

## Special Review

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### **Department of Information Technology (DoIT) Department of State Police (DSP) Department of Natural Resources (DNR)**

#### **Resource Sharing Lease Agreements**

DoIT Did Not Effectively Monitor Agreements Executed Primarily by DSP and DNR  
With Two Telecommunications Companies

Sufficient Accountability and Control Was Not Established for Lease Payments  
Totaling \$4.4 Million Deposited Into Escrow Accounts Maintained Outside of the  
State's Control

DSP and DNR Did Not Oversee Escrow Accounts Activity Nor Supervise Employees  
Who Arranged Purchases of Equipment and Services Using Escrow Funds

Certain Lease Payments Were Not Received, Equipment Purchases Were Not  
Accounted for, and Certain Questionable Activities Were Identified

November 2016

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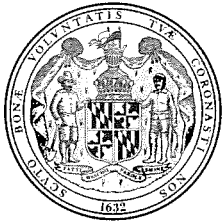
**OFFICE OF LEGISLATIVE AUDITS**  
**DEPARTMENT OF LEGISLATIVE SERVICES**  
**MARYLAND GENERAL ASSEMBLY**

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DEPARTMENT OF LEGISLATIVE SERVICES  
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MARYLAND GENERAL ASSEMBLY

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November 18, 2016

Senator Guy J. Guzzone, Co-Chair, Joint Audit Committee  
Delegate C. William Frick, Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a review of an allegation we received related to certain resource sharing lease agreements between two telecommunications companies and the Department of Information Technology (DoIT), the Department of State Police (DSP), or the Department of Natural Resources (DNR). The agreements provide compensation to the State from these companies, which are allowed to use the State's communications infrastructure, such as towers, to install, operate, and maintain communications systems.

DoIT is responsible for reviewing, valuating, and approving information technology resource sharing agreements entered into by State agencies under its authority. Our review disclosed that DoIT did not maintain comprehensive records of the agreements, nor effectively oversee the 10 such agreements and related renewals which were the subject of our review. These 10 agreements were primarily entered into by the Departments of State Police and Natural Resources as early as 1996, with related compensation (including renewal periods) valued at \$5.9 million as of June 2016.

Certain arrangements pertaining to the receipt of lease payments and the subsequent expenditure of these funds did not provide sufficient control and accountability. Beginning in 2001, lease payments from the two telecommunications companies for these resource sharing agreements were being deposited into escrow accounts maintained outside of the State's control by a law firm, and DSP and DNR did not establish effective oversight of the escrow account activity. One DSP employee and one DNR employee singly directed the law firm to make purchases of telecommunications equipment and services from these escrow accounts. We identified certain questionable activities by one of these individuals, which we referred to the Office of the Attorney General. As of

June 2016, deposits into and withdrawals from the accounts totaled \$4.4 million and \$3.8 million, respectively, and the balances in the accounts totaled \$536,700. DoIT employees responsible for overseeing resource sharing agreements became aware of these questionable arrangements in April 2011, but took no substantive action. We were advised that DoIT Executive Management did not become aware of the practice until July 2015, at which time the law firm was directed to cease making any payments from the escrow accounts and DNR undertook an internal audit of the funds. The resulting January 2016 report concluded the escrow accounts effectively created an “off-budget” pool of funds that could be spent without regard to the State budget or procurement requirements.

DoIT has recently taken certain actions for current and future agreements to help ensure that all funds received from information technology resource sharing agreements are deposited into the Major Information Technology Development Project Fund, which it maintains. DoIT advised us that the affected State agencies will need to collectively make decisions regarding the closure of all escrow accounts and the disposition of the related funds.

An Executive Summary is included on page 5 of this report. The responses to our findings and recommendations from DoIT, DSP, and DNR are included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this review by DoIT, DSP, and DNR.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'TJ Barnickel III', with a stylized flourish at the end.

Thomas J. Barnickel III, CPA  
Legislative Auditor

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## **Executive Summary**

### **Special Review on Resource Sharing Lease Agreements**

We have conducted a review of an allegation we received related to certain resource sharing lease agreements between two telecommunications companies and the Department of Information Technology (DoIT), the Department of State Police (DSP), or the Department of Natural Resources (DNR). The agreements provide compensation to the State from these companies, which are allowed to use the State's communications infrastructure, such as towers, to install, operate, and maintain communications systems. The allegation related to the lack of records and oversight regarding those agreements and related compensation, and possible violations of State budget and procurement law. We determined that the allegation was valid.

DoIT is responsible for reviewing, valuating, and approving resource sharing agreements entered into by State agencies under its authority. However, DoIT did not maintain comprehensive records of the agreements, nor did it effectively oversee the 10 such agreements and related renewals which were the subject of our review. These 10 agreements were primarily entered into by the Departments of State Police and Natural Resources, as early as 1996, with related compensation (including renewal periods) valued at \$5.9 million as of June 2016. Consequently, certain arrangements pertaining to the receipt and expenditure of lease payments did not provide sufficient control and accountability over those funds.

Our review disclosed that, beginning as early as 2001, the two telecommunications companies entered into escrow agreements with a law firm and deposited their lease payments into escrow accounts outside of the State's control, instead of directly buying telecommunications equipment and services on the State's behalf as provided for under the initial agreements. Under this new arrangement, the law firm was directed by the companies to disburse funds, on the State's behalf, for the purchase of equipment or services. In practice, these purchases were authorized by one employee at DSP or one employee at DNR, who exercised complete control over those transactions. As of June 2016, deposits into and withdrawals from the accounts totaled \$4.4 million and \$3.8 million, respectively, and the balances in the accounts totaled \$536,700.

DoIT employees responsible for overseeing resource sharing agreements became aware of these questionable arrangements in April 2011, but took no substantive action. We were advised that DoIT Executive Management did not become aware of the practice until July 2015 at which time the law firm was directed to

cease making any payments from the escrow accounts and DNR undertook an internal audit of the funds. The resulting January 2016 report concluded the escrow accounts effectively created an “off-budget” pool of funds that could be spent without regard to the State budget or procurement requirements and that the arrangement lacked proper segregation of duties.

Citing State law, DoIT believes the funds deposited into the escrow accounts should have been deposited into the Major Information Technology Development Project (MITDP) Fund, which DoIT administers. The MITDP Fund is used to support many of the State’s major information technology development projects. Since the lease payments were not deposited into the Fund, the monies were used for purposes other than those specified by the Fund’s enabling law. We reviewed purchases, totaling approximately \$1.5 million, that were made during the period from January 2011 through June 2016, as authorized by DSP and DNR personnel. While the items purchased appeared to support DSP and DNR wireless telecommunications activities, such as for radio communications systems, the purchases were not for a major information technology development project.

We noted that the escrow account transactions were not recorded in the State’s accounting records and were not monitored to ensure the propriety of the transactions. For example, DSP and DNR did not obtain bank account statements and did not verify that disbursements made by the law firm agreed with the purchases authorized nor ensure all lease payments due were deposited. We determined that payments totaling \$342,000 had not been received dating back to 2009.

Purchases of equipment and services made by DSP and DNR using escrow account funds were not subject to any independent supervisory review and approval. One individual from each of these Departments singly decided what equipment and services would be purchased and directed the law firm to make payment to vendors on their behalf using escrow funds. Furthermore, purchases were not made in accordance with State procurement regulations and we identified instances in which the prices paid for equipment exceeded those available under State contracts.

Furthermore, in 2012, the DNR employee who directed the escrow account purchases authorized the law firm to pay \$73,350 to an out-of-State vendor to install a telecommunications tower on DNR land without conducting a proper procurement and executing a written contract. This same individual had previously executed, without the knowledge of DNR or DoIT officials, an agreement that specified that a telecommunications company would pay DNR \$162,000 to vacate its licenses to operate certain radio frequencies that interfered



with cellular equipment operated by the telecommunications company and for DNR to purchase a replacement system. In April 2016, DNR terminated the employee. DNR management advised us that the employee's services were no longer needed and that the termination was not related to the use of the escrow funds. Because of concerns regarding the nature of these procurements, we referred these matters to the Criminal Division of the Office of the Attorney General for its review.

