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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 16, 2014

Mr. Brian Digman
NYS Chief Information Officer
Office of Information Technology Services
State Capitol
Empire State Plaza
P.O. Box 2062
Albany, NY 12220

Re: Procurement and Contracting
Practices
Report 2013-F-24

Dear Mr. Digman:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Office of Information Technology Services (ITS) to implement the recommendations contained in our audit report, *Procurement and Contracting Practices* (Report 2010-S-71).

Background, Scope and Objective

The New York State Office of Information Technology Services, formerly the New York State Office for Technology, plays a significant strategic and technology procurement role in State government. ITS is responsible for providing centralized information technology services to the State and its governmental entities. ITS also sets statewide technology policy for all State government agencies, assists agencies with large technology procurements and monitors all large technology expenditures in the State, seeking efficiencies, lower costs, and innovative solutions. With an annual budget of about \$434 million, the agency serves as one of the State's principal purchasers of technology. Between July 2012 and September 2012, ITS transferred its procurement function to the Office of General Services (OGS). ITS and OGS are actively working together to finalize their roles in the procurement process.

Our initial report was issued on February 28, 2012. Our objective was to determine whether ITS' procurement and contracting practices resulted in the best value for taxpayers, consistent with applicable legal, regulatory and ethical requirements. The audit covered the period April 1, 2008 through December 2, 2011. We identified several major problems and potential ethics violations, including \$1.5 million wasted in a contract with McAfee; unfair bidding practices; inappropriate

negotiations with vendors regarding contract terminations; and discretionary purchases that exhibited a disregard for requirements. We found a culture emanating from the highest levels of the agency that disregarded the New York State Finance Law, the State's Procurement Guidelines and the agency's own procurement policies. This did not result in the best value for the taxpayers, but instead led to the waste of substantial public resources. Moreover, in several notable instances, transgressions appeared to have been motivated by personal gain and may have violated the ethics standards contained in the New York State Public Officers Law.

The objective of our follow-up was to assess the extent of implementation, as of March 4, 2014, of the eight recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

ITS officials have made some progress and, in working with OGS, continue to make progress in addressing the problems we identified in the initial audit. Of the eight prior audit recommendations, two were implemented and six were partially implemented.

ITS officials believe they have fully implemented all of our recommendations and that we do not properly take into account the fact that ITS' contract and procurement functions are now hosted by OGS and that ITS utilizes the procurement expertise and other resources of OGS when pursuing technology and other procurements. They further note that, as a result of the transfer of the ITS Contracts and Procurement function and contract management staff to OGS, ITS no longer initiates or handles procurements, including discretionary purchases, without OGS involvement. Rather, they indicate every procurement on ITS' behalf utilizes OGS procedures, including standard business case analysis practices where appropriate, as directed by OGS.

We acknowledge that the transfer of procurement duties has occurred and that progress can continue to be made. However, we reviewed contracts that began both before and after the transfer of functions, and we continued to find issues with contracts initiated after the transfer of functions occurred, particularly discretionary purchases. The status of recommendations discussed in this report reflects our observations at the time of the review.

Follow-up Observations

Recommendation 1

Provide ethics training to all staff, including senior and executive management.

Status - Implemented

Agency Action - During the summer months of 2012 and 2013, ITS employees attended ethics trainings provided by the New York State Office of the Inspector General and the Joint Commission on Public Ethics, respectively. We are satisfied with the number of employees, particularly senior and executive management officials, that received ethics training.

Recommendation 2

Ensure that all senior officials and contract management staff receive up-to-date training in New York State procurement laws and OFT procurement policies.

Status - Partially Implemented.

Agency Action - In our initial audit, we found several officials violated ITS procurement policies and the New York State procurement guidelines. These officials awarded contracts to selected vendors and failed to determine if they were obtaining the best value for the services, or if the price the State was paying was reasonable. Since then, ITS officials have not updated the procurement training curriculum nor have they provided such training to their employees, in particular senior level officials. ITS officials contend the ethics training provided by the Inspector General's Office in June 2012 included material specific to New York State contract and procurement lobbying laws. ITS also reported that staff have been working closely with OGS to establish procurement processes, including procurement staff monitoring procedures, for all ITS procurements. In this regard, all joint agency procurement processes have been, and are continuing to be, reviewed and improved by both agencies to ensure that all aspects of the State's procurement laws and rules are followed at all times.

