



**Department of Legislative Services
Office of Legislative Audits**

**Department of Transportation
State Highway Administration**

Special Reviews

**Possible Conflict of Interest and
Questionable Procurement Practices**

Report dated June 24, 2011

Improper Use of Contract Funds

Report dated November 21, 2011



Department of Legislative Services Office of Legislative Audits

Background

- SHA is responsible for the planning, construction, improvement, maintenance, and operations of the State highway system and operates numerous facilities throughout the State, including its headquarters in Baltimore City and seven district offices responsible for State roads in their respective districts.
 - SHA entered into multi-year contracts with architectural and engineering firms to provide construction inspection services for SHA construction projects.
 - SHA's Office of Construction (OOC) was responsible for developing the scope of these contracts on behalf of the district offices, and the Office of Procurement and Contracts (OPC) conducted the related procurements (including issuing the requests for proposals and publishing the solicitations).
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Background

- Separate contracts are issued for each of the seven district offices, which in turn are responsible for assigning work to the firms under contract in their respective districts, for monitoring the related work, and for approving the invoices.
- As of December 31, 2010, among the seven districts, there were 17 open construction inspection contracts.
 - **Total contract cost - \$146 million**
 - **Remaining unspent balance - \$64 million.**
- Contracts span several years so certain district offices had multiple contracts open at the same time.



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Audit Overview

- OLA received a hotline allegation regarding possible conflicts of interest involving several senior SHA employees responsible for certain construction-related services. We reviewed the allegations and the procurement of two \$16 million inspection service contracts in one SHA district.
- OLA's review of these allegations identified possible violations of State Ethics Laws, Governor's Executive Order, and SHA policies, as well as questionable procurement practices and the improper use of contract funds. Certain matters were referred to the Criminal Division of the Office of Attorney General* and the State Ethics Commission.
- OLA performed a second special review of certain aspects of the construction inspection services contracts that disclosed additional deficiencies.

* A referral to the Criminal Division does not mean that a criminal act has actually occurred or that criminal charges will be filed. A decision related to a violation of State Ethics Laws would be determined by the State Ethics Commission.



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June 24, 2011 Special Report Findings

Original Hotline Allegation:

Possible conflict of interest between certain SHA management employees and architectural and engineering firms.

Key Findings:

- A senior SHA management employee in SHA's OOC appeared to have solicited funds from firms doing, or seeking to do, business with SHA potentially violating State Ethics Laws, a Governor's Executive Order, and SHA policies. The employee's business interest was not always disclosed on the annual Financial Disclosure Statements filed with the State Ethics Commission. **(Finding 1)**



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June 24, 2011 Special Report Findings (cont.)

- A former senior SHA management employee started working for a firm doing construction management and inspection services for SHA within 12 days of retiring from SHA in December 2008. The employee was directly involved in SHA's procurement of the firm's contract and subsequently was directly involved in this contract as an executive of the firm, in possible violation of State Ethics Laws and SHA policies. **(Finding 2)**
- SHA employees upon leaving State service were routinely hired by firms doing business with SHA, but no attempts were made to identify these employees and/or to ensure that their employment was not violating State Ethics Laws and SHA policies. **(Finding 3)**



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June 24, 2011 Special Report Findings (cont.)

Our review of the procurement and related payments for two \$16 million contracts involving the aforementioned employees and firms disclosed:

- A complete rating of the technical proposals was not performed and certain key components of the rating process were not adequately documented (**Finding 4**)
- The independent contract award approval process was compromised (**Finding 4**)
- SHA, in conjunction with the firms, redirected contract funds from the two aforementioned contracts for unrelated projects, and/or to conceal overspending on other contracts, thereby circumventing Board of Public Works (BPW) oversight and approval. (**Finding 5**)



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November 21, 2011 Special Report Findings

OLA performed an expanded review of construction inspection services contracts processed by the OOC due to concerns identified in Finding 5 of our June 2011 Special Report. We reviewed invoices totaling \$70 million from 16 contracts involving 12 firms for the period from 1/1/08 to 4/4/11.

Key Findings:

- SHA and 10 architectural and engineering firms arranged to use unexpended balances of contracts, totaling \$11.3 million, to pay for work that was outside the scope of those contracts without obtaining required BPW approval. These arrangements are indicative of a less than arm's-length relationship that, in turn, could raise questions regarding the integrity of the procurement and payment process for subsequent contracts involving these firms. **(Finding 1)**
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November 21, 2011 Special Report Findings (cont.)

- SHA did not issue written task orders to formally assign work and to manage these contracts awarded to the firms. As a result, SHA could not effectively monitor services provided by firms, as well as the related charges billed by the firms. **(Finding 2)**

- During the period from September 2008 through August 2009, SHA improperly extended the contract expiration dates for all 9 contracts reviewed that had expired, allowing SHA to retain approximately \$26 million in unspent contract funds. SHA extended the related contract periods for certain of these contracts a total of 19 times—resulting in extensions of each for two or more additional years—without BPW approval. **(Finding 3)**



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November 21, 2011 Special Report Findings (cont.)

- OLA's test of four contract awards totaling \$34 million and approved by the BPW, disclosed that:
 - SHA could not adequately support the amount of funds that had been requested, and
 - Available supporting documents did not provide a consistent, discernible basis for estimating construction inspection contract values. The percentage of construction inspection service contract values to related construction costs ranged from 3% to 27% based on original estimates and ranged from 5% to 11% based on subsequent support. **(Finding 4)**



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November 21, 2011 Special Report Findings (cont.)

- SHA procured new contracts even though unspent funds remained on existing contracts. **(Finding 5)** For example, in November 2009 SHA requested and received BPW approval for a new \$10 million contract when there was \$36.5 million in contract funds remaining in other contracts for similar services in this district. Furthermore, as previously noted in Finding 3, during this same period, SHA was entering into agreements with firms to extend the contract terms to retain unspent funds.

Construction Inspection Contracts for One District					
Contract	BPW Approval	Contract Amount	Remaining Balance of Earlier Contracts as of		
			10/15/08	12/17/08	11/18/09
1	06/21/06	\$ 8,000,000	\$ 4,440,276	\$ 4,067,744	\$ 1,734,312
2	07/26/06	\$ 8,000,000	\$ 5,185,068	\$ 4,515,665	\$ 2,665,936
3	10/18/06	\$ 8,000,000	\$ 5,810,564	\$ 5,464,158	\$ 3,362,342
4	10/15/08	\$ 16,000,000	-	\$ 16,000,000	\$ 12,957,848
5	12/17/08	\$ 16,000,000	-	-	\$ 15,741,364
6	11/18/09	\$ 10,000,000	-	-	-
Total		\$ 66,000,000	\$15,435,908	\$ 30,047,567	\$ 36,461,802



Conclusion

SHA should:

- Establish procedures to ensure that, in the future, employees comply with State Ethics Laws, Governor's Executive Order, and SHA policies
- Ensure that contracts are procured in accordance with SHA procurement policies and that the process (including the justification for contract values) is adequately documented.
- Develop procedures and controls to ensure that contract funds are only used as authorized.
- Obtain BPW approval for significant contract modifications, and submit past modifications to BPW for retroactive approval.
- Issue task orders for all construction inspection services and use the task orders to monitor the work and related invoices.