There were a number of other issues raised regarding DoIT's oversight and DSP's and DNR's administration of the arrangements. For example, 19 of 22 renewal options under the 10 agreements were not formally executed, including some agreements which required Board of Public Works' approval. Two agreements were allowed to continue after their initial terms without the State receiving any compensation, resulting in a potential loss of compensation totaling \$575,000. Finally, DoIT, DSP, and DNR did not maintain complete inventory lists describing the equipment attached to their telecommunications towers and the ownership of the equipment so that they could ensure all attached equipment was covered by an agreement.



## **Background Information**

### **Resource Sharing Agreements**

State law allows State agencies to enter into information technology resource sharing agreements with private companies. These agreements allow these private companies the non-exclusive, long-term use of State rights-of-way, existing communications infrastructure, and real estate, for the private companies to install, operate, and maintain communications systems. In exchange, these private companies provide the State with communications equipment, services, or cash. State law requires that a unit of State government shall advise the Department of Information Technology (DoIT) of any information technology proposal involving resource sharing. DoIT's Secretary is required to review, determine the value of, and approve all resource sharing agreements proposed by State agencies under its authority.

Based on our inquiries, we determined that the Department of State Police (DSP), the Department of Natural Resources (DNR), and DoIT had 24 resource sharing agreements with private companies (DSP – 6, DNR – 15, DoIT – 3) for the non-exclusive long-term use of State resources, including rights-of-way (highways, roads, bridges), communications infrastructure (telecommunications towers), and real estate (land and buildings). As further described under the Scope, Objectives, and Methodology section, our review focused on 10 of these resource sharing agreements between DSP, DNR, or DoIT and two telecommunications companies.

### **Agency Responsibilities**

The **Department of Information Technology (DoIT)** was established by Chapter 9, Laws of Maryland 2008, effective July 1, 2008. DoIT is responsible for the State's information technology policies, procedures, and standards, and for overseeing the implementation of major information technology projects for the State's Executive Branch agencies and commissions.<sup>1</sup> DoIT manages the Major Information Technology Development Project Fund and coordinates, purchases, and manages information technology and telecommunications services for State agencies. DoIT is also responsible for reviewing, determining the value of, and approving information technology resource sharing agreements with State agencies. Prior to DoIT's creation, the information technology functions of the Executive Branch were the responsibility of the Department of Budget and

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<sup>1</sup> By Law, DoIT does not have authority or responsibilities for the University System of Maryland, Morgan State University, or St. Mary's College.

Management (DBM). Prior to these functions being the responsibility of DBM, the wireless communications services functions were the responsibility of the Department of General Services.

The **Department of State Police (DSP)** is responsible for safeguarding the lives and safety of all persons within the State, protecting property, and assisting in securing to all persons the equal protection of the laws. DSP maintains a wireless telecommunications network to support public safety and emergency communications within DSP and with various other state, local, and federal entities. This network uses multiple telecommunications towers, primarily located at DSP's barracks.

The **Department of Natural Resources (DNR)** oversees the management and use of the State's living and natural resources for the current and future enjoyment of Maryland's citizens and visitors. DNR maintains a wireless telecommunications network to support communications among the State's parks and natural resources' police operations. This network uses multiple telecommunications towers located across the State.

## **Scope, Objectives, and Methodology**

We have conducted a review of an allegation that we received related to resource sharing agreements between two telecommunications companies and the Department of Information Technology (DoIT), the Department of State Police (DSP), or the Department of Natural Resources (DNR). The allegation related to possible violations of State budget and procurement law and the lack of records and oversight regarding certain resource sharing agreement activity and related compensation. Cash compensation from these agreements was allegedly deposited into escrow accounts maintained by a law firm.

The purpose of our review was to determine whether the allegation we received was valid and to determine if the related activities violated State laws, regulations, and policies. This review was performed in accordance with State Government Article, Section 2-1220 of the Annotated Code of Maryland. We determined that the allegation was valid.

The scope of our review included 10 resource sharing agreements between DSP, DNR, or DoIT and two telecommunications companies. The agreements, which were entered into during the period from July 1996 through September 2003, allowed these companies to attach cellular equipment to six State-owned telecommunications towers located in Waterloo, Waldorf, Westminster, Parole, La Plata, and Germantown.

DSP is responsible for six of these agreements and DNR and DoIT are each responsible for two agreements. The agreements have initial terms of 5 to 10 years, with several 5-year renewal options, and provide for the telecommunications companies to compensate the State in the form of equipment, services, and lease payments, or a combination thereof. The total value of compensation for these 10 agreements was \$5.9 million. (Refer to Table 1 on the next page.)

Our review focused on the procedures established to monitor and account for the compensation received by the three Departments under these 10 agreements. During the period from February 2001 through June 2016, payments related to resource sharing agreements totaling approximately \$4.4 million were deposited into six escrow accounts maintained outside of the State's control by a law firm. We also focused on the disbursement of those funds and the accounting for the related purchases. As of June 30, 2016, the two telecommunications companies continued to have cellular antennas and related equipment attached to the towers. During the course of our review, we became aware of two arrangements related to telecommunications services that were handled by a DNR employee and DNR

was unaware of one of these arrangements. The employee no longer works for DNR.

Table 1					
Summary of Resource Sharing Lease Agreements					
Value of Compensation Through June 30, 2016					
	State Agency	Location	Vendor	Terms of Agreement (Including Extension Periods)	Value of Compensation Through June 2016
1	DSP	Westminster	Company 1	May 1996 to April 2018	\$325,988
2		Waterloo	Company 1	May 1996 to April 2016	\$797,345
3			Company 2	May 2001 to July 2016	\$602,357
4		Parole	Company 1	May 1996 to April 2016	\$938,542
5			Company 2	May 2001 to July 2016	\$733,304
6		La Plata	Company 1	Sept. 2003 to Sept. 2023	\$332,327
7	DSP/DNR*	Waldorf	Company 1	May 1996 to April 2016	\$800,594
8			Company 2	May 2001 to May 2021	\$602,357
9	DoIT	Germantown	Company 1	Oct. 2002 to Oct. 2022	\$488,231
10			Company 2	Oct. 2002 to Oct. 2022	\$240,000
*On October 18, 2000, DSP transferred the Waldorf Barracks property to DNR.				Total	\$5,861,045

**Source:** Resource Sharing Agreements

Our review consisted of tests, analyses, inspections of documents and records, observations, and discussions with DoIT, DSP, and DNR personnel, as we deemed necessary to achieve our objectives. We reviewed numerous documents, including resource sharing agreements, escrow account records, procurement documents, invoices, and related records. We interviewed State employees and law firm personnel. Finally, we conducted certain physical inspections of cell tower equipment. The results of our review of the allegation are identified in the findings in this report. Our review did not constitute an audit conducted in accordance with generally accepted government auditing standards. Our review was primarily conducted during the period from February through July 2016.

We identified certain questionable matters involving a DNR employee, as described in findings 6 and 7 and we referred these matters to the Criminal Division of the Office of Attorney General. DNR should consult with the Office of the Attorney General before taking any actions related to the findings contained in this report. A referral to the Criminal Division does not mean that a criminal act has actually occurred or that criminal charges will be filed.

The responses to our findings and recommendations from DoIT, DSP, and DNR are included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise the Departments regarding the results of our review of these responses.





## Findings and Recommendations

### Oversight of Resource Sharing Agreements

#### **Finding 1**

**The Department of Information Technology (DoIT) did not maintain comprehensive records of telecommunications resource sharing agreements. Certain arrangements regarding the related lease payments, such as the depositing of payments into escrow accounts outside of the State's control, were inconsistent with DoIT's understanding of the requirements of State law. DoIT did not take timely action to address these arrangements.**

#### **Analysis**

The Department of Information Technology (DoIT), as the oversight agency, did not maintain comprehensive records of telecommunications resource sharing agreements maintained by Executive Branch agencies under its authority, including its own agreements and did not account for the activity and related compensation.

Furthermore, certain arrangements regarding the lease payments received under these agreements were inconsistent with DoIT's understanding of the related requirements of State law. DoIT employees became aware in April 2011 of the longstanding practice of two telecommunications companies depositing lease payments into escrow accounts maintained by a law firm, but DoIT did not take timely action to address the matter until July 2015.

