
**Alan G. Hevesi
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

DIVISION OF STATE SERVICES

**OFFICE OF GENERAL
SERVICES**

CONTRACT MONITORING

Report 2005-S-18

AUDIT OBJECTIVE

Our objective was to determine whether the Office of General Services (OGS) Procurement Services Group (Group) adequately monitors statewide and agency-specific contracts, particularly with regard to aggregate sales volume, catalog price lists, and the quality of vendor performance.

AUDIT RESULTS - SUMMARY

Our audit found several weaknesses in the Group's system for monitoring statewide and agency-specific contracts. The Group does not verify aggregate sales volume nor ensure that catalog price lists are current. In addition, the Group does not adequately document user complaints or purchases that are made outside of the statewide procurement process, thereby hindering its ability to determine whether vendor performance was adequate.

The monitoring of sales activity is important for assessing future needs. In addition, under certain contracts, the volume of sales activity is important in determining vendor sales discounts or the amount of fees owed by vendors. However, the Group does not have formal policies or procedures, nor a management information system, to ensure vendors report sales volume, that the reported volume is accurate, and that staff properly use this information to manage the contracts. [Pages 3-5]

The Group does not always maintain and communicate up-to-date price lists for catalog contracts, instead relying on the vendors to

quote prices to individual contract users. Furthermore, the Group does not routinely verify the prices that vendors post on their websites. Therefore, contract users may not have accurate information to base their purchasing decisions. [Page 5]

The Group's monitoring of vendor performance needs improvement. The Group tracks customer complaints informally, seldom maintaining documentation of the issue or its resolution. In addition, the Group does not determine whether agencies have obtained better prices or quality outside the statewide procurement process. Such information could be used to analyze and improve the current system of statewide contracts. [Pages 5-6]

Our report contains eight recommendations to improve contract monitoring practices. In particular, we recommend the development of a management information system, and related policies and procedures, to manage some of the Group's major contract responsibilities. OGS officials generally agreed with our recommendations and have indicated they are taking steps to implement changes.

This report, dated August 4, 2006, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Services
State Audit Bureau
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

OGS provides a broad range of support services that are necessary for the efficient operation of State government. Such services include centralized information processing; space planning and leasing; real property management and maintenance; and centralized contracting for goods and services. The statewide procurement of goods and services is the responsibility of the Group. In this regard, the Group is responsible for developing detailed specifications, evaluating bids, and monitoring vendor performance to ensure compliance with contract terms.

The Group negotiates hundreds of contract awards totaling more than \$3 billion annually for approximately 5,700 contract users. Contract users include State agencies, eligible local governments, schools, not-for-profit organizations and authorities. The Group establishes statewide and agency-specific contracts for five different types of procurements: general services (such as rubbish removal), commodities (such as clothing, furniture, building supplies, and vehicles), information technology services, telecommunications services, and temporary services (such as nursing and security). The Group's 94 employees are organized into ten teams that each focus on certain aspects of these five types of procurements.

AUDIT FINDINGS AND RECOMMENDATIONS

Vendor Sales Report Monitoring

To assist in planning, OGS requires vendors to report sales, either on a quarterly, semi-annual or annual basis. OGS needs contract sales volume figures to assess future needs, which may affect subsequent contract

negotiations. Monitoring sales volume is particularly important in certain situations. For approximately 50 of OGS's statewide contracts, the volume of goods or services sold to all contract users (including State agencies, local governments, etc.) determines the level of discount each purchaser may take. In other instances, the monitoring of sales volume is important to ensure the correct amount of revenue is received. For approximately 70 contracts, OGS allows contract users to purchase goods and services under the same terms as federal contracts. Under the federal contracts, a fee known as the Industrial Funding Fee (IFF) is normally paid by the vendor to the federal government. However, when the State participates in these contracts, the vendor may either redirect the fee to the State or reduce its prices by a corresponding percentage. If the fee is redirected to the State, OGS must have accurate records of sales volume so that it can ensure that it receives the correct amount of revenue.

