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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# Procurement and Contracting Practices

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## Office for Technology

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Report 2010-S-71

February 2012

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# Executive Summary

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## Purpose

To determine whether the Office for Technology's (OFT) procurement and contracting practices resulted in the best value for taxpayers, consistent with applicable legal, regulatory and ethical requirements. The audit covers the period April 1, 2008 through December 2, 2011.

## Background

OFT plays a highly significant strategic and technology procurement role in State government. The agency serves as one of the State's principal technology procurement entities responsible for what should be competitive and efficient procurement of some of the State's largest non-capital contracts. In October 2010, the State Comptroller rejected a contract submitted by OFT for staff augmentation valued at \$7.5 billion. The Comptroller cited flawed cost evaluation methodologies in the rejection and determined the value of the contract appeared to overstate IT consultant spending in the State. As a result, the Comptroller ordered a full-scale independent audit of OFT's contracting and procurement practices be conducted by his Division of State Government Accountability.

## Key Findings

This report provides details surrounding several major problems and potential ethics violations, including how:

- OFT wasted \$1.5 million in a contract with McAfee;
- Deputy CIO Rico Singleton used his official position in apparent violation of the Public Officers Law;
- Unfair bidding practices and inappropriate negotiations with vendors regarding contract terminations; and
- Discretionary purchases exhibit disregard for requirements.

## Key Recommendations

The Comptroller has referred Mr. Singleton's possible violations of the Public Officers Law to the Joint Commission on Public Ethics. In addition, OFT should take significant steps to change its organizational culture and control environment to ensure that proper contracting and purchasing practices are put in place and complied with. This includes complying with existing controls and safeguards to prevent fraud, waste and abuse of State resources, and monitoring their actual implementation to ensure that unethical practices will not occur in the future.

## Other Related Audits/Reports of Interest

[Office of Mental Retardation and Developmental Disabilities Preservation Fund Procurement Practices at Springbrook NY, Inc., 2007-S-51,](#)

[Office of Mental Retardation and Developmental Disabilities Physical Plant Procurement Practices at Central New York Developmental Disabilities Services Office, 2007-S-136,](#)

**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

February 28, 2012

Daniel C. Chan, Ph.D.  
Acting Chief Information Officer & Director of Office for Technology  
Empire State Plaza  
P.O. Box 2062  
Albany, NY 12220

Dear Dr. Chan:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of Procurement and Contracting Practices. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The New York State Office for Technology (OFT) plays a highly significant strategic and technology procurement role in State government. OFT is responsible for providing centralized information technology services to the State and its governmental entities. OFT also sets statewide technology policy for all State government agencies, assists agencies with large technology procurements and monitors all large technology expenditures in the State, seeking efficiencies, lower costs, and innovative solutions. With an annual budget of about \$434 million, the agency serves as one of the State's principal technology procurement entities responsible for what should be competitive and efficient procurement of some of the State's largest non-capital contracts.

In August 2009, the Office of the State Comptroller's Bureau of State Expenditures found that OFT lacked complete procurement records containing information necessary to support eight of the nine contracts then under review. In October 2010, the State Comptroller rejected a contract submitted by OFT for staff augmentation valued at \$7.5 billion. The Comptroller cited flawed cost evaluation methodologies in the rejection and determined the value of the contract appeared to overstate IT consultant spending in the State. As a result, the Comptroller ordered a full-scale independent audit of OFT's contracting and procurement practices be conducted by his Division of State Government Accountability.

OFT, like other State agencies, must abide by the State Finance Law, which requires agencies to protect the interests of the State and its taxpayers by promoting fairness in contracting with the business community; conducting formal competitive procurements to the maximum extent practicable; and documenting the determination of the method of procurement and the basis of the award in the procurement record. For purchases up to \$50,000, New York State Procurement Guidelines require agencies to ensure that the commodities and services acquired meet their form, function and utility needs, and document and justify both the selection of the vendor and the reasonableness of the price.

In procurement matters, as in all their actions, OFT employees must conform their conduct to the ethical standards contained in the New York State Public Officers Law which requires that an official solely use his or her authority in a manner which serves the public and directs the official to avoid any actual and apparent conflicts of interest.

In addition, OFT has developed its own purchasing and ethics policies. The Office's Purchasing Policy states: "The procurement process should result in a solution that best meets the agency's needs, and guards against favoritism, fraud and collusion." The Ethics Policy provides, "Officers and employees of State government may not engage in activities that would create or appear to create a conflict with their public duties" and "State officers and employees should conduct themselves in ways to avoid suspicion among the public that the employees are likely to be engaged in acts that are in violation of the public's trust."

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## Audit Findings and Recommendations

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We found a culture, emanating from the highest levels of the agency, that disregarded the New York State Finance Law, the State's Procurement Guidelines and OFT's own procurement policies. This did not result in the best value for the taxpayers, but instead led to a waste of substantial public resources. Moreover, in several notable instances, transgressions appear to have been motivated by personal gain and may violate the ethics standards contained in the New York State Public Officers Law.

In responding to our draft report, OFT acknowledges the serious misconduct by its former executives as detailed in the following sections of this report, which they characterize as total derogation of authority and intentional disregard of ethics training. At the same time, officials say that these deeds are attributable to just one person and his supervisor, who they say ignored and flouted recognized contracting, procurement and ethical guidelines. They assert that our audit conclusions mischaracterize current operations and fail to acknowledge corrective actions; particularly those taken since the new Chief Information Officer was appointed in April 2011, which they believe has resulted in significant cultural and organizational change.

We are heartened by this new administration's stated commitment to ethics and integrity, which includes a collaborative environment, an open door policy and reduced reliance on contracts that deviate from normal procurement processes. However, these abuses were flagrant, significant and not well hidden; yet no one stepped forward to question these actions, clearly indicating that the tone set by these top officials had permeated the organization's understanding of what type of behavior was acceptable. Despite new management's best efforts, such attitudes and behaviors do not change overnight. Indeed, even after the departure of Mr. Rico Singleton on December 16, 2010, present OFT staff including the General Counsel continued to seek monetary credits from Computer Associates Inc. as recently as November 2011 despite OSC legal representations that such actions are inappropriate. Therefore, while we support management's new directions, we will also continue to monitor and scrutinize OFT procurement activity in the foreseeable future to ensure that similar problems do not recur.

### **OFT Wasted \$1.5 million in a Contract with McAfee**

We found OFT officials wasted at least \$1.5 million in State money on one contract. In March 2009, OFT entered into a \$5.7 million three year agreement with a software security firm (McAfee) that was supposed to provide cost savings by combining the use of anti-virus, security, and other related products across agencies. The agreement provided unlimited licenses and maintenance for State agencies and localities, with certain exclusions. OFT paid \$1.9 million upfront for the first year cost of the contract and planned to recoup these costs by reselling the licenses to other agencies. However, in the end, OFT recouped less than \$400,000.

According to the former Deputy CIO of Shared Services, this agreement failed because of a "disconnect between projected demand and actual demand." OFT sent surveys to various state entities to determine what security products they used, when they expired, and how much they

cost. In addition, they asked if agencies were interested in participating in an agreement for McAfee endpoint total protection products. About 78 percent of the 41 entities said they would be interested in participating. However, after the agreement was signed, other survey results showed about one-third of the 60 entities responding were not interested in participating in the agreement.

Some OFT officials told us they had expressed concerns about the agreement, but they were ignored. These officials felt former Deputy CIO Rico Singleton wanted to get the project done as a “quick win.” In addition, McAfee officials also noted that former CIO Melodie Mayberry-Stewart had declared that they did not have time to engage in a competitive bidding process, even though negotiations began in August 2008 and documentation provided by McAfee indicates the negotiated pricing was available until the end of March 2009 – over seven months later.