#### Agreements Recordkeeping

DoIT did not maintain a complete list of existing Executive Branch agency resource sharing agreements, including the value of the agreements and renewal periods. At the beginning of our review, a spreadsheet maintained by DoIT only listed 5 of the 10 agreements included in our review. These 10 agreements were entered into by DoIT, the Department of State Police (DSP), and the Department of Natural Resources (DNR). Furthermore, at the time of our review, DoIT did not maintain copies of these agreements in its files. Consequently, DoIT did not establish a mechanism to ensure it was aware of all arrangements made by State agencies with telecommunications companies and that the related agreements had been subject to its review.

#### Arrangements for Lease Payments Received

Citing State law, DoIT believes any funds received from information technology resource sharing agreements should be deposited into the Major Information Technology Development Project (MITDP) Fund, which is maintained by DoIT.

Rather than depositing funds into the MITDP Fund, the lease payments from two telecommunications companies for resource sharing agreements were deposited into federally insured interest-bearing escrow accounts maintained by a law firm. This practice began in February 2001 when one of the telecommunications companies executed an escrow agreement with a law firm to serve as its fiduciary for holding lease payments due to the State for its resource sharing agreements. In March 2002, the second telecommunications company executed a similar escrow agreement with the same law firm.

Prior to the establishment of the escrow accounts, lease payments were not made; rather, compensation paid under these resource sharing agreements was in the form of telecommunications equipment and services that were provided, or paid for, by the telecommunications companies on the State's behalf. Under this new arrangement, the law firm was directed by the companies to disburse funds, on the State's behalf, for the purchase of equipment or services. In practice, these procurements were authorized by DSP and DNR personnel. We were advised by the law firm that the escrow accounts were created as a convenience so that the telecommunications companies could avoid direct involvement in the purchase of equipment and services for the State. Whether executive management of the Department of Budget and Management, which, at that time, had oversight responsibility for the State's telecommunications activities, was aware of the arrangement is unknown to us.

There were six different escrow bank accounts established and used by the law firm. Based on our review of the applicable bank statements for these six bank accounts, deposits into and withdrawals from the account (excluding transfers between accounts and bank fees) related to the agreements (and renewals) during the period from February 2001 through June 30, 2016 totaled approximately \$4.4 million and \$3.8 million, respectively. As compensation for serving as the fiduciary, the escrow agreements permitted the law firm to retain accumulated interest earnings.

According to DoIT, any funds received from information technology resource sharing agreements should be deposited into the MITDP Fund, which has been maintained by DoIT since 2008 when it was established as a State agency. State law, dating back to 1996,<sup>2</sup> requires that all funds from the sale, lease, or exchange of communications sites, facilities, or frequencies, and from information technology agreements involving resource sharing be deposited into the Fund, which is used to support many of the State's major information technology

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<sup>2</sup> A similar requirement existed under State law governing the Fund's predecessor - the Information Technology Investment Fund, which was maintained by the Department of Budget and Management.

development projects. Furthermore, since July 1, 2014, State law requires this revenue to be used only to support the operation of networkMaryland, the State's information technology communications network.

The lease payments from the resource sharing agreements were not deposited into the Fund and the monies were used for purposes other than those specified by law. We reviewed purchases, totaling approximately \$1.5 million, that were made during the period from January 2011 through June 2016, as authorized by DSP and DNR personnel. While the items purchased appeared to support DSP and DNR wireless telecommunications activities, such as for radio communications systems, the purchases were not for a major information technology development project nor, after July 2014, were they related to networkMaryland. Furthermore, because the lease payments deposited into the escrow account also included compensation related to DoIT's agreements, these funds were available to be spent by DSP and DNR.

#### Actions Taken by DoIT, DSP, and DNR

In April 2011, DoIT's Resource Sharing Program Manager raised concerns about the escrow account arrangement with the law firm and at least one other DoIT employee was made aware of this arrangement; however, no substantive action was taken to investigate this matter until 2015. Specifically, DoIT did not take action to stop the deposit of lease payments into the escrow accounts and did not determine the proper disposition of the remaining balance of funds in the escrow accounts.

We were advised that DoIT Executive Management did not become aware of the arrangement until July 2015 when DNR sought to modify its resource sharing agreements for the Waldorf tower. Based on concerns DoIT had with the renewals, in July 2015, DoIT formally requested financial documentation on the escrow accounts from the law firm, DSP, and DNR. At that time, DNR also directed the law firm to cease making any disbursements from the escrow accounts for either DSP or DNR unless expressly authorized by DNR's Deputy Secretary. After reviewing the information provided, a determination was made collectively by DoIT, DSP, and DNR to have DNR's internal audit unit conduct an audit of the escrow accounts.

DNR's internal audit began in August 2015 with the purpose of (1) determining the legal basis for the escrow accounts in relationship to State finance and procurement laws, regulations, and policies; and (2) assessing the control and accountability of funds deposited, maintained, and withdrawn from the escrow accounts. DSP also conducted an internal investigation in September and October of 2015, and concluded that its employee who authorized escrow purchases failed

to properly inventory the equipment purchased. DSP subsequently counseled this employee.

On January 28, 2016, DNR issued a report based on its completed review of escrow account activity during the period from January 1, 2013 to August 31, 2015. The report concluded the escrow accounts effectively created an “off-budget” pool of funds that could be spent without regard to the State budget or procurement requirements and that the arrangement lacked proper segregation of duties.

As a result of the internal audit, DoIT advised us it took the following actions:

1. Advised DSP and DNR that all telecommunications resource sharing agreements require DoIT approval and all related lease payments need to be made directly to the MITDP Fund
2. Established standard language regarding payments to the MITDP Fund for future resource sharing agreements
3. Initiated a review of each of the 10 resource sharing agreements to identify all in-kind equipment and lease payments made to determine the amount owed to the MITDP Fund
4. Issued a policy clarification regarding resource sharing renewals, standard pricing methodology, and procedures for handling requests to change equipment on resource sharing sites by telecommunications companies

As of June 30, 2016, two escrow accounts remained open with a combined balance of approximately \$536,700. Except for one transaction that was in process prior to the law firm being instructed to cease disbursements, no disbursements have since been made from the escrow accounts. DoIT advised us that the final closure of the escrow accounts and disposition of the related funds will not be completed until all related resource sharing agreements have been modified and a determination is collectively made by DoIT, DSP, and DNR regarding the disposition of the available funds.

#### **Recommendation 1**

**We recommend that DoIT**

- a. maintain a comprehensive record of all telecommunications resource sharing agreements administered by State agencies under its jurisdiction, maintain copies of those agreements, and require the agencies to periodically (such as, annually) report the status of the agreements;**
- b. discontinue use of the escrow accounts;**

- c. working with DSP and DNR, determine the disposition of the remaining escrow account funds and all future resource sharing agreement lease payments; and
- d. evaluate whether there is any recourse or action to be taken if it is determined that escrow funds should have been deposited into the MITDP Fund and that the funds were used in a manner inconsistent with the MITDP Fund's purposes.

#### **Finding 2**

**DoIT, DSP, and DNR did not maintain comprehensive records of resource sharing agreements for their own telecommunications towers, properly execute or obtain required approvals for renewals, nor maintain records of equipment attached to their towers.**

#### **Analysis**

DoIT, DSP, and DNR did not maintain a complete list of their resource sharing agreements. Also, these Departments did not properly execute agreement renewal options and did not obtain Board of Public Works (BPW) approval when the value of those options exceed \$200,000. Finally, all three Departments lacked inventory records detailing the specific equipment attached to their telecommunications towers and did not ensure that agreements were executed with all parties with equipment on the towers.

- DoIT, DSP, and DNR did not maintain a list of their resource sharing agreements. Consequently, the Departments did not establish a mechanism to monitor the agreement terms to ensure, for example, that renewal options were properly exercised and that all compensation due from telecommunications companies was received and accounted for.
- Although the initial resource sharing agreements were formally executed and approved by BPW, the agreements were usually allowed to continue beyond their initial terms without formal notification and agreement between the parties to exercise renewal options, as required by the agreement provisions. Consequently, the Departments missed opportunities to negotiate the payment terms of the initial agreements, some of which have been in existence for approximately 20 years. Based on the renewal option periods specified in the 10 agreements, we determined that, collectively, 19 of the 22 renewal options (generally for a period of 5 years each) were informally exercised by the three Departments by allowing the telecommunications companies to continue to use the towers. The value of 9 of these renewals were individually greater

than \$200,000 and, according to BPW staff, should have been submitted to BPW for review and approval.

