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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OFFICE OF MENTAL
RETARDATION AND
DEVELOPMENTAL
DISABILITIES**

**PHYSICAL PLANT
PROCUREMENT
PRACTICES AT CENTRAL
NEW YORK
DEVELOPMENT
DISABILITIES SERVICES
OFFICE**

Report 2007-S-136

AUDIT OBJECTIVE

Our objective was to determine whether fraud was occurring in the bidding process for purchases of home maintenance, rehabilitation and repair services for group homes at the Central New York Developmental Disabilities Services Office (DDSO).

AUDIT RESULTS - SUMMARY

We determined that Central NY DDSO Physical Plant staff ensured that favored vendors received State business by working in collusion with them. As a result, other vendors were not given the opportunity to gain the State's business and the State did not pay a reasonable price. We identified 168 purchases totaling over \$1 million that were awarded as a result of collusion and bid rigging and there could be more.

Also, Physical Plant staff admitted in interviews that, at times, favored vendors were allowed to bid and received projects at a higher price than reasonable. One Maintenance Supervisor called it throwing the vendor a "lollipop." If a reasonable price had been paid, more money would have been available to do other necessary rehabilitation, repairs and maintenance on group homes occupied by persons with mental retardation and developmental disabilities.

Auditors and experts from the Office of General Services (OGS) examined a sample of work done at group homes and found that the State did not pay a reasonable price and, as a result, favored vendors were overpaid for projects. After physical observation, OGS experts used a conservative approach to estimating a reasonable price for a sample of 31 purchases. As a result, OGS experts estimated that the DDSO overpaid for work done on 19 of the 31 purchases. The DDSO

paid a total of \$127,845 for these 19 jobs. However, if a reasonable price had been paid, the DDSO would have paid \$76,800, resulting in an overpayment of \$51,045 (or 40 percent more than they should have).

We found that the Physical Plant Superintendent, both in his capacity as Maintenance Supervisor and Physical Plant Superintendent, appears to have violated several provisions of Article 4, Section 74 (Code of Ethics) of the Public Officers Law. The Physical Plant Superintendent hired vendors to perform work at the DDSO who are clients and suppliers of his personal landscaping and snowplowing business. In addition, the Physical Plant Superintendent secured discounts and entered into other financial transactions with vendors whom he hired to perform work at the DDSO. This situation has compromised the Physical Plant Superintendent's professional judgment in carrying out his official duties.

The Office of the State Comptroller's Investigations Unit, who participated in this audit, referred our findings to the Oneida County District Attorney's Office and continues to work cooperatively with the District Attorney for appropriate action in this matter.

Office of Mental Retardation and Developmental Disabilities (OMRDD) officials were cooperative during this audit and have already begun to take action to address matters brought to their attention during the audit. For example, Central NY DDSO management has instituted new guidelines and forms to ensure the bidding process is fair and a reasonable price is obtained. Also, management has taken action to recruit a new Physical Plant Superintendent.

This report, dated January 6, 2009, is available on our website at:
<http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
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BACKGROUND

OMRDD provides a comprehensive system of care for more than 140,000 persons with mental retardation and developmental disabilities and their families. OMRDD provides this care through 14 regional Developmental Disabilities Services Offices (DDSOs) and a network of community-based, not-for-profit agencies and State-operated programs in each region.

Central NY DDSO oversees the care that is provided to about 3,850 persons with mental retardation and developmental disabilities in Cayuga, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga and Oswego counties. This care is provided in 197 community-based group homes, 306 family care homes, and 23 other program sites.

Central NY DDSO provides various services to support these group and family care homes. Employees in the Physical Plant Services Office (Physical Plant) hire vendors to provide home maintenance and repair services at the 197 group homes located across the eight counties covered by the DDSO. They are also responsible for monitoring the vendors to ensure that the work is done properly prior to payment. Physical Plant staff have about \$1.8 million each year to perform this work. Physical Plant staff is also responsible for hiring vendors for rehabilitation work on recently purchased group homes and have a separate budget to do

this work. In 2007, Physical Plant staff paid vendors about \$200,000 for rehabilitation work at two recently purchased group homes. The Physical Plant has offices in both Rome and Syracuse. The Physical Plant is managed by the Physical Plant Superintendent who oversees eight Maintenance Supervisors and reports directly to the Central NY DDSO Business Officer.

Because there are 197 group homes and a limited budget, Physical Plant staff work with the Central NY DDSO Business Officer and the Board of Visitors to prioritize the necessary projects that can and will get done each year to meet the needs of persons with mental retardation and developmental disabilities. Once the projects to be done are decided and the State budget is passed it is up to the Physical Plant staff to follow appropriate purchasing laws and guidelines to hire the vendors to do the necessary rehabilitation, maintenance and repair services.

New York State Procurement Law requires that for purchases under the discretionary buying threshold of \$15,000, there must be evidence of how the vendor was selected and evidence that the price was reasonable, purchases of \$15,000 or more require advertisement in the Contract Reporter, and a formal contract based on sealed bids is required for purchases of \$50,000 or more. Central NY DDSO's purchasing guidelines require three written estimates (bids) for purchases over \$5,000 (over \$2,500 prior to November 2006) and sealed bids received and opened by the Business Office for purchases of \$15,000 or more. Purchases for group home rehabilitation, maintenance, and repair goods and services under \$15,000 are made directly by the Physical Plant staff and approved by the Principal Account Clerk or Head Account Clerk (in the Principal Account Clerk's absence) in the Business Office after

the purchase has been made and the goods and services have been provided.

