

THOMAS P. DiNAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 12, 2015

Ms. Kerry Delaney
Acting Commissioner
Office for People with Developmental Disabilities
44 Holland Avenue – 3rd Floor
Albany, NY 12229

Re: 2014 Credit Card Review

Dear Acting Commissioner Delaney:

As part of the Bureau of State Expenditures' examination¹ of credit card transactions, we reviewed select Procurement Card (PCard) transactions incurred by the Finger Lakes Developmental Disabilities Service Office (DDSO) to Finger Lakes Home Supply (Home Supply) from December 19, 2012 through June 5, 2014. The objective of our examination was to determine whether the DDSO adhered to State purchasing laws, rules and regulations, and guidelines (collectively, procurement requirements) for the purchase of food and household items.

A. Results of Examination

We found the DDSO did not adhere to the State Procurement Law when it spent \$1,031,709 on 1,416 PCard transactions with Home Supply on food and household items during the examination period. By not following procurement requirements, the DDSO denied the preferred sources and the existing centralized contractor the opportunity to provide the items. The DDSO also gave Home Supply an unfair advantage in obtaining the State's business. Further, the DDSO did not pay reasonable prices to Home Supply for the food and household items.

We shared a draft report with DDSO and the Office for People with Developmental Disabilities officials and considered their comments (Attachment A) in preparing this final report. The officials agreed with the findings and stated they are working with the appropriate entities to establish a contract for procuring the home delivery of food and

¹We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

household items. In the interim period, prior to the contract being established, they will ensure they are paying a reasonable price for all purchases.

B. Background and Methodology

The DDSO is responsible for coordinating services for approximately 1,500 persons with developmental disabilities living in 150 group homes across eight counties. Employees at each group home routinely purchase food and household items necessary to keep the homes operational.

State Finance Law Article 11, Section 163 requires agencies to conduct the purchase of goods using the following procurement priority: (i) preferred source offerings, (ii) statewide centralized contracts (e.g., SYSCO, Palmer Distributing), (iii) agency or multi-agency established contracts, and then (iv) open market procurements. Open market procurements can be either discretionary or result in a formal, competitive bidding process. Agencies may progress through the procurement priority when an available item does not meet the required form, function, or utility. State procurement is designed to facilitate each agency's mission while protecting the interests of the State and its taxpayers and promoting fairness in contracting with the business community.

To accomplish our objective, we examined select Home Supply and Palmer Distributing invoices to compare pricing. We also obtained price lists from Home Supply, Palmer Distributing; preferred source vendors and SYSCO. In addition, we analyzed Citibank data relating to PCard transactions, and reviewed the Office of General Services (OGS) centralized contracts PC60164 with Palmer Distributing and PC60353 with SYSCO. We also interviewed DDSO management, staff at six group homes we visited, the owner of Palmer Distributing, and an employee of Home Supply.

C. Details of Findings

DDSO did not Adhere to State Procurement Requirements

From July 1, 2003 through June 30, 2012, the DDSO purchased food and household items from Palmer Distributing under centralized contract PC60164. When the Palmer Distributing centralized contract expired, OGS instructed agencies to follow State purchasing requirements, including evaluating whether the centralized contract PC60353 with SYSCO, which provides food and household items, would meet agency needs.

However, the DDSO did not adhere to the procurement requirements as the DDSO did not purchase from preferred sources, from centralized contract PC60353 with SYSCO;

solicit formal bids to ensure a fair and competitive procurement for food and household items; or obtain approval from the Comptroller's office for purchase in excess of \$50,000.

Instead, the DDSO left the procurement of groceries and household items to the discretion of each individual group home. Therefore, group homes purchased items from local retailers such as Walmart for approximately six months, then the group homes began purchasing food and household items for amounts in excess of the DDSO's discretionary spending authority from Home Supply in addition to the local retailers.

The Business Officer explained the reason the DDSO did not obtain a contract for food and household items was because the discretionary spending authority was applied on a home-by-home basis and none of the group homes spent more than \$50,000 in a year. This explanation is troubling for two reasons. First, the purchasing law applies to State agencies, and not individual homes. Second, the DDSO previously procured dozens of contracts from which multiple group homes routinely purchase.