- None of the three Departments maintained complete inventory lists detailing the type and ownership of equipment attached to their telecommunications towers, including equipment owned by the State (see finding 8). During this review, we conducted physical inspections of telecommunications towers in Parole (DSP), Westminster (DSP), Waldorf (DNR), and Germantown (DoIT), along with Department personnel. The inspections identified many equipment items attached to the towers, including equipment represented to us as being owned by federal, State, or local governments, which are permitted to use the towers without making lease payments. The Departments could not verify that resource sharing agreements or memoranda of understanding with government entities had been established for all attached equipment.

All attached equipment should be inventoried to help ensure that only appropriate communications equipment is deployed on State towers. Agreements and memoranda of understanding are necessary to affix the responsibilities of all parties, to specify the agreement terms and any payment arrangements, and to address matters such as site access, maintenance, and liability.

## **Recommendation 2**

**We recommend that DoIT, DSP, and DNR**

- a. maintain a comprehensive record of their resource sharing agreements and copies of any renewal options exercised;**
- b. review existing agreements and determine whether the terms should be renegotiated, ensure the existing arrangements with the telecommunications companies are supported by executed agreements or renewal options, and ensure that new agreements, as well as renewals valued at \$200,000 or more, are retroactively submitted to BPW for approval; and**
- c. establish and maintain complete inventory records of all equipment attached to State-owned telecommunications towers under their jurisdiction and ensure that resource sharing agreements or memoranda of understanding have been executed with all entities with equipment attached to the towers.**

### Finding 3

**The financial transactions pertaining to escrow account funds were not recorded in the State’s accounting records and were not monitored by State officials, and related interest earnings were retained by the law firm. DSP and DNR personnel did not ensure that account disbursements agreed with the amounts of related purchases.**

### Analysis

The financial transactions pertaining to the escrow accounts were not recorded in the State’s accounting records and were not monitored by State officials, and the related interest was retained by the law firm. DSP and DNR personnel did not ensure that account disbursements agreed with amounts of related purchases.

- The financial transactions of the escrow accounts (deposits and disbursements) were not recorded in the State’s accounting records, nor were they monitored by State officials through the State budget process. As identified in the aforementioned DNR internal audit, the escrow accounts effectively created an “off-budget” pool of funds that could be spent without regard to the State budget or procurement processes. As a result, these funds were not subject to any budgetary or fiscal oversight by the General Assembly and executive control agencies. State law requires that both revenues and expenditures be approved by the General Assembly in the annual State budget.
- DoIT, DSP, and DNR did not obtain escrow account bank statements to monitor the deposit and disbursement activity and did not ensure the law firm performed monthly bank reconciliations. While the law firm maintained paper documentation to support deposit and withdrawal transactions (such as cancelled checks and deposit slips), law firm personnel advised us that the firm did not maintain formal accounting records for the accounts (such as a check register) and did not complete monthly bank reconciliations. Although State personnel were not signatories on the escrow accounts, because the accounts contained funds due to the State and available for its use, the related transactions should have been monitored.
- Interest earned on the escrow accounts was not paid to the State but was retained by the law firm. The escrow agreements between the law firm and

#### Summary of Escrow Transactions February 2001 to June 2016

Deposits of Lease Payments	\$4,354,641
Disbursements for purchase of goods and services	\$3,845,966

Source: Escrow Account Bank Records

the telecommunications companies provided for the firm to retain any interest; however, since these funds otherwise would have been paid to the State, the interest on unspent funds would have been earned by the State. If the lease payments had been remitted to the MITDP Fund, the Fund would have been credited with the interest earnings in accordance with State law. Based on our review of bank records, we determined that accumulated interest earnings on the escrow accounts and investment of these funds in certificates of deposit totaled approximately \$90,900 during the period from February 1, 2001 to June 30, 2016.

- DSP and DNR personnel did not verify that all escrow account disbursements agreed in amount with the corresponding purchases. DSP and DNR did not obtain the associated invoices for the equipment and services purchased. Consequently, there was no official state record of these purchases, and there was no assurance that the amounts paid from the escrow accounts for equipment and services purchased were consistent with the agreed-upon prices and related vendor invoices. As previously mentioned, we reviewed purchases totaling approximately \$1.5 million that were made during the period from January 2011 through June 2016. Based on our review, we concluded that the amounts paid appeared to be consistent with the available documentation, such as email requests and price quotes from DSP and DNR for those purchases.

### **Recommendation 3**

**We recommend that DoIT, DSP, and DNR**

- a. in consultation with the Department of Budget and Management and the State Comptroller's Office, determine the proper method for recording any current fiscal year escrow account revenue and expenditure transactions in the State's accounting records;**
- b. obtain all bank statements for escrow accounts until they are closed and verify the propriety of all transactions;**
- c. in consultation with legal counsel, determine whether the State can recover any interest retained by the law firm; and**
- d. to the extent practical, obtain and review invoices for purchases made with escrow account funds, compare them to amounts disbursed from the accounts, and take appropriate action for any differences identified.**



**Finding 4**

**DoIT, DSP, and DNR did not ensure that all compensation due under the resource sharing agreements was collected and, consequently, certain payments were not received.**

**Analysis**

DoIT, DSP, and DNR did not have processes in place to ensure that all compensation due from the resource sharing agreements was received. Even though DSP and DNR took action in 2008 to collect payments totaling approximately \$701,400 that had been outstanding since fiscal year 2002, DSP and DNR did not establish effective monitoring of subsequent lease payments.

For the 10 agreements included in the scope of our review, we compared the funds deposited into the escrow accounts with the lease payments required by the agreements (including the renewal periods) during the period from February 2001 through June 2016. We identified instances in which either required payments were not received or the initial agreements had lapsed and provisions were not made for compensation beyond the initial contract periods even though the telecommunications companies continued using the towers. The estimated value of uncollected compensation totaled \$917,000.

- For eight resource sharing agreements, we determined that compensation totaling approximately \$342,000 of the \$4,697,000 in lease payments required was not received. For example, for one resource sharing agreement for space on DSP's Waterloo tower, we noted that only \$391,400 of the \$602,400 in required compensation was deposited into the escrow accounts; the delinquent balance of \$211,000 dated back to fiscal year 2009. As of June 30, 2016, the outstanding compensation had not been pursued or recovered.
- For two resource sharing agreements with two telecommunications companies, no compensation had been received for periods dating back to May 2003. Specifically, we noted that no funds had been deposited into the escrow accounts for the agreements for DSP's Westminster tower or for DoIT's Germantown tower. The two initial agreements provided that, as compensation, the companies would erect new telecommunications towers on State land, rather than make lease payments. The new tower under the Westminster agreement was valued at \$326,000 for the period from May 1996 to April 2003. The new tower under the Germantown agreement was valued at \$240,000 for the period from October 2002 to October 2012. The companies erected the towers in accordance with the agreements. However, when these initial agreements expired, DSP and DoIT did not require the

companies to begin making lease payments even though their equipment was still on the DSP and DoIT towers.

DSP and DoIT could not provide us with documentation of the renewals for these agreements (see finding 1). However, based on standard lease rates for similar resource sharing agreements, DoIT advised us that compensation totaling approximately \$575,000 (\$375,000 for Westminster since May 2003 and \$200,000 for Germantown since October 2012) should have been received through June 2016.

DoIT, DSP, and DNR management personnel advised us that they believed the law firm was monitoring the amounts owed by the telecommunications companies. However, the law firm is a fiduciary of the telecommunications companies and had no contractual obligation to monitor payments on the State's behalf. Therefore, each Department was responsible for ensuring the telecommunications companies made the lease payments required under their resource sharing agreements.