AUDIT FINDINGS AND RECOMMENDATIONS

Physical Plant Purchasing Practices

Bidding

We determined that Central NY DDSO Physical Plant staff ensured that favored vendors received State business by working in collusion with them and rigging bids. As a result, other vendors were not given the opportunity to gain the State's business and the State did not pay a reasonable price. We identified 168 purchases totaling over \$1 million, which were awarded as a result of collusion and bid rigging and there could be more.

The bid rigging usually worked as follows for each purchase estimated to be between \$5,000 (\$2,500 prior to November 2006) and \$14,999 which required three formal written bids: (1) before any bids were submitted, Physical Plant staff predetermined which vendor would win the State's work, (2) Physical Plant staff set a "price target" for the favored vendor to submit as its bid, and (3) they contacted the favored vendor and asked them to submit their bid along with one or two others (fake bids). Also, sometimes Physical Plant staff would ask another favored vendor to provide a high bid to allow the selected winning vendor to get a particular job. In addition, one Physical Plant staff admitted that, on a few occasions, he created the fake losing bid(s) himself on his home computer.

We found that at least nine favored vendors were involved in the bidding scheme, but suspect that there could be more. We found that the fake bids submitted by the favored vendors were either:

- Sham entities,
- A legitimate entity also owned by the favored vendor,
- Legitimate entities but the legitimate entity did not know the favored vendor was submitting bids on their behalf by using their letterhead or made up letterhead with their entity's name on it, or
- Legitimate entities who worked in collusion with the favored vendor and, as payoff, received subcontract work under the favored vendor for the group home work they bid on or on other non-State work the favored vendor performed.

Although we have paperwork that demonstrates that the scheme goes back to 2003, there are indicators that it began long before this. One vendor, who admitted he participated in the scheme, told us he has been participating since the late 1990s.

State procurement laws require that state agencies award contracts only to responsible vendors. Bulletin G-221, issued by the Office of the State Comptroller, outlines the qualities of a responsible vendor which include: integrity, performance, legal capability and financial capability. Some factors to be considered include: civil fines and injunctions imposed by governmental agencies, tax delinquencies, less than satisfactory performance, debarment by the State Labor Department due to a prevailing wage violation, and/or recent bankruptcies. We question how Physical Plant staff deemed four of the nine favored vendors responsible because they had at the time of our audit or in the recent past: filed Chapter 7 Bankruptcy or incurred State and Federal tax liens or Department of Labor (DOL) wage violations

or the business and/or owner had a judgment against them.

Vendor	Bankruptcy	Tax Liens	DOL Liens	Judgments
Vendor #1	Yes	2	3	0
Vendor #2	No	3	0	6
Vendor #3	No	0	0	3
Vendor #4	No	20	0	14
TOTAL	1	25	3	23

In addition, we found at least five purchases totaling \$27,735 where Physical Plant staff did not do their job but instead allowed Vendor #2 to do it for them. Vendor #2 hired three different vendors to do DDSO work at the group homes and then told the DDSO to pay them directly. As for the vendors, they thought that Vendor #2 had been hired by the DDSO and they were just a subcontractor of Vendor #2. However, when it came time for payment, the check actually came from the DDSO. Fake bids had to have been created either by Vendor #2 or Physical Plant staff to justify payment for the \$20,950 paid to Vendors A and B because these purchases would have required three bids to justify open competition and reasonable price. The remaining three payments made to Vendor C were under the purchasing thresholds and would not have required three bids. The five payments were as follows:

Vendor	Job Scope	Purchase Amount
Vendor A	Sewer Line	\$ 6,200
Vendor B	Driveway	\$14,750
Vendor C	Paving	\$ 2,445
Vendor C	Paving	\$ 1,850
Vendor C	Paving	\$ 2,490
TOTAL		\$27,735

Many of the Physical Plant staff reported that they practice bid rigging because there are too many (purchasing) rules which make their job difficult. However, we found that by rigging bids the Physical Plant staff made their job more difficult. For example, the DDSO is required to buy wall-to-wall carpet from the

state-wide contract. Purchasing from the state-wide contract does not require obtaining any bids. Physical Plant staff need only contact the vendor on state-wide contract and tell them what they want to purchase and where they want it installed. We found instances when Physical Plant staff rigged bids in order to avoid using the state-wide contract vendor for wall-to-wall carpet. In addition, Physical Plant staff described the scope of work as “providing area rugs” when, in fact, auditors confirmed that the vendor actually provided wall-to-wall carpet.

Little effort was made to cover up the bid rigging. Vendors in the surrounding community, who had no dealings with Physical Plant staff, had knowledge of how the Physical Plant operated. For example, one of the Physical Plant staff told us that an entity that had never done work for Central NY DDSO submitted bids for an upcoming project, a legitimate bid and two fake bids because it was this vendor's understanding that that was what is required to get Central NY DDSO business.

There was widespread knowledge and acceptance of the bid rigging practice among Physical Plant staff. Many of the Physical Plant staff participated in the bid rigging. New staff reported to us that they were taught by their fellow workers how to obtain fake bids. One of the Physical Plant staff reported that it was never their practice to do it the right way. The culture and attitude was to get it done in what management and staff thought was the easiest way.

A review of a sample of purchases found that:

- A number of them had all three bids from the same fax machine (that of the favored vendor) attached as support of reasonable price in the

procurement record. This clearly showed the bid rigging.

- Many of the fake bids did not have enough information on them for Physical Plant staff to know who to contact if the vendor was selected as the lowest (winning) bidder.
- The entities on the fake bids were not on the Physical Plant Vendor List. (A list of vendors interested in State business that Physical Plant staff have determined are responsible to perform the work.) Therefore, most of the entities on the fake bids had never been hired to provide goods or services to the Central NY DDSO. Even DDSO management admitted that they would not expect to continuously see bids from vendors that never received DDSO work and admit that they should have questioned this.
- Some of the fake bids were signed in the entity's name instead of by the owner or an employee of the vendor.

