STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL

Final Report
October 30, 2009

Inspector General Finds DOH Director Launched Bogus Bid Process

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General determined that Neil Johanning, Director of the Office of Health Insurance Programs' Information Technology Services Group, an office within the New York State Department of Health (DOH), generated a solicitation for bids from contractors to install computer cable knowing that the proposed work had already been completed by Dell/nFrastructure. The Inspector General further found that Johanning then selected nFrastructure to be awarded the contract in this sham bidding process even though it was not the lowest bidder. DOH discovered the illegitimate nature of the bid prior to awarding the contract and the state paid no monies to Dell/nFrastructure for the cabling.

The Inspector General forwarded these findings to DOH for disciplinary action against Johanning.

ALLEGATION

The Inspector General received a complaint alleging that Johanning steered a contract to Dell Inc. and its cabling subcontractor, nFrastructure, Inc., based on a personal relationship between Johanning and the two corporations and because nFrastructure had already completed the work for which the contract was to be awarded.

SUMMARY OF INVESTIGATION

Background

As Director of the Office of Health Insurance Programs' Information Technology Services Group, Johanning is responsible for providing computer network support to the Office of Medicaid Management. In this capacity, in 2006, Johanning was responsible for procurement, distribution and installation of new computers. The newly purchased computers were to be utilized by DOH. The existing DOH computers being replaced were then to be supplied to the local social services districts with DOH paying for the installation.

This project was completed in two phases. Johanning's misconduct, which is the subject of this report, occurred solely during Phase II of the project. On July 14, 2006, Dell submitted a proposal in the amount of $731,065 for the purchase and installation of 414 personal computers, 209 printers and multiple cable drops[1] for installations in 57 local offices under Phase II of the program. State Finance Law § 112 requires that state agencies engage in a formal competitive process for the purchase of services and commodities that exceed $50,000.[2] However, to the extent the $731,065 Dell purchase could be considered under a statewide contract, Johanning and DOH could avoid competitive bidding. A statewide contract is a contract to purchase goods and services negotiated on the state's behalf by the Office of General Service (OGS) for the benefit of authorized users such as state agencies, authorities and municipal governments. When an agency procures goods or services via a statewide contract, it need not engage in competitive bidding because OGS has already solicited bids, negotiated the price, and chosen the vendor in advance for all authorized users.

Believing that his entire proposal fell under an existing "statewide contract" entered into by OGS with Dell, Johanning requested this proposal from Dell[3] with the intent to purchase the computers and cabling services.[4] Indeed, during Phase I of the project, OGS had approved the utilization of the statewide contract for the entire purchase including computers, printers and the installation of new cable. In turn, during the initial procurement of Phase II, Johanning attempted to again process the complete project - the computers and the cable- via the statewide contract. However, Johanning's attempt to utilize the statewide contract for the cabling was rejected by DOH after consultation with OGS. Specifically, OGS informed DOH that that the proposal had to be divided into separate orders because, while the purchase of computers and printers was included in the existing statewide contract, cabling was not.

Approval of Cable Installations

Based upon OGS's information regarding the scope of the statewide contract, in order to obtain approval for the new cables, Johanning was required to split the purchase requisition in order to separate the computer purchase and printer installation (covered by the statewide contract) from the cable installation (not covered by the statewide contract). Johanning thereafter generated two purchase requisitions for computers, printers and installation and a third purchase requisition for the new cables. On November 17, 2006, DOH's Bureau of Accounts Management received, among other things, a purchase requisition from Johanning in the amount of $107,767 for cable drops to be completed by Dell/nFrastructure. However, because the price exceeded the $50,000 discretionary

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[1] A "cable drop" generally refers to the installation of cabling from the system to individual users.
[2] Purchases below $50,000 are deemed to be under the "discretionary threshold" and may be made by the agency without competitive bidding or review by the Office of the State Comptroller. Prior to April 2006, the discretionary spending threshold was $15,000. See L. 200, ch. 56.
[3] Relevant to this report, nFrastrucure was a subcontractor to Dell for purposes of installing the cabling and did not have an independent statewide contract with the state.
[4] State Finance Law § 163(3)(a)(iv) authorizes OGS to permit authorized entities to utilize such statewide contracts.

spending threshold, DOH's Bureau of Accounts Management rejected it and informed Johanning that the price mandated a formal bidding process.