#### **Recommendation 4**

**We recommend that DoIT, DSP, and DNR**

- a. establish procedures to ensure that all lease payments due from resource sharing agreements are received, and**
- b. determine the amount of unpaid compensation for all 10 resource sharing agreements and take necessary actions to collect the amounts from the respective telecommunications companies.**

#### **Finding 5**

**Purchases made by DSP and DNR from the escrow accounts were not subject to supervisory approval and were not made in accordance with State procurement regulations, and no other attempts were made to ensure that the best value was received.**

#### **Analysis**

Purchases of equipment and services made by DSP and DNR using escrow account funds were not subject to any independent supervisory review and approval and were not made in accordance with State procurement regulations. There was no documentation to substantiate that efforts were made to ensure the best value was received. During the period from February 1, 2001 to June 30, 2016, approximately \$3.8 million was disbursed from the escrow accounts for purchases made by the law firm on behalf of DSP and DNR. We reviewed purchases totaling approximately \$1.5 million (\$843,700 for DSP and \$656,400

for DNR) that were made during the period from January 1, 2011 to June 30, 2016.

- Purchases made from escrow account funds on behalf of DSP and DNR were not subject to independent supervisory review and approval by the respective Departments. One information technology employee at DSP and one information technology employee at DNR each singly decided what equipment and services would be purchased and directed the law firm to make payment to vendors on their behalf using escrow funds. To make a purchase, these employees sent an email to the law firm requesting the purchase of specific services or equipment from a specific vendor. The law firm complied with the request if sufficient funds were available in the accounts and ordered the equipment to be delivered or the services to be provided to DSP or DNR.
- Equipment and services obtained using funds from the escrow accounts were not competitively procured, solicitations were not published on *eMaryland Marketplace*, and procurements were not subject to control agency (such as the Department of Budget and Management and DoIT) and Board of Public Works approval, as required by State procurement regulations. In many cases, these DSP and DNR employees requested that purchases be made from vendors with which there were available Statewide contracts. However, there was no evidence that the DSP and DNR employees made escrow fund purchases using the rates, specifications, and terms provided in Statewide contracts. As a result, assurance was lacking that DSP and DNR obtained equipment and services at the most advantageous prices to the State.

We noted that, during the period from June 2013 to August 2015, the aforementioned DSP employee directed the law firm to make multiple purchases of a specific piece of telecommunications equipment (wireless dispatch consolette) from a vendor, at a total cost of \$258,800. This same equipment could have been purchased through one of two Statewide contracts at a total cost of approximately \$184,700, resulting in savings of \$74,100 (or 29 percent). The DSP employee was aware of the Statewide contracts and was involved with procurements of these same items using the Statewide contract. For example, in June 2014, the employee solely authorized the purchase of six consolettes using escrow account funds at a unit cost of \$10,233. In September 2014, the employee was authorized by DSP to purchase nine of these items using the normal DSP procurement process and a Statewide contract for \$7,533 per item—a difference of \$2,700 per item. This DSP employee advised us that the Statewide contracts were not used for purchases with escrow funds because the actual purchases were made by the

law firm, not by a State agency. However, as noted above, the purchases were controlled by and made on behalf of DSP and DNR.

As previously mentioned, DNR directed the law firm in July 2015 to cease making any disbursements from the escrow accounts for either DSP or DNR unless expressly authorized by DNR's Deputy Secretary. As of June 30, 2016, except for one transaction that was in process at that time, no other disbursements for DSP or DNR purchases had been made from the accounts.

### **Recommendation 5**

**We recommend that DSP and DNR**

- a. continue abiding by the current prohibition on the use of the escrow account funds; and**
- b. determine the extent to which retroactive approval should be obtained from the Board of Public Works, the Department of Budget and Management, and DoIT for previous purchases from escrow funds, and obtain those approvals.**

### **Questionable Activities**

#### **Finding 6**

**The DNR employee who directed escrow account purchases authorized the use of escrow funds for certain questionable activity related to the purchase and installation of a telecommunications tower on DNR land.**

#### **Analysis**

The DNR employee who directed the escrow account purchases authorized the law firm to pay an out-of-State vendor to install a telecommunications tower on DNR land without formal approval of DNR or DoIT officials and without conducting a proper procurement or executing a written contract. DNR could not document that the tower construction had been inspected, and the selection of the vendor and certain of the payments appeared questionable.

In August 2012, the DNR employee initiated a bid solicitation for the installation of a telecommunications tower. (The tower components had previously been purchased by this employee with escrow funds.) According to DNR records, the procurement was cancelled after the bids were evaluated. All bids exceeded DNR's \$50,000 delegated procurement authority for information technology contracts and, therefore, the procurement required DoIT's review and approval, which the DNR employee believed would take too long to obtain.

Several days after the cancellation, the employee authorized the law firm to disburse \$57,600 from the escrow account to the vendor that had submitted the lowest bid on the original solicitation, even though that vendor had been disqualified from the original procurement. The vendor was disqualified because the bid was submitted after the bid submission deadline, did not contain all the required affidavits (such as disclosure of no conflicts-of-interest or criminal convictions, and a certificate of liability insurance), and did not provide documentation for certain qualifications (such as past experience with installing telecommunications towers, installing and aligning microwave antennas, and tower climbing certification). In addition, the vendor was located out of state and was not registered with the State Department of Assessments and Taxation as required by State law. The DNR employee advised us that the vendor was selected because DNR was familiar with the vendor's performance on tower maintenance services provided on other DNR towers. According to State records, DNR had paid this vendor approximately \$318,300 for tower maintenance services during the period from July 2011 to November 2015.

DNR also did not have a written contract with the vendor as required by State procurement regulations. As a result, terms and conditions (such as price, time period, scope of work, legal recourse for non-performance) were not established. In total, the vendor was paid \$88,500 for the tower installation work, even though the vendor's original bid on the solicitation was \$57,600—a difference of \$30,900. Based on our review, approximately \$13,400 of this difference appeared to be for labor related to the tower foundation work which was already included in the scope of the original bid. The remaining \$17,500 was for extra work completed that was not included in the scope of the original procurement during the solicitation process.

The failure to obtain DoIT's review for the contract procurement is significant because DoIT had a Statewide contract with preapproved vendors for tower installation services. In addition, DoIT management advised us that inspections are typically performed when towers are installed to ensure they are installed according to specifications. These specifications include obtaining a certification of concrete tower foundation footings, a certification of tower installation, and a verification of electrical systems. The aforementioned vendor was not on the DoIT Statewide contract and DNR could not provide documentation that the tower was inspected after it was installed. The tower was subsequently inspected in August 2016 by a DoIT contractor as part of the Statewide interoperability wireless radio project known as Maryland First. The inspection concluded the tower was adequately supported for the current equipment and could support the loading of proposed equipment for the radio project.

According to DNR's records, the total cost of the tower installation project was approximately \$138,400, which included the tower, communications equipment and services, and installation services. The \$88,500 paid to the aforementioned vendor included \$73,350 from escrow funds and \$15,150 that was paid in multiple transactions via the State's corporate purchasing card.

In April 2016, DNR terminated the aforementioned employee. DNR management advised us that the employee's services were no longer needed and that the termination was not related to the use of the escrow funds. Because of concerns regarding the nature of this procurement, we referred this matter to the Criminal Division of the Office of the Attorney General for its review.

#### **Recommendation 6**

##### **We recommend that DNR**

- a. submit the tower installation award to DoIT for retroactive review and approval; and**
- b. in consultation with the Office of the Attorney General, determine the extent to which any of the payments totaling \$13,400 were inappropriately paid to the vendor and pursue recovery.**

#### **Finding 7**

**The DNR employee who directed escrow account purchases processed a unique arrangement with a telecommunications company without review and approval from either DNR management or DoIT. The related payments were deposited into an escrow account and were used to purchase equipment without a competitive procurement and without DNR and control agency approvals.**

#### **Analysis**

The DNR employee who directed escrow account purchases processed an arrangement with a telecommunications company without review and approval from either DNR management or DoIT. The September 2008 agreement specified that the telecommunications company would pay DNR \$162,000 to vacate its licenses to operate certain radio frequencies that interfered with cellular equipment operated by the telecommunications company and for DNR to purchase a replacement system. The funds received were deposited into one of the escrow accounts used for the resource sharing agreements instead of being deposited into the MITDP Fund as required by law. The funds were then used to purchase the replacement system specified in the arrangement without any competitive procurement.