We also found that once the agreement was signed, two important issues still had not been resolved. First, there were disagreements on whether or not the agreement would apply to operating systems other than Windows. Although entities were eventually able to apply the agreement to other operating systems, this issue should have been decided before the contract was signed. Second and more importantly, it became clear that McAfee could not meet OFT’s Minority- and Women-Owned Business Enterprise (MWBE) goal requirements. In fact, MWBE participation was not addressed in the contract at all. McAfee ultimately sought a waiver of the requirements, and received it months later after much discussion between the two parties. However, according to documentation provided by McAfee, its staff was told by an OFT Contract and Procurement Supervisor that they could solve the problem simply by providing incorrect information, as long as the MWBE form was filled out and submitted.

There are also other indications that OFT was not prepared to implement this project at the time the contract was signed. McAfee officials told us that OFT did not have the technical expertise needed to handle the distribution of the McAfee products. Specifically, OFT lacked an effective system to manage the products being purchased, or to perform necessary billing. McAfee officials noted that they offered to build a program to manage the project and perform billing, but OFT officials did not want to make the investment and rejected the offer. Even after McAfee offered to build a program for free, OFT still rejected it. McAfee also told us that OFT needed professional help to facilitate the implementation of some of the products. Again, McAfee originally offered to provide these services for a fee, but was rejected. McAfee eventually offered to do the first five agencies for free, but was again rejected by OFT officials.

The agreement was ultimately terminated after the first year. In the end, OFT recouped only \$376,886 of its costs through other entities and more than \$1.5 million already paid to McAfee as upfront fees for the various products was wasted.

This is not the first time that a major OFT initiative has fallen short of expectations due to poor management. OFT previously had a \$42 million agreement with another software vendor for acquisition, subscription, licensing, and support for their programs. In 2006, this arrangement was investigated by the New York State Inspector General, who found “inadequate oversight” of the multi-million dollar transaction. At the time, OFT assured the Inspector General that new

procedures had been implemented to provide for more effective oversight. However, we found some of the same issues in our examination of the McAfee agreement. According to an OFT staff member, both the prior failed agreement and the Inspector General's recommendations were pointed out to Mr. Singleton by senior management staff, but these warnings were ignored.

## **Deputy CIO Rico Singleton Used His Official Position in Apparent Violation of the Public Officers Law**

As previously noted, the McAfee agreement on which OFT wasted over \$1.5 million was substantially negotiated by Deputy CIO Rico Singleton. We found Mr. Singleton's behavior during and immediately after negotiations with McAfee raises serious questions regarding his motivations. In fact, on several occasions throughout the negotiations and implementation of this multi-million dollar contract with McAfee, it appears Deputy CIO Singleton violated the public's trust.

We determined that Mr. Singleton developed a friendship with the McAfee account manager and then appears to have used his position of authority with OFT to obtain a job with McAfee for his girlfriend immediately after the agreement was signed. Compounding this apparent misuse of his public office, Mr. Singleton himself solicited and later interviewed, in their Atlanta offices, for a position with McAfee, within a month of when the company was paid \$1.9 million dollars. According to McAfee officials, his airfare and hotel were paid for by the vendor.

Specifically, the Public Officers Law provides that no public officer or employee:

- “should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the State for private business or other compensated non-governmental purposes (§74(3)(d));
- should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person (§74(3)(f));
- shall, directly or indirectly solicit, accept or receive any gift having more than a nominal value, whether in the form of money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.” (§73(5)(a))

Moreover, in all their actions, state employees must, under Public Officers Law §74(3)(h), endeavor to pursue a course of conduct which will not raise suspicion among the public that they are likely to be engaged in acts that are in violation of their trust.



Notably, these ethical restrictions have specifically been found to prohibit State officials from soliciting private sector employment with an entity that has a matter pending before the State agency until a 30 day “cooling off” period has expired (See Ethics Comm. Advisory Opinion No. 06-01). Indeed, such a solicitation for post-government employment “could be considered a reward for official action (or inaction) . . . and also raises the appearance that the State employee’s interest with such an activity is in substantial conflict with the proper discharge of his or her duties in the public interest” under New York State law.

Similarly, OFT’s Ethics Policy provides:

- Officers and employees of State government may not engage in activities that would create or appear to create a conflict with their public duties.
- A gift is anything of more than nominal value, in any form, given to a State officer or employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise. “Nominal value” is considered such a small amount that acceptance of an item of nominal value could not be reasonably interpreted or construed as attempting to influence a State employee or public official.
- Using or attempting to use their official positions to secure unwarranted privileges or exemptions for themselves or others.

As discussed in more detail below, Mr. Singleton’s apparent use of his State position for personal gain during the course of negotiating this lucrative State contract raises the appearance of a conflict of interest thereby diminishing the public’s trust in the legitimacy of his actions.

*See Exhibit A for a comprehensive timeline of events.*

#### **A. Mr. Rico Singleton Uses His Position to Help Secure Employment for His Live-in Girlfriend**

Mr. Singleton was employed by OFT from September 2007 through December 2010. Between August 2008 and March 30, 2009, Mr. Singleton personally negotiated the agreement with McAfee. During the course of those negotiations, Mr. Singleton developed a friendship with the New York State McAfee account manager, one of the primary McAfee contacts during the negotiations. Emails between the two, as well as interviews with McAfee staff, reveal that Mr. Singleton and this account manager socialized on many occasions.

In December 2008, during the midst of the negotiations, McAfee was seeking to hire an Associate Account Manager. As the following emails demonstrate, Mr. Singleton requested that the account manager consider Mr. Singleton’s girlfriend, with whom he was living, for the position. She was ultimately hired and assigned to work in the New York State Government sector of McAfee.



Documentation shows Mr. Singleton was persistent in having McAfee hire his girlfriend. According to documentation received from McAfee, the account manager and his immediate supervisor did not feel that they could turn him down.

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From: [REDACTED] [McAfee Account Manager]

To: rico [REDACTED]

Subject: Question

Sent: Dec 10, 2008 12:27 PM

What's up stud? I had a blast the other day. Question, the girl who was at the hotel with us. Can I get her contact info? We have an Associate Account Manager role open and I wanna recruit her to McAfee. This role would be working with myself and the NYC rep in supporting OFT, DOITT & etc. Lmk.

----- Original Message -----

From: rico [REDACTED]

To: [REDACTED] [McAfee Manager]

Sent: Wed Dec 10 10:24:35 2008

Subject: Re: Question

Can I give you someone else to hire. that will be good for off. But you can't sweet talk her

----- Original Message -----

From: [REDACTED] [McAfee Manager]

To: [REDACTED] [McAfee Supervisor]

Sent: Wed Dec 10 11:50:18 2008

Subject: Sales Candidate

FYI. He's not giving it up. What do you want to do?