We found that the Group does not have a management information system, and related policies and procedures, to manage some of its major contract responsibilities, including the monitoring of vendor sales. For example, the Group does not have the means to adequately monitor the contracts containing aggregate sales volume discounts or IFF provisions, to track whether vendors report sales volume in a timely manner, and to determine whether the sales figures reported by vendors are accurate. Likewise, the Group does not have a system to identify all contracts where the IFF is applicable, and whether the vendors have opted for the direct remittance or the discounted price. Having a management information system could help the Group compare actual sales volume to estimates to assess future needs and, if necessary, take corrective action, such as re-bidding contracts or renegotiating prices.

For our audit scope period April 1, 2003 through October 31, 2005, we found that OGS generally received the required vendor sales reports for the contracts containing aggregate sales volume discounts or IFF provisions. However, the procurement teams do not receive guidance on what to do with the sales reports they receive. Sales reports are not used to determine the correct sales discount so that the Group can alert contract users of the correct discounted price. Furthermore, the Group does not have policies or procedures requiring verification of sales volume data. As a result, contract users are dependent on the vendors for calculating the discounts, thus increasing the risk that the discounts will be understated.

Group officials state that they cannot monitor aggregate sales volume or verify sales report figures submitted by vendors if the contract user is not a State agency, because they do not have access to expenditure summaries other than those paid through the State's Central Accounting System. However, we found that, even for State agency purchases, the Group does not attempt to reconcile vendor sales reports with State expenditure summaries. OGS officials have indicated they are in the process of establishing a reconciliation procedure for State purchases and have instituted a confirmation procedure for non-State purchases.

We also noted an internal control weakness in the administration of the IFF. The Group does not have written procedures for handling IFF transactions, and instead relies on individual purchasing officers to handle all aspects of IFF administration, from the calculation of fees owed to their ultimate collection. This inadequate separation of duties increases the risk that fees will be diverted and not deposited in the State

Treasury. OGS's IFF collections totaled approximately \$790,000 during the period April 1, 2003 through September 15, 2005. However, without monitoring sales volume, the Group does not have the necessary information to determine whether more fees should have been collected and whether fees were collected, but not deposited.

OGS officials have been previously aware of the types of issues discussed in this section of our report. Our audit report entitled *Administration and Use of Contract PS00374, IBM Corporation - Comprehensive Services Agreement* (Report 2004-R-5, issued October 15, 2004) disclosed that OGS did not monitor aggregate sales volume under the contract, but instead relied on the contractor to determine the discounts applicable to contract users. In response to that audit, OGS's internal audit unit reviewed contracts with aggregate sales volume discounts and IFF provisions. The internal review found that the Group does not have adequate monitoring activities to ensure accurate sales reporting by vendors, to identify when volume discounts are available, and to ensure that vendors are following their contract obligations. The internal review also found poor controls over IFF collections and recommended that an accounts receivable system be designed to ensure timely collection of those fees.

Recommendations

1. Develop a management information system that will enable staff to identify contracts with aggregate sales volume discounts or IFF provisions, track whether sales reports were received timely, and compile data on aggregate sales.
2. Develop policies and procedures to verify sales figures reported by vendors.

Recommendations (Cont'd)

3. Develop written procedures related to the billing, receiving, recording, reconciling, safeguarding and depositing of procurement-related fees, and ensure these duties are properly separated.

Catalog Price List Monitoring

Approximately 850 vendors utilize catalog price list contracts to provide a variety of commodities to contract users. These contracts require vendors to submit price updates to the Group for prior approval. To ensure that contract users are aware of appropriate prices, the Group should maintain up-to-date price lists and make these lists available to contract users. The most efficient way of making these price lists available to potential users is to put them on the OGS website.

We found that Group officials do not routinely maintain price lists for all contracts and make these lists available to contract users through the OGS website. We randomly sampled 25 vendors that provide catalog price lists of commodities and found only six (24 percent) had a price list posted on the OGS website, and another four (16 percent) had direct links to price lists on the vendors' websites. Only one vendor had both a price list on the OGS website and a direct link to the prices on its own website. For this vendor, we compared both sources and found that prices were consistent. However, Group officials informed us that they do not routinely verify prices posted on vendor websites and have not established policies and procedures requiring teams to monitor and verify these price lists.