Neither DNR nor DoIT were aware of the existence of this arrangement until we brought it to their attention. According to State law, agreements related to radio frequencies should be reviewed and approved by DoIT and the funds received should have been deposited into the MITDP Fund. Because of concerns regarding the nature of this procurement, we referred this matter to the Criminal Division of the Office of the Attorney General for its review.

#### **Recommendation 7**

**We recommend that DNR and DoIT review the aforementioned arrangement to determine whether State contract requirements have been met, the terms promote the best interests of the State, and the agreement is properly approved and executed.**

### **Accountability and Control over Equipment Purchases**

#### **Finding 8**

**DSP and DNR did not record, tag, and inventory equipment purchased with escrow account funds and could not readily determine the location of all equipment purchased.**

#### **Analysis**

DSP and DNR did not record, tag, and inventory equipment purchased with escrow account funds and could not provide a listing or identify the location of equipment purchased. Prior to or during our review, both DSP and DNR attempted to identify equipment purchased with escrow funds but these efforts were incomplete or were not comprehensive.

- In April and May of 2016, DSP reviewed equipment purchases made with escrow funds during the period from January 1, 2013 to August 31, 2015 which, according to escrow account records, totaled approximately \$625,600. DSP attempted to locate the equipment, ensure it was properly tagged, and record it in the equipment records. As of June 30, 2016, DSP's review was still in progress.
- In December 2015, DNR performed a physical inventory of equipment purchased with escrow funds that had been installed on select telecommunications towers to ensure the equipment was recorded and tagged; however, DNR did not compare the results of this physical inventory with the items purchased with escrow funds. Using available documentation, such as email authorizations and vendor price quotes, we subsequently compared purchases made with escrow funds, during the period from January 1, 2013 to

August 31, 2015, totaling approximately \$337,500, with DNR's physical inventory results. Based upon our comparison it appears reasonable that DNR had identified, tagged, and recorded these equipment items in December 2015.

Considering that disbursements from the escrow accounts totaled \$3.8 million during the approximately 15 years of their existence, the efforts recently made by DSP and DNR do not address a significant portion of those expenditures. While we recognize that, due to age, some of the equipment may have been disposed of or become obsolete or inoperable, the Departments should obtain reasonable assurance that they had received the equipment purchased and should attempt to determine the related disposition.

**Recommendation 8**

**We recommend that DSP and DNR, to the extent practical,**

- a. expand the aforementioned inventory reviews to identify all equipment purchased with escrow account funds,**
- b. tag and record located equipment in the inventory records, and**
- c. take appropriate corrective action for any equipment that cannot be located.**





**State of Maryland**  
**Department of Information Technology**

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Mr. Thomas J. Barnickel III, CPA  
Legislative Auditor  
State of Maryland  
Office of Legislative Audits  
301 West Preston Street, Room 1202  
Baltimore, MD 21201

Dear Mr. Barnickel:

The Department of Information Technology (DoIT) has reviewed your draft audit report covering the Special Review of Resource Sharing Lease Agreements. As requested, our responses to the Findings in the report, as related to DoIT, are attached.

For additional clarification purposes, the two leases ascribed to DoIT and reviewed as part of this audit were originally entered into in 2002 by the Department of Budget and Management. Prior to the creation of DoIT as a Unit of State government in 2008, the information technology functions of the Executive Branch were the responsibility of the Department of Budget and Management (DBM). The asset in the leases ascribed to DoIT is now categorized as a DoIT asset and our review treats the leases as if they were DoIT leases.

If you have any questions or need additional information, you may contact my Chief of Staff at (410) 697-9403 or [al.bullock@maryland.gov](mailto:al.bullock@maryland.gov).

Sincerely,

David A. Garcia, Secretary  
Department of Information Technology

cc: Mr. Al Bullock, Chief of Staff  
Mr. Douglas Carrey-Beaver, Principal Counsel

# **DoIT Response to Findings and Recommendations Resource Sharing Lease Agreements Special Review November 2016**

## **Oversight of Resource Sharing Agreements**

### **Finding 1**

**The Department of Information Technology (DoIT) did not maintain comprehensive records of telecommunications resource sharing agreements. Certain arrangements regarding the related lease payments, such as the depositing of payments into escrow accounts outside of the State's control, were inconsistent with DoIT's understanding of the requirements of State law. DoIT did not take timely action to address these arrangements.**

### **Recommendation 1**

**We recommend that DoIT**

- a. maintain a comprehensive record of all telecommunications resource sharing agreements administered by State agencies under its jurisdiction, maintain copies of those agreements, and require the agencies to periodically (such as, annually) report the status of the agreements;**
- b. discontinue use of the escrow accounts;**
- c. working with DSP and DNR, determine the disposition of the remaining escrow account funds and all future resource sharing agreement lease payments; and**
- d. evaluate whether there is any recourse or action to be taken if it is determined that escrow funds should have been deposited into the MITDP Fund and that the funds were used in a manner inconsistent with the MITDP Fund's purposes.**

### **DoIT Response**

While we agree that DoIT employees became aware in April 2011 of the longstanding practice of two telecommunications companies depositing lease payments into escrow accounts maintained by a law firm and that no action was taken at that time, we would like to acknowledge that DoIT Executive Management did take action to address the matter immediately as soon as they became aware of the practice in July 2015.

- a. Concur.** DoIT will appropriately maintain all records provided and is exploring what avenue of reporting best fits within its authority.
- b. Concur.** However, we disagree to the extent the recommendation suggests that DoIT made use of escrow agreements.

- c. **Concur.** The Departments have agreed that the remaining escrow account funds, as well as all future resource sharing agreement lease payments, will be deposited into the MITDP Fund.
- d. **Concur.**

#### **Finding 2**

**DoIT, DSP, and DNR did not maintain comprehensive records of resource sharing agreements for their own telecommunications towers, properly execute or obtain required approvals for renewals, nor maintain records of equipment attached to their towers.**

#### **Recommendation 2**

**We recommend that DoIT, DSP, and DNR**

- a. **maintain a comprehensive record of their resource sharing agreements and copies of any renewal options exercised;**
- b. **review existing agreements and determine whether the terms should be renegotiated, ensure the existing arrangements with the telecommunications companies are supported by executed agreements or renewal options, and ensure that new agreements valued at \$100,000 or more, are retroactively submitted to BPW for approval;**
- c. **establish and maintain complete inventory records of all equipment attached to State-owned telecommunications towers under their jurisdiction and ensure that resource sharing agreements or memoranda of understanding have been executed with all entities with equipment attached to the towers.**

#### **DoIT Response**

- a. **Concur.**
- b. **Concur.**
- c. **Concur.**

**Finding 3**

The financial transactions pertaining to escrow account funds were not recorded in the State's accounting records and were not monitored by State officials, and related interest earnings were retained by the law firm. DSP and DNR personnel did not ensure that account disbursements agreed with the amounts of related purchases.

**Recommendation 3**

We recommend that DoIT, DSP, and DNR

- a. in consultation with the Department of Budget and Management and the State Comptroller's Office, determine the proper method for recording any current fiscal year escrow account revenue and expenditure transactions in the State's accounting records;
- b. obtain all bank statements for escrow accounts until they are closed and verify the propriety of all transactions;
- c. in consultation with legal counsel, determine whether the State can recover any interest retained by the law firm; and
- d. to the extent practical, obtain and review invoices for purchases made with escrow account funds, compare them to amounts disbursed from the accounts, and take appropriate action for any differences identified.

**DoIT Response**

Although not a party to the escrow agreements DoIT is happy to assist with all review and corrective actions.

- a. Concur.
- b. Concur.
- c. Concur.
- d. Concur.

**Finding 4**

DoIT, DSP, and DNR did not ensure that all compensation due under the resource sharing agreements was collected and, consequently, certain payments were not received.

