

Audit Report

Maryland Public Broadcasting Commission

June 2016



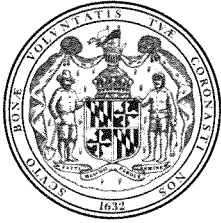
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DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Executive Director

Thomas J. Barnickel III, CPA
Legislative Auditor

June 13, 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 fiscal compliance audit of the Maryland Public Broadcasting Commission (MPBC) for the period beginning December 1, 2011 and ending June 30, 2015. MPBC is responsible for operating and maintaining a system of regional and local facilities to provide educational and cultural television and radio programs throughout the State. MPBC is also responsible for the preparation, content, and presentation of such programs to the public.

Our audit disclosed that MPBC's procurement policy, which was developed to provide guidance for procurements that are exempt from State procurement regulations, did not contain certain required provisions. Additionally, MPBC did not document that it reported to or obtained approval from its governing commission for seven exempt contract awards totaling \$8.0 million as required by its procedures.

MPBC did not comply with various State procurement regulations for all seven sole source and competitively bid contract awards tested, totaling \$4.1 million that were not part of its procurement exemption. For example, MPBC did not obtain approval from the Board of Public Works and did not publish two sole source contract awards, as required. For three competitively bid procurements where the technical abilities of the bidders were considered more important than the proposed prices, the evaluations of the bidders' technical proposals were not sufficiently documented to conclusively support the evaluation results and the related award decisions.

MPBC also did not adequately monitor contract terms and payments for three contracts tested related to fundraising services. For example, MPBC did not obtain required detail reports from a vendor operating the call center for donor

pledges to determine whether performance standards were met. MPBC also did not obtain relevant support to evaluate the reasonableness of the amount it was charged by the Public Broadcasting Service for its annual subscription dues, which exceeded \$3.0 million.

Finally, MPBC did not periodically review user access capabilities for critical fundraising systems to which numerous users had unnecessary access. These systems are used to monitor and account for donations and include donor information which MPBC is required to keep confidential by State law.

MPBC's response to this audit is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this audit by MPBC.

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

Table of Contents

Background Information	5
Agency Responsibilities	5
Financial Statement Audits	5
Status of Findings From Preceding Audit Report	6
Findings and Recommendations	7
Contract Procurement and Disbursements	
Finding 1 – MPBC’s procurement policy did not contain certain provisions required by State law for entities with procurement exemptions, and contracts awarded under its exemption were not always reported to or approved by MPBC’s governing commission.	7
Finding 2 – MPBC did not always comply with State procurement regulations for sole source and competitively bid contracts that were not part of its procurement exemption.	8
Finding 3 – MPBC significantly understated the approximate quantity of mailings in a procurement solicitation for direct marketing and fundraising services which could have affected the bid prices received.	10
* Finding 4 – MPBC did not adequately monitor contract terms and payments for three contracts related to fundraising services.	11
Finding 5 – MPBC did not have an adequate process to evaluate the reasonableness of the amount it was charged by the Public Broadcasting Service for its annual subscription dues which exceeded \$3.0 million.	13

* **Denotes item repeated in full or part from preceding audit report**

Fundraising Information Systems

Finding 6 – MPBC did not periodically review user access capabilities for critical fundraising systems, and numerous users had unnecessary access to information required to be kept confidential by State law. 13

Audit Scope, Objectives, and Methodology 15**Agency Response Appendix**

Background Information

Agency Responsibilities

The Maryland Public Broadcasting Commission (MPBC) is responsible for operating and maintaining a system of regional and local facilities to provide educational and cultural television and radio programs throughout the State. MPBC is also responsible for the preparation, content, and presentation of programs for the public. MPBC operates six television stations located in Annapolis, Baltimore, Frederick, Hagerstown, Oakland, and Salisbury. MPBC is governed by an 11-member commission whose members are appointed by the Governor.

According to the State's records, during fiscal year 2015, MPBC's operating expenditures totaled approximately \$28.2 million. These expenditures consisted of approximately \$18.0 million in special funds (primarily from viewer and corporate contributions), \$8.2 million in State general funds, \$1.5 million in reimbursable funds, and \$500,000 in federal funds.