We performed a simple analysis of purchases made by the Physical Plant and the potential for fraud was apparent. For example, several of the transactions were in rounded dollars. More importantly, many transaction were for just under the purchasing thresholds - \$2,495; \$4,995; \$14,999, etc. In fact, when we interviewed vendors, and Physical Plant staff, they were quick to tell us that favored vendors knew what the purchasing guidelines were and knew that if they stayed just under the thresholds they were more likely to get the work. Some even called the group of favored vendors the 2495 club.

Similar reviews of a sample of procurements by Central NY DDSO management would

have discovered the bid rigging. However, Central NY DDSO controls in the Physical Plant and in the Business Office were so lax that the documentation was accepted and the procurements were approved for payment. We found that:

- At least one Physical Plant staff personally benefited from the bid rigging scheme by gaining discounts from favored vendors on products for his personal use.
- The one person in the Business Office primarily responsible for approving Physical Plant purchases is the wife of one of the Physical Plant staff involved in the bid rigging scheme. In fact, when asked, the Business Officer told us he never thought it was a problem that the Principal Accounts Clerk (the one person in the Business Office primarily responsible for approving Physical Plant purchases) is the wife of one of the Physical Plant Maintenance Supervisors.
- The Business Officer himself was the Physical Plant Superintendent from November 1999 until he was promoted to Business officer in May 2005. We have evidence that he signed off on procurements where all three of the bids came in from the fax machine of a favored vendor when he was Physical Plant Superintendent.
- We found that Central NY DDSO management assigned the title of Internal Auditor to a Principal Account Clerk (G-14) who did not have the skills for this function. The Internal Auditor did not audit Central NY DDSO purchases because she was told to focus all her efforts on

client cash accounts. The Internal Auditor also reports directly to the Business Officer who is responsible for the Physical Plant and the Business Office so even if the Internal Auditor discovered the bid rigging, she would be left to report it to the one person responsible for the two units that are involved in the bid rigging. The Internal Auditor should report directly to the DDSO Director in order to ensure independence when reporting potential fraud, waste, abuse, management inefficiencies and unethical situations discovered.

- Some of the favored vendors are relatives, neighbors, and/or friends of Physical Plant and Business Office staff.
- Some of the owners of the legitimate entities who worked in collusion with favored vendors to submit fake bids and received subcontract work as payoff, were DDSO employees or relatives of DDSO employees.

Employees in the Central NY DDSO Storehouse received a copy of the purchase order for each Physical Plant purchase. The purchase order indicates, among other things, the name of the vendor who received the State's business, a brief summary of the scope of work, and the amount paid. Just looking at these documents made one of the storehouse employees question how the same vendors were continuously getting the work. If the storehouse employee who only received a portion of the purchase record questioned the purchases, we wonder why Business Office staff who received the entire procurement record or other Central NY DDSO management did not question the procurements. Moreover, when we initiated the audit, we explained to Central NY DDSO

management that we were concerned that one vendor had received \$1.4 million over a three year period. This amount did not include larger jobs (\$50,000 or more) obtained by the vendor because these jobs go through the Dormitory Authority of the State of New York (DASNY). Central NY DDSO management was surprised and had to ask who the vendor was.

We question the competence of Central NY DDSO's Business Officer to manage and monitor Business Office and Physical Plant operations. The Business Officer told us he trusted his employees to do the right thing and never suspected that they were working with vendors to rig bids. When we showed the Business Officer evidence of the bid rigging, he asked us to explain to him how he could have identified the collusion and bid rigging. We explained to him step by step the testing we did and the monitoring efforts he should have made. We also explained to the Business Officer the significance of allowing the wife of one of the Physical Plant staff to approve all Physical Plant purchases and having the Internal Auditor focus all her efforts on client cash accounts.

In addition to ensuring the competence of Central NY DDSO staff in key supervisory positions, the Business Officer, Deputy Director of Quality Assurance (supervisor of the Business Officer), DDSO Director, Regional Director and OMRDD Central management should increase their monitoring efforts of Central NY DDSO purchases and ensure that adequate controls are in place to prevent fraud, waste, and abuse of State resources.

Split Ordering

We also discovered other purchasing practices carried out by Physical Plant staff that circumvented purchasing requirements. We found Physical Plant staff would split order

(divide work into multiple purchases), keeping each purchase just under the purchasing threshold (under \$5,000 [\$2,500 prior to November 2006]) to avoid triggering competitive bidding requirements. The following are a few examples. (All of these purchases were made prior to November 2006 when the threshold was \$2,500.):

- Two purchase orders were issued on the same date to the same vendor to paint a group home. Both purchase orders were issued for just under the purchasing thresholds (one for \$2480 and the other for \$2485) and together would have required competitive bidding.
- Two purchase orders were issued within one week of each other to the same vendor to install flooring at a group home. Both purchase orders were issued for just under the purchasing threshold (one for \$2375 and the other for \$2425) and together would have required competitive bidding.
- Two purchase orders were issued within one week of each other to the same vendor to paint the garage at a group home. Both purchase orders were issued for just under the purchasing threshold (one for \$2375 and the other for \$2450) and together would have required competitive bidding.
- Two purchase orders were issued within two days of one another to the same vendor to provide materials for a kitchen rehabilitation. Both purchase orders were issued for just under the purchasing threshold (one for \$2480 and the other for \$2485) and together would have required competitive bidding.