----- Original Message -----

From: [REDACTED] [McAfee Supervisor]

To: [REDACTED] [McAfee Account Manager]

Sent: Wed Dec 10 12:26:48 2008

Subject: Re: Sales Candidate

We'll have to do as he wishes, we can drop it, don't want to piss him off

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Sent using BlackBerry

From: [REDACTED] [McAfee Account Manager]

Sent: Wed Dec 10 14:50:01 2008

To: [REDACTED] [McAfee Supervisor]

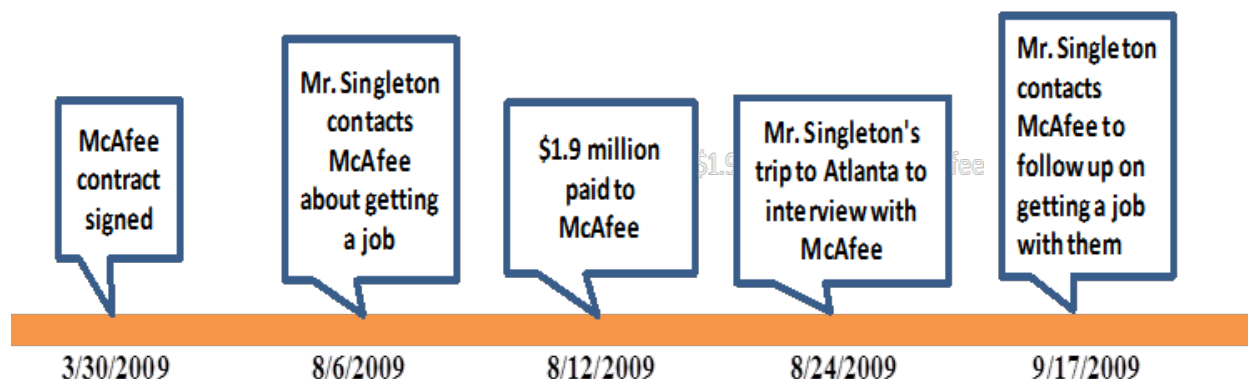
Subject: Re: Sales Candidate

Importance: Normal

Agreed. Do you want to look at Rico's recommendation?

## B. Mr. Singleton Seeks Employment for Himself after Negotiating the Multi-Million Dollar Contract

On August 6, 2009, after the contract was signed, but prior to the \$1.9 million payment, Mr. Singleton also solicited employment for himself at McAfee. He interviewed at McAfee's Atlanta office less than a month after McAfee was paid by the State.



His actions not only appear to violate the Public Officers Law, but also the agreement itself, which restricted OFT and McAfee from soliciting employees of the other for hire for the term of the agreement plus one year. McAfee staff informed us that Mr. Singleton specifically requested that any information relating to the job interview not be sent to his work computer but, instead, wished that all information regarding his possible employment with the company be sent to his personal email account.

See example of related communications as follows:

From: Rico Singleton (LinkedIn Messages)  
 Sent: Thu Aug 06 10:15:02 2009  
 To: [REDACTED]  
 Subject: RE: Join my network on LinkedIn  
 Importance: Normal

## LinkedIn

Rico Singleton has sent you a message.

Date: 8/06/2009

Subject: RE: Join my network on LinkedIn

Hey.. let's schedule some time to talk. I'm ready to talk about MFE.. Looking to leave before December so need to start putting things in motion.. When do you have time..

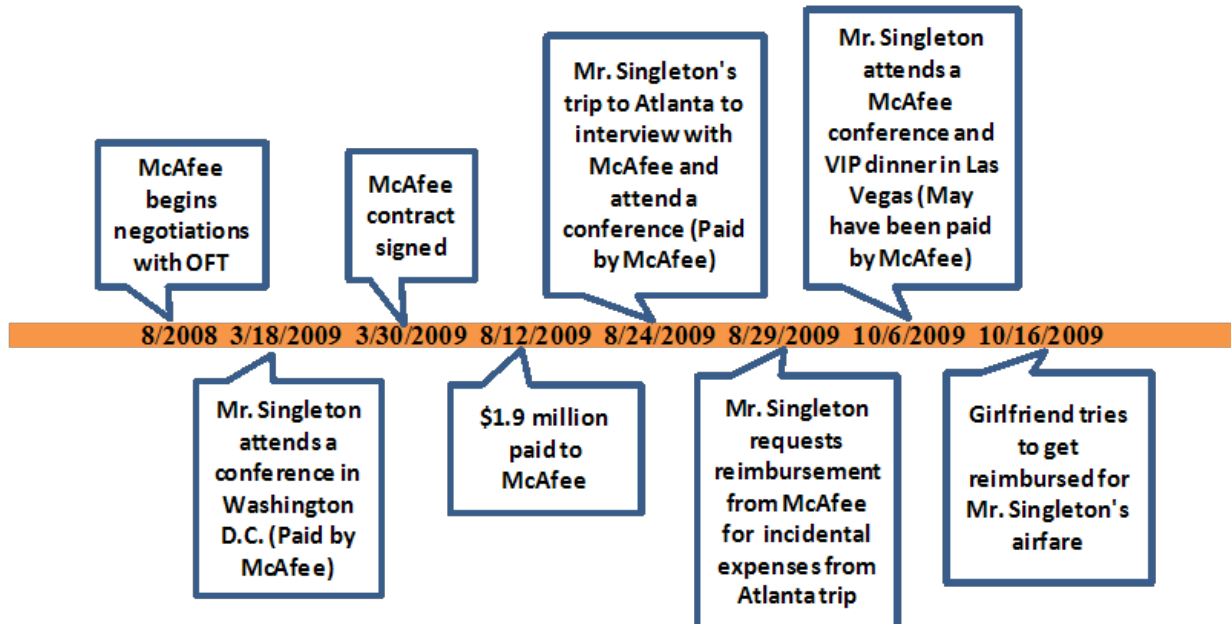
Note: MFE is the stock symbol for McAfee)

**From:** Rico J. Singleton <rico@[REDACTED]>  
**To:** [REDACTED] [McAfee Manager]  
**Sent:** Thu Sep 17 20:09:54 2009  
**Subject:** Follow up

I'm planning on being at Focus to speak on NYS ELA again. Look forward to catching up with you there. In the meantime let me know what your thinking... My preference is to be able to reside in GA, to work in GHE as strategic business development, and nothing less than Director level at minimum, and to have flexibility to grow business where ever possible and feasible around the country.

### C. Improper Travel Reimbursement

In addition to the issues discussed above, Mr. Singleton also appears to have accepted improper travel benefits from McAfee. According to McAfee officials, they provided Mr. Singleton free travel, including airfare and hotels, for conferences in Washington D.C., Las Vegas, and Atlanta. Further, at the Las Vegas conference, Mr. Singleton attended a "special invitation only" dinner with General Colin Powell as a guest of McAfee officials.

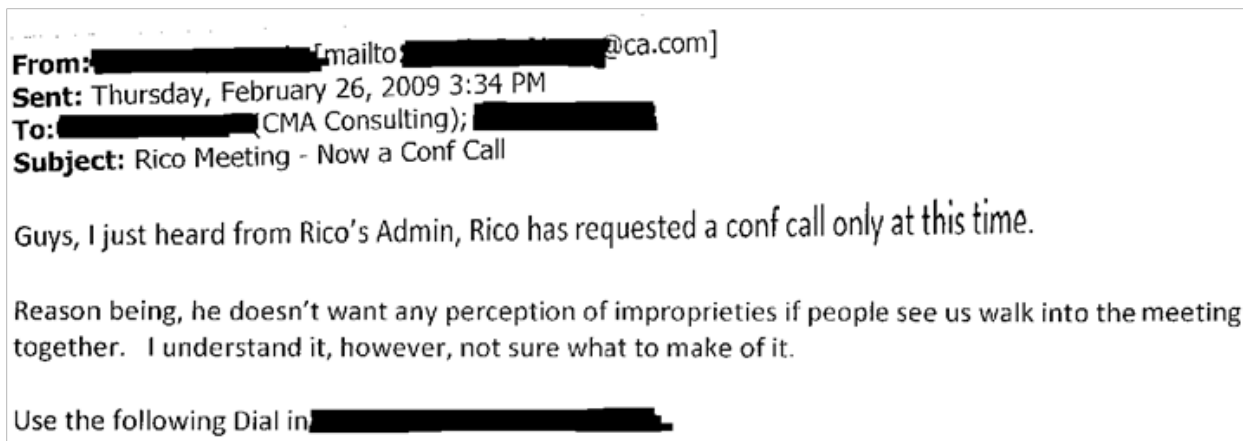


As the timeline shows, Mr. Singleton requested reimbursement from McAfee for incidental expenses during his trip to Atlanta. Subsequent to the Las Vegas and Atlanta conferences, Mr. Singleton's girlfriend, whom he had helped secure a position with McAfee, also requested reimbursement for his airfare. Due to the timing of the request, we question if this reimbursement was for the Las Vegas or Atlanta flight. While McAfee officials stated that they paid for Mr. Singleton's expenses from the Vegas trip, we were unable to definitively verify this claim.