Financial Statement Audits

In compliance with the audit requirements established by the Corporation for Public Broadcasting (a federally funded, nonprofit organization that provides funds to MPBC as well as to other public broadcasting stations), MPBC engaged an independent accounting firm to perform audits of the combined financial statements of MPBC and the Maryland Public Broadcasting Foundation, Inc., an affiliated nonprofit foundation.

In the related audit reports for fiscal years ended June 30, 2012, 2013, and 2014, the firm stated that the combined financial statements presented fairly, in all material respects, the combined financial position of MPBC and the Foundation, and the respective changes in net assets and cash flows for the years then ended in accordance with Financial Reporting Guidelines prescribed by the Corporation for Public Broadcasting.

In the related audit report for fiscal year ended June 30, 2015, the firm stated that the combined financial statements presented fairly, in all material respects, the combined financial position of MPBC and the Foundation, and the respective changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the four findings contained in our preceding audit report on MPBC dated November 28, 2012. We determined that MPBC satisfactorily addressed three of the findings. The remaining finding is repeated in this report.

Findings and Recommendations

Contract Procurement and Disbursements

Background

Under State law, the Maryland Public Broadcasting Commission (MPBC) is exempted from State procurement regulations when procuring the services of artists for educational and cultural television productions and when planning for or fulfilling the obligations of grants or cooperative agreements that support these activities. According to State records, during the period from July 1, 2012 to June 30, 2015, MPBC awarded contracts totaling approximately \$33.0 million, including \$23.0 million in contracts that were considered exempt from State procurement regulations based on this law. The remaining contract awards totaled \$10.0 million, of which at least \$3.7 million were sole source procurements.

Finding 1

MPBC's procurement policy did not contain certain provisions required by State law for entities with procurement exemptions, and revisions to this policy were not approved by its governing commission. MPBC also did not document that it reported to, or obtained approval from, its commission, as required for contracts awarded under its State procurement regulations exemption.

Analysis

MPBC's procurement policy did not adequately address certain provisions as required by State law for entities with procurement exemptions. Specifically, the revised policy did not contain critical provisions regarding solicitation requirements and when competitive bidding should be used. These provisions were included in MPBC's separate standard operating procedure (SOP) documents but the SOP documents were not included or referenced in its procurement policy. In addition, although MPBC's procurement policy was approved by its commission in 2005, MPBC revised this policy in 2015 and did not seek approval for the revised policy from its commission.

According to State law, each agency with an exemption from State procurement regulations is required to have written policies and procedures for its exempt procurements that should include provisions regarding the procurement method to be used, the solicitation requirements, and the approval process. State law also requires these exempt agencies to submit their policies and procedures to their board, commission, council, or authority for review and approval.

Furthermore, for contracts tested that were awarded under MPBC's State procurement regulations exemption between January 2012 and October 2014, documentation did not exist to support that contracts valued over \$500,000 had been approved by MPBC's commission and contracts valued between \$50,000 and \$500,000 had been reported to MPBC's commission, as required by its SOP. We tested seven contracts totaling \$8.0 million and found that MPBC did not obtain approval from its commission for four contracts totaling \$6.9 million, even though each of these contracts was valued at more than \$500,000. MPBC also did not report to the commission the other three contract awards totaling \$1.1 million for which the contracts were valued between \$50,000 and \$500,000.

Recommendation 1

We recommend that MPBC

- a. revise its procurement policy to comply with the requirements of State law;**
- b. submit the revised procurement policy, and all future policy revisions, to its commission for review and documented approval;**
- c. ensure all applicable contracts are reviewed or approved by the commission as required, prior to contract award; and**
- d. submit the aforementioned contracts to its commission for review and/or approval.**

Finding 2

MPBC did not always comply with State procurement regulations for sole source and competitively bid contract awards that were not part of its procurement exemption.

Analysis

MPBC did not always comply with State procurement regulations for sole source and competitively bid contract awards. Our test of three sole source procurements totaling approximately \$1.4 million and four competitively bid procurements totaling \$2.7 million related to contracts awarded between January 2013 and April 2015—none of which were covered by MPBC's exemption from State procurement regulations—disclosed certain deficiencies for each of these procurements.