Purchases were also split among entities that were actually owned by the same persons.

For example, for the same project, one entity was hired for the labor portion of the project while another entity was hired to provide the materials for the project. Both entities were owned by the same persons. Each entity was paid just under the purchasing threshold of \$5,000 (or \$2,500 prior to November 2006), therefore, avoiding bidding requirements.

When interviewed, one Maintenance Supervisor informed us that he was taught to split order by the current Business Officer when he was Physical Plant Superintendent. However, the current Business Officer denied teaching anyone to split order or encouraging split ordering. In addition, another Maintenance Supervisor told us that another former Physical Plant Superintendent encouraged Physical Plant staff to split order to expedite the purchasing process. A culture that encourages circumventing purchasing requirements creates a weak internal control environment. In failing to comply with purchasing requirements, Central NY DDSO management did not demonstrate a supportive attitude toward internal control. As shown by our findings, an inadequate commitment to internal control has created an environment that has allowed for fraud, waste, and abuse.

Reasonable Price

Physical Plant staff admitted in interviews that, at times, favored vendors were allowed to bid and receive projects at a higher price than reasonable. One Physical Plant employee called it throwing the vendor a "lollipop." If a reasonable price had been paid, more money would have been available to do other necessary rehabilitation, repairs and maintenance on group homes occupied by persons with mental retardation and developmental disabilities.

Auditors and experts from the Office of General Services (OGS) examined a sample

of work done at group homes and found that the State did not pay a reasonable price and, as a result, favored vendors were overpaid for projects. After physical observation, OGS experts used a conservative approach to estimate a reasonable price for a sample of 31 purchases. In their estimates, OGS included an 11 percent overhead profit plus the cost of material and the cost of labor at the NYS prevailing wage rate. As a result, OGS experts estimated that the Central NY DDSO overpaid for work done on 19 of the 31 purchases. The Central NY DDSO paid a total of \$127,845 for these 19 projects.

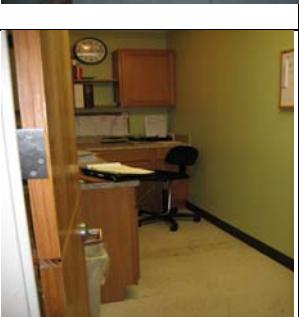
However, if a reasonable price had been paid, the Central NY DDSO would have paid \$76,800, resulting in an overpayment of \$51,045 (or 40 percent more than they should have).

We believe there could be many more projects where the Central NY DDSO overpaid for projects at group homes. However, given the limited time and resources available, OGS experts were only able to provide a reasonable price estimate for 31 purchases. The table below contains the 19 projects where the State overpaid.

Job Description	Photo	DDSO Cost	OGS Determination of Reasonable Price	Overpayment
Install 4,900 sq. ft. Driveway	Not Available	\$14,750	\$7,000	\$7,750
Install 2,340 sq. ft. Driveway, including Excavation Work	Not Available	\$14,975	\$8,500	\$6,475
Install Laminate Floor in Living Room and Hallways		\$16,470	\$10,000	\$6,470
Masonry - Repair Sidewalk and Wall		\$8,200	\$2,600	\$5,600

Labor to construct Gazebo from Pre-Fab Kit		\$4,975	\$1,600	\$3,375
Labor to install steel kitchen door		\$4,750	\$2,000	\$2,750
Install 200 sq. ft. of fence with gates	Not Available	\$6,500	\$3,900	\$2,600
Provide and install 150 sq. ft. of Handrails		\$4,820	\$2,600	\$2,220
Labor to Install Basement Fire Door		\$2,375	\$400	\$1,975
Labor to Install Egress Window in Basement		\$4,850	\$2,900	\$1,950
Install 864 sq. ft. Driveway, including excavation & saw cut edges	Not Available	\$9,875	\$8,000	\$1,875

Install 3 Sinks, 4 Faucets and 1 Countertop in Program Areas		\$4,875	\$3,200	\$1,675
Labor to secure kitchen by installing 2 half doors and wooden spindles across opening.		\$3,000	\$1,700	\$1,300
Install Vinyl Flooring in the Mop Room and Medical Room (Total 120 sq. ft.)	 	\$2,425	\$1,200	\$1,225
Prepare floor for another vendor to Install new Ceramic Tile		\$3,425	\$2,400	\$1,025

Construct Generator Pad and Roof		\$4,935	\$4,000	\$935
Install a New Screen Porch. Roof and floor already existing.		\$6,750	\$5,900	\$850
Medical Room Modification		\$6,675	\$5,900	\$775
Install a replacement window		\$3,220	\$3,000	\$220
Totals		\$127,845	\$76,800	\$51,045

In addition, the way the Physical Plant's budget is organized impacts how much is paid for certain projects. Unlike most DDSO's, Central NY DDSO's budget for Physical Plant projects is decentralized. Each of the 197 group homes has their own budget. All other DDSO's have a centralized budget, where the DDSO can combine like-projects at different group homes into a single bid. Combining like-projects into a single bid is a more cost effective way of purchasing. The decentralized budget at the Central NY DDSO promotes bidding like-projects

separately, which may increase costs. We were told by OMRDD Central that when it makes sense, the Central NY DDSO is told that projects should be combined for a better price (for example, painting being done in several houses, etc.). However, we found that like-projects are being bid out separately. For example, one of the projects identified above for not paying a reasonable price was the installation of a gazebo. We found that Physical Plant staff had gazebos installed at three separate group homes during a two month period by the same vendor (It is worth

noting that two of the gazebo purchases were within ten days of each other and were made by the same Physical Plant employee.). Each project was bid separately and awarded to the same vendor. All three projects were awarded based on rigged bids. If the Physical Plant staff had bid out all three like-projects together (and had not rigged the bids), it is probable they would have paid a better price.