**Recommendation 4**

We recommend that DoIT, DSP, and DNR

- a. establish procedures to ensure that all lease payments due from resource sharing agreements are received, and

- b. **determine the amount of unpaid compensation for all 10 resource sharing agreements and take necessary actions to collect the amounts from the respective telecommunications companies.**

**DoIT Response**

- a. **Concur.** DoIT has instituted new standard language for all resource sharing leases that correctly direct payments to the MITDPF.
- b. **Concur.**

**Finding 5**

**Purchases made by DSP and DNR from the escrow accounts were not subject to supervisory approval and were not made in accordance with State procurement regulations, and no other attempts were made to ensure that the best value was received.**

**Recommendation 5**

**We recommend that DSP and DNR**

- a. **continue abiding by the current prohibition on the use of the escrow account funds; and**
- b. **determine the extent to which retroactive approval should be obtained from the Board of Public Works, the Department of Budget and Management, and DoIT for previous purchases from escrow funds, and obtain those approvals.**

No response from DoIT necessary as there was no recommendation for DoIT.

**Questionable Activities**

**Finding 6**

**The DNR employee who directed escrow account purchases authorized the use of escrow funds for certain questionable activity related to the purchase and installation of a telecommunications tower on DNR land.**

**Recommendation 6**

**We recommend that DNR**

- a. **submit the tower installation award to DoIT for retroactive review and approval; and**
- b. **in consultation with the Office of the Attorney General, determine the extent to which any of the payments totaling \$13,400 were inappropriately paid to the vendor and pursue recovery.**

No response from DoIT necessary as there was no recommendation for DoIT.

**Finding 7**

**The DNR employee who directed escrow account purchases processed a unique arrangement with a telecommunications company without review and approval from either DNR management or DoIT. The related payments were deposited into an escrow account and were used to purchase equipment without a competitive procurement and without DNR and control agency approvals.**

**Recommendation 7**

**We recommend that DNR and DoIT review the aforementioned arrangement to determine whether State contract requirements have been met, the terms promote the best interests of the State, and the agreement is properly approved and executed.**

**DoIT Response**

**Concur.**

**Accountability and Control over Equipment Purchases**

**Finding 8**

**DSP and DNR did not record, tag, and inventory equipment purchased with escrow account funds and could not readily determine the location of all equipment purchased.**

**Recommendation 8**

**We recommend that DSP and DNR, to the extent practical,**

- a. expand the aforementioned inventory reviews to identify all equipment purchased with escrow account funds,**
- b. tag and record located equipment in the inventory records, and**
- c. take appropriate corrective action for any equipment that cannot be located.**

No response from DoIT necessary as there was no recommendation for DoIT.



**LARRY HOGAN**  
GOVERNOR

**BOYD K. RUTHERFORD**  
LT. GOVERNOR

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**COLONEL**  
**WILLIAM M. PALLOZZI**  
SUPERINTENDENT

November 17, 2016

Thomas J. Barnickel III, CPA  
Legislative Auditor  
State of Maryland  
Office of Legislative Audits (OLA)  
State Office Building, Room 1202  
301 West Preston Street  
Baltimore, MD 21201

Dear Mr. Barnickel:

This letter is in response to the final draft of the OLA Special Review on Resource Sharing Lease Agreements, dated October 2016. The OLA Special Review on Resource Sharing Lease Agreements involved the Department of Information Technology (DoIT), Department of Natural Resources (DNR), and the Maryland Department of State Police (MDSP). The review was related to certain resource sharing lease agreements between telecommunications companies and DoIT, DNR and MDSP. These agreements provided compensation to the State from these companies, with allowed the State's communications infrastructure, such as radio towers, to install, operate, and maintain communications systems. MDSP responses to findings recommended by OLA are attached.

MDSP has begun to implement several of the recommendations outlined by OLA and together with DoIT and DNR, will establish appropriate record keeping and fiscal compliance measures pertaining to revenue and expenditure transactions regarding Resource Sharing Lease Agreements. MDSP looks forward to working with the OLA to improve our Department and in turn to improve the quality of the State's resources. If you need additional information regarding this response, please contact Mr. Paul Abell, Chief Financial Officer, at 410-653-4245.

Thank you for the opportunity to respond to the Special Review on Resource Sharing Lease Agreements.

Sincerely,

William M. Pallozzi  
Superintendent

WMP:PLA:ren

Attachment

cc: Mr. Paul Abell, Chief Financial Officer, MDSP

***"Maryland's Finest"***

Special Review

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**Department of State Police Response to  
Office of Legislative Audit  
RESOURCE SHARING LEASE AGREEMENTS**

October 2016

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**Finding 2**

**DoIT, DSP, and DNR did not maintain comprehensive records of resource sharing agreements for their own telecommunications towers, properly execute or obtain required approvals for renewals, nor maintain records of equipment attached to their towers.**

**Recommendation 2**

**We recommend that DoIT, DSP, and DNR**

- a. maintain a comprehensive record of their resource sharing agreements and copies of any renewal options exercised;**
- b. review existing agreements and determine whether the terms should be renegotiated, ensure the existing arrangements with the telecommunications companies are supported by executed agreements or renewal options, and ensure that new agreements, as well as renewals valued at \$200,000 or more, are retroactively submitted to BPW for approval; and**
- c. establish and maintain complete inventory records of all equipment attached to State-owned telecommunications towers under their jurisdiction and ensure that resource sharing agreements or memoranda of understanding have been executed with all entities with equipment attached to the towers.**

**MDSP Response:**

- a. MDSP agrees: MDSP will maintain comprehensive records of all resource sharing agreements including any renewal options exercised.
- b. MDSP agrees: MDSP will review all existing agreements for resource sharing lease agreements. MDSP will ensure that any new agreements, including renewals, valued at \$200,000 or more are submitted to the BPW for approval.
- c. MDSP agrees: MDSP has already begun to comply with this recommendation and will continue to identify all equipment attached to State-owned towers under MDSP's jurisdiction. MDSP will ensure that a memorandum of understanding will be executed with all entities with equipment attached to the towers.

**Finding 3**

**The financial transactions pertaining to escrow account funds were not recorded in the State's accounting records and were not monitored by State officials, and related interest earnings were retained by the law firm. DSP and DNR personnel did not ensure that account disbursements agreed with the amounts of related purchases.**

**Recommendation 3**

**We recommend that DoIT, DSP, and DNR**

- a. in consultation with the Department of Budget and Management (DBM) and the State Comptroller's Office, determine the proper method for recording any current fiscal year escrow account revenue and expenditure transactions in the State's accounting records;**
- b. obtain all bank statements for escrow accounts until they are closed and verify the propriety of all transactions;**
- c. in consultation with legal counsel, determine whether the State can recover any interest retained by the law firm; and**
- d. to the extent practical, obtain and review invoices for purchases made with escrow account funds, compare them to amounts disbursed from the accounts, and take appropriate action for any differences identified.**

**MDSP Response:**

- a. MDSP agrees: MDSP will work with DBM and the Comptroller's Office to determine the proper method for recording current fiscal year escrow account information.
- b. MDSP agrees: MDSP will try, to the extent that escrow bank records are available and received, to verify all transactions within the escrow account pertaining to MDSP.
- c. MDSP agrees: MDSP will consult with legal counsel to determine whether the State can recover any interest retained by the law firm.
- d. MDSP agrees: MDSP will, to the extent practical, obtain and review invoices for purchases made with escrow account funds, compare them to amounts disbursed from the accounts, and take appropriate action for any differences identified.

**Finding 4**

**DoIT, DSP, and DNR did not ensure that all compensation due under the resource sharing agreements was collected and, consequently, certain payments were not received.**

**Recommendation 4**

**We recommend that DoIT, DSP, and DNR**

- a. establish procedures to ensure that all lease payments due from resource sharing agreements are received, and**
- b. determine the amount of unpaid compensation for all 10 resource sharing agreements and take necessary actions to collect the amounts from the respective telecommunications companies.**

**MDSP Response:**

- a. MDSP agrees: MDSP will establish procedures to ensure that all lease payments due from resource sharing agreements with MDSP are received.
- b. MDSP agrees: MDSP will take necessary steps to collect from the appropriate telecommunications companies any unpaid compensation for those resource sharing agreements executed between MDSP and the telecommunications company.

**Finding 5**

**Purchases made by DSP and DNR from the escrow accounts were not subject to supervisory approval and were not made in accordance with State procurement regulations, and no other attempts were made to ensure that the best value was received.**

**Recommendation 5**

**We recommend that DSP and DNR**

- a. continue abiding by the current prohibition on the use of the escrow account funds; and**
- b. determine the extent to which retroactive approval should be obtained from the Board of Public Works, the Department of Budget and Management, and DoIT for previous purchases from escrow funds, and obtain those approvals.**

**MDSP Response:**

- a. MDSP agrees: MDSP will continue abiding by the current prohibition on the use of the escrow account funds.
- b. MDSP agrees: MDSP will determine the extent to which retroactive approval should be obtained from the Board of Public Works, the Department of Budget and Management, and DoIT for previous purchases from escrow funds, and obtain those approvals.