- For two sole source contract procurements totaling \$928,000 for television ratings statistics and market research analysis services, MPBC did not prepare formal justifications to support that only the contracted vendors could provide the necessary services. Although MPBC asserted that the number of vendors providing these services were limited, MPBC did not document its research

efforts and decisions supporting this conclusion. MPBC also did not publish these two contract awards on *eMaryland Marketplace (eMM)* and did not obtain approval from the Board of Public Works (BPW), as required. State procurement regulations require that the justifications for sole source procurements be prepared and approved prior to contract award and that they be documented in writing, that sole source contracts greater than \$100,000 be approved by BPW, and that sole source contract awards greater than \$25,000 be published on *eMM* within 30 days of the contract award.

In addition, MPBC awarded two sole source contracts totaling \$715,800 (including one of the aforementioned contracts) to vendors that either were not registered with the State Department of Assessments and Taxation (SDAT) to do business in the State or were not in good standing with SDAT. According to BPW's Procurement Advisor, agencies should ensure that vendors are in good standing with SDAT during the procurement process.

- For the four competitively bid contract procurements totaling \$2.7 million, MPBC did not prepare a register of proposals identifying the date and time bid documents (technical and price proposals) were received and did not document that all bids were opened in the presence of at least two State employees. State procurement regulations require that a register of proposals (both technical and price proposals) be prepared that identifies proposals received by each offeror, and that these proposals be opened in the presence of at least two State employees.
- For three competitive procurements totaling \$2.3 million, the evaluations of the technical proposals by the committee members were not sufficiently documented to conclusively support the evaluation results and related award decisions. For example, for one \$900,000 contract, each member of the evaluation committee did not complete substantial elements of the technical evaluation such as whether the work plan included with the proposal indicated the specific methodology and techniques to be used to provide the required services. According to the requests for proposals for all three procurements, the technical abilities of the bidders were considered more important than the proposed prices.
- For two competitive procurements totaling \$1.9 million, MPBC allowed the winning vendors to negotiate contract prices or scope changes after selecting the vendors for the contract awards but prior to making the awards. For example, for a fundraising management system contract totaling \$985,200, this award amount reflected an increase in the vendor's proposed price by approximately \$142,000 for additional services (such as credit card

processing) that were not included in the original proposal. As these negotiations were not part of the competitive bid process, other bidders were not given the opportunity to provide a response. We were advised by BPW's Procurement Advisor that the actions taken by MPBC in these situations were not proper.

Recommendation 2

We recommend that MPBC

- a. comply with the aforementioned State procurement regulations,**
- b. seek retroactive approval from BPW for the aforementioned sole source awards,**
- c. ensure that contracts are awarded to vendors who are registered and in good standing with SDAT,**
- d. sufficiently document the evaluation of bids received with completed technical evaluations by each member of the evaluation committee, and**
- e. discontinue conducting exclusive negotiations with winning vendors after the bid evaluation process is completed and prior to contract award.**

Finding 3

MPBC significantly understated the approximate quantity of mailings in its contract procurement solicitation for direct marketing and fundraising services which could have affected the bid prices received.

Analysis

MPBC significantly understated the approximate quantity of mailings in its contract procurement solicitation for direct marketing and fundraising services, which could have affected the bid prices received. Effective January 2015, MPBC entered into an 18-month service contract (including two option years) with the incumbent vendor for direct marketing and fundraising services for an amount not to exceed \$476,500, of which \$188,325 was for the initial 18-month period. MPBC solicited competitive bids for these services, received two bids, and determined the incumbent vendor was the only qualified bidder. Contracted services included supporting membership fundraising, helping MPBC increase its member contributions, and assisting MPBC in developing improved relationships with donors.

Nine months after the contract began, MPBC noticed that its authorized contract funding of \$476,500 was almost fully spent and that it had made a significant error in its estimated mailings in its procurement solicitation, which affected the contract value. Specifically, the original contract award amount had been based

on 150,000 pieces of mail being sent during the initial eighteen-month period even though the number of mailings anticipated by MPBC was more than one million pieces. Accordingly, MPBC obtained BPW approval in August 2015 to increase the value of the initial 18-month contract from \$188,325 to \$524,133 (an increase of 178 percent); the option years were not modified. The new contract value was based on one million pieces of mail and the vendor's original billing rate of \$0.32 per mailing.