In addition, the Group should develop a management information system to identify which contracts use price lists, and then track

when vendors update price lists, whether current price listings have been reviewed and approved, and whether prices have significantly increased or decreased. As we noted with the contracts that have volume discount provisions, contract users must rely primarily on vendors to communicate price-related information. As a result, contract users cannot be certain they are paying the appropriate prices for items listed under these contracts.

Recommendations

4. Require procurement teams to monitor and verify that catalog price lists are current and accurate.
5. Provide current catalog price list data to potential contract users via the OGS website.
6. Develop a management information system to enable the Group to identify:
 - contracts that use catalog price lists;
 - currently applicable prices and/or discounts; and
 - contract prices that have changed, and when these changes occurred.

Quality of Vendor Performance

According to Group officials, assessing vendor performance is primarily the responsibility of contract users. OGS conducts bi-annual customer surveys of State and non-State contract users to assess overall satisfaction with the State's contracting process, but does not regularly obtain customer feedback on individual contracts and vendors. The monitoring of customer complaints can be a useful means of detecting

problems related to vendor performance, and the Group has established a process intended to track such complaints. However, we found that the process is not used effectively.

Group policy requires purchasing officers to monitor vendor responses to complaints and to recommend appropriate enforcement action against vendors who violate contract terms. To do this, the Group has developed a formal process to document and resolve user problems and complaints. However, Group officials do not require that this process be used to its full potential. Despite administering approximately 3,000 active contracts, the Group formally logged only 23 complaints during the period April 1, 2003 through July 7, 2005. Group officials told us that purchasing officers usually receive and deal with complaints informally, without formally documenting the complaint or the outcome. As a result, Group officials must rely on purchasing officers' opinions and recollections to determine whether vendors are performing satisfactorily. In addition, Group officials do not have adequate information to determine whether certain vendors are continually violating contract terms, or whether issues are widespread. Having complete information is important to help Group officials meet their responsibilities to monitor vendor responses to complaints and recommend appropriate enforcement action.

In addition, the State Finance Law allows agencies to acquire products directly from vendors or suppliers other than those participating in a centralized contract when such products are available in similar function and form and the prices or terms are economically beneficial to the acquiring agency. This method of procurement, known as "OGS or Less," provides flexibility to contract users.

State agencies are required to notify OGS concerning any "OGS or Less" purchases. Such information may provide Group officials with critical data specific to market conditions, such as competitive pricing or performance quality. However, we found that the Group does not have procedures for monitoring "OGS or Less" purchases and does not have a system to consistently capture this information from users who employ this method. We spoke with some procurement teams about how they handle such information, and they told us they usually do not retain this data. As a result, the Group may not know why, and to what extent, statewide contracts are not being used. Therefore, the Group may be unaware of the need for pricing or vendor performance improvements that may increase the use of statewide contracts.

(In responding to our draft audit report, OGS officials stated that not retaining "OGS or Less" documentation does not present a material risk, because the total dollar value of such purchases was negligible, based on OGS staff's professional judgment. Because OGS does not retain, review and monitor this documentation, we could not verify this assertion. Much like the issue regarding user complaints, we are concerned that OGS's lack of records forces management to place too much reliance on individual staff as the sole source of institutional knowledge.)

Recommendations

7. Formally document, retain, and investigate complaints.
8. Develop policies and procedures to require that "OGS or Less" purchases be documented, retained, and analyzed.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the Group's contract monitoring practices for the period April 1, 2003 through October 31, 2005. To accomplish our audit objectives, we reviewed applicable laws, rules, regulations, policies and procedures. We interviewed Group officials, and reviewed and analyzed records and reports maintained by the Group. We also reviewed selected contract expenditure summaries, catalogs and/or price lists, and sales reports, where applicable, during our audit period.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

We provided a draft copy of this report to OGS officials for their review and comment. OGS officials generally agreed with our recommendations and indicated actions planned to implement them. A complete copy of OGS's response is included as Appendix A.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of General Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Frank Houston, John Buyce, Joel Biederman, Douglas Abbott, Nadiuska Piedra, Andrew Davis, Ashley Nightingale, Joe Nopper, Resa Ostrander, Amy Jordan, and Paul Bachman.