Moreover, the Legislature recently amended the State Finance Law to require agencies to use the aggregate amount of all purchases for the same goods or services to be made within a 12 month period when determining purchasing thresholds and purchasing requirements. Since Physical Plant staff work with the Central NY DDSO Business Officer and the Board of Visitors to prioritize the necessary projects that can and will get done each year, they need to use the annual project list in its entirety (i.e., without breaking it down by group home) to combine purchases for the same goods and services. Once combined, both DDSO and State purchasing guidelines should be properly followed (i.e., like projects bid out together) to ensure a reasonable price is paid.

Recommendations

1. For those Central NY DDSO employees involved, OMRDD management should take appropriate disciplinary action.
2. Management should assess the integrity of those vendors involved and determine the appropriateness of commencing or continuing to purchase goods and services from them.
3. Both OMRDD Central and Central NY DDSO management should develop management reports that

analyze purchasing data for potential fraud, waste and abuse.

4. Management should eliminate the practice of allowing the wife of one of the Physical Plant staff to approve Physical Plant purchases.
5. Management should ensure that the Internal Auditor has proper knowledge and qualifications to perform the job, reports directly to the DDSO Director, and does not focus all of her audit efforts on client cash accounts. (Instead, the Internal Auditor should assess the DDSO's risk and audit those areas with the most risk.)
6. The Business Officer should be qualified and competent to perform the duties assigned.
7. The Business Officer, Deputy Director of Quality Assurance, DDSO Director, Regional Director and OMRDD Central management should properly monitor Central NY DDSO purchases and ensure that adequate controls are in place to prevent fraud, waste, and abuse of State resources.
8. Change the control environment at Central NY DDSO to one that supports internal controls and respect for purchasing laws.
9. Modify purchasing practices to comply with the State Finance Law as recently amended.

Physical Plant Superintendent Conflict of Interest

The Physical Plant Superintendent was hired as a Maintenance Supervisor 1 in November

2000 and in July 2004 was promoted to Maintenance Supervisor 3. In July 2007 he was promoted to Physical Plant Superintendent. He was put on administrative leave in February 2008 after OSC auditors found evidence that he was running his personal landscaping and snow plowing business out of the Central NY DDSO Physical Plant office.

All state employees are required to adhere to the Code of Ethics standards under Article 4 Section 74 of the Public Officers Law. We found that the former Physical Plant Superintendent in his capacity as Maintenance Supervisor 1, Maintenance Supervisor 3 and Physical Plant Superintendent has violated several provisions of the law.

This DDSO employee was in a position to influence decisions on which vendors were contacted for bids and which were eventually hired to do work for the DDSO. This employee has hired vendors to perform work at the DDSO who are also clients and suppliers of his personal landscaping and snowplowing business. In addition, this employee secured discounts and entered into other financial transactions with vendors whom he hired to perform work at the DDSO. This situation has compromised the employees' professional judgment in carrying out his official duties as an employee of the CNY DDSO because the external relationship directly affects his income.

We found that this employee appears to have violated several provisions of subsections 2 and 3 of Article 4, Section 74, of the Public Officers Law which state that no officer or employee of a state agency should:

- (2) *Have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any*

obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

- (3) (d) *Use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.*
- (3) (e) *Engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.*
- (3) (f) *Not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.*
- (3) (h) *Endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.*

In what appears to be in violation of the cited provisions of Section 74, we found that one of the employee's snowplowing clients is also a vendor that he hired to perform work at the DDSO. This vendor is also a neighbor of this employee. Prior to 2000 (before this employee began working at the DDSO), this vendor was only awarded three small payments totaling \$559. However, after this employee began working at the DDSO this

vendor was paid \$316,893¹. Finally, we also found that in several instances this employee hired this vendor for DDSO work by rigging bids. Therefore, State business was given to this vendor without competition and without assurance of a reasonable price.

This DDSO employee also secured discounts for himself. The employee told us that he personally receives a discount for landscaping materials from a vendor who he has hired to work for the DDSO. We found invoices in the employees' desk from this vendor that did not have price information, indicating that the DDSO employee may have received materials for free. This vendor began receiving payments for the first time from the DDSO several months after this employee began working in the Physical Plant. This vendor was paid \$318,678 by the DDSO during the time of this employee's employment at the Physical Plant. In addition, in 2007 while this employee served as the Physical Plant Superintendent, he sold a 1995 Ford Mustang to this vendor.

This employee secured further discounts for himself from another vendor who he hired to perform work at the DDSO. This vendor was paid \$175,932 by the DDSO during the time this employee worked at the Physical Plant.

This DDSO employee did not obtain an official opinion from the Commission on Public Integrity as to whether there was a conflict of interest between his landscaping and snowplowing business and his official duties at the DDSO. The employee told us that he discussed the issue with his supervisor, the DDSO Business Officer, who found no conflict of interest with the situation. The Business Officer explained that he thought it was not a conflict since this

employee was not responsible for hiring vendors to do landscaping and snowplowing. However, it was not the subject of the employee's duties (e.g., contracting for landscaping and or snowplowing) at the DDSO that appears to have resulted in a violation of the law. It was the nature of his relationship with the vendors, where he had a direct financial interest in securing business for them that was problematic. In addition, as a state employee it was inappropriate for this employee to personally benefit (by discount or any other means) from his position.