Information about the expected levels of services could impact vendors' bidding decisions, as well as the outcome of the bid evaluation processes. Therefore, the failure to provide such information based on a documented rationale impedes MPBC's ability to determine whether it received the most favorable bids, made the appropriate award decisions, and established reasonable contract values. Furthermore, State procurement regulations require that solicitations provide an approximate quantity of goods for an indefinite quantity contract.

Recommendation 3

We recommend that MPBC ensure procurement solicitations contain realistic approximate quantities of the services needed.

Finding 4

MPBC did not adequately monitor contract terms and payments for three contracts related to fundraising services.

Analysis

MPBC did not adequately monitor three contracts related to fundraising services. According to State records, as of September 2015, payments to these vendors totaled approximately \$1.2 million.

- MPBC did not ensure payments to the contractor providing direct marketing and fundraising services were consistent with the contract rate. Our test of three task orders for fundraising mailing campaigns totaling \$142,740 (including the cost for postage) disclosed that the rates billed did not agree with the contract rate. Rather, MPBC established different rates for each task order. As a result, our review of the invoices for the task orders disclosed \$5,940 was overpaid on one invoice, and for two invoices, combined underpayments totaled \$6,625. MPBC management advised that the task order rates should vary depending on the nature of the mailing; however, this basis for payment was not established in the contract and this approach

negates the purpose of using competition to obtain the most favorable price. Similar conditions were commented upon in our preceding audit report.

- MPBC did not adequately monitor the call center services contractor during pledge drives to ensure payments were consistent with the contract terms. The contract provided that the vendor was not to bill for services that did not comply with certain performance standards and MPBC generally was not to pay for these services. However, MPBC did not obtain detailed call center activity reports from the vendor to determine whether the vendor met those standards which required, for example, that callers must not remain in the queue for more than 30 seconds waiting for the next available operator. Under the terms of the contract, vendor payments were based on a per-minute rate for each call, and documentation (such as on-line access to call center reports) was to be available from the vendor to support each invoice.

Our test of three invoices totaling approximately \$82,800 disclosed that MPBC paid these invoices without determining whether the vendor met the performance standards for the calls included in the invoices. Based on summary reports provided by the vendor, we noted that during the month of March 2015 for example, the average queue time was 49 seconds yet MPBC paid this invoice without questioning the vendor's contract compliance. Similar conditions were commented upon in our preceding audit report.

- MPBC did not review invoices from its donor premium gift fulfillment vendor to ensure it was invoiced only for premium gifts that were ordered. Twice a week, MPBC ordered premium gifts (such as, DVDs, CDs, books) from the vendor based on gifts selected by its donors. The vendor shipped the premium gifts directly to the donors and invoiced MPBC for the items shipped. While MPBC did review, on a test basis, the invoiced costs for the premium gifts shipped, it did not compare the number of premium gifts billed by the vendor with its record of premium gifts ordered by donors. Payments made on this contract totaled approximately \$736,000 through September 30, 2015.

Recommendation 4

We recommend that MPBC

- a. ensure that contractor services and payments are consistent with contract terms and rates (repeat); and**
- b. obtain and review documentation, including performance reports, to support all invoices and pursue recovery of charges not supported (repeat).**

Finding 5

MPBC did not have an adequate process to evaluate the reasonableness of the amount it was charged by the Public Broadcasting Service (PBS) for its annual subscription dues.

Analysis

MPBC did not have an adequate process to evaluate the reasonableness of the amount it was charged by PBS for its annual subscription dues. PBS annually calculates MPBC's subscription dues based on factors including population served, non-federal funding sources (such as, donations, tower leasing, production services, merchandise and content licensing, and DVD sales), and number of broadcasting transmitters. MPBC advised us that the dues were reviewed for consistency with the prior year's dues; however, MPBC did not document its review and did not obtain relevant supporting documentation from PBS to thoroughly evaluate the reasonableness of the dues. Our recalculation of the dues bills for 2014 and 2015, using documentation we obtained from PBS, did not disclose any obvious discrepancies.