To avoid a lengthy bidding process in which their selection would not be guaranteed, Dell and subcontractor nFrastructure, Inc. subsequently reduced its estimated price for the cable drops to $66,777 and Johanning then sought to have the purchase requisition approved by a "single source" waiver. A single-source procurement, as delineated in State Finance Law §163, avoids the competitive bidding process by allowing a contract to be awarded to a designated entity. An exception to the general bidding requirements of section 163, single-source waivers may only be approved when competitive bidding is "not feasible" and "shall only be made under unusual circumstances and shall include a determination by the commissioner or the state agency that the specifications or requirements for said purchase have been designed in a fair and equitable manner." Moreover, use of a single-source waiver requires adequate justification and documentation to be supplied by the agency to the Office of the State Comptroller supporting a valid basis for the departure from competitive bidding and be in the best interest of the state.

The Office of the State Comptroller rejected Johanning's single-source request because of insufficient supporting justification and a lack of quotes for competitive comparison. Based upon this rejection, Johanning was reminded that formal bidding could only be avoided if the purchase request fell below the discretionary threshold of $50,000 and was instructed to proceed accordingly. As a result, in a further effort to forestall competitive bidding, Dell and nFrastructure again reduced the price for the cabling and Johanning submitted a purchase request for $44,535.95. However, to its credit, the repeated submission of reduced quotes aroused the suspicion of DOH's Bureau of Accounts Management and Johanning was informed that any amount over $15,000 would require solicitation of bids.[5] Thus, Johanning was required to conduct a competitive bidding process prior to awarding the contract for the cabling.

Edward McCue, a project manager employed by the New York State Office for Technology, was assigned to work on the Phase II project at the request of DOH. McCue recalled that a problem existed regarding approval for the purchase order for the cabling, the delay of which was causing concern. During a telephone conference in the fall of 2006 attended by McCue, Johanning, and representatives from Dell and nFrastructure, Johanning, absent approval of the purchase order and, therefore, lacking authority to award the contract, permitted nFrastructure to proceed to perform the cabling.

The Inspector General interviewed Johanning who indicated that he had been concerned about the cabling delay because, in anticipation of the project, nFrustructure had set aside resources and created a schedule. In addition, the computers were ready for delivery and the printers had been shipped. Johanning confirmed that he spoke with all the aforementioned individuals during the telephone conference call in the fall of 2006. According to Johanning, during the call, cable installations were discussed and Ed

[5] While § 163 requires competitive bidding for contracts of more than $50,000, agencies possess the right to set a lower threshold or require solicitation of bids at any price.

Feurenstein of nFrastructure made the suggestion that, since the purchase order was expected to be approved, work should commence. Feurenstein then called nFrastructure project manager Mark Coffey, who said his crew was available and recommended starting the project in anticipation of being awarded the contract. Notwithstanding knowledge of the lack of authority for Johanning's approval, nFrastructure commenced work. Johanning admitted to the Inspector General that he was aware that nFrastructure had commenced installing the cabling prior to the publication of the bid solicitation.

Despite his prior authorization to Dell/nFrastructure to proceed with the cabling installation, Johanning prepared a description of work to be included in a solicitation of bids for the project. On May 16, 2007, prior to the issuance of any bid solicitation for the project, Johanning received an e-mail message from Feuerstein who advised him that nFrastructure had completed the cable installations for the Phase II project. As further proof that the project was complete prior to Johanning's drafting of the solicitation, the Inspector General received from McCue a copy of the project site tracker, an electronic file recording of the various stages of completion of the project, which confirmed that this cabling project had been completed prior to the actual release date of the solicitation of bids. On May 21, 2007, five days after the project had already been completed by nFrastructure, a description appeared in the New York State Contract Reporter notifying potential bidders of the opportunity to bid on the installation of 64 Category-6 cable drops at 15 sites throughout New York for DOH.