On the Home Supply invoices we reviewed that were dated between June 2013 and June 2014, the DDSO purchased 375 different items. If the DDSO adhered to State procurement requirements, it could have purchased more than 300 of the 375 items from preferred sources or from a centralized contract vendor if the items met the DDSO's form function and utility. For example, we found 61 similar items were available from preferred sources, and 293 similar items were available from SYSCO. Although the Business Office indicated these items did not meet the DDSO's form, function and utility, there is no documented evidence to support this determination. Further, the Business Officer acknowledged that certain cleaning supplies should have been purchased from the preferred sources.

By not using a competitive process to obtain food and household items, the DDSO gave Home Supply an unfair advantage in obtaining the State's business.

DDSO Paid Unreasonable Prices

We asked DDSO officials to support that prices paid to Home Supply were reasonable. Officials did not do price comparisons to support price reasonableness. Officials told us the prices were reasonable because they believed Home Supply charged all their customers the same price. This does not substantiate reasonableness.

We compared the prices the DDSO paid Home Supply to prices offered for same or similar items available from Preferred Source vendors, SYSCO, and Wegmans. We found the prices the DDSO paid Home Supply were unreasonable.

For example, the following table shows the price difference between Home Supply offerings and preferred source offerings for same or similar products and units of measure.

Item Description	Home Supply	Preferred Source	Price Difference	Percent Difference
Elbow Pasta	\$28.18	\$15.29	\$12.89	84%
Spaghetti	\$26.45	\$14.69	\$11.76	80%
Bathroom Tissue	\$59.25	\$42.13	\$17.12	41%
Examination Gloves	\$46.50	\$39.35	\$7.15	18%

The following table shows examples of the price difference between select Home Supply offerings and SYSCO offerings for same or similar products and units of measure.

Item Description	Home Supply	SYSCO	Price Difference	Percent Difference
Laundry Detergent	\$56.16	\$21.44	\$34.72	162%
Sweet Peas	\$40.12	\$19.97	\$20.15	101%
Sugar	\$43.05	\$25.31	\$17.74	70%
Synthetic Free Gloves	\$69.50	\$46.41	\$23.09	50%
Lasagna	\$81.99	\$57.97	\$24.02	41%

The following table shows examples of price differences between select Home Supply offerings and Wegmans offerings for same or similar products and units of measure.

Item Description	Home Supply	Wegmans	Price Difference	Percent Difference
Lasagna	\$22.55	\$8.99	\$13.56	151%
Nutri Grain Bar	\$29.31	\$11.94	\$17.37	145%
Water	\$6.79	\$2.99	\$3.80	127%
Snack Packs	\$23.91	\$12.00	\$11.91	99%
Kix Cereal	\$12.63	\$6.58	\$6.05	92%
Grape Juice	\$27.18	\$17.94	\$9.24	52%

We also found the prices the DDSO paid Home Supply were also significantly higher than the prices paid to Palmer Distributing. We compared the 375 items the DDSO purchased from Home Supply to the Palmer Distributing price list and found the same or similar items were available in each case. Both companies used the same item numbers for all but two of the items purchased. Further, Palmer Distributing previously offered 303 of these items in the same packaging and units of measure as Home Supply.

The sum of the total of unit prices of the 303 items for which the DDSO paid Home Supply was \$21,153. In comparison, if the contract was still active, the DDSO would have paid Palmer Distributing \$16,586 for the same 303 items. This represents a 27.5 percent price increase, which far exceeds the consumer price index of 1.75 percent for the same period.

We learned Home Supply was incorporated in January 2013 and is owned and operated by Todd Palmer. Todd Palmer is the nephew and former employee of Doug Palmer, the owner of Palmer Distributing.

The State's procurement process is designed in part to ensure open competition, guard against favoritism, and protect the interest of the State and its taxpayers. By continuing to do business with Home Supply without following the State's procurement requirements, the DDSO wasted taxpayer dollars and did not foster fair and open competition.

