

Special Review

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## **Department of General Services**

### **Possible Conflict of Interest Related to Certain Architectural and Engineering Contracts**

A DGS Management Employee and Subordinate Were Directly Involved in  
Contracts Awarded to Firms That Employed the Management Employee's Spouse

Better Policies and Procedures Are Needed to Prevent Conflicts of Interest

February 2008

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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

February 28, 2008

Senator Verna L. Jones, Co-Chair, Joint Audit Committee  
Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We conducted a follow-up review of a Special Review report we issued in November 2003, regarding an allegation received through our fraud hotline. The allegation related to possible improper activity in the procurement of architectural and engineering services by the Department of General Services (DGS). In that report, we noted that a management employee at DGS and/or the employee's subordinates were involved with procuring two architectural and engineering service contracts totaling \$3.6 million from a firm where the management employee's spouse was employed as a vice president. At that time, we recommended that the matter be referred to the State Ethics Commission for further review and investigation and that DGS establish procedures to ensure that conflicts of interest do not occur when awarding State contracts in the future.

DGS referred the case to the State Ethics Commission which entered into a disposition agreement on May 27, 2004 with the DGS management employee. The agreement indicated, in part, that the management employee's participation in the aforementioned contracts was a violation of Section 15-501 of the Public Ethics Law. The agreement further provided that the management employee would not participate either directly or through supervisory duties in any project involving the management employee's spouse's firm. According to the agreement, DGS had revised its internal operating policies to ensure that no such conflict occurred in the future.

Our current review disclosed that the revised operating policies were inadequate. Specifically, despite the Ethics Commission's findings, the DGS management employee continued to supervise an employee with responsibilities relating to one of the aforementioned contracts involving the firm that employed the management employee's spouse for a seven-month period. In addition, the same management employee was directly involved in a new contract totaling \$4.3 million awarded to another firm that subsequently employed the management employee's spouse.

The participation in these transactions by the management employee and subordinate appears to be a violation of one or more provisions of the State Ethics Law as well as certain provisions of State procurement laws.

Due to the questionable nature of these activities, we referred these matters to the Office of the Attorney General's Criminal Division.

Respectfully submitted,

Bruce A. Myers, CPA  
Legislative Auditor

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

We conducted a follow-up review of a Special Review report we issued in November 2003 regarding an allegation received through our fraud hotline. The allegation related to possible improper activity in the procurement of architectural and engineering services by the Department of General Services (DGS). In that report, we noted that a management employee at DGS and/or the employee's subordinates were involved with procuring two architectural and engineering service contracts totaling \$3.6 million from a firm where the management employee's spouse was employed as a vice president. At that time, we recommended that the matter be referred to the State Ethics Commission for further review and investigation. We also recommended that DGS establish procedures to ensure that conflicts of interest do not occur when awarding State contracts in the future.

The purpose of our current follow-up review was to determine whether DGS complied with our prior report recommendations. 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 as we deemed necessary to achieve our objective. 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 primarily from September through November 2007. Certain fiscal compliance issues related to one of the contracts discussed in this report will be included in the audit report on our fiscal compliance audit of the Department of General Services – Office of the Secretary and Other Units for the period beginning November 24, 2003 and ending January 31, 2007.

DGS's response to our findings and recommendations is included in the appendix to this report. As prescribed in the 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**

The DGS Office of Facilities Planning, Design and Construction (the Office) provides professional management and technical services for State agencies in the planning, budgeting, design, construction, and maintenance of State facilities. State agencies generally must coordinate all phases of the design and construction of certain capital projects with DGS.

## Findings and Recommendations

### Background

In November 2003, we issued a special report addressing an allegation related to the Department of General Services (DGS) that was received through our fraud hotline. The report noted that a DGS management employee was directly involved in and/or supervised employees involved in the procurement of two architectural and engineering (A&E) service contracts with a firm where the management employee's spouse was a vice president. We recommended that DGS immediately refer this issue to the State Ethics Commission for further review and investigation and that DGS establish procedures to ensure that conflicts of interest do not occur when awarding State contracts in the future.

DGS referred the case to the State Ethics Commission which entered into a disposition agreement on May 27, 2004 with the DGS management employee. The agreement indicated, in part, that the management employee's participation in the aforementioned contracts was a violation of Section 15-501 of the Public Ethics Law. The agreement further provided that the management employee would not participate either directly or through supervisory duties in any project involving the management employee's spouse's firm and that DGS had revised its internal operating policies to ensure that no such conflict occurred.

### Finding

**A DGS management employee continued to supervise an employee with responsibilities relating to a contract involving the firm that employed the management employee's spouse despite an agreement with the State Ethics Commission to the contrary. The same management employee was directly involved in a new contract totaling \$4.3 million awarded to another firm that subsequently employed the management employee's spouse.**

### Analysis

Despite an agreement to the contrary with the State Ethics Commission, a DGS management employee continued to supervise an employee with responsibilities relating to a contract involving the firm that employed the management employee's spouse. In addition, we noted that the same management employee was directly involved in a new contract totaling \$4.3 million awarded to another firm that subsequently employed the management employee's spouse, and DGS' revised operating policies had not prevented or detected this potential conflict. Specifically, our review disclosed the following conditions:

- After the signing of the aforementioned disposition agreement in May 2004, the management employee continued to act in a supervisory capacity for an employee involved with one of the contracts addressed in our 2003 Special Review report for approximately a seven-month period, until the employee's spouse left the firm's employment. This was in direct violation of the disposition agreement signed by the employee, since the DGS employee's spouse was still employed by the firm during the aforementioned period. During that period, DGS made payments totaling \$183,000 to the aforementioned firm.
- The management employee subsequently participated in another procurement, and, as of October 1, 2007, acted as the project manager, on a contract totaling \$4.3 million to another A&E firm where the management employee's spouse was subsequently employed. Although the management employee was not a member of the Qualification Committee, which was responsible for rating the technical qualifications of the A&E firm and the ultimate selection of the firm, the management employee played a key role in the price negotiations on the contract. The employee's spouse started receiving compensation from the new firm in calendar year 2005, shortly after the firm's services had been procured. During the period from August 2004 through August 2007, the management employee was directly responsible for approving contract billings, including some billings related to change orders, totaling approximately \$3.1 million.
- Although the disposition agreement indicated that DGS had revised its internal operating policies to ensure that conflicts of interest do not occur when awarding State contracts, our review disclosed that the revised policies were inadequate. Specifically, the policies only required management employees involved in certain aspects of the procurement (such as members of the Qualification Committee) to complete an affidavit relating to such conflicts, and the policies did not include a provision to detect potential conflicts that may arise after the award of contracts.
- The management employee did not disclose that his/her spouse was employed by an entity that was doing business with the State on the calendar year 2005 and 2006 financial disclosure statements filed with the State Ethics Commission, as required. In addition, we were advised by DGS management that they were unaware of the spouse's employment with the current firm.

The management employee's and subordinate's involvement with the aforementioned contracts appear to violate one or more provisions of State Ethics Law which is contained in Title 15 of the State Government Article of the



Annotated Code of Maryland. Specifically, Section 15-501 of the Article states that an employee may not participate in a matter if a qualifying relative of the employee (such as a spouse) has an interest in the matter and the employee knows of the interest. In addition, if the management employee's spouse is an owner of the aforementioned firm, Section 15-502 of the Article states, in part, that an employee's spouse may not have a financial interest of more than three percent in an entity that is negotiating or has entered into a contract with the employee's governmental unit. Finally, Section 15-506 of the Article states that an employee may not intentionally use the prestige of office or public position for that employee's private gain or that of another.

In addition, the management employee's involvement in these A&E contracts may have violated the State Finance and Procurement Article, Section 4-304 which governs DGS employees. This Article states that an employee of DGS may not accept or receive, directly or indirectly, whether by rebate, gift or otherwise, from a person to whom a contract may be awarded any money or thing of value or any promise, obligation, or contract for future reward or compensation.

Furthermore, on the calendar year 2005 and 2006 disclosure statements submitted to the State Ethics Commission, the management employee made an oath or affirmed under penalty of perjury that the contents of the financial disclosure statement, are complete, true, and correct to the best of the employee's knowledge, information, and belief. However, as noted above, the disclosure statements indicated that neither the employee nor his spouse had salaried employment or held any office or directorship with an entity that did business with the State. This appears to violate provisions of the Criminal Law Article of the Annotated Code of Maryland. Specifically, Section 9-101 of that Article states that a person may not willfully and falsely make an oath or affirmation as to a material fact in an affidavit required by any State, federal, or local law or under the Maryland Rules, which would include the State Ethics Commission disclosure statements.

Finally, certain of these conditions appear to violate provisions of a Governor's Executive Order 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.

As a result of the aforementioned questionable activity, we referred these matters to the Office of the Attorney General's Criminal Division.

**Recommendation**

**We recommend that DGS immediately refer this issue to the State Ethics Commission for further review and investigation. Additionally, we again recommend that DGS establish adequate procedures to ensure that conflicts of interest do not occur when awarding State contracts in the future. Finally, we recommend that DGS fully cooperate with the Office of the Attorney General's Criminal Division regarding this matter.**

## 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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February 26, 2008

Bruce A. Myers, CPA  
Legislative Auditor  
Office of Legislative Audits  
301 West Preston Street, Room 1202  
Baltimore, Maryland 21201

Re: Follow-Up Review of November 2003 Special Report

Dear Mr. Myers:

This letter is in response to your February 6, 2008 letter pertaining to the review of a Special Report issued in 2003 regarding an allegation received on your fraud hotline in which you noted that a management employee at DGS and/or the employee's subordinate were involved with procuring architectural and engineering services from a firm in which the employee's spouse had an ownership interest. Following the Special Report, DGS immediately removed the management employee from any direct or supervisory role with the contract and referred the issue to the State Ethics Commission for further review and investigation. DGS requested, and the Ethics Commission provided, ethics training to all DGS staff. In addition, DGS established internal operating procedures to ensure that conflicts of interest would not occur when awarding State contracts in the future.

Your notes also discuss concerns about an unrelated architectural and engineering contract that was managed by the same employee. At the time this contract was awarded, the employee's spouse was not employed by or involved with the joint venture that was awarded the contract. According to the employee, in January 2005 the employee's spouse began sharing space with one of the firms that was part of the joint venture and at some point later in the year became an employee of a related firm. DGS required the employee to obtain advance advice from the Ethics Commission regarding the potential for conflict. The employee did so and advised DGS that senior staff at the Commission had determined that there was no conflict because the spouse did not have an ownership interest in the firm and was not directly or indirectly involved in the firm's work for DGS.



Bruce A. Myers, CPA  
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I agree with your recommendation to refer this matter to the State Ethics Commission and have done so by copy of my January 4, 2008 letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alvin C. Collins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alvin C. Collins  
Secretary

cc: Maryland State Ethics Commission