The description of the project in the bid solicitation posed a dilemma for nFrastructure and Johanning. In fact, when it had previously completed the project, nFrastructure had not used Category-6 cable but, rather, had installed Category-5 cable. Tom Carroll of Dell/nFrastructure contacted Johanning by e-mail and inquired whether Category-5 cable could be substituted for the Category-6 cable specified in the bid request. Johanning responded that Category-5 cable was acceptable and, subsequently, a revised bid was sent to all prospective bidders reflecting the change in the cable specifications.

Bids were received from several vendors and, unsurprisingly, Johanning chose Dell/nFrastructure's bid of $23,354.24, even though it exceeded the lowest bid by more than $12,000. Johanning justified the decision to DOH's contract management unit of choosing the higher priced bidder by claiming that Dell/nFrastructure was the vendor for the other parts of the project and, therefore, using the same vendor for the cabling would prove advantageous. The bids and Johanning's selection of Dell/nFrastructure was subject to an internal audit by DOH which revealed that the cabling had already been completed. Upon discovery of this violation of procurement requirements, DOH withdrew the solicitation for bids and the contract was never actually awarded to Dell/nFrastructure or any other entity. Because the work by nFrastructure was completed in violation of state procurement law, nFrastructure has never been paid by the state for the cabling.

Johanning claimed to the Inspector General that he believed the procurement rules had changed while the project was ongoing, and maintained that he "was trying to get the

stuff done any way " he could. Johanning correctly noted that, during Phase I of the project, he was able to include the cabling in a single package with the other components of the project and utilize the statewide contract with no additional steps, much less competitive bidding. Johanning conceded, though, that conducting a bidding process after nFrastructure had already completed the project was troublesome stating, "the problem is why are we bidding this when the vendor is already doing it?"

The Inspector General found no evidence of any improper relationship between Johanning and Dell/nFrastructure, and evidence supports the conclusion that when Johanning approved nFrastructure's installation of the cabling, he was working under the false assumption that the procurement would eventually be approved and was motivated by the desire to expeditiously complete the project. Notwithstanding this lack of personal benefit, Johanning's behavior can not be countenanced. The state procurement rules exist to ensure that state agencies enter into contracts that are most advantageous to the state and those contracts over a certain threshold or sought to be single-sourced are thoroughly vetted prior to award. Johanning willfully circumvented these requirements and compounded his misconduct by causing the publication of a sham request for bids for an already completed project.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that Johanning issued a solicitation for bids from contractors to install computer cable for a procurement project after the proposed work had already been completed by his chosen vendor at his direction. Johanning previously authorized nFrastructure to commence work under the assumption that a purchase order requesting the funds for payment would be approved. The Inspector General further found that nFrastructure was awarded the contract even though it was not the lowest bidder.

The Inspector General further found that DOH appropriately scrutinized Johanning's various efforts to award Dell/nFrastructure the contract and detected the illegitimate bid solicitation prior to the award of the contract or misspent funds by the state.

The Inspector General's findings and relevant materials have been provided to DOH for disciplinary action against Johanning.

The Inspector General recommends that DOH implement training to ensure that staff involved in the procurement process is aware of the appropriate actions or has access to reliable resources when confronted with difficult or unique situations during the procurement and execution phase of projects. Staff should also be reminded that work should not be authorized until approval for payment is received.

Response of the Department of Health to the Inspector General's Findings

The Department of Health advised the Inspector General that Mr. Johanning was disciplined and received a 6-day suspension without pay. In addition, DOH agreed with the Inspector General's recommendation and stated it will remind staff that extra training and information on the procurement process are available for employees who require it and that relevant information is available for employees on DOH's Web site on the procurement process.