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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 27, 2012

Ms. Courtney Burke
Commissioner
Office for People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229-0001

Re: OPWDD Physical Plant Procurement
Practices at CNYDDSO
Report 2012-F-3

Dear Ms. Burke:

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 followed up on the actions taken by officials of the Office for People With Developmental Disabilities and Central New York Developmental Disabilities Services Office to implement the recommendations contained in our report, Physical Plant Procurement Practices at Central New York Developmental Disabilities Services Office (Report 2007-S-136).

Background, Scope, and Objective

The New York State Office for People With Developmental Disabilities (OPWDD) is responsible for coordinating services for more than 126,000 New Yorkers with developmental disabilities. It provides services directly and through a network of approximately 700 nonprofit service providing agencies, with about 80 percent of services provided by private nonprofits and 20 percent provided by state-run services.

The Central New York Developmental Disabilities Services Office (Central NY DDSO) provides a wide range of support and services to individuals with developmental disabilities and their families throughout Oneida, Herkimer, Madison, Lewis, Onondaga, Oswego, Cortland, and Cayuga counties. Central NY DDSO oversees the care that is provided to about 1,450 persons with developmental disabilities. This care is provided in 195 community-based group homes, 161 family care homes, and 19 other program sites. Central NY DDSO provides various services to support these group and family homes. Employees in the Physical Plant Services Office (Physical Plant), Contract Management Unit (CMU) and at the group homes hire vendors to provide home

maintenance and repair services.

New York State Purchasing Guidelines require that for purchases under the discretionary buying threshold of \$15,000 state agencies must follow their internal policies and procedures, and agencies must maintain justification to support vendor selection and the reasonableness of price. Purchases of \$15,000 or more require advertisement in the Contract Reporter. Prior approval by the Comptroller is required for contracts exceeding \$50,000.

Central NY DDSO's purchasing guidelines tier the requirements for various price ranges of work as follows:

- Projects between \$500 and \$2500: Cost analysis sheet, construction industry cost standards (such as those promulgated by R.S. Means, a firm that publishes construction cost information), demonstration of reasonableness of price, proof of funding, and one quote.
- Projects between \$2,500 and \$5,000: Cost analysis sheet supported by three written bids or, in the event it is not possible to obtain three bids, another cost justification must be used (i.e. R.S. Means).
- Projects over \$5,000: Cost analysis sheet supported by sealed bids.

The Physical Plant and CMU have a vendor list (for the Eastern and Western regions) from which they are supposed to select vendors on a rotating basis. 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 Clerks absence) in the CMU after the purchase has been made and the goods and services have been provided.

As of July 2, 2012, after engagement of this follow up audit, OPWDD reorganized, merging Central NY DDSO with Broome Developmental Disabilities Services Office (Broome DDSO) to create Broome and Central New York Developmental Disabilities Services Office. Our work was limited to only the Central NY DDSO; no testing was done at Broome DDSO.

The initial report issued January 6, 2009 examined whether fraud, waste or abuse was occurring in the bidding process for purchases of home maintenance, rehabilitation, and repair services for group homes at Central NY DDSO. Our initial audit report found that Physical Plant staff at Central NY DDSO worked in collusion with certain vendors to guarantee them State work. We identified 168 purchases totaling over \$1 million that were awarded through collusion and bid rigging. We examined a sample of work done at the group homes and found that the State did not pay a reasonable price and, as a result, favored vendors were overpaid for projects.

Additionally, the Physical Plant Superintendent violated the Public Officers law by entering into various financial transactions with vendors hired to perform work at group homes. As a result four employees were charged criminally along with six conspiring vendors. These employees are no longer in State service. The employees and vendors were each sentenced to probation and were ordered to pay varying amounts in restitution. The objective of our follow-up review was to

assess the extent of implementation as of July 25, 2012 of the 12 recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

Officials have made progress correcting problems identified in our initial report. Nine of the twelve recommendations have been implemented, and the remaining three recommendations have been partially implemented.

However, management is not monitoring Central NY DDSO's purchases to the fullest to ensure that fraud, waste, and abuse are not occurring. We found risk that certain vendors may be favored for purchases under \$2,500 where bids are not required. Documentation to support emergency purchases was weak. For 84 percent of our sample of those projects deemed "emergencies" by Central NY DDSO records did not clearly support whether the situation was an emergency or not. As a result, we could not determine in many instances whether the work performed had to be done on an emergency basis without bidding or could have been done on a scheduled basis with opportunity to seek competition. Also, there is a lack of documentation to support that the handyman services, which Central NY DDSO contracted out for, are being executed as intended. Additionally, one of the vendors being used most frequently for handyman services is one of the nine vendors involved in the bid rigging in the initial audit and the one vendor that Central NY DDSO decided to continue to use.

