



Department of Legislative Services
Office of Legislative Audits

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

Resource Sharing Lease Agreements
Special Review

Report dated November 18, 2016

Presentation to the Joint Audit Committee

Thomas J. Barnickel III, CPA
Matthew L. Streett, CPA, CFE

December 6, 2016



Department of Legislative Services Office of Legislative Audits

Overview

- We conducted a review of an allegation we received related to resource sharing lease agreements (RSA) between 2 telecom companies and the Departments of Information Technology (DoIT), State Police (DSP), or Natural Resources (DNR).
 - The 10 RSAs reviewed by OLA, dating back to 1996, allowed the companies, in exchange for compensation to the State, to use 6 State telecom towers for the installation and operation of their communications systems.
 - The total value of compensation for these 10 RSAs was \$5.9 million.
 - RSA payments from the companies were deposited into escrow accounts maintained by a law firm and subsequently used to acquire goods and services.
 - During the period from February 2001 through June 30, 2016, escrow account deposits and withdrawals totaled approximately \$4.4 million and \$3.8 million, respectively.
-



Department of Legislative Services Office of Legislative Audits

Report Overview

Key Findings

Oversight of Resource Sharing Agreements -

DoIT did not maintain comprehensive records of the RSAs nor effectively monitor the RSAs executed primarily by DSP and DNR with two telecom firms.

DSP and DNR did not establish effective oversight of escrow accounts where RSA payments were deposited and from which telecom equipment and services were purchased.

Questionable Activities – Certain procurements were authorized by the DNR employee who directed escrow account purchases without adhering to State procurement regulations and laws or obtaining required DNR or DoIT approvals.

Accountability over Equipment Purchases - DSP and DNR did not record, tag, and inventory equipment purchased with escrow funds, and could not locate all equipment purchased.



Oversight of RSAs (Finding 1)

DoIT Oversight

DoIT, as the State's RSA oversight agency, did not maintain a complete list of existing Executive Branch agency RSAs or copies of the related agreements executed by Executive Branch agencies under its authority.

- DoIT had no process in place to ensure it was aware of all RSAs between State agencies and telecom companies, and only had a record of 5 of the 10 RSAs reviewed by OLA.
- From February 2001 to June 2016, \$4.4 million in RSA payments were deposited into 6 escrow accounts maintained by a law firm. DoIT believes these funds should have been deposited into the Major Information Technology Development Project (MITDP) Fund.



Department of Legislative Services Office of Legislative Audits

Oversight of RSAs (Finding 1)

DoIT Oversight (cont'd)

- DoIT generally became aware of these accounts in April 2011, but did not take any substantive action to investigate this matter until July 2015. Since then -
 - The law firm was directed to cease making payments from the escrow accounts.
 - An internal audit concluded the accounts effectively created an “off-budget” pool of funds without regard to the State budget or procurement requirements.
 - DoIT provided direction for future RSAs.
 - The closure of escrow accounts with balances of \$536,700 is pending until the disposition of the funds is determined.



Oversight of RSAs (Finding 2)

Agreement Recordkeeping

DoIT, DSP, and DNR did not maintain a complete list of their RSAs, obtain appropriate approvals (when required), or maintain inventories of telecom equipment on their towers.

- No lists of the RSAs or mechanisms to monitor the RSA terms to ensure that renewal options were properly exercised and that all vendor compensation was received.
 - RSAs were allowed to continue beyond their initial terms without formal notification and agreement to exercise renewal options. Nineteen of 22 renewals, spanning 15 years, were informally exercised, including 9 renewals (for 5 year periods) that should have been submitted to BPW for approval.
 - Inventory lists detailing the type and ownership of telecom equipment attached to State towers were not maintained.
-



Oversight of RSAs (Finding 3)

Escrow Account Transactions

Escrow account financial transactions were not accounted for on State records and the law firm retained related interest earnings.

- Escrow account deposits and disbursements were not recorded in the State's accounting records and were not subject to any State budgetary or fiscal oversight.
 - The law firm did not maintain formal accounting records for the escrow accounts. DoIT, DSP, and DNR did not obtain related bank statements to monitor the deposit and disbursement activity.
 - Escrow account interest and investment income estimated at \$90,900 was retained by the law firm.
 - No official record was maintained by DSP and DNR to ensure that escrow account disbursements agreed in amount with the corresponding purchases. The purchases OLA reviewed appeared to be consistent with DSP and DNR requests.
-



Oversight of RSAs (Finding 4)

Collection of Lease Payments

DoIT, DSP, and DNR did not ensure that all compensation due from the RSAs was received.

- For 8 of the 10 RSAs, compensation provided in the RSAs totaling approximately \$342,000 was not received from February 2001 through June 2016.
- No compensation required under one DSP RSA for the period from May 2003 to June 2016 and for one DoIT RSA from October 2012 to June 2016. DoIT estimated that value of lost compensation totaled \$575,000 for those periods.

This condition was caused by the mistaken belief by all State parties that the law firm was monitoring the amounts owed by the telecom companies.



Oversight of RSAs (Finding 5)

Purchases from Escrow Accounts

DSP and DNR purchases of equipment and services were not subject to any independent supervisory review and approval and were not made in accordance with State procurement regulations. OLA reviewed \$1.5 million in purchases.

- One employee at DSP and one employee at DNR unilaterally decided what equipment and services would be purchased and directed the law firm to make payment to vendors using escrow funds.
- No documentation to substantiate that efforts were made to ensure the best value was received.
 - The DSP employee directed the law firm to purchase specific equipment from a vendor at a cost of \$258,800, even though the items could have been purchased under a Statewide contract, which the employee was aware of, at a cost of \$184,700.



Department of Legislative Services Office of Legislative Audits

Questionable Activities

Finding 6 – Tower Installation

A DNR employee authorized the law firm to pay an out-of-State vendor to install a telecom tower without formal approval of DNR or DoIT officials and without conducting a proper procurement or executing a written contract. OLA determined that the selection of the vendor and certain of the payments appeared questionable. The vendor was paid \$88,500.

Finding 7 – Arrangement with a Telecom Company

In September 2008, a DNR employee processed a unique arrangement whereby DNR vacated its license to operate certain radio frequencies without review and approval from either DNR management or DoIT. Payments to DNR of \$162,000 were deposited into the escrow account instead of the State's MITDP Fund. Instead, replacement equipment was bought.

Because of concerns regarding the nature of the above findings, we referred both matters to the Criminal Division of the Office of the Attorney General.



Equipment Purchases (Finding 8)

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 OLA's review, both DSP and DNR attempted to identify equipment purchased with escrow funds but these efforts were incomplete or were not comprehensive.

- As of June 30, 2016, DSP had not completed its review of purchases made with escrow funds totaling approximately \$625,600.
- In December 2015, DNR performed a physical inventory of installed equipment to ensure it was recorded and tagged, but did not compare these results to escrow purchases. Based on OLA tests, it appears escrow purchases totaling \$337,500 made during a certain period had been inventoried.



Conclusions

As appropriate, DoIT, DSP, and/or DNR should

- maintain a comprehensive record of all telecom RSAs and tower-installed equipment;
- determine if existing RSAs should be renegotiated, and that all existing arrangements and renewals are supported and approved;
- discontinue use of the escrow accounts and determine the disposition of the remaining escrow account funds, record escrow account transactions in the State's accounting records;
- establish procedures to ensure that all RSA payments due are received and take necessary actions to collect unpaid compensation;
- obtain retroactive approval for the DNR tower installation award; and
- identify and establish accountability over all State equipment purchased with escrow funds.