## Unfair Bidding Practices

As part of OFT's oversight of State agency technology plans, individual agencies are required to submit a Plan to Procure for particular technology acquisitions. OFT reviews the Plans to Procure to ensure they are in line with the agency's goals, and to determine if there are opportunities to collaborate between and among agencies to enhance efficiency and realize cost savings.

In October 2008, Mr. Singleton began discussions with Computer Associates, Inc. (CA) to revamp the Plan to Procure system. After personally negotiating directly with CA for many months, including negotiating price, Mr. Singleton advised CA that OFT wanted to involve a particular reseller in the project, Currier, McCabe, and Associates (CMA). A reseller is an alternate distribution source for the contractor under a contract. Resellers must be preapproved by the State and the contractor is liable for the reseller's performance and compliance with the contract. Notably, CMA only became a certified reseller for CA products the month before the bidding process, adding further question to the legitimacy of the transaction. According to a former CA employee and as confirmed by email evidence, Mr. Singleton arranged for a phone conference for CA, CMA and OFT, rather than an in-person meeting, prior to any bidding to avoid "any perception of improprieties from people seeing them together."



Shortly thereafter, OFT twice solicited other resellers through a bidding process that gave potential bidders an extremely short response time – only three and seven days respectively. Given the extremely short response time afforded potential bidders and the prior negotiations with CA and CMA, it is not surprising that CMA was the only vendor to respond each time. Both responses were deemed invalid; the first because it exceeded a mandatory budget cap and the second because it failed to include a mandatory form. At that point, OFT's Director of Contracts and Procurement called staff at the Office of the State Comptroller to explain the two failed bids and the limited response. According to OFT documentation, the State Comptroller's staff agreed that OFT's process would adequately support issuing a Purchase Order to CMA, provided OFT could prove a level playing field for all bidders and that the cost was reasonable.

However, since CMA had already attended meetings regarding the project at which the price

was discussed, the two bidding processes appear to be nothing more than a pretense to give the appearance that OFT conducted a competitive procurement. At a minimum, it is clear that other potential bidders were never afforded a fair opportunity or level playing field and that CMA had a competitive advantage in seeking the contract award.

### **Inappropriate Negotiations with Vendors Regarding Contract Terminations**

OFT's Director of Contracts and Procurement claimed that OFT sought out CA because of how configurable its product was to the State's needs. However, after lengthy and significant modifications, the product was still not suited to OFT's expectations. In this regard, it should be noted that the statements of work agreed to between CA and CMA (the product vendor and reseller) and CMA and OFT (the reseller and the State agency) differed dramatically. According to OFT documentation, the project ultimately failed.

After the project failed, Mr. Singleton informed both CMA and CA that the agency was terminating the contract "for cause" as to both companies. OFT confirmed its termination for cause in a letter(s) from Mr. Singleton to CMA and CA in December 2009, citing a series of failures to perform work. Nevertheless, in April 2010, OFT approached the State Comptroller's legal division to seek advice about a potential deal discussed between OFT and CA, whereby OFT's "for cause" finding would be dropped in exchange for CA providing OFT a total of approximately \$350,000 in credits. (The \$350,000 in credits was a downward adjustment from OFT's original March 2, 2010 request of CA for \$1.1 million.) OFT cited the loss of one storage device ("thumb drive") containing confidential information and CA's failures to adequately perform under the contract. Between April and June 4, 2010 (the date of the Comptroller's legal division's written response), OFT indicated to OSC that it had decided not to enter into the "settlement" with CA but, still wished to learn OSC's opinion on the legality of this type of settlement.

The State Comptroller's legal division advised OFT in writing that (i) using credits from one contract for a contract that OFT was not currently utilizing would raise procurement issues; (ii) any such agreement that involves an amount of money over the statutory approval threshold in State Finance Law section 112 would be subject to prior approval by the Comptroller; and (iii) it is questionable whether the provision of credits by CA would provide a legal basis for OFT's decision to rescind its prior termination "for cause."

Indeed, a "for cause" determination bears serious consequences for a vendor because this designation finds that the termination is the fault of the vendor. The vendor is required to report this finding to other agencies in connection with future bids for State business. This reporting requirement serves a public interest by ensuring that agencies are aware of problematic vendors in the future. Agency officials can utilize this information when determining whether a potential vendor is responsible before committing public resources to a contract.

Subsequent to OFT's initial outreach, OFT expressly informed OSC that it did not intend to pursue this arrangement as memorialized in OSC's June 4, 2010 response. However, contrary to what OFT informed the Comptroller's office, our audit revealed that OFT's former General Counsel and CA had, in fact, by the time the Comptroller advised them that it was improper, already entered

into an agreement. Notably, the letter from the Comptroller's legal division was addressed to the member of OFT's legal staff who served as the notary on the executed agreement between CA and OFT. CA officials related that they felt they were being "held hostage" by these terms, but they eventually relented and agreed to provide OFT with \$222,743 in credits, partially towards an unrelated procurement, in May 2010. We found that OFT's General Counsel offered a similar deal to CMA, in return for \$225,000 in credits for unrelated procurements. CMA officials said they felt this was "extortion" and refused to provide credits to OFT.

## **Discretionary Purchases Exhibit Disregard for Requirements**

We found several OFT officials violated OFT's procurement policies and the New York State procurement guidelines. These officials awarded contracts to selected vendors and failed to determine if they were obtaining the best value for the services, or if the price the State was paying was reasonable. Additionally, we found a lack of competition and skirting State Comptroller oversight of such discretionary contracts.

Generally, under State law, purchases above \$50,000 must be competitively bid and are subject to approval by the State Comptroller. Discretionary purchases are any purchases below \$50,000 and do not need to be formally bid or approved by State Comptroller. In addition, OFT's Procurement Policy requires it to analyze whether the price is reasonable for all discretionary procurements. In most cases, this involves obtaining three quotes from vendors and filling out a Reasonableness of Price form.

The State Comptroller's Bureau of State Expenditures performed a review of OFT's discretionary contracts in 2009 and found that OFT "did not adequately conduct its procurement process in accordance with the Law and Guidelines for eight of the nine procurements examined." Our review of discretionary purchases shows OFT has clearly not fixed the problems cited in the August 2009 report. Between April 1, 2008 and May 1, 2011, OFT made 23 discretionary purchases totaling \$891,618. We reviewed each one and found only six were supported by adequate and proper documentation. The other 17, totaling \$699,248, were not. Seven of these 23 procurements occurred after the Comptroller's previous review, but only four of these were appropriately supported. The other three, including the most recent one, had incomplete procurement records and demonstrated problems similar to those found in 2009. As a result, we could not determine if these purchases resulted in the best value for New York State taxpayers.

Five of the 23 procurements we examined represented "stop gap" contracts. Stop gap contracts are used as a bridge between a contract that is ending and a new contract that has yet to be implemented in order to not lose service during the interim. Stop gaps occur when the agency does not begin negotiations on the new procurement early enough to allow the bidding process to occur in a timely fashion. If monitored correctly, contract ending dates should come as no surprise. In the past, we found OFT staff sometimes needed to issue stop gap contracts to prevent the loss of service and cited the need as an emergency. However, urgency caused by poor planning does not constitute an emergency and results in lack of competition and potentially paying more for the service. During the period of the new stop gap, the State may not be receiving the best value, since it is not the result of a competitive procurement.