Follow-Up Observations

Recommendation 1

For those Central NY DDSO employees involved, OMRDD (now OPWDD) management should take appropriate disciplinary action.

Status - Implemented

Agency Action - Central NY DDSO took disciplinary action against the four employees who were charged and convicted for their involvement in the fraudulent bidding scheme. Termination was recommended for all four employees, however, three retired and the other resigned before he could be terminated.

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.

Status - Implemented

Agency Action - Management has assessed the integrity of the nine favored vendors and has determined the appropriateness of commencing or continuing to purchase goods and

services from them. Central NY DDSO discontinued doing business with all but three of the nine vendors. They continued to do business with the three vendors because “they were not charged with any wrong-doing” while the other six were. Central NY DDSO did further research and vendor responsibility checks on the remaining three vendors. While three of the nine vendors may still be used, Central NY DDSO only uses one of these vendors regularly.

Recommendation 3

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

Status - Partially Implemented

Agency Action - Neither OPWDD nor Central NY DDSO has developed new reports to analyze the vendor payment data to detect fraud, waste, or abuse for those purchases not made on agency credit cards. However, a column has been added to an existing report which includes the vendor name and describes the maintenance work done at various sites. Official stated this information was added so they can visually check for repetitive use of the same vendor. OPWDD does issue quarterly reports analyzing procurement card use agency wide, however, none of the prior audit findings were related to purchases made on the State procurement card. For procurement card transactions OPWDD sends exceptions to Central NY DDSO management for investigation. Central NY DDSO management also has reports which they use to monitor procurement card and gas card use.

Recommendation 4

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

Status - Implemented

Agency Action - Central NY DDSO issued a policy pertaining to family and household member working relationships. The policy defines a family member as a spouse, sibling, parent, child or an individual who shares a home with the employee. The policy states an employee shall not directly supervise any family member or work in a direct line of supervision where a family member would review their work performance. Also, if employees form a family, household, or personal relationship, they are expected to notify management. We reviewed the relationships between the employees responsible for approving purchases and the physical plant staff, and did not identify any relationships violating the policy.

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 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.)

Status - Implemented

Agency Action - The Internal Auditor continued to perform cash counts in line with her knowledge and qualifications until she retired about a year ago. Central NY DDSO officials moved the responsibility of auditing Physical Plant procurement to the Internal Control Officer (ICO). The ICO has been an investigator with Central NY DDSO since 1998 and the ICO since July 2002. In addition to being the ICO, he is also the Administrator on Duty Coordinator, and the Emergency Management Director. The ICO reports directly to the Central NY DDSO Director. The ICO's duties include coordinating internal control reviews and chairing the Internal Control Workgroup. In June 2009, Central NY DDSO created an Internal Control Workgroup made up of managers within Central NY DDSO to assess functions and risk areas. The ICO has focused efforts on areas other than client cash accounts including food procurement, mileage, energy use, small household repairs, and other high risk areas noted by management and in OSC audits.

Recommendation 6

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

Status - Implemented

Agency Action - The responsibilities of the Business Officer have been scaled, back making the responsibilities more manageable for one individual. For example, the Business Officer no longer oversees the Physical Plant. The position's duties were reduced in order to allow the Business Officer to focus more on the primary responsibilities including overseeing the payroll department, overseeing the non-personal service budget, and overseeing the consumer cash system. The Business Officer has a Master of Science in Public Service Administration and a Bachelor's of Professional Studies in Health Services Management, and relevant experience qualifying him to perform the primary duties assigned.

Recommendation 7

The Business Officer, Deputy Director of Quality Assurance, DDSO Director, Regional Director and OMRDD (now OPWDD) 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.

Status - Partially Implemented

Agency Action - Central NY DDSO management has made efforts to increase monitoring over purchases and strengthen controls to reduce the occurrence of fraud, waste and abuse of State resources. Management has added review for all Physical Plant purchases above

\$2,500. For these purchases, a Health Facility Management Assistant is charged with obtaining all bids for the work. Physical Plant personnel do not obtain any bids for these projects. Also, as noted previously, an Internal Control Workgroup was formed to assess risks in some procurement areas. As a result of the assessed risks, the ICO has conducted audits of small house-hold repairs and other procurement areas.