APPENDIX A - AUDITEE'S RESPONSE



DANIEL D. HOGAN
COMMISSIONER

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

ROBERT J. FLEURY
FIRST DEPUTY COMMISSIONER

May 5, 2006

Mr. Frank J. Houston
Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 William Street - Floor 21
New York, NY 10038

Dear Mr. Houston:

This is the Office of General Services' (OGS) response to your Draft audit report 2005-S-18 on Contract Monitoring. Our Procurement Services Group (PSG) has developed about 2,800 contracts that are used by over 5,000 customers and which generate about \$3 billion in sales all with a staff of only 95 people. We have to prioritize uses of our time to ensure that our resources generate the best value for our customers. The remainder of our response is organized around your recommendations, followed by information presented in your report indented and then our comments.

Recommendation 1. Develop a management information system that will enable staff to identify contracts with aggregate sales volume discounts or IFF provisions, track whether sales reports were received timely, and compile data on aggregate sales.

The report presents that for all contracts OGS needs contract sales volume figures to assess future needs. The report found that the Group does not have an automated management information system, and related policies and procedures, to manage some of its major contract responsibilities, including the monitoring of vendor sales. With respect to contracts that generate revenue as a percentage of total sales under the contract (generally referred to as Industrial Funding Fees (IFF) after terms in General Service Administration contracts) the report states we do not have a system to determine whether:

- vendors report sales volume in a timely manner
- sales figures reported by vendors are accurate
- to identify all contracts where the IFF is applicable
- the vendors have opted for the direct remittance or the discounted price



We generally agree with this section of the report. PSG is in the initial stage of assessing needs and product availability to address our need for a contract management system. This process will be dependent on the availability of budgetary and other resources to build such a system.

Recommendation 2. Develop policies and procedures to verify sales figures reported by vendors.

The report states that procurement teams do not receive guidance on what to do with the sales reports they receive. Sales reports are not used to determine the correct sales discount so that the Group can alert contract users of the correct discounted price. Furthermore, the Group does not have policies or procedures requiring verification of sales volume data. As a result, contract users are dependent on the vendors for calculating the discounts, thus increasing the risk that the discounts will be understated.

PSG has a mix of formal and informal guidance including contract templates and written procedures and processes that have been put in use but have not been formalized. Sales Report handling and use is one of the areas that have informal practices. As the report notes, teams do receive sales reports. This is because they have processes to identify when reports are received and to follow up on them. The process involves reviewing reports to evaluate whether they are reasonable and to calculate whether IFF payments are supported by the report. Our own internal audit identified that we do not verify sales reports and your report reiterates that point. To address this issue PSG has contracted for the services of an auditor to perform confirmation of the sales reports related to our 10 largest IFF contracts. Confirming the largest contracts will cover the majority of such revenue. One of the major impediments to doing this is that the State's Central Accounting System does not consistently capture data necessary to verify sales to state agencies by matching electronic sales reports to electronic payment data. We will use the experience gained during these confirmations to develop a process to handle this in a systematic manner.

*
Comment

Recommendation 3. Develop written procedures related to the billing, receiving, recording, reconciling, safeguarding and depositing of procurement-related fees, and ensure that these duties are properly separated.

The audit found inadequate separation of duties in the collection of revenue from contract where a percentage of all sales is paid to OGS as a fee. The report also concludes that because PSG lacks a contract management system that we cannot be sure that we have collected all the revenue due.

*** State Comptroller's Comment - This situation is being reviewed as part of the design of the new Central Accounting System.**

Action underway should address the concerns raised in the audit related to control fee collection. We are in the process of using our accounts receivable system to track the receipt of fees from IFF contracts and instructing vendors to send all fee payments to the OGS cashier.

Recommendation 4. Require procurement teams to monitor and verify that catalog price lists are current and accurate.

The report states that Group officials informed the auditors that they do not routinely verify prices posted on vendor websites and have not established policies and procedures requiring teams to monitor and verify these price lists.