Our review of contract files also disclosed numerous instances of improper purchasing, including apparent favoritism shown to certain vendors and nine contracts where OFT did not demonstrate that the price was reasonable, as required by its own policy. In addition, OFT split purchases on four of the 23 contracts so the price would remain below \$50,000 and allow the agency to circumvent the Comptroller's approval. One OFT staff member noted that, if the margin is close, OFT will urge the vendor with the lowest quote to reduce their price below \$50,000. This results in more contracts under the discretionary level and not subject to the State Comptroller's oversight. Some examples of the issues we found are described below.

- A contract with New Concepts Consulting (New Concepts) for \$49,999 for products including web design, two videos and a newsletter appears to have been awarded based upon favoritism. This company previously did work for an Ohio Foundation chaired by CIO Mayberry-Stewart prior to her New York State employment. We found no documentation that other vendors were solicited and no documentation of reasonableness of price. Further, current OFT staff interviewed could not tell us why this vendor was used. However, according to a former OFT employee, New Concepts originally submitted a proposal to OFT for web design work. When the employee informed New Concepts that OFT had no use for these services at that time, Ms. Mayberry-Stewart asked the employee to take another look at the proposal. Again, the employee informed Ms. Mayberry-Stewart that there was no need for New Concepts' services. OFT eventually contracted with and paid New Concepts \$33,000, even after repeated objections by this staff member. However, the product delivered was substantially less than agreed upon, in part because OFT decided not to have New Concepts supply the newsletter. The website design had to be replaced after the service was provided because OFT officials were not satisfied with the end result. In addition, according to the State Comptroller's Bureau of State Expenditures, OFT terminated this contract after questioning by one of the State Comptroller's auditors.
- A contract with Securitas Security Services was executed for \$42,051. Securitas was providing this service previously; however it did not submit a proposal for a new security contract, even when new bids were requested. According to OFT staff, five days after bids were due, the Director of Contracts and Procurement, asked Securitas if it could meet the best price submitted. Securitas was thus provided an unfair advantage over all other vendors.
- Two contracts with Microknowledge were for training services for two consecutive years. The contracts were worth \$49,999 and \$40,000. The deliverables under the contracts are for substantially the same service; both are primarily to provide Microsoft Office 2007 training to various OFT staff members. They also avoided Comptroller approval since they were issued for under \$50,000.

## Recommendations

OFT should take significant steps to change its organizational culture and control environment to ensure that proper contracting and purchasing practices are put in place and complied with. This includes complying with existing controls and safeguards to prevent fraud, waste and abuse of

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State resources, and monitoring their actual implementation to ensure that unethical practices will not occur in the future. We note that a new executive team was appointed to head OFT in April 2011. We recommend the following specific actions be taken to begin this change in culture:

1. Provide ethics training to all staff, including senior and executive management.
2. Ensure that all senior officials and contract management staff receive up-to-date training in New York State procurement laws and OFT procurement policies.
3. Develop a standard business case analysis to be performed for all purchases. To ensure transparency, the analysis should document:
  - the planning and preparations performed before entering into any agreement or contract,
  - the competition or bidding that took place,
  - the logic behind selecting winning bidders, and
  - the reasons why losing bidders are not chosen.
4. Ensure that no one individual has the ability to influence or control the procurement process for any contracts or purchases and that full disclosure and/or recusal is required of all OFT employees in the case of a potential conflict of interest or the appearance thereof.
5. Establish monitoring procedures to ensure all staff comply with procurement and contracting laws.
6. Create a process to better monitor contract end dates and thereby reduce the Office's reliance on stop gap contracts.
7. Discontinue abusive practices to avoid competition that would otherwise be required and appropriate.
8. Ensure all staff comply with their responsibility to provide unfettered access to all necessary information requests by OSC in the conduct of its independent audits.

## Next Steps

In addition to making the above recommendations, OSC has referred the possible violations of the Public Officers Law to the Joint Commission on Public Ethics for investigation. For its part, OSC will continue to monitor and scrutinize OFT procurement and contracting activities. OSC also advises that senior management at OFT take steps to ensure that all OFT staff are fully aware of their responsibilities to comply with the requirements of independent audits as conducted by this Office. Providing anything less than unfettered access to documents and staff raises further questions as to accountability and transparency of OFT.

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## Audit Scope and Methodology

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The objective of our audit was to determine whether OFT's procurement and contracting practices for the period April 1, 2008 through December 2, 2011 resulted in the best value for taxpayers, consistent with applicable legal, regulatory and ethical requirements.

To achieve our objective, we interviewed current and former OFT personnel and reviewed contracts and other supporting documentation provided by OFT. We also reviewed relevant State laws and OFT's own procurement and ethics policies and procedures. We selected a judgmental sample of 53 contracts that were active during our audit period. We also interviewed vendors and subpoenaed and reviewed supporting documentation related to contracts entered into with OFT. In addition, we reviewed electronic records from OFT computers.

During our audit, officials from OFT specifically impeded auditor access to staff, electronic data, and files necessary to the audit. Some documentation from OFT was delayed to such an extent that auditors had to put in additional, costly and time consuming steps to determine that the documentation was reliable. This lack of access to staff and information raises serious concerns as to whether other abuses might exist but have yet to be discovered.

We conducted our performance audit 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.

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. 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 functions do not affect our ability to conduct independent audits of program performance.

## Authority

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This audit was done according 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

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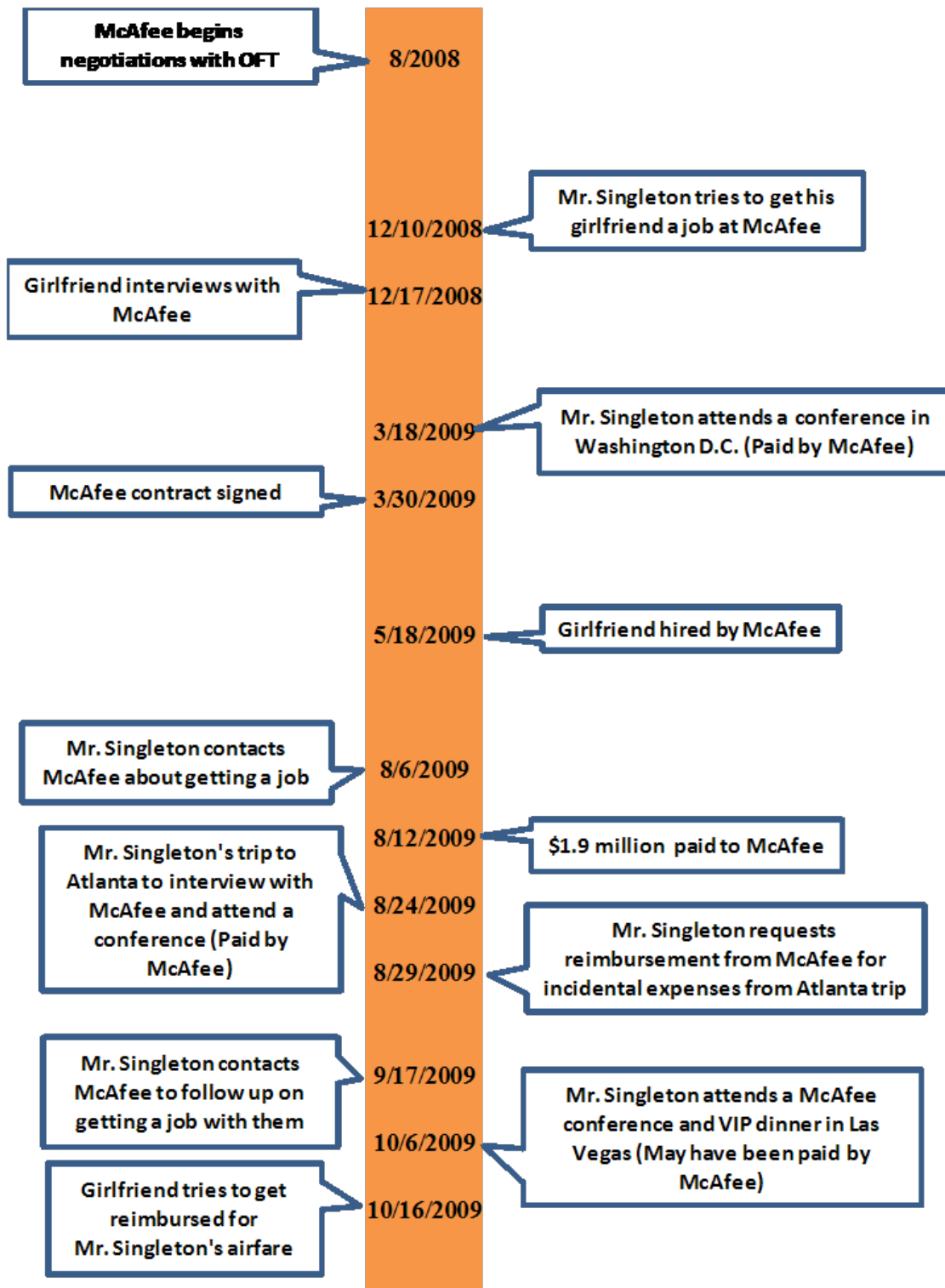
We provided a draft copy of this report to OFT officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety, along

