

Special Review

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**Department of General Services  
Office of Procurement and Logistics**

A Senior Official Was Involved in Certain Activities That Potentially  
Violated State Ethics Laws and a Governor's Executive Order

December 2007

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

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Karl S. Aro  
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Bruce A. Myers, CPA  
Legislative Auditor

December 10, 2007

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee  
Senator Nathaniel J. McFadden, Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We conducted a review of an allegation received through our fraud hotline related to a senior Department of General Services (DGS) official's activities with a nonprofit association. The senior official oversees centralized purchasing for most State agencies and the association's mission, in part, is to establish and maintain increased professionalism in the field of public sector procurement.

Our review disclosed that the DGS official also served as President of the association. In addition, the association recently held a trade show for which it solicited and received monetary sponsorships from vendors doing business with the State or that sought to do business with the State. Moreover, certain actions of the association gave the appearance that its activities were State-affiliated. For example, contact information on the association's website listed the State business addresses, phone numbers, and email addresses for the DGS official, as well as for certain employees from other State agencies who were active in the association.

Based on our review, as well as discussions with senior management personnel at the State Ethics Commission, the aforementioned conditions (and certain others identified in this report) potentially violated State Ethics Laws. Any final decision related to violations of the State Ethics laws would ultimately be determined by the five-member State Ethics Commission. In addition, these conditions appear to have violated several provisions of the Governor's Executive Order, issued in February 2007, related to standards of conduct for Executive Branch employees.

Based on our findings, we have recommended that DGS refer these matters to the State Ethics Commission for review and that DGS, in the future, take appropriate action to ensure compliance with the Governor's Executive Order.

Respectfully submitted,

Bruce A. Myers, CPA  
Legislative Auditor



## **Scope, Objective, and Methodology**

We conducted a review of an allegation related to the Department of General Services (DGS) – Office of Procurement and Logistics (OPL) that was received through our fraud hotline. The allegation related to a senior DGS official with oversight responsibility for OPL and that official's affiliation with a nonprofit association that was reportedly soliciting monetary sponsorships from vendors doing business with the State or seeking to do business with the State. OPL manages the centralized procurement of goods and services for most State agencies.

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

Our review consisted of tests, analyses, observations, and discussions with DGS personnel and others, as we deemed necessary, to determine the validity of the aforementioned allegation. Our review did not constitute an audit conducted in accordance with generally accepted government auditing standards. Had we conducted an audit in accordance with generally accepted government auditing standards, other matters may have come to our attention that would have been reported. Our review was conducted during September and October 2007.

DGS' response to our findings and recommendations is included as an appendix to this report. As prescribed in State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise DGS regarding the results of our review of its response.

## **Background Information**

As previously noted, the Department of General Services (DGS) – Office of Procurement and Logistics (OPL) manages the centralized procurement of goods and services for most State agencies. According to the State’s records, OPL awarded contracts totaling approximately \$349 million during fiscal year 2006 related to the procurement of goods and services.

The mission of the association referenced in the allegation is, in part, to establish and maintain increased professionalism in the field of public sector procurement. The association also provides and promotes education and training for procurement personnel employed by government agencies. Its members primarily include various State and local government procurement personnel.

On October 16, 2007, the association held its first “reverse” trade show. According to its literature, the show was an association fundraiser and an opportunity for vendors to network with procurement personnel, including State employees, who are responsible for procurement decisions at their respective agencies. At the show, State agencies, as well as other governmental agencies, were exhibitors and the attendees were primarily vendors seeking to do business with the State.

## Findings and Recommendations

### Potential Violation of State Ethics Laws and a Governor's Executive Order

#### **Finding 1**

**A senior Department of General Services (DGS) official with Statewide procurement responsibility for OPL also served as President of an association and was involved in activities that potentially violated State Ethics Laws and a Governor's Executive Order. For example, the association sponsored a trade show, and solicited and received monetary sponsorships from current and prospective State vendors.**

#### **Analysis**

A DGS senior official, responsible for oversight of the centralized procurement of goods and services for most State agencies, also served as the President of a nonprofit association that solicited and received monetary sponsorships from current and prospective State vendors for a trade show held on October 16, 2007. The aforementioned condition, and certain others that came to our attention, could violate State Ethics laws. In addition, in our opinion, the conditions identified, at a minimum, gave the appearance that certain vendors (for example, those that made payments to sponsor the trade show) could receive preferential treatment in dealing with State procurements. Specifically, we noted the following conditions:

- The association's website, as well as communications issued by the association, encouraged its members (many of whom are State agency personnel) to ensure that their agencies contributed monetarily to the trade show and to solicit sponsorships from vendors. For example, on the association's website, the DGS official stated, in part, "I expect all the agencies and departments represented by [the association] to have signed up for booths by now.... You are encouraged to continue to market this event to your vendors." According to information provided by the association, there were 70 sponsorships for the trade show (consisting of 66 vendors and 4 State agencies). In addition, approximately 350 other vendors paid registration fees to the association to attend the show, and exhibitors, including State agencies, paid exhibitor fees. The association estimated that it collected sponsorship, registration, and exhibitor fees related to the show totaling approximately \$94,000. Sponsorships ranged from \$100 to \$3,000, and exhibitor/registration fees ranged from \$125 to \$200. Those who signed up as sponsors for the show had their logos displayed on the association's website.

On September 17, 2007, we met with the DGS Secretary and legal counsel regarding the aforementioned relationship and the related activities. Subsequent to that meeting, we noted that the vendor logos were removed from the association's website.

- Actions taken by the official and the association, gave the appearance that the association's activities were State-affiliated. For example, sponsorship and registration information related to the association's trade show was displayed by DGS adjacent to its vendor bid board located at its offices in the State Office Building and was also posted on eMaryland Marketplace, which is the DGS official website accessed by prospective vendors seeking to bid on State contracts. Furthermore, contact information on the association's website listed the State business addresses, phone numbers, and email accounts for the DGS official, as well as for certain employees from other State agencies who were active in the association. In addition, the association's logo was a picture of the State House and a map of Maryland in miniature.
- Various State employees who were members of the association, including the DGS official, used their State email accounts to send advertisements for the trade show, as well as to solicit sponsorships from vendors.
- The association's literature identified numerous benefits that were available to sponsors, such as increased name recognition among Maryland government purchasers, and increased visibility of the vendor's presence, products, and services in the minds of key decision makers. In spite of these comments, we noted that the association's website included the following disclaimer: "Sponsors of the reverse trade show, hosted by the association, will receive no special access, treatment or fiscal benefits from the association or any governmental entity." In our opinion, the inclusion of such a disclaimer on its website reflects the fact that the association recognized that the trade show, as constructed, could give the appearance that vendors who participated in the trade show could receive preferential treatment from government procurement employees.
- All vendors who attended the trade show received a directory that included the names, telephone numbers, and agency affiliations of association members, many of whom are State employees responsible for procurement decisions. The association advised vendors that the directory would be a valuable tool for their sales forces.



While not publicly advertised by the association (such as on its website), we were advised by the association that vendors who had not attended the trade show could purchase the directory from the association.

Senior management personnel at the State Ethics Commission advised us that the aforementioned conditions could violate a number of State Ethics Laws, such as Sections 15-502, 15-505, and 15-506 of the State Government Article of the Annotated Code of Maryland. For example, Section 15-505 states that an official or employee may not knowingly accept anything of economic value, regardless of form, directly or indirectly, from an entity that the official or employee knows, or has reason to know, does or seeks to do any business of any kind, regardless of the amount, with the official's or employee's governmental unit. Any final decision related to violations of the State Ethics laws would ultimately be determined by the five-member State Ethics Commission.

In addition, these conditions appear to violate several provisions of the Governor's Executive Order, issued in February 2007, related to standards of conduct for Executive Branch employees. Specifically, the Executive Order states, in part, that an employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties. The Order further states that employees shall avoid any actions creating the appearance that they are violating applicable law or the ethical standards.

Finally, State Procurement Regulations provide that it is the intent of the Regulations to provide for increased public confidence in public procurement, to ensure the fair and equitable treatment in both fact and appearance of all persons who deal with the State procurement system, and to foster effective broad-based competition.