Recommendation 3

Develop a standard business case analysis to be performed for all purchases. To ensure transparency, the analysis should document:

- *the planning and preparations performed before entering into any agreement or contract,*
- *the competition or bidding that took place,*
- *the logic behind selecting winning bidders, and*
- *the reasons why losing bidders are not chosen.*

Status - Partially Implemented

Agency Action - According to officials, ITS no longer initiates or handles procurements, including discretionary purchases, without OGS involvement. Every procurement on ITS' behalf utilizes OGS procedures, including standard business case analysis practices where appropriate, as directed by OGS. Additionally, ITS officials noted that under OGS' direction, ITS has and continues to complete questionnaires, memoranda, and other documents when developing business case analyses in support of proposed procurements. However, our current review of discretionary purchases found two were made without obtaining three written quotes from vendors as required by the New York State purchasing requirements.

Recommendation 4

Ensure that no one individual has the ability to influence or control the procurement process for any contracts or purchases and that full disclosure and/or recusal is required of all OFT employees in the case of a potential conflict of interest or the appearance thereof.

Status - Partially Implemented

Agency Action - We obtained a copy of ITS' ethics policy which outlines the responsibilities of every employee and details the restrictions concerning conflicts of interests. According to this policy, each ITS employee receives a copy of the New York State "Code of Ethics" (Code) upon hiring, and is required to take and file an oath of office and sign a statement to affirm that they agree to conform to the provisions described in the Code. Additionally, ITS officials provided us with a copy of their proposed procurement procedures for their Budget unit. While these procedures include a multi-layered review process for procurements, they are presently in draft form and have not yet been implemented. ITS also notes that staff have been working closely with OGS to establish procurement processes, including procurement staff monitoring procedures, for all procurements. In this regard, all joint agency procurement processes have been, and are continuing to be, reviewed and improved by both agencies to ensure that all aspects of the State's procurement laws and rules are followed at all times

Recommendation 5

Establish monitoring procedures to ensure all staff comply with procurement and contracting laws.

Status - Partially Implemented

Agency Action - ITS officials provided us with a copy of their proposed procurement procedures for their Budget unit. While these procedures include a multi-layered review process for procurements, they are presently in draft form and have not yet been implemented.

Recommendation 6

Create a process to better monitor contract end dates and thereby reduce the Office for Technology's reliance on stop gap contracts.

Status - Partially Implemented

Agency Action - In the initial audit, five of the 23 procurements we examined represented "stop gap" contracts. Stop gap contracts are used as a bridge between a contract that is ending and a new contract that has yet to be implemented, and are put in place in order to not lose service during the interim. However, if monitored correctly, contract ending dates should come as no surprise and the need for stop gap contracts should be minimal.

Although ITS officials noted that they meet on a regular basis to monitor contracts and their end dates, our review of contracts showed that they continue to use stop gap contracts. We sampled ten contracts that had been initiated after the previous audit and found two to be “stop gap” contracts for amounts under ITS’ discretionary limit of \$50,000. Both were used to extend contracts that had expired and retain the vendors’ services before new contracts were approved.

Recommendation 7

Discontinue abusive practices to avoid competition that would otherwise be required and appropriate.

Status - Partially Implemented

Agency Action - We found no evidence that ITS officials continued to engage in abusive practices to avoid competition, and ITS officials note that they have no knowledge or information about the use of abusive practices by any ITS official or employee in the conduct of any official procurement duties or responsibilities subsequent to the release of the original OSC audit report. However, we found there are still issues with the discretionary purchases. We reviewed ten contract files initiated after the release of our original audit, of which four were discretionary contracts. We found two of the four contract files did not contain evidence that three written quotes were obtained from vendors as required by the State purchasing requirements.

Additionally, we found four of the ten contract files did not contain evidence of other required documentation, such as the Procurement Record Checklist or the Procurement Lobbying Law Certification.

Recommendation 8

Ensure all staff comply with their responsibility to provide unfettered access to all necessary information requests by OSC in the conduct of its independent audits.

Status - Implemented

Agency Action – ITS officials provided auditors with the documents requested.

Major contributors to this report were Nadine Morrell, Danielle Rancy and Melissa Davie.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of ITS for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Brian Reilly
Audit Manager

cc: Bruce Rollins, Office of Information Technology Services