According to State records, during the period from July 1, 2012 to June 30 2015, MPBC paid subscription dues to PBS totaling approximately \$10.0 million.

Recommendation 5

We recommend that MPBC establish a process to evaluate and document the reasonableness of its annual PBS subscription dues prior to payment.

Fundraising Information Systems**Finding 6**

MPBC did not periodically review user access capabilities for critical fundraising systems, and numerous users had unnecessary access to information that is required to be kept confidential by State law.

Analysis

MPBC did not periodically review user access capabilities to critical fundraising systems and we noted that numerous users had unnecessary access. These systems are used by MPBC to monitor and account for donations and include donor information which MPBC is required to keep confidential by State law. As of September 2015, there were 61 users with active accounts that could access and modify donor information on the donor database and 11 users with active

accounts that could access and modify credit card donation information, including account numbers and donation amounts, on the online donation system.

Our review of all users with active accounts disclosed that, based on their job duties, 10 users did not require access to the donor databases and 4 users did not require access to the online donation system. During our audit, we brought the lack of periodic access reviews to MPBC's attention; as a result, MPBC removed the access from those users who did not require access. MPBC was also in the process of reviewing the other active accounts, some of which either had never used their access or had not used their access in the last three months.

Additionally, our review disclosed that one user had the capability to change bank account information into which certain credit card donations were deposited even though the user did not require this capability. This employee was responsible for generating monthly reports used by another employee to reconcile credit card donations received through the online donation system with MPBC's bank account. Consequently, this user could redirect credit card donations and alter reports used for reconciling transactions, allowing the misappropriation of credit card donations without detection. According to MPBC's records, these credit card collections totaled approximately \$1.3 million during fiscal year 2015.

According to the State of Maryland's *Information Security Policy*, agencies shall continuously (at least annually) monitor the security controls within their information systems to ensure that the controls are operating as intended.

Recommendation 6

We recommend that MPBC

- a. perform periodic documented reviews of user access capabilities for its critical fundraising systems,**
- b. ensure donor information is kept confidential in accordance with State law and users are assigned only those capabilities necessary to perform job duties, and**
- c. grant access to change bank account information only to applicable management personnel (such as the Chief Financial Officer).**

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Maryland Public Broadcasting Commission (MPBC) for the period beginning December 1, 2011 and ending June 30, 2015. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine MPBC's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included procurements and disbursements, payroll, cash receipts, accounts receivable, and information systems. We also determined the status of the findings contained in our preceding audit report.

Our audit did not include an evaluation of internal controls over compliance with federal laws and regulations for federal financial assistance programs and an assessment of MPBC's compliance with those laws and regulations because the State of Maryland engages an independent accounting firm to annually audit such programs administered by State agencies, including MPBC.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of MPBC's operations, and tests of transactions. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk. Unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, the results of the tests cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability.

We determined that the data extracted from these various sources were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

MPBC's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect MPBC's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to MPBC that did not warrant inclusion in this report.

The response from MPBC to our findings and recommendations is 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 MPBC regarding the results of our review of its response.

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APPENDIX

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LARRY D. UNGER
PRESIDENT & CEO



TV WORTH
WATCHING

May 27, 2016

Thomas J. Barnickel, CPA
Legislative Auditor
Department of Legislative Services
301 West Preston Street
Room 1202
Baltimore, Maryland 21201

Dear Mr. Barnickel:

Enclosed is the response of the Maryland Public Broadcasting Commission to the draft audit report for the period beginning December 1, 2011 and ending June 30, 2015. An electronic version has also been emailed to response@ola.state.md.us.

Sincerely,

Larry D. Unger
President and CEO, Maryland Public Television

cc: Edward H. Kaplan, Chair, Maryland Public Broadcasting Commission

Enclosure

Finding 1

Response: MPBC disagrees with this Finding.

The Exemption Policies

The Finding alleges that MPBC's "*procurement policy*" did not contain certain provisions required for entities with procurement exemptions. The Finding recites the State legal requirement that entities with exemptions from State procurement have written policies and procedures for its exemptions. During the period of the audit, MPBC had two procurement exemptions, one for artists and one for grants. For both of these exemptions MPBC has written policies and procedures and those policies and procedures comply with State law (the "Exemption Policies"). The Exemption Policies were created in 2005 and were approved by MPBC's governing commission at that time. MPBC has followed these Exemption Policies without incident since then.