#### **Recommendation 1**

**We recommend that DGS take immediate action to refer the above information to the State Ethics Commission. We also recommend that DGS, in the future, take appropriate action to ensure compliance with the aforementioned Governor's Executive Order.**

## APPENDIX

Martin O'Malley  
Governor

Anthony G. Brown  
Lt. Governor



Alvin C. Collins  
Secretary

### MARYLAND DEPARTMENT OF GENERAL SERVICES OFFICE OF THE SECRETARY

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December 6, 2007

Bruce Myers  
Legislative Auditor  
Maryland General Assembly  
301 W. Preston Street  
RM 1202  
Baltimore, Maryland 21201

Dear Mr. Myers:

I appreciate this opportunity to respond to your November 19, 2007, audit report related to a senior Department of General Services official's activities with a nonprofit association. Below is the Department's response to your finding and recommendation.

#### Finding 1:

A senior Department of General Services (DGS) official with Statewide procurement responsibility for OPL also served as President of an association and was involved in activities that potentially violated State Ethics Laws and a Governor's Executive Order. For example, the association sponsored a trade show, and solicited and received monetary sponsorships from current and prospective State vendors.

As an initial matter, it is essential to understand the goals of the association and the purpose of the trade show. The association is the Maryland chapter of a national organization dedicated to establishing and maintaining increased professionalism in the field of public sector procurement. Organizations are eligible for membership if they are federal, state/provincial, county, city, public schools, institutions of higher learning, commissions, boards, governmental hospitals, public authorities or institutions. Each member agency is represented by one or more of its employees currently and directly involved with the public procurement profession. The Maryland chapter consists of representatives from Maryland state agencies, counties, cities, towns, schools and universities, federal government, local municipalities and public commissions in Maryland. These agencies rely on the association to provide education and training as well as opportunities to share ideas and solutions.

One of the most important challenges of public procurement is fostering effective broad-based competition for government contracts. Part of this challenge is to increase the number of businesses that are willing and able to compete for public contracts. Participation is made difficult by rules and procedures that differ from one level of government to another and from agency to agency within each level. The purpose of the trade show was to give potential vendors the opportunity to learn what contracting opportunities exist at and the competitive procedures followed by individual agencies. The trade show was open to all vendors and, as you noted in the discussion notes, more than 350 attended.



Bruce Myers  
December 4, 2007  
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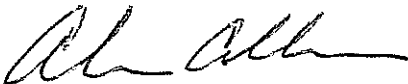
To make the trade show possible the association formed an organization committee. Representatives from government agencies participated in its numerous sub-committees, i.e. facilities, workshops, program, advertising, registration, and sponsorships. An invitation to financially sponsor the event was sent out to the general public via the association's website. The sponsorship funds were used toward overall expenses to decrease the cost of admission for individual vendors.

Many Maryland state and local procurement agency representatives used their agency email addresses to send out notices and advertisements about the trade show. Many agencies placed trade show notices and advertisements on their websites. The employees of these agencies, including the DGS official, participated in the trade show as representatives of their agencies. Procurement agencies are members of the association. Agencies designate representatives to participate in the association. As the others, the DGS official participated in the association as DGS' representative.

It is significant that the DGS official did not personally solicit sponsorships from any vendor nor did he serve on the organization committee or any of its subcommittees. The official had no involvement other than to attend one planning session early on and to encourage members of the association to participate in the trade show and to get the word out to all vendors that the opportunity was available to all. He did not talk to any vendor or potential sponsor nor did he personally solicit anything from any vendor or potential sponsor. The official did not solicit or encourage members to solicit vendor sponsorships.

Finally, as we discussed, many other State officials are members in, and some are officers or directors of, associations that solicit and receive money from private sponsors to fund conferences which are aligned with and support the goals and purposes of the State. As with the DGS official, these officials acted in good faith for the good of the State and without personal gain. Such efforts should be encouraged. However, your audit report will have a chilling effect on the willingness of employees to put in this extra effort for the greater good. At this point, the Ethics Commission has not publicly addressed the issue as it applies to officials and associations statewide nor has senior management personnel at the State Ethics Commission been presented with all of the relevant facts in regard to the DGS official which is the subject of your report. Therefore, I agree with your recommendation that this matter should be referred to the Ethics Commission for review and will do so by copy of this letter. With the guidance of the Ethics Commission and the Office of the Attorney General we will take all appropriate action to ensure compliance with the ethics law and the Governor's Executive Order.

Sincerely,



Alvin C. Collins  
Secretary

cc: Robert A. Hahn, Executive Director  
Maryland Ethics Commission