with State Comptroller's Comments, at the end of the report. OFT officials acknowledge the serious cases of misconduct detailed in this report and expressed their appreciation for our recommendations, which they indicate will help improve internal controls over contracting and procurement. However, they also believe our overall conclusions about organizational culture mischaracterize current operations and fail to acknowledge significant changes made since the new Chief Information Officer was appointed in April 2011.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chief Information Officer of the Office for Technology 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 why.

## Exhibit A

### Chronology of Ethically Questionable Events Involving the OFT Contract with McAfee



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## Contributors to this Report

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### Vision

A team of accountability experts respected for providing information that decision makers value.

### Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

# Agency Comments



ANDREW M. CUOMO  
GOVERNOR

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Mr. John Buyce  
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Office of the State Comptroller  
110 State Street, 11<sup>th</sup> Floor  
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February 21, 2012

Re: DRAFT Audit Report 2010-S-7

Dear Mr. Buyce:

Please allow this letter to respond to the Draft Audit Report 2010-S-71 issued by the Office of the State Comptroller (OSC) concerning the NYS Office for Technology's (OFT) procurement and contracting practices (the Draft Report). This letter will also serve to offer clarifications of and corrections to statements and characterizations made in the Draft Report. OFT appreciates the findings and recommendations of this audit, as they will help OFT in its continued efforts to improve its internal controls with regard to contracting and procurement, however, OFT strongly believes that many of the conclusions of the audit mischaracterize the agency's current operations. Moreover, several of OSC's recommendations fail to acknowledge the significant changes at the agency and the existing or new policies implemented by OFT. Most notably:

- In the Draft Report, OSC states that at OFT it found a "culture emanating from the highest levels of the agency" that "disregarded" law, Procurement Guidelines and OFT policy. However, it is important to recognize that the examples of such disregard included in the Draft Report can be attributed mainly to one person, former Deputy Chief Information Officer Rico Singleton, who left OFT and State service in December of 2010, and whose direct supervisor left the agency approximately three months later;
- A new Acting NYS Chief Information Officer and Director of OFT was appointed in April 2011 and, since then, corrective action has restored the required operational rigor to the agency's procurement procedure;
- Out of nineteen non-discretionary procurements reviewed by OSC, and 600-plus vouchers associated with purchases off of contracts held by either the NYS Office of General Services (OGS) or OFT, only two transactions were found to have problems. Moreover, those transactions took place in 2009, and the problems are, in many ways, attributable to Mr. Singleton who, as noted above, has not worked at OFT since 2010;
- The Draft Report describes problems with documentation in OFT's discretionary procurements that were previously addressed in a 2009 OSC audit report and subsequently remedied by OFT. OFT's discretionary contracts that were let after the 2009 audit show that OFT typically uses appropriate documentation. Including a

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\* See State Comptroller's Comments on page 90.

discussion of these problems tends to draw an inaccurate picture of current procurement policies and procedures at OFT;

- Contrary to the Draft Report, and as detailed below, agency records show that OFT does not regularly use discretionary contracts due to poor planning; and
- OFT complied fully in the conduct of OSC's independent audit of OFT.

Finally, the stated scope of this audit was contracting and procurement activities during the period from April 1, 2008, to December 2, 2011. Although the audit officially closed on December 2, 2011, all but one of the contracts OSC reviewed were let between December 2003 and September 2010<sup>1</sup> before the appointment of the current NYS Chief Information Officer and Director of OFT. OSC auditors also reviewed 600-plus vouchers that are associated with OFT purchases off of contracts held by OGS or OFT. The overwhelming majority of these 600-plus vouchers, if not all of them, were also processed prior to the appointment of NYS' current Acting Chief Information Officer and Director of OFT.

#### I. Recommendations 1, 2, 4, 5 and 7:

More than half of the findings of the Draft Report are directly related to the actions of former Deputy Chief Information Officer Rico Singleton, and of OSC's eight recommendations to OFT, numbers one, two, four, five and seven appear to be aimed specifically at preventing misconduct like Mr. Singleton's. OFT recognizes the seriousness of Mr. Singleton's misconduct, which constituted a total derogation of his authority and an intentional disregard of the ethics and procurement education and training that he received repeatedly during his tenure at OFT.

- A. *Recommendations 1 and 2: Provide ethics training to all staff, including senior and executive management, and ensure that all senior officials and contract management staff receive up-to-date training in New York State procurement laws and OFT procurement policies.*

OFT agrees with OSC that ethics and procurement training for staff is imperative. In addition to its compliance with Executive Order No. 3, dated January 2, 2011, OFT has a policy (referenced on Page 7 of the Draft Report and attached here at Tab 1) of requiring all staff members to take ethics training every two years. That policy has been in place for approximately three years. Procurement Lobbying Law training has been provided to nearly all agency employees. In addition, instruction on ethics is built into the mandatory approval process for employees attending conferences, training sessions or other events. OFT requires supervisory approval to attend such events. Requests are also reviewed by OFT's Ethics Officer who requires submission of detailed information about the event (see Tab 2 (Attachment A of OFT's Ethics Policy)) and opines as to whether the requestor can attend the event and accept meals, waiver of conference fees, or travel reimbursements, if offered. Guidelines regarding acceptance of travel reimbursement are also attached to OFT's Ethics Policy. See Tab 3 (RIDER to OFT's Ethics Policy).

OFT understands that the new Joint Commission on Public Ethics is in the process of updating its training materials that incorporate the recent changes to the ethics law. OFT will create an updated ethics training for all staff. Additionally, OFT will update and expand its Procurement Lobbying Law training materials to cover ethics in procurement generally and will offer training to all senior officials and contract management staff, as suggested in the Draft Report.

<sup>1</sup> Only one discretionary contract was procured in 2011.