In addition, Article 4, Section 73-a of the Public Officers Law states that employees whose salary exceeds Salary Grade 24 and/or who have been designated a policy maker, are required to file an Annual Statement of Financial Disclosure with the Commission on Public Integrity. This employee was required to file with the Commission for calendar year 2006 by May 15, 2007. During our initial interview with this DDSO employee in February 2008, we discussed with him the fact that he failed to file with the Commission for the 2006 year making his Annual Statement of Financial Disclosure over nine months late. The employee was aware that he had not filed timely because he had received a late filing notice from the Commission on Public Integrity. This employee subsequently submitted his Annual Statement of Financial Disclosure.

Recommendation

10. Ensure all Physical Plant employees are aware of their responsibilities under the Public Officers Law including, but not limited to: engaging in any direct and indirect financial interests which may conflict with official state duties; using an official position to secure unwarranted privileges and/or benefits for

¹ Included are 8 payments made against a contract totaling \$12,075.

themselves and/or others; and/or accepting any employment which may impair their independence and/or judgment in the exercise of their official duties.

Use of State Time and Resources

At the onset of the audit, we arrived with OSC Investigators at the Central NY DDSO without giving Central NY DDSO officials advance notice. Once there, we secured original documentation of all Physical Plant purchases for the past two years (January 2006 through February 2008) including the most current work which was stored in Physical Plant staff's desks. We also secured copies of select documents on Central NY DDSO's computer network and copies of the computer hard drives for nine Central NY DDSO employees. This was all achieved with the cooperation of both OMRDD Central and, once informed upon entry, Central NY DDSO staff.

When retrieving current documents from the former Physical Plant Superintendent's desk, we found indicators that the Physical Plant Superintendent was running his side business while on duty at the DDSO. The Physical Plant Superintendent has a snowplowing and landscaping business. He reported to us that he does this work before and after DDSO work hours. However, we found evidence that he was running this side business while on duty at the DDSO as Physical Plant Superintendent. A large volume of documentation, dating back to 2001 was found in two locations in the office of the Physical Plant Superintendent: his desk and a file cabinet. We found records that include appointment books (17 books in total), invoices to customers from June 2001 to February 2008, and empty payment envelopes he received from customers.

When we asked the Physical Plant Superintendent to explain why the documentation was in his desk and file cabinet, he stated that he recently took them out of his briefcase and put them in the desk because he needed his briefcase for something else. However, what we found refutes this explanation. For example, his most recent invoices and empty payment envelopes from customers were in his top and bottom right side desk drawers and were easily accessible. Older (from prior year) invoice books were located in a filing cabinet.

We brought this matter to the attention of Central NY DDSO management and, as a result, the Physical Plant Superintendent was put on Administrative Leave.

In addition, when we reviewed the contents of the computer hard drives for the nine employees we found that employees have unfettered access to the internet and there is no filter on the emails that they can receive. As a result, we found that five employees had sexually explicit and otherwise inappropriate pictures and cartoons on their computers. Moreover, at least one employee used the internet to do her personal shopping.

Misuse of state resources, including state time, significantly undermines public trust in state government. DDSO Management should ensure the proper stewardship of state resources, including employee time.

Recommendations

11. Monitor staff to ensure proper use of state time and resources.
12. Appropriate filters should be set up and used to prohibit employees from receiving emails and using the internet to access sites and information that are not work related.

AUDIT SCOPE AND METHODOLOGY

We did our audit according to generally accepted government auditing standards. The objective of our audit was to determine whether fraud was occurring in the bidding process for purchases of home maintenance, rehabilitation and repair services for group homes at the Central New York Developmental Disabilities Services Office. Our audit covered the period July 2003 through June 2008.

To accomplish this objective we reviewed Central New York DDSO's bidding and payment requirements, policies and procedures. We did data analysis and used other software tools (i.e. to determine relationships between employees and vendors) on Central NY DDSO financial data which showed indicators of fraud (i.e., many whole dollar payments, many purchases directly under the purchasing thresholds, employees and employee neighbors being paid as vendors, multiple entities being paid by the DDSO who were actually all owned by the same persons, etc.)

With the cooperation of OMRDD's Central Office, auditors, investigators and network security staff from OSC arrived at the Central New York DDSO unannounced. Once there, we secured original documentation of all Physical Plant purchases as well as other pertinent documents for the last two years (January 2006 through February 1, 2008) including the most current work which was stored in Physical Plant staff's desks. We secured copies of select documents on Central NY DDSO's computer network and copies of the computer hard drives for nine Central NY DDSO employees. We also secured original documentation available for Physical Plant purchases made between July 2003 and December 2005 at a later date.

We interviewed Central New York DDSO employees. We analyzed the information found in the desks and on the computer hard drives of the employees for evidence of bid rigging and other inappropriate materials. We reviewed a sample of project files supporting the work of Physical Plant staff. Once we identified the potential bidding schemes, we interviewed the vendors bidding on the projects to determine which vendors were involved in the bid rigging, their part in the bid rigging scheme, and to also confirm fake bids and bidders in collusion with favored vendors. Once we confirmed the vendors that were involved in the bid rigging, we expanded our test to include all maintenance, rehabilitation, and improvement purchases for those participating vendors.

In addition we visited 36 of the 197 group homes and observed jobs performed during the past few years with experts from OGS to (1) determine if the work had been done and (2) compare work done to the scope of work and price paid as listed on purchase orders. We selected these 36 group homes because much of the work over the last two years was performed by favored vendors and/or the work was procured by Central NY DDSO maintenance staff thought or known to be involved in the bidding scheme. OSC auditors and OGS experts visited these 36 group homes and reviewed repair, maintenance and improvement projects for reasonable price. Based on their initial observations, OGS experts identified 66 projects that appeared questionable. OGS intended to calculate a reasonable price for all 66 projects but due to limited time and resources, OGS experts were only able to calculate reasonable price for 31 of the projects. OGS experts used a conservative approach to estimating a reasonable price for the 31 purchases. In their estimates, OGS included an 11 percent overhead profit plus

the cost of material and the cost of labor at the NYS prevailing wage rate.