The Procurement Manual

In addition to MPBC's Exemption Policies, MPBC also maintains a separate procurement manual. The procurement manual serves as a guide for those persons at MPBC involved with procuring goods and services through the State procurement process. The manual draws closely from the State's procurement regulations set forth in COMAR. There is no legal requirement for MPBC to have a procurement manual. There is no legal requirement as to what the content should be in MPBC's procurement manual. And, there is no legal requirement that the manual be approved by MPBC's governing commission.

The Finding Confuses the Exemption Policies and the Procurement Manual

The Finding appears to confuse the Exemption Policies and the procurement manual. The Finding states that "although MPBC's *procurement policy* was approved by its commission in 2005, MPBC revised this policy in 2015 and did not seek approval for the revised policy from its commission." In fact, MPBC's Exemption Policies were approved by its commission in 2005, not the procurement manual. The procurement manual was created by MPT's procurement officer and has never been reviewed or approved by the commission. The procurement manual is periodically reviewed and modified. Again, there is no legal requirement that the MPBC commission review or approve the procurement manual. As the Finding points out, there is a legal requirement that the MPBC commission approve the Exemption Policies, and it did so in 2005. Since then, there have been no substantive changes to the Exemption Policies that would require commission approval. Nevertheless, MPBC will have its commission approve the latest version of the Exemption Policies which essentially mirrors the 2005 version.

As part of the confusion, the Finding seems to suggest that the problem with MPBC's Exemption Policies is that they are somehow not incorporated into MPBC's procurement manual, or

alternatively that the procurement manual is not incorporated into the Exemption Policies. It is unclear why this is an issue at all. It is not clear why it is not sufficient to have separate Exemption Policies which guide contracts outside of the procurement process and a separate procurement manual which governs contracts that are inside of the procurement process. This has not been an issue for MPBC during the last eleven years and blending them together as the Finding seems to suggest will only lead to greater confusion.

Auditor's Comment: There is no confusion regarding OLA's understanding of the distinction between MPBC's procurement policy and its procurement manual, which is identified in the audit report as the standard operating procedures. The audit finding primarily addresses this fact – that MPBC's procurement policy did not contain certain provisions required by State law. Although these provisions can be found in the standard operating procedures document, they are not included in the policy, which alone is subject to commission approval. For example, the policy does not contain MPBC's solicitation and competitive bidding requirements which is a specific requirement of State law.

The Exemption Policies do not Require that the Commission Review or Approve Contracts

The Finding continues the confusion by highlighting certain contracts which it claims should have been approved by or reported to the MPBC commission but were not as allegedly required by the MPBC "*procurement policy*", which as noted above the Finding interprets to mean the Exemption Policies. MPBC's Exemption Policies, however, have no requirement that the commission review or approve any contract. MPBC's procurement manual, which has no legal force or effect, does. So, the fact that certain contracts inadvertently may not have been approved by or reported to the commission is of no legal consequence. Although there is no legal requirement that it do so, MPBC nevertheless has obtained approval by, or reported to, the commission all of the contracts at issue.

Auditor's Comment: The audit finding has been revised to clarify that certain contracts were not approved by or reported to MPBC's commission as required by its standard operating procedures, rather than the procurement policy as originally stated. Nevertheless, according to State law, the procurement policy should address approval requirements.

Finding 2

Response: As explained more fully below, MPBC disagrees with much of this Finding.

MPBC Reasonably Believed that the Contracts at Issue were Exempt from Procurement

The first part of the Finding related to sole source contracts involves MPBC's contracts for television ratings statistics. For decades, and over the course of multiple audits, MPBC has treated these contracts as subscription services that are exempt under DGS procurement rules that exempt subscriptions. No audit has ever challenged MPBC on this practice and MPBC entered into its recent contracts for ratings statistics on the good faith belief that this practice was acceptable. Changing the designation now to a sole source after two years of the contract would not affect the performance or terms of the contract in anyway. In fact, given that MPBC is dealing with a monopoly and has no alternatives for this service, MPBC has done an excellent job managing the costs of the contracts. Indeed, MPBC paid less under the contract in 2015 than it did in 2008 while receiving more services on more channels and in more markets than previously.