Mr. Singleton received formal ethics training described above at least twice during his three-plus years at OFT, on October 31, 2007, and June 29, 2009. See Tab 4. Additionally, Mr. Singleton and other OFT senior management members and program directors received formal Procurement Lobbying Law training on March 5, 2008, and again on March 24, 2010. See Tab 5. Procurement Lobbying Law training was provided throughout the Spring and Summer of 2010.

Besides formal ethics and Procurement Lobbying Law training, Mr. Singleton repeatedly received personal instructions regarding ethics and ethics in procurement. Indeed, throughout his tenure at OFT Mr. Singleton was routinely trained and educated, formally and informally, regarding ethics and ethics in procurement, particularly with regard to the propriety of accepting offers of travel reimbursement. To the extent Mr. Singleton sought or received the reimbursements from McAfee referenced in the Draft Report, he acted deliberately, in direct contravention of the law, his training, and oral and written instructions from OFT's then-Ethics Officer.

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Comment  
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OFT understands that OSC has referred Mr. Singleton's possible violations of the Public Officers law for investigation. OFT will continue to cooperate with any such investigation.

- B. Recommendations 4 and 5: Ensure that no one individual has the ability to influence or control the procurement process for any contracts and purchases and that full disclosure and/or recusal is required of all OFT employees in the case of a potential conflict of interest or the appearance thereof, and establish monitoring procedures to ensure all staff comply with procurement and contracting laws.*

OFT has implemented several measures that ensure procurements are free from undue control and influence from any one person. Ethics and procurement training, such as that described above, is one way. However, others exist. Some examples include, but are not limited to:

- A policy of multi-level signoff across multiple business units, including the Program Area, Finance, Contracts and Procurement, Counsel, and senior management, as appropriate;
- Major procurements and purchases require senior management approval before they are commenced; and
- Evaluators of bid proposals are provided specific guidance regarding conflicts of interest and Procurement Lobbying Law. Evaluators sign "conflict of interest" statements in which they attest that they do not have a conflict of interest with the procurement they are evaluating. Guidance is provided as to what constitutes a conflict of interest.

In addition to the procedures that already exist, OFT will include in the expanded ethics in procurement training described above information about conflicts of interest and individual parameters in the procurement process.

Until the issuance of the Draft Report, OFT senior management, including other former Deputy Chief Information Officers, were unaware of the conduct attributed to Mr. Singleton in it.

*C. Recommendation 7: Discontinue abusive practices to avoid competition that would otherwise be required and appropriate.*

OSC recommends that OFT take “significant steps to change its organizational culture.” Draft Report at 15-16. The current environment at OFT would neither encourage nor tolerate the conduct described in the Draft Report. With the appointment of a new Acting NYS Chief Information Officer and Director of OFT in April, 2011, came a significant cultural and organizational change. OFT’s new leadership fosters an extremely collaborative environment both laterally across agencies and vertically within OFT. There is an “open door” culture where all ideas and suggestions are considered and no decision is pre-determined. Additionally, OFT had during the audit period, and continues to have, contracting, procurement, and ethics guidelines and practices in place. According to the Draft Report, these guidelines and practices were ignored and flouted by Mr. Singleton.

With regard to improper procurement and contracting issues discussed in the Draft Report, OSC reviewed nineteen specific non-discretionary contracts that were procured between December 2003 and November 2009 and over 600 vouchers associated with OFT purchases off of eleven contracts held by OGS and OFT. Out of these 600-plus transactions, including the nineteen non-discretionary procurements, OSC identified issues with two, both from 2009, and both managed by Mr. Singleton. One was an enterprise-wide anti-virus and security software contract with McAfee, and the other was an engagement with Computer Associates, Inc. (CA) and Currier, McCabe and Associates (CMA) to implement a system related to OFT’s Plan-to-Procure process.

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1. Lessons Learned from the McAfee Contract

OFT learned lessons from this particular procurement, and has and will continue to implement corrective measures in new procurements. For example, OFT analyzes projected savings in myriad ways in order to increase the reliability of its estimates of savings, and OFT has successfully relied on this strategy in opting not to embark on some enterprise procurements while pursuing others. For example, in 2010, OFT spearheaded an enterprise license agreement with IBM for multi-agency purchasing of software and software maintenance through the IBM Passport Advantage and a State contract. Through OFT’s efforts, the State realized a 39% discount worth \$2.5 million in savings for new purchases by two agencies and a 10% discount on maintenance for existing customers, worth \$735,591. Through OFT’s management of this enterprise software contract in 2010, the State saved over \$3.2 million.

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2. The CA and CMA Engagement

With respect to the CA and CMA engagement, as OSC notes, the project was not successful. In a December 2009 letter to CA and CMA, OFT articulated a series of vendor failures to perform work and terminated the engagement for cause. Both CA and CMA vigorously objected, leading to attempts on the part of OFT to resolve the parties’ differences. OFT’s current administration resolved this matter with CMA before receipt of the Draft Report and expects to resolve the matter with CA soon.

\* See State Comptroller’s Comments on page 90.

- ii. **Recommendation 3: Develop a standard business case analysis to be performed for all purchases. To ensure transparency, the analysis should document: [a] the planning and preparations performed before entering into any agreement or contract, [b] the competition or bidding that took place, [c] the logic behind selecting winning bidders, and [d] the reasons why losing bidders are not chosen.**

OSC makes this recommendation regarding documentation for “all purchases,” but documentation requirements for discretionary contracts are distinct from requirements for full-blown competitive procurements. For example, according to OGS’s Procurement Guidelines for discretionary contracts, agencies are required to document and justify the selection of the vendor and document and justify the reasonableness of the price to be paid. See July 2009 New York State Procurement Guidelines at 10 available at <http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>. There is no clear guidance as to what price is “reasonable” either from OSC or the Procurement Council nor any requirements for establishing reasonableness of price, but discretionary contracts are subject to Comptroller review post-audit, as was done with this audit.

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Again, although the formal time period of the audit is between April 1, 2008 and December 2, 2011, all but one of the twenty-three discretionary contracts OSC reviewed were entered into between September 2006 and September 2010. The one later contract was let in May 2011. The bulk of these contracts—16 of 23, nearly 70%—fall within the audit period of a 2009 OSC audit report that also covered OFT’s discretionary contracts. See Tab 6, available at <http://osc.state.ny.us/audits/allaudits/093010/2009bse01001.pdf>. OFT accepted responsibility for the findings in the 2009 audit report and implemented corrective action in response to it. Yet, in this Draft Report, OSC re-identifies the findings from the 2009 audit period. For example, OSC’s 2009 audit report identifies eight discretionary contracts, all of which were re-reviewed in this current audit. In the Draft Report, OSC makes specific findings about four discretionary contracts. Two of those were specifically reviewed in the 2009 audit, and three of them fall within the 2009 audit’s time period. OSC has simply re-stated the problems found by an earlier audit.

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*A. Discretionary Contracts Let Following the 2009 Discretionary Contract Audit Were Properly Documented*

The contracts relevant to this audit are, or should be, the seven discretionary contracts OFT entered into after the 2009 discretionary contracts audit. OSC writes that four of these seven post-2009 audit discretionary contracts had “incomplete procurement records” and “problems similar to those found in 2009.” Draft Report at 14. According to the spreadsheet provided to OFT by OSC, only two of these contracts (T000253 and T000276) were inadequately supported due to lack of analysis of reasonableness of price. See Tab 7. OSC’s conclusion ignores the specific character of these procurements, and thus its conclusion that they were inadequately supported is incorrect.

