

AUDITOR-CONTROLLER/ TREASURER/TAX COLLECTOR



COUNTY OF SAN BERNARDINO

- 222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018 • (909) 387-8322 • Fax (909) 386-8830
- 172 West Third Street, First Floor
San Bernardino, CA 92415-0360 • (909) 387-8308 • Fax (909) 387-6716

LARRY WALKER
Auditor-Controller/
Treasurer/Tax Collector

May 28, 2013

Matt Brown, Assistant Auditor-Controller/Treasurer/Tax Collector
Auditor-Controller/Treasurer/Tax Collector
222 W. Hospitality Lane, 4th Floor
San Bernardino, CA 92415-0018

SUBJECT: AUDITOR-CONTROLLER/TREASURER/TAX COLLECTOR (ATC) – TAX COLLECTION DIVISION'S CONTRACT BILLING AUDIT

Introductory Remarks

In compliance with Article V, Section 6, of the San Bernardino County Charter, and County Policy No. 02-02 on Internal Operational Auditing, the Internal Audits Section has completed an audit of the ATC – Tax Collection Division's contract billing. Our audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

Background

The Tax Collection Division of the ATC (Division) performs three primary functions: tax collection, tax accounting and tax sales. Tax Collection is responsible for the annual secured and unsecured tax roll including the collection and recording of approximately \$1 billion in property taxes, plus County licenses and other fees, on an annual basis. The Division contracts for attorney services used when a taxpayer declares bankruptcy while owing outstanding property taxes.

Objectives, Scope and Methodology

The audit objective was to determine whether billings for legal services for bankruptcy proceedings of entities owing unpaid property taxes are accurate. During the audit period of July 1, 2007 through September 30, 2012, contract 07-688 (Contract) was the only contract that provided the Division these types of services. This contract has been in place since 2007.

The Internal Audits Section examined the Contract and compared its terms with a sample of its ensuing invoices during the audit period.

Conclusion

Based on the results of the audit, we concluded that the Contract should be amended to clarify its terms. In addition, Division staff should verify the contract billing is in accordance with the approved contract. However, charges as a whole appear reasonable.

We identified several practices that could be improved. We have listed these areas and our recommendations for improvement in the Findings and Recommendations section of this report.

We sent a draft report to the department on March 19, 2013 and discussed our findings with management on April 2, 2013. Management's responses have not been altered in any way and are included below as they were provided to us.

Findings and Recommendations

Finding 1: Contract Language Should Be Improved

A properly written contract should detail the rights and obligations of the parties in a clear and unambiguous manner. California Civil Code Section 1638 states "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." California Business and Professions Code (BPC) Section 6148 (a) states that a written contract must contain the basis of compensation, the general nature of the legal services to be provided and the respective responsibilities of the attorney and the client as to the performance of the contract.

Our review disclosed that compensation terms of Contract 07-688 were not clear. While there were different rates for litigation and pre-litigation services, the activities considered pre-litigation services were not defined within the contract.

When contracted services begin with a bankruptcy litigation, a definition of whether the term litigation means the vendor's litigation or the County's debtor's litigation needs to be clearly stated within the contract. The lack of clarity within the contract's terms led to the vendor and the Division interpreting the term pre-litigation differently which resulted in unclear contract billing.

Recommendation:

Contract 07-688, and any other contracts for similar services, should be amended to include a clear definition of what activities constitute pre-litigation activities.

Management's Response:

Management concurs. It is anticipated that a new contract for the provision of outside legal services for representation of the County in bankruptcy proceedings of entities owing the County unpaid property taxes will be submitted to the Board of Supervisors for approval on

May 21, 2013. A copy of the draft contract has been included with this response. The Standard Hourly Billing Rates (Exhibit "A") has been changed to reflect billable services as "general matters" or "litigation matters," and details the activities included in each service; pre-litigation activities have been incorporated under "general matters."

Auditor's Response:

The Division's planned action will address the deficiencies noted in the finding.

Finding 2: Billings Were Paid That Were Not in Accordance with Contract

Per Contract 07-688 on page 2 paragraph 2.b, "Attorneys shall only assign persons to perform services under this Contract who are approved by the County and when feasible Attorneys will use lower compensated personnel in order to reduce the costs of services to County. The persons listed in Exhibit "A", Standard Hourly Billing Rates, may perform services under this Contract. The hourly rate for each of the listed attorneys and other attorneys who may be approved to work under this Contract shall not exceed the rates listed on Exhibit "A", Standard Hourly Billing Rates. The County Counsel may approve other attorneys or other persons to work for Attorneys under this Contract and may approve increases to the rates listed on Exhibit "A", Standard Hourly Billing Rates."

Per page 5 paragraph 11.c.1, local area travel is a non-reimbursable cost. Page 5 paragraph 11.a.6 of the Contract states that reimbursable ordinary costs and expenses shall be limited to postage, faxes and photocopying at \$0.10 per page.

The following contract non-compliance issues were found within the paid billings.

- The services of two legal assistants were billed even though Exhibit "A" did not list a billing rate for legal assistants.
- The services of one attorney and one paralegal were billed even though they were not listed by name on Exhibit "A" of the Contract nor approved by County Counsel.
- Other non-compliant billings included charges for:
 - local area travel
 - copying expenses billed at \$0.35 and \$2.10 per page
 - fax expenses billed at \$1.00 per page

Inadequate comparison of billings to the contract terms resulted in the County paying for services not authorized by the Contract and overpaying for contracted services.

Recommendation:

We recommend that management require Division staff to:

- adequately review billings made under this Contract to ensure they agree with the underlying contract terms and not pay for items out of compliance; and
- communicate with County Counsel to ensure that approval was given for any personnel or standard hourly billing rates that do not align with Exhibit "A" of the Contract.

Management should monitor staff and review staff's work periodically to ensure that the staff's review of Contract billings is complete and accurate. In addition, management should seek recovery of overcharged services if the estimated recovery will be greater than the resources used.

Management's Response:

Management concurs. Upon Board of Supervisor approval of the new contract, the new Tax Collection Manager will be provided a copy of the contract and exhibits, and trained on allowable costs. The Standard Hourly Billing Rates (Exhibit "A") clearly defines the individuals providing services under the contract, and their corresponding billing rate. The Case Management Plan (Exhibit "B") has been included in the new contract and will be completed by the outside legal counsel. The Case Management Plan will serve as a reference tool to assist the Tax Collection Manager in validating the accuracy of billings, and to ensure the County does not overpay for services.

Auditor's Response:

The Division's planned action will address the deficiencies noted in the finding.

Thank you very much for the cooperation extended by your staff during the course of this audit.

Respectfully submitted,

Larry Walker
Auditor-Controller/Treasurer/Tax Collector
San Bernardino County

By: 
Mark Cousineau, CPA, CFE, CIA, CGAP, CITP, CGFM, CRMA
Chief Deputy Auditor
Internal Audits Section

LDW:MWC:AK:aeb

Quarterly copies to:
Board of Supervisors (5)
Chief Executive Officer (2)
Grand Jury (2)
Auditor-Controller Audit Committee

Date Report Distributed: 5/29/13