We believe the statement may be taken out of context. PSG staff review some contracts, including pricing posted on the vendor's web site. PSG does acknowledge there are some instances where vendor posted pricing is not verified.

Recommendation 5. Provide current catalog price list data to potential contract users via the OGS website.

We randomly sampled 25 vendors that provide catalog price lists of commodities and found only six (24 percent) had a price list posted on the OGS website, and another four (16 percent) had direct links to price lists on the vendors' websites.

OGS recognizes that providing online access to price lists improves customer service. We have made an effort to include these terms in our contracts. OGS typically does contracts for a 5 year term. The handling of price lists, whether posted via the OGS web site directly or hosted by the contractor on the contractor's web site, is a contractual requirement. OGS is including language in its various solicitation documents and contract templates and, additionally, is taking steps and allocating resources to improve the various mechanisms by which contract pricing is provided to customer agencies. The number of contracts with online price lists will increase as contracts expire and are replaced. We do not believe that agreeing to allow online pricing should be a determinative factor in whether a contract is awarded.

Recommendation 6. Develop a management information system to enable the Group to identify:

- Contracts that use catalog price lists;
- Currently applicable prices and/or discounts; and
- Contract prices that have changed, and when these changes occurred.

The report states that the Group should develop a management information system to identify which contracts use price lists, and then track when vendors update price lists, whether current price listings have been reviewed and approved, and whether prices have significantly increased or decreased. As we noted with the contracts that have volume discount provisions, contract users must rely primarily on vendors to communicate price-related information. As a result, contract users cannot be certain they are paying the appropriate prices for items listed under these contracts.

OGS agrees and as previously mentioned is considering obtaining a contract management system. A significant investment in technology and Business Process Improvement is required to implement this goal.

Recommendation 7. Formally document, retain, and investigate complaints.

Group officials told us that purchasing officers usually receive and deal with complaints informally, without formally documenting the complaint or the outcome. A complaint database was only used 23 times.

Purchasing Officers investigate complaints when they are received and issues are resolved in an appropriate manner. The audit issue is that we did not use an automated system to track complaints. This occurs for one of two reasons. Formal documentation is developed and maintained for complaints that might result in action against the contractor, in these cases documentation is kept with the contract files. Other complaints are either insignificant or are more of a request for guidance or help; they often require a brief phone call to resolve, we do not believe there is a benefit to tracking such interactions.

Recommendation 8. Develop policies and procedures to require that "OGS or Less" purchases be documented, retained, and analyzed.

State agencies are required to notify OGS concerning any "OGS or Less" purchases. Such information may provide Group officials with critical data specific to market conditions, such as competitive pricing or performance quality. However, we found that the Group does not have procedures for monitoring "OGS or Less" purchases and does not have a system to consistently capture this information from users that employ this method. We spoke with some procurement teams about how they handle such information, and they told us that they usually do not retain this data. As a result, the Group does not know why, and to what extent, statewide contracts are not being used. Therefore, the Group may be unaware of the need for pricing or vendor performance improvements that may increase the use of statewide contracts.

We do not believe that there is a material risk related to not retaining OGS or Less documentation. The teams that received notifications from agencies also told the auditors that the dollar value of the purchases were negligible, the agency did not identify contract items, and the low dollar amounts involved would not have triggered renegotiation of pricing or development of a new contract. PSG benchmarks its contract pricing against other states and the federal government contract pricing. PSG provided examples where we negotiated with vendors to reduce pricing under our contracts. We do not agree with the conclusion that PSG "does not know why, and to what extent, statewide contracts are not being used." This conclusion does not accept that the individuals that reviewed the OGS or less filings used their professional judgment and were able to determine that they were immaterial to the contract overall.

Overall we believe that our performance measures indicate that our contract administration process meets our customers' needs. We agree that use of a contract management system can improve efficiency and service offered to customers. We believe that ongoing actions within PSG will improve the service provided to our customers.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Fleury". The signature is stylized with a large initial "R" and "F".

Robert J. Fleury

cc: B. Curtin
B. Russell
W. Bikowitz