Recommendation

- 1) *Follow procurement requirements when purchasing food and household items.*
 - a) *If food and household items cannot be purchased from preferred sources, centralized contracts or existing agency contracts,*
 - i) *Work with the OSC Bureau of Contracts to establish a formal contract in a reasonable time frame, and*
 - ii) *Ensure the DDSO pays a reasonable price for items until such time as a formal contract is in place.*

We thank the management and staff of the Finger Lakes Developmental Disabilities Service Office for the courtesies and cooperation extended to our auditors. Since your response to our draft report is in agreement with the recommendation, there is no need for further response. If you choose to provide a response, we would appreciate receiving it by July 10, 2015 indicating any actions planned to address the recommendation in this report.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

cc: Robert Cornell, Business Officer, Finger Lakes DDSO
John Smith, Deputy Commissioner for Administration, OPWDD
James Nellegar, Director of Internal Audit, OPWDD

Encl: Attachment A



**Office for People With
Developmental Disabilities**

ANDREW M. CUOMO
Governor

KERRY A. DELANEY
Acting Commissioner

April 22, 2015

Mr. Bernard J. McHugh
Director, Bureau of State Expenditures
Office of the State Comptroller
110 State Street
Albany, NY 12236

Mr. McHugh:

The Office For People With Developmental Disabilities (OPWDD) has reviewed the Office of the State Comptroller's draft report (Report No: 2014 Credit Card Review) regarding the Developmental Disabilities State Operations Office's (Region 1 – Finger Lakes) Procurement Card transactions.

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 OPWDD and the Division of Enterprise Solutions are committed to addressing and resolving all of the issues identified in your audit.

If you have any questions or concerns, please do not hesitate to contact me directly at 518-474-4376 or Mary.E.Peck@opwdd.ny.gov.

Sincerely,

Mary E. Peck
Director, Office of Internal Control

Attachment

cc: Acting Commissioner Delaney
K. Valenichis
J.F. Smith
R. Cornell
J. Nelligar
V. Sleasman



**Office For People With Developmental Disabilities (OPWDD)
Response to the Office of the State Comptroller's (OSC)
Draft Audit Report
2014 Credit Card Review
DDSOO 1 (Finger Lakes)**

OPWDD's Business Offices operate out of six regions of the State, and each Business Office within the region is assigned a unique department identification number in the Statewide Financial System. OPWDD considers each district office within the region to be a separate agency in terms of applying the discretionary threshold. The Region 1 – Finger Lakes office's application of the discretionary threshold on a home by home basis was a misunderstanding on how the discretionary threshold should be applied, and not an intentional disregard for the NYS purchasing laws, rules, and regulations.

Although I'm sure the Office of the State Comptroller is familiar with OPWDD, we believe it would be helpful to reiterate our mission in serving individuals with developmental disabilities. For the individuals living in our community homes, inclusion in local activities is paramount and critical to their success. We encourage staff in our homes to have individuals participate in as many community activities as possible. This includes shopping in local stores and farmers' markets, eating at local restaurants, and attending community events. While the purchase of some household items is done through the home delivery method, this is more out of necessity in some homes, and supplements existing community shopping. If this method is necessary, our local offices will be reminded to use the appropriate procurement method.

Recommendation #1:

Follow procurement requirements when purchasing food and household items.

- a) *If food and household items cannot be purchased from preferred sources, centralized contracts, or existing contracts,*
 - i. *Work with the OSC Bureau of Contracts to establish a formal contract in a reasonable time frame, and*
 - ii. *Ensure the DDSO pays a reasonable price for items until such time as a formal contract is in place.*

Response:

The Division of Enterprise Solutions (Fiscal Services) will issue a memorandum reminding all regional business offices of the NYS procurement laws, rules, and regulations, and the appropriate procurement methods as they apply to the application of the discretionary threshold.

The Division of Enterprise Solutions is working with OSC and OGS to establish a formal contract for procuring the home delivery of food and household items. In the meantime, they will review prices to ensure we're paying a reasonable price for all purchases.

We would like to take this opportunity to thank your audit team for their professionalism, and also for the opportunity to respond to the findings contained in this draft report. Should you have any questions, please don't hesitate to contact Mary Peck, Director of Internal Control, at 518-474-4376 or Mary.E.Peck@opwdd.ny.gov.