In addition to being the State Auditor, the Comptroller of New York State performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was done 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.

REPORTING REQUIREMENTS

Draft copies of this report were provided to Central NY DDSO officials for their review and comment. Their comments were considered in preparing this report and are attached as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Mental Retardation and Developmental Disabilities shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include David R. Hancox, Walter Irving, Melissa Little, Suzanne Mazone, Eileen Chambers, Lynn Freeman, Meredith Holmquist, G. Stephen Hamilton, Stephanie Kelly, Joe Fiore, Patrick Lanza, Raymond Russell and David Nummey.

APPENDIX A - AUDITEE RESPONSE

David A. Paterson
Governor



Diana Jones Ritter
Commissioner

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November 12, 2008

Mr. David R. Hancox
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Dear Mr. Hancox:

The Office of Mental Retardation and Developmental Disabilities (OMRDD) has reviewed the Office of the State Comptroller's draft audit report (Report No: 2007-S-136) regarding Physical Plant Procurement Practices at Central NY DDSO.

Our responses to the findings contained in the report are attached for your consideration. Again, I want to thank you and your team for their professionalism. Please remain assured that OMRDD and Central New York DDSO are committed to addressing and resolving all of the issues identified in your audit.

Sincerely,

Mary E. Peck
Director, Office of Internal Control

Attachment
cc: Commissioner Ritter
Mr. Chmura
Mr. DiNuzzo
Mr. Gleason
Mr. Nellegar
Mr. Sleasman
Mr. Smits



Providing supports and services for people with developmental disabilities and their families.



Office of Mental Retardation and Developmental Disabilities
Central New York Developmental Disabilities Services Office

Response to Report Number 2007-S-136, Physical Plant Procurement Practices at
Central New York Developmental Disabilities Services Office

Let us begin by stating that the Central New York Developmental Disabilities Services Office (CNYDDSO) is fully committed to comprehensively addressing all of the issues cited in the Office of the State Comptroller's report. Accountability and governance are integral elements of our culture here at OMRDD and we have a zero tolerance for fraud and/or fiscal mismanagement. Our responsible stewardship of State resources is intrinsically linked to the quality of services that we provide to the individuals in our care. As such, we strive to create a culture that supports not only doing the right things, but doing things right.

We would like to extend our appreciation to the on-site auditors for their professionalism, hard work, and diligence in identifying the issues set forth in your report. CNYDDSO takes the findings in this report seriously and will take the necessary steps to not only address your findings but to create an effective system of control and a cultural climate where activities such as those identified will be either eliminated or discovered in a timely manner.

Since the audit began, CNYDDSO has made numerous adjustments to the bidding process that we believe will be the cornerstone to correcting the deficiencies that your team identified. Management staff has instituted new forms and protocols for completion, signature, and routing to ensure that three appropriate bids are received prior to a project being awarded. Maintenance Supervisors continue to define the specifications for jobs, but contracts are bid and awarded by individuals independent of the MSIs.

Using this as a backdrop, we would like to address your recommendations individually as follows:

Recommendation #1:

For those Central NY DDSO employees involved, OMRDD management should take appropriate action.

Response: The Plant Superintendent has been placed on administrative leave and his probation has been terminated. This has resulted in his return to his permanent backup of Maintenance Supervisor III, and he remains on administrative leave. Additional action may be taken dependent on both the finalization of this report, our own in-house review, and any measures the Oneida County District Attorney may wish to pursue. We are currently in the process of recruiting a new Plant Superintendent, who will be instrumental in providing the necessary oversight and supervision to our Plant Services staff.

As indicated in the audit report, the OSC will be turning this case in its entirety over to the Oneida County District Attorney's Office. OMRDD's Office of Investigations and Internal Affairs and the Bureau of Labor Relations, along with CNYDDSO Internal Affairs, have met with the District Attorney's office to understand the scope of their investigation and establish an ongoing relationship for the duration of these proceedings, monitoring progress and providing additional records, data, and technical assistance as necessary.

OMRDD Internal Affairs, Labor Relations, and CNYDDSO Internal Affairs will proceed administratively against those individuals named in the OSC report where it will not negatively impact the District Attorney's investigation or subsequent prosecution. Any employees convicted of criminal conduct in connection with this matter will be similarly charged with same in a subsequent administrative proceeding.

Recommendation #2:

Management should assess the integrity of those vendors involved and determine the appropriateness of commencing or continuing to purchase goods and services from them.

Response: Based upon information obtained to date, CNYDDSO has ceased doing business with all but two of the contractors involved. The two with whom we continue to do business include one vendor who is only utilized for HVAC preventive maintenance, obtained via a competitive sealed bid process, and a second vendor who was marginally involved and, reportedly, completely cooperative and forthcoming with OSC investigators. In addition, CNYDDSO has expanded our vendor list to assure qualified resources are identified and available for future projects. All potential vendors are being evaluated to ensure they are legitimate and responsible businesses with the proper background and credentials.

Recommendation #3:

Both OMRDD Central and Central NY DDSO management should develop management reports that analyze purchasing data for potential fraud, waste, and abuse.

