



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: OFFICE OF THE INDIANA ATTORNEY GENERAL
TITLE: CONTINGENCY FEE CONTRACT
CASE ID: 2020-10-0327
DATE: October 28, 2020

After examination and review, Office of Inspector General Staff Attorney Kelly Elliott reports as follows:

The purpose of this Report is to fulfill the statutory requirements of Ind. Code §4-6-3-2.5 regarding contingency fee contracts. This statute requires the Inspector General (IG) to review proposed contingency fee contracts for possible conflicts of interests and potential Code of Ethics violations. Under this statute, an agency may not enter into a contingency fee contract unless the IG has made a written determination that entering into the contract would not violate the Indiana Code of Ethics, set forth in Ind. Code §4-2-6 and 42 IAC 1-5, or any statute or agency rule concerning conflicts of interests.

On October 21, 2020, the Office of the Indiana Attorney General (OAG) notified the IG that it wished to enter into a contingency fee contract with United Collection Bureau, Inc. (UCB), a collections firm, and Scheer, Green and Burke, L.P.A. (Firm), a law firm. The OAG explains that Firm, in cooperation with UCB, will represent the State in actions against debtors for the collection of claims against various individual and business accounts for recovery of overpayments and assessments of accounts owed to state offices and agencies, as well as state universities and court systems.

The State will compensate UCB and Firm through a contingency fee for an aggregate

amount collected up to, and not exceeding, Two Million Dollars (\$2,000,000). The contract provides the following contingency fee terms: (1) 25% for all aggregate amounts collected that do not require legal services; or (2) 33% for all aggregate amounts collected through litigation in a court of law. The State will compensate UCB and Firm with an aggregate contingency fee for amounts collected of Two Million Dollars (\$2,000,000) or more in accordance with Ind. Code §4-6-3-2.5.

Pursuant to Ind. Code §4-6-3-2.5(b), an agency is required to make a written determination before entering into the contract that the contingency fee representation is cost effective and in the public interest. The OAG must consider five factors when making this determination as outlined by Ind. Code §4-6-3-2.5(c). Those factors are as follows:

- (1) Whether the agency has sufficient and appropriate legal and financial resources to handle the matter.
- (2) The time and labor required to conduct the litigation.
- (3) The novelty, complexity, and difficulty of the questions involved in the litigation.
- (4) The expertise and experience required to perform the attorney services properly.
- (5) The geographic area where the attorney services are to be provided.

The OAG made such a determination and considered all of the factors outlined in the statute.

The OAG's determination explains that UCB and Firm will handle collection claims on behalf of the OAG's Asset Recovery and Bankruptcy Litigation section (ARB). The OAG's determination provides that the ARB maintains a high volume of both active litigation matters and post-judgment cases that require collection efforts. The ARB lacks the necessary resources to sufficiently handle this high volume of collection claims. The OAG's determination explains that given the prolific nature of the collections needs of the ARB, and the limited manpower to process the collections claims discussed herein, the State requires additional resources and expertise to ensure Indiana's interests in the collections claims are properly protected.

The OAG's determination provides that collection matters are heavily regulated at the

federal and state level and require a detailed understanding of the processes available for recovering funds from judgments. The OAG's determination explains that UCB and Firm maintain specialized knowledge and institutional practices to recover funds more effectively and efficiently. The OAG's determination notes that allowing UCB and Firm to handle collection cases will permit the ARB to allocate its time and resources to other more complex and time-sensitive cases.

The OAG's determination explains that the case matters at issue require a third-party collections firm and outside counsel with specialized knowledge of Indiana's Debt Collection laws, as well as the federal Fair Debt Collections Practices Act. The OAG states that failure to comply with the comprehensive rules and regulations impacting debt collecting could result in a failed recovery and/or penalties against the collecting party. The OAG's determination explains that UCB and Firm maintain requisite knowledge, expertise and experience in the field of debt collection to best serve the State's interests in such claims.

The OAG's determination states that collection claims arise in counties across the State and the OAG intends to utilize UCB and Firm to assist in collection cases throughout the State. The OAG's determination states that UCB and Firm have the resources to manage claims pending in multiple venues around the State. The OAG's determination notes that this will also help reduce the additional time and expenses the ARB uses to travel to attend case matters that require a personal appearance by the parties.

Furthermore, Ind. Code §4-6-3-2.5(d) requires the OAG to request proposals from private attorneys wishing to provide services on a contingency fee basis, unless the agency, in this case the OAG, determines in writing that requesting proposals is not feasible under the circumstances. The OAG's determination states that the OAG requested proposals from four collection firms and their outside counsel, all of whom were licensed and equipped to handle collection matters in the

State. The OAG's determination explains that they chose UCB and Firm because of their extensive history of working with governmental entities in recovery efforts. Additionally, UCB and Firm both have extensive knowledge of collections practices in the State and have worked with multiple Indiana governmental entities on collection actions.

According to the OAG, no employee of the OAG or immediate family member of an OAG employee has any financial interest in UCB or Firm. Likewise, there is no information to indicate that any OAG employee or immediate family member of an OAG employee has a financial interest in the contract itself. Furthermore, neither UCB nor Firm employs any state employees, including OAG personnel involved in any of the contracting decisions. Finally, the OAG provides that no OAG employee is contracting with or will be supervising the work of a business entity in which a relative is a partner, executive officer or sole proprietor.

Based on the information provided, and after careful review and examination, we find that entering into this contingency fee contract will not violate the Code of Ethics or any statute or agency rule concerning conflicts of interests. This Report is issued in compliance with the above noted statutory requirements.

Dated: October 28, 2020

APPROVED BY:



Lori Torres, Inspector General