MPBC agrees in the future when the current contracts are ending that it will treat the next contract as a sole source, instead of exempt, if there are no competitors at that time. This is not a case of MPBC not complying with the regulations for sole source contracts as stated in the Finding. MPBC never treated this contract as a sole source at all, and has never done so in its long history of using these services. MPBC is aware of the sole source requirements and would have followed them if it viewed the contracts as a sole source, which it did not. To the extent that the rules have now been changed long after the contracts have commenced, they should be changed prospectively.

Auditor's Comment: MPBC's mischaracterization of the contracts as subscriptions and not sole source procurements, which also require compliance with State procurement regulations, does not relieve it of the responsibility to comply with those regulations, including seeking Board of Public Works' approval.

MPBC Agrees that for Contracts Subject to the Procurement Process Vendors Must Register with SDAT, but this Obligation does not Apply to Contracts Exempt from Procurement

As to the reference that two "sole source contracts" were not registered with SDAT, as explained above for one of the contracts at issue, MPBC understandably believed that the contract was exempt from procurement and for the other alleged sole source contract, that contract was unquestionably exempt from procurement. Given that MPBC reasonably believed that the contracts were exempt from procurement, there is no requirement under Maryland law that the vendors register with SDAT for contracts that are not part of the procurement process. The contention in the Finding that "agencies should ensure that vendors are in good standing with SDAT during the procurement process" is not to the contrary. Indeed, MPBC agrees that for contracts that are subject to the procurement process, the vendors must register with SDAT. But that is not the case here, and for these contracts that were not subject to procurement, there was no obligation to register. MPBC will continue to ensure that for contracts subject to procurement, the vendors register with SDAT.

Auditor's Comment: MPBC seems to mistakenly assume that the process of obtaining services through a sole source contractor does not qualify as a procurement method under State procurement law. As stated in the report finding, we confirmed with the Board of Public Works' Procurement Advisor that agencies should ensure that all vendors, including those obtained through sole source procurements, are registered and in good standing with SDAT.

There is no Basis to Support the Finding that MPBC did not Comply with Procurement Regulations Related to the Receipt of Bid Documents

The Finding's contention that MPBC did not comply with procurement regulations for a limited number of contracts is incorrect. The Finding states that MPBC did not "prepare a register of proposals identifying the date and time bid documents were received" and "did not document that all bids were opened in the presence of at least two State employees." There is no requirement under Maryland law that MPBC identify the date and time bid documents are received. COMAR 21.05.03.02 (G)(1) is the only regulation that addresses the receipt of bid proposals and it provides, "Proposals and modifications shall be held in a secure place until the established due date. Proposals may not be opened publicly but shall be opened in the presence of at least two State employees. After the established due date, a register of proposals shall be prepared that identifies each offeror." This regulation does not require, contrary to the Finding, that MPBC record the date and time that bids were received, and MPBC did in fact open bids in the presence of two State employees. Nevertheless, in the future, MPBC will compile this information in a "register".

Auditor's Comment: The primary issue identified in the audit finding is MPBC's failure to prepare a register of proposals received for four competitive procurements as required by State procurement regulations. The contents of the register (that is, the time and date of receipt of proposals) was not the focus of the audit finding, but illustrates the nature of the information that typically would be included in the register to help demonstrate the integrity of the bid receipt process. For the four procurements, MPBC did not document which bids were opened in the presence of at least two State employees as stated in the audit finding.

There is no Basis to Support the Finding that MPBC did not Comply with Procurement Regulations Related to the Evaluation of Bid Proposals

Similarly, the Finding states that "MPBC did not sufficiently document the evaluation of bids." Specifically, the Finding asserts that for one contract, the evaluation committee members did not complete substantial elements of the technical evaluation". Here too, the Finding is incorrect. The Finding cites no procurement regulation to support its position, because there is no applicable regulation. COMAR 21.05.03.03 (A) (c) (6) addresses the evaluation of proposals, and in particular the role of an evaluation committee and states, "Initial evaluations may be

conducted and recommendation for award made by an evaluation committee. Final evaluations, including evaluation of the recommendation of the evaluation committee, if any, shall be performed by the procurement officer and the agency head or designee.” Other than this cryptic statement, the regulations do not impose any obligations on the evaluation committee. COMAR 21.05.01.07 does require that there be a procurement record on file for each procurement and that certain documents be maintained therein, but no mention is made of the evaluation committee or any documents related to it. For the contract at issue, the procurement officer prepared a 10 page, single-spaced board report that evaluated in detail the merits of the proposals. It is inconceivable that this comprehensive document could have been prepared without extensive input from the evaluation committee.