Response: The CNYDDSO will work with OMRDD's Office of Internal Control on enterprise wide approaches to internal controls and fraud detection. CNYDDSO is currently analyzing existing reports to determine their efficiency and ensure that they are being distributed and reviewed appropriately. Additionally, quarterly reports are being generated for the purpose of detecting potential duplicity between vendor and employee addresses. CNYDDSO has directed its Information Services (IS) Department to explore additional methods of electronic data collection so that patterns can be identified and brought to the attention of management.

Recommendation #4:

Management should eliminate the practice of allowing the wife of one of the Physical Plant staff to approve Physical Plant purchases.

Response: Staff who are related are no longer involved in either receiving or approving one another's work.

Recommendation #5:

Management should ensure that the Internal Auditor has proper knowledge and qualifications to perform the job; reports directly to the DDSO Director and does not focus all audit efforts on client cash accounts. ((Instead, the Internal Auditor should assess the DDSO's risk and audit those areas with the most risk)).

Response: Management has taken steps to create an Internal Audit function that is separate from the Business Office, reports directly to the DDSO Director, and is significantly strengthened in depth of expertise and scope of responsibility. CNYDDSO currently employs two staff who have the necessary skills and educational backgrounds to participate in the internal control process (one staff member is a CPA and the other has an MBA). The current audit function, such as the review of consumer cash, will continue to be done by the individual responsible, but will be incorporated in the new Internal Audit function. She has done and continues to do an excellent job in that area.

Recommendation #6:

The Business Officer should be qualified and competent to perform the duties assigned.

Response: The Business Officer was chosen from a competitive civil service list upon which he received a score of 90 and a rank of two amongst all test takers. We believe that the Business Officer would be more effective if his scope of responsibilities is scaled back and he receives more direct supervision. Effective immediately, the Business Officer no longer supervises the Physical Plant Services Office (PPSO); this unit now reports directly to the Deputy Director of Quality Assurance. We believe that, by reducing the Business Officer's responsibilities and increasing his supervision, he will be able to be effective in this modified role.

Recommendation #7:

The Business Officer, Deputy Director of Quality Assurance, DDSO Director, Regional Director, and OMRDD Central Management should properly monitor Central NY DDSO purchases and ensure that adequate controls are in place to prevent fraud, waste, and abuse of State resources.

Response: We concur that all levels of the organization need to be actively involved to ensure that proper controls, supervision and monitoring are in place for proper utilization of state resources. This will be accomplished by new

systems, better monitoring reports, and increased direct supervision. Most importantly, leadership is focused on fostering cultural change throughout the organization that recognizes and adheres to an effective system of internal control as a part of everyday business practices.

Recommendation #8:

Change the control environment at Central New York DDSO to one that supports internal controls and respect for purchasing requirements.

As indicated previously, CNYDDSO management is committed to developing an environment that understands the need for and supports an effective system of internal control. An independent Internal Control function, reporting to the Director, is being established. In addition, all fiscal staff have been trained or retrained on expectations for sound purchasing practices. To ensure a strong and sustainable control environment throughout the organization, this ongoing learning process will include a combination of CNYDDSO in-service training, OMRDD Central Office training, and training offered by the Office of the State Comptroller.

Recommendation #9:

Modify purchasing practices to comply with the State Finance Law as recently amended.

Response: CNYDDSO has reviewed all State Finance Law requirements including those which have been recently amended. For one, staff have already been instructed to batch like projects where possible in order to bid them as one large contract as opposed to multiple smaller contracts. It is determined that, by doing this, we can achieve better pricing as well as better utilization of our staff.

Recommendation #10: *Ensure all Physical Plant employees are aware of their responsibilities under the Public Officers Law including, but not limited to: Engaging in any direct and indirect financial interests which may conflict with official state duties; using an official position to secure unwarranted privileges and/or benefits for themselves and/or others; and/or accepting any employment which may impair their independence and/or judgment in the exercise of their official duties.*

Response: Utilizing on-line and personal presentation training available through the Commission on Public Integrity, all Business Office staff and those in PPSO will be trained/retrained regarding their responsibilities under the Public Officers Law. This will be facilitated by our Staff Development and Human Resources Departments. Compliance will be monitored and supervised by our new Physical Plant Superintendent and the DDQA.

Recommendation #11: Monitor staff to ensure proper use of state time and resources.

Response: All DDSO staff, including those in PPSO, are instructed in expectations regarding proper use of state time and resources. Ongoing oversight and supervision will assure adherence to these expectations. As one method to do this, the Information Services Department is now utilizing technology to determine inordinate phone and computer usage, travel reimbursement, etc. Reports are already being generated, and management is currently assessing the information provided. Further, sign-in and sign-out forms have been instituted at all certified sites to document PPSO staff and contractor visits. Also, new mileage forms must be completed by all staff utilizing state vehicles. These new forms require much more detail so that exact locations and travel are effectively monitored.

Recommendation #12: Appropriate filters should be set up and used to prohibit employees from receiving emails and using the internet to access sites and information that are not work related.

Response: OMRDD Central Office already manages computer usage by blocking inappropriate access to internet sites that are sexual, social, or clearly not related to work. In addition, a "Precise MAIL" filter is also being used to limit spam. Our IS Department will continue to explore ways to monitor usage to ensure the proper utilization of computers. All staff will be again reminded that computers are to be used for work related activities in accordance with OMRDD policy and procedure. The IS Department and CNYDDSO Internal Control Office will also monitor reports to determine if any outliers emerge regarding usage that may result in a more detailed review.

Again, we appreciate your efforts in conducting this audit and helping us to improve our procurement practices. Although the results are not as we would have wished, we believe that this assessment will enable us to move forward in a stronger, smarter, and more efficient manner.

Should you have any questions, please don't hesitate to contact us.