**Finding 8**

**DSP and DNR did not record, tag, and inventory equipment purchased with escrow account funds and could not readily determine the location of all equipment purchased.**

**Recommendation 8**

**We recommend that DSP and DNR, to the extent practical,**

- a. expand the aforementioned inventory reviews to identify all equipment purchased with escrow account funds,**
- b. tag and record located equipment in the inventory records, and**
- c. take appropriate corrective action for any equipment that cannot be located.**

**MDSP Response:**

- a. MDSP Agrees: MDSP immediately conducted an internal review of the aforementioned equipment with the assistance of MDSP's Internal Audit Section. To the extent possible, due to the availability of records, MDSP will continue to identify all equipment purchased with escrow account funds.
- b. MDSP agrees: MDSP has already begun and will continue to tag and record into MDSP's inventory records, equipment purchased with escrow account funds.
- c. MDSP agrees: MDSP, based upon the availability of records and to the extent practical, will take appropriate corrective action for any equipment purchased with escrow account funds that cannot be located.



*Larry Hogan, Governor*  
*Boyd Rutherford, Lt. Governor*  
*Mark Belton, Secretary*  
*Joanne Throwe, Deputy Secretary*

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November 17, 2016

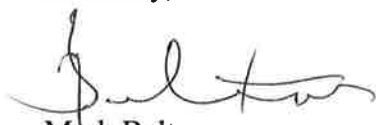
Thomas J. Barnickel, CPA  
Legislative Auditor  
Office of Legislative Audits  
301 W Preston Street  
Room 1202  
Baltimore, Maryland 21201

Dear Mr. Barnickel:

Thank you for the opportunity to respond to the subject audit report and the significant efforts of your staff to thoroughly investigate this concern. As you are aware, DNR initially brought this issue to the attention of the Office of Legislative Audits, and immediately froze the funds within the escrow account and simultaneously conducted an internal audit, which in general reached the same findings as the OLA review.

Should you need additional information or clarification, please do not hesitate to contact Sharon Carrick, the Director of our Internal Audit and Management Review team.

Sincerely,



Mark Belton  
Secretary

cc: Joanne Throwe, Deputy Secretary  
Mark L. Hoffman, Assistant Secretary, Mission Support  
Sharon Carrick, Director, Audit & Management Review  
Kim Knussman, Director, Fiscal & Administrative Services

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**Finding 2**

**DoIT, DSP, and DNR did not maintain comprehensive records of resource sharing agreements for their own telecommunications towers, properly execute or obtain required approvals for renewals, nor maintain records of equipment attached to their towers.**

**Recommendation 2**

**We recommend that DoIT, DSP and DNR:**

- a. Maintain a comprehensive record of their resource sharing agreements and copies of any renewal options exercised;**
- b. Review existing agreements and determine whether the terms should be renegotiated, ensure the existing arrangements with the telecommunications companies are supported by executed agreements or renewal options, and ensure that new agreements, as well as renewals valued at \$200,000 or more, are retroactively submitted to BPW for approval; and**
- c. Establish and maintain complete inventory records of all equipment attached to State-owned telecommunications towers under their jurisdiction and ensure that resource sharing agreements or memoranda of understanding have been executed with all entities with equipment attached to the towers.**

The Department agrees with the finding and the related recommendations.

The Department has executed a new Resource Sharing Policy to clarify proper procedure for such transactions effective March 1, 2016.

**Finding 3**

**The financial transactions pertaining to escrow account funds were not recorded in the State's accounting records and were not monitored by State officials; and related interest earnings were retained by the law firm. DSP and DNR personnel did not ensure that account disbursements agreed with the amounts of related purchases.**

**Recommendation 3**

**We recommend that DoIT, DSP and DNR:**

- a. In consultation with the Department of Budget and Management and the State Comptroller's Office, determine the proper method for recording any current fiscal year escrow account revenue and expenditure transactions in the State's accounting records;**
- b. Obtain all bank statements for escrow accounts until they are closed and verify the propriety of all transactions;**
- c. In consultation with legal counsel, determine whether the State can recover any interest retained by the law firm; and**

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- d. To the extent practical, obtain and review invoices for purchases made with escrow account funds, compare them to amounts disbursed from the accounts, and take appropriate action for any differences identified.**

The Department agrees with the finding and related recommendations.

The Department's internal audit reviewed bank statements for the escrow accounts and invoices for all DNR purchases made through the escrow accounts for the period January 1, 2013 to August 31, 2015 and found that all purchases were accounted for and there was no questionable activity.

**Finding 4**

**DoIT, DSP and DNR did not ensure that all compensation due under the resource sharing agreements was collected and, consequently, certain payments were not received.**

**Recommendation 4**

**We recommend that DoIT, DSP, and DNR:**

- a. Establish procedures to ensure that all lease payments due from resource sharing agreements are received; and**
- b. Determine the amount of unpaid compensation for all 10 resource sharing agreements and take necessary actions to collect the amounts from the respective telecommunications companies.**

The Department agrees with the finding and related recommendations.

**Finding 5**

**Purchases made by DSP and DNR from the escrow accounts were not subject to supervisory approval and were not made in accordance with State procurement regulations; and no other attempts were made to ensure that the best value was received.**

**Recommendation 5**

**We recommend that DSP and DNR:**

- a. Continue abiding by the current prohibition on the use of the escrow account funds; and**
- b. Determine the extent to which retroactive approval should be obtained from the Board of Public Works, the Department of Budget and Management, and DoIT for previous purchases from escrow funds, and obtain those approvals.**

The Department agrees with the finding and related recommendations. DNR initiated the current freeze on the use of escrow account funds on August 27, 2015, shortly after it became aware of the funds existence.



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DNR will abide by the prohibition on the use of escrow account funds, and will work to secure retroactive approval should it be deemed appropriate by the Board of Public Works, the Department of Budget & Management, and the Office of the Attorney General.

**Finding 6**

**The DNR employee who directed escrow account purchases authorized the use of escrow funds for certain questionable activity related to the purchase and installation of a telecommunications tower on DNR land.**

**Recommendation 6**

**We recommend that DNR :**

- a. Submit the tower installation award to DoIT for retroactive review and approval; and**
- b. In consultation with the Office of the Attorney General, determine the extent to which any of the payments totaling \$13,400 were inappropriately paid to the vendor and pursue recovery.**

The Department agrees with the finding and related recommendations.

**Finding 7**

**The DNR employee who directed escrow account purchases processed a unique arrangement with a telecommunications company without review and approval from either DNR management or DoIT. The related payments were deposited into an escrow account and were used to purchase equipment without a competitive procurement and without DNR and control agency approvals.**

**Recommendation 7**

**We recommend that DNR and DoIT review the aforementioned arrangement to determine whether State contract requirements have been met, the terms promote the best interests of the State, and the agreement is properly approved and executed.**

The Department agrees with the finding and related recommendation.

**Finding 8**

**DSP and DNR did not record, tag, and inventory equipment purchased with escrow account funds and could not readily determine the location of all equipment purchased.**

**Recommendation 8**

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**We recommend that DSP and DNR, to the extent practical :**

- a. Expand the aforementioned inventory reviews to identify all equipment purchased with escrow account funds;**
- b. Tag and record located equipment in the inventory records; and**
- c. Take appropriate corrective action for any equipment that cannot be located.**

The Department agrees with the finding and related recommendations.

The DNR completed a physical inventory in December 2015 that accounted for all items purchased with escrow funds during the period of its internal audit (1/1/2013-8/31/2015). All items have been tagged and recorded in compliance with the provisions of the Inventory Control Manual (1 Jul 2012) issued by the Maryland Department of General Services. There have been no purchases using escrow funds subsequent to this Special Review.

AUDIT TEAM

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Audit Manager

**David O. Mauriello, CPA**  
Senior Auditor

**Joshua A. Naylor**  
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