Auditor’s Comment: The audit finding does not cite the failure of MPBC to sufficiently document the evaluation results for three procurements as a violation of State procurement regulations. Rather, the finding refers to the obvious need for MPBC to follow its established vendor proposal evaluation procedures to help ensure the integrity of the process. Because of incomplete evaluation documentation, MPBC could not conclusively support that the evaluations for these procurements were properly performed and the award decisions were consistent with the evaluation results.

MPBC did not Negotiate Improperly after the Selection of a Vendor

The Finding asserts that MPBC allowed a winning vendor to negotiate contract prices or scope changes after selecting the vendor. Specifically, the Finding states that for a fundraising management system, the total proposed price increased by approximately \$142,000 “for additional services . . . that were not included *in the original proposal*.” The Finding is incorrect. A fuller review of the winning vendor’s bid plainly reveals that the services that were offered by the vendor and that were included in the final contract, were also included as part of the vendor’s original proposal. While some services were offered on an optional basis with an additional fee, they were responsive to the scope of work, they were part of the original proposal, and they were considered as part of the evaluation process. They did not first arise as part of some sort of after-selection negotiation as the Finding suggests.

Auditor’s Comment: Although MPBC correctly claims that the services costing \$142,000 were contained in the applicable vendor’s proposal, those services were not included in MPBC’s original request for proposals. Therefore, all bidders were not given the opportunity to provide a financial bid for these services.

Finding 3

Response: MPBC does not dispute this Finding and agrees with the recommendation that it do a better job of calculating the quantities needed in its direct mailing contract.

Finding 4

Response: This Finding involves three different contracts. For the first two contracts involving direct mailing and call center services, MPBC has already modified those contracts to comply with the recommendation.

For the third contract, the Finding claims that MPBC “did not review invoices from its donor premium gift fulfillment vendor”. This statement is contradicted by the Finding’s assertion that “MPBC did review, on a test basis, the invoiced costs for the premium gifts”. The fact is that MPBC did review and regularly does review invoices from its gift fulfillment vendor. Those invoices include such detailed information as the name of the donor, the gift shipped, and the cost of the gift. An invoice could have anywhere from several hundred to several thousand gifts. Given this large quantity, MPBC reviews approximately 10% of every invoice. The review consists of, among other things, confirming the gift that was sent, the cost of the gift, and the member to whom the gift was sent; and checking MPBC member files to compare the member, the amount of the pledge, and the pledge gift with the invoice. To the extent that the Finding now suggests that MPBC review every item instead of only some of the items, that would require MPBC to hire an employee whose task would be nothing other than to review every one of the thousands of items and to create separate purchase orders for each item. That is not cost-effective as it would cost MPBC and the State more money than would be saved by adopting the approach in the Finding. Nevertheless, MPBC will explore other cost-effective options in an effort to provide greater scrutiny of the invoices.

Auditor’s Comment: The invoice review performed by MPBC during the audit did verify that the vendor-reported gift shipments were consistent with the amounts billed. However, because the review did not include a comparison to the donor database, the review did not ensure that MPBC was only billed for gifts that were ordered and not previously shipped.

Finding 5

Response: During the nearly fifty years that MPBC has been a Public Broadcasting Service (“PBS”) member station, MPBC has always thoroughly reviewed its PBS annual dues and significantly, the Finding states that there are no “obvious discrepancies” in the PBS dues that were reviewed during the audit period. As to the recommendation that MPBC “document” its review of the dues, MPBC will comply with that.

Finding 6

Response: MPBC does not dispute the Finding but notes that there has been no breach of any confidential information. As noted in the Finding, MPBC already has complied with the recommendation.

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