While management has implemented changes to strengthen monitoring over procurement there are still areas of weakness where more could be done to ensure fraud, waste, and abuse is not occurring. We found that certain vendors appear to be favored for purchases under \$2,500 where bids are not required. Additionally, we found documentation to support emergency purchases is weak. We could not determine in many instances whether repairs were for actual emergencies or were for events that occurred as a result of an anticipatable pre-existing condition. Also, there is lack of documentation to support that the handyman contract Central NY DDSO bid out is being executed the way it was intended. Additionally, one of the vendors being used most frequently for handyman services is one of the nine vendors involved in the bid rigging in the prior audit and the one vendor that Central NY DDSO decided to continue to use and does so, on a frequent basis.

Recommendation 8

Change the control environment at Central NY DDSO to one that supports internal controls and respect for purchasing laws.

Status - Implemented

Agency Action - OPWDD made strides to change the control environment at Central NY DDSO. The agency's Office of Internal Control and the Bureau of Internal Audit administered an enterprise-wide Internal Control Survey which included the feedback on control environment. The results of the survey showed a significant need in improvement at Central NY DDSO. As a result, the Commission on Public Integrity and OPWDD's Ethics Officer, conducted ethics training for all Central NY DDSO Business Offices on February 24, 2009. In 2010, a follow-up survey was administered and the results showed that Central NY DDSO's Business Office staff's overall perception of the DDSO's control environment, functions and activities have improved since 2008. In addition, 12 Central NY DDSO fiscal employees have attended purchasing practices training which included "Selecting the Correct Procurement Method" and "Fraud Red Flags" topics. The training was given by the Comptroller's Bureau of State Expenditures.

Recommendation 9

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

Status - Implemented

Agency Action - Management has modified purchasing practices to make them comply with the State Finance Law, specifically the portions prohibiting split ordering. We reviewed a sample of purchases for the 2010-11 and 2011-12 fiscal years. We reviewed purchases for similar goods or services made within 30 days of each other from the same vendor that totaled greater than \$5,000 excluding emergency purchases and those that were bid out agency wide or off an established contract. If goods and services totaled more than \$5,000, then management is required to obtain three sealed bids. Based on our review, we found that the agency has made an effort to curtail the practice of split ordering. For the 2010-11 and 2011-12 fiscal years, there were no instances of split ordering in our sample.

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 Report 2007-S-136 Page 16 of 24 themselves and/or others; and/or accepting any employment which may impair their independence and/or judgment in the exercise of their official duties.

Status - Implemented

Agency Action - Central NY DDSO provided training to Business Office and Physical Plant employees, most recently in March 2010. Training was presented by a representative from the former New York State Commission on Public Integrity. The training covered a range of topics including but not limited to Civil Service Law, post-employment restrictions, nepotism, and receipt of gifts by employees. Staff from the Physical Plant, Business, and Staff Development Offices attended the training.

Recommendation 11

Monitor staff to ensure proper use of state time and resources.

Status - Partially Implemented

Agency Action - Management has made some steps to better monitor staff's use of state time and resources. In 2008 Central NY DDSO conducted a review of internet usage; however, no additional reviews have been done since. In a follow-up directive issued by OPWDD's Internal Audit Department, Central NY DDSO staff was directed by OPWDD's management not to spend staff time monitoring cell phones/phone usage and internet usage. OPWDD management believed this monitoring was an unproductive use of staff's time. Despite the reluctance from OPWDD's management, both Central NY DDSO's Director and Information Security Acting Director have decided to monitor internet usage and continue the cell phone usage policy effective June 30, 2012, and monitor usage every six months.

We were not provided any evidence of monitoring of phone usage; however, unit or team administrators are responsible for monitoring this each month. Additionally, Central NY DDSO management has made efforts to monitor employee's travel. For example, on June 30, 2010, an Internal Control Review was completed which reviewed reimbursement for the usage of personal vehicles. Also, trainings and advisories from the Business Office were provided and include guidance on how to monitor employee travel.

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.

Status - Implemented

Agency Action - OPWDD has set up filters on websites and emails for all Developmental Disability Services Offices. Access to specific categories or content is blocked including those websites containing pornography and/or nudity, criminal or fraudulent content, violence, and gambling. Certain social media sites and recreational content is accessible, specifically at the request of the Commissioner, Facebook can be accessed by employees. We conducted on-site testing and found the filters are working as intended.

Major contributors to this report were Abe Fish, Sharon Salembier, Heather Pratt, Andre Spar, Matt Luther, Amanda Halabuda, and Gayle Clas.

We would appreciate your response to this report within 30 days, indicating any action planned to address the unresolved issues discussed in this report. We also thank the management and staff of Central New York DDSO and the Office for People With Developmental Disabilities for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

A handwritten signature in cursive script, reading "Melissa A. Little". The signature is written in dark ink on a white background.

Melissa Little
Audit Manager

cc: V. Sleasman, Director of Internal Audit
T. Lukacs, Division of the Budget