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OFFICE OF THE STATE COMPTROLLER

June 4, 2013

Mr. Anthony J. Annucci
Acting Commissioner
Department of Corrections and Community Supervision
1220 Washington Avenue, Bldg. #2
Albany, NY 12226-2050

Re: Violations of Law, Conflicts of
Interest and Other Improprieties at
the Department of Correctional
Services' Food Production Center
Report 2012-F-6

Dear Acting Commissioner Annucci:

Pursuant 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 followed up on the actions taken by officials of the Department of Corrections and Community Supervision to implement the recommendations in our report, *Violations of Law, Conflicts of Interest and Other Improprieties at the Department of Correctional Services' Food Production Center* (2009-S-6).

Background, Scope, and Objectives

The Department of Corrections and Community Supervision (Department) operates a 47,000 square foot Food Production Center (Center) located on the grounds of the recently closed Oneida Correctional Facility in Rome, NY. The Center opened in 1992, providing meals to approximately 5,000 inmates in four nearby State prisons. In October 2003, the Center began providing meals to all 70 State correctional facilities. With an annual food budget of \$50.9 million, the Center currently feeds about 50,000 State inmates and other individuals in 60 facilities and 25 counties. To accommodate its food preparation and distribution needs, the Center uses a cook-chill process to chill food immediately after its preparation and then ships it throughout the State for easy reheating.

Our initial audit report, which was issued on August 31, 2010, determined whether former Food Production Center (Center) Director Howard Dean, his staff, and various food vendors complied with the laws of New York State regarding ethics and procurement. The audit found ethical violations regarding purchases from favored vendors. For example, Mr. Dean and his staff solicited donations from certain vendors for annual picnics and parties, which resulted in his staff improperly attending these events free of charge. In addition, Center management directed the unspent donations from these vendors to one of two employee benefit funds to be used for gifts for the staff and other items. In return, these same favored vendors were awarded millions of dollars in State business each year, most of which was procured in violation of State Finance Law. The audit's findings were forwarded to the Oneida County District Attorney's Office for consideration of possible criminal charges as well as the Commission on Public Integrity (now succeeded by the Joint Commission on Public Ethics), the state entity which adjudicates violations of the state's ethics law, for consideration of potential action. The audit recommended that Department officials institute safeguards to ensure that similar practices will not occur in the future at the Center or other locations within the prison system and Department officials assist the District Attorney and the Commission on Public Integrity. The objective of our follow-up was to assess the extent of the implementation, as of April 11, 2013, of the two recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found Center and Department officials have made progress in implementing recommendations from our prior report. Of the two recommendations, one has been implemented and the other has been partially implemented.

Follow-Up Observations

Recommendation 1

Institute safeguards to ensure that similar practices will not occur in the future at the Food Production Center or other locations within the prison system.

Status – Partially Implemented

Agency Action – The Department has made efforts to institute safeguards to ensure similar practices will not occur in the future at the Center or other locations within the prison system. However, more needs to be done to better communicate its expectations regarding ethical employee behavior, strengthen the transparency of its vendor selection process for food products, ensure the Department complies with bidding requirements and obtains proper authorization of certain funds.

Supervisory staff from the Department's central offices and the correctional facilities attended ethics training in September 2010, and supervisors from the Center did so in February 2011. The Department also provides ethics training to its new employees. However, non-

supervisory Center staff do not receive this training. This leaves a gap in the Department's communication of its ethical expectations. Department officials indicated they will look into providing the training to nonsupervisory employees at the Center.

In November 2010, the Department established a four-step process to improve the selection of its food product providers. The process now includes blind tasting and rating of potential products, and helps limit the likelihood that a vendor will receive preferential treatment. In addition, the Department now requires that employees pay for holiday parties or other employee gatherings, and it no longer holds parties at the Center.

The Center's procurement guidelines require competitive bidding for contracts with an aggregate cost that exceeds the State's discretionary threshold of \$50,000 within a one-year period. We found the Department continues to make purchases that exceed the threshold but are not part of an approved State contract. For example, the Department made 28 payments to Orthodox Union, a kosher food certifier, totaling \$60,014 in State fiscal year (SFY) 2010-2011, and 33 payments totaling \$61,920 in SFY 2011-2012, all without a contract. When we brought this to their attention, Department officials said they plan to look into single sourcing this contract to ensure they meet state procurement requirements.

We also found weaknesses in the Center's accountability for two employee benefit funds, both of which also still lack appropriate authorization from the Comptroller. Each of the funds includes a checking or savings account used for purposes such as retirement and bereavement gifts and accreditation luncheons. Deposits to the accounts come from sources such as profits from vending machines, fundraisers, and raffle ticket sales. When we requested information about account activity in the funds since our prior audit, Center official's responses indicated they did not have adequate information to substantiate their receipts or disbursements.

As a result of the April 2011 merger of the former Department of Correctional Services and the Division of Parole, the Department now has an internal audit unit. The purpose of the unit is to provide senior management with an independent, objective analysis of risks, designed to add value and improve operations. Although the unit has not yet completed any audits or reviews of the Center, Department officials said they have plans to do so toward the end of SFY 2013-2014 and they provided us with their draft internal audit plan.

Recommendation 2

Assist the District Attorney and the Commission on Public Integrity.

Status – Implemented

Agency Action – Employees of the Food Production Center were interviewed by and cooperated with the Oneida County District Attorney's Office. In addition, Howard Dean was found guilty of ethical violations and defrauding the State and ordered to pay \$100,000 in restitution. In December 2012 he was sentenced to five years' probation.

The Commission on Public Integrity (now the Joint Commission on Public Ethics), has not, to our knowledge, pursued action regarding the potential violations cited in our original report.

Major contributors to the report were Sharon Salembier, Deb Spaulding, Claudia Christodoulou, Devisha Gujjar, and Joseph Robilotto.

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 Department and Center management and staff for the courtesies and cooperation extended to our auditors during this engagement.

Very truly yours,

Melissa Little
Audit Manager

cc: P. Berezny, Director of Internal Controls
T. Lukacs, Division of the Budget