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**T000253:** As set forth in the documentation provided to OSC auditors during this audit, see Tabs 8, 9 and 10, T000253 was a 60-day discretionary contract let in July 2009, with the approval of OSC, where OFT procured a technical grant writer to write a response to the Federal Communications Commission/National Telecommunications and Information Administration’s Broadband Stimulus Grant Program. See Tab 8. The application was to be released by the federal government on July 14, 2009, and was due on August 14, 2009. See Tab 8. As was

\* See State Comptroller’s Comments on page 90-91.

discussed with a Director at OSC, OFT solicited proposals from three of its then-current IT consultant vendors that had a high level of networking technical information. See Tab 8. Only one vendor responded. See Tabs 9 & 10. Without other proposals to compare, OFT could not state one way or another if the sole respondent's price was reasonable. OFT advised OSC that it received just one response and OSC told OFT it was "Ok to go ahead." See Tab 8. OFT then advised OSC that the sole respondent met the mandatory requirements and asked, "Given the fact that the not to exceed price is within the discretionary spend limit do we need to do anything else prior to the execution of a Statement of Work and a Purchase Order?" See Tab 8. OSC responded, "If it's under \$50 K we don't need anything. Best of luck with your grant application!" See Tab 10. All of the documents referenced in Tabs 9 through 10 were provided to OSC auditors in this audit.

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**T000276:** This contract concerned OFT's September 2010 rental of licenses for a specific e-discovery tool that were already procured by the Office of the New York State Attorney General (OAG) in connection with the multi-million dollar M/A COM litigation. As set forth in OFT's Attachment A request to the Division of the Budget, which was made available to the OSC auditors in this audit, OAG and OFT were working together to review many terabytes of data that needed to be filtered for relevancy and privilege and turned over to M/A COM attorneys. See Tab 11. OFT had been using OAG's "Clearwell" e-discovery tool on a trial basis and the trial was set to expire. OFT had to choose between renting OAG's existing license directly from Clearwell or using another e-discovery tool that required weeks of migration and was an inferior program, risking default on court deadlines. See Tab 11. Thus, after consultation with OSC's Contract Department, OFT used a discretionary contract to rent OAG's existing Clearwell licenses for the sole purpose of the M/A COM litigation. See Tab 12. All of the documents at Tabs 11 and 12 were provided to OSC auditors in this audit.

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The seven discretionary contracts that were let after the 2009 discretionary contracting audit satisfied the existing documentary requirements for discretionary contracts. However, when additional documentation is appropriate and available for discretionary purchases, OFT will collect it. OSC's specific recommendation in this regard is that OFT document the bidding process for "all purchases." To the extent bidding takes place on any contract, OFT already does and will continue to maintain records supporting that process. However, some procurements are not competitive and do not, therefore, have a bidding process. These types of procurements include single or sole source contracts, certain purchases off of OGS centralized contracts and certain discretionary contracts such as those where reasonableness of price is appropriately supported by information other than formal bidding.

*B. Action to be Taken by OFT*

OFT will instruct its Program areas to document the planning and preparations performed prior to requesting a purchase or procurement and to provide that information to Contracts and Procurement and/or Finance along with a request to procure or purchase. Guidelines on what type of information must be documented will be provided. Where bidding takes place, OFT will continue to comply with the extensive requirements as set forth by OSC's Bureau of Contracts which must approve all contracts above the statutory discretionary threshold. OFT will continue to document the competition or bidding that took place, the logic behind selecting winning bidders and the reasons losing bidders were not chosen.

\* See State Comptroller's Comments on page 91.

**III. Recommendation 6: Create a process to better monitor contract end dates and thereby reduce the Office's reliance on stop gap contracts.**

OSC defines "stop gap" contracts as a discretionary contract used as a bridge between a contract that is ending and a new contract that has yet to be implemented specifically due to failure to begin the bidding process in a timely fashion. Draft Report at 14. OFT monitors contract end dates and takes the actions necessary to procure successor contracts in a timely manner whenever possible. OFT's Director of Contracts and Procurement holds regular meetings with senior management to be certain that senior management is aware of upcoming contract expiration dates and any issues that may result in a less-than-timely successor contract.

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OSC concludes that OFT "regularly" uses discretionary contracts as "stop gap" contracts because it identified six of the 23 discretionary contracts it reviewed as "stop gap." Draft Report at 14. Five of these contracts date back to 2008 and, as they are up to four years old, they do not evidence that OFT "regularly" uses stop gap contracts today. In fact, OSC auditors discussed these types of "stop gap" contracts with OFT Finance staff at the close out meeting for the 2009 discretionary contracting audit, and OSC has not identified any "stop gap" contract, as that term is defined in the Draft Report, let by OFT since 2008. The sixth discretionary contract identified by OSC was not a "stop-gap" in that it was not used due to the agency's failure to begin a timely bidding process. This discretionary contract, highlighted in the Draft Report at 15, is with Securitas Security Services for security guard services. OFT began the mini-bid re-procurement of these services five months prior to the expiration of the contract. Five months to conduct a mini-bid off of an OGS centralized contract is typically more than sufficient. According to a detailed time line in the files, made available to OSC auditors in this audit, upon embarking on this process OFT learned that OSC had frozen this centralized contract. OFT was instructed to contact OSC for guidance and OSC recommended that OFT utilize a discretionary contract to cover any gap in service between the expiration of the underlying contract and a non-mini-bid re-procurement. OSC also required that a Contract Ad be placed in the Contract Reporter for fifteen days. OFT did not expect the Contract Ad to be treated as a solicitation but received proposals from various security guard companies. OFT used the unexpected information to re-negotiate the terms of the discretionary contract with Securitas and receive a better rate, and better value, for the State. See Tab 13 (detailed time line for procurement file made available to OSC in this audit). This was not a case of poor planning; OFT set out to conduct a standard mini-bid with five months left on the underlying contract.

**IV. Recommendation 8: Ensure all staff comply with their responsibility to provide unfettered access to all necessary information requests by OSC in the conduct of its independent audit.**

OSC states that "officials from OFT specifically impeded auditor access to staff, electronic data and files necessary for the audit" and suggests that staff should be instructed to provide "unfettered" access to all agency staff and data. OFT responded to all of OSC's requests for documents, information and interviews, however, OFT will update its policy on handling subpoenas to state its current practice of complying with the full breadth of OSC's legal authority, which the agency did with respect to this audit. OFT agrees that compliance with audit procedures is imperative.

\* See State Comptroller's Comments on page 91.

A. *The Conclusion that Data Productions Were Untrustworthy Is Unsupportable*

OSC has identified three isolated document productions that may have taken OFT several weeks to respond to but has not taken into account the context of these requests. During those intervening weeks, OFT was responding to many different requests for information from the auditors as well as communicating with OSC about these requests. In short, OFT provided OSC with access to a very large quantity of material and the time it took to respond to these requests was not unreasonable under the circumstances. As such, these purported delays do not support the conclusion that OFT's productions were untrustworthy as OSC suggests in the Draft Report.

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B. *Access to OSC Staff and Data*


Regarding access to staff, OFT notes that OFT and OSC had several discussions about interview processes that are not discussed in the Draft Report.

Regarding access to data, OFT did not deny access to any electronic data or files necessary to the audit. Where OFT and OSC had questions about certain requests for data, those questions were resolved during the course of the audit.

V. **Conclusion**

We look forward to the opportunity to talk with you about these findings with the expectation that this response will be taken into consideration in the production of OSC's final report. We also look forward to the opportunity to implement the corrective action suggested by OSC to improve the agency's contracting and procurement activities.

Sincerely,



Daniel R. Healy  
Deputy Chief Information Officer

Attachments:


- Tab 1:** OFT Policy on Ethics Responsibilities of [ ]OFT Employees
- Tab 2:** Attachment A to OFT Policy on Ethics Responsibilities of [ ]OFT Employees; Questions to answer when submitting a request to accept an invitation to participate at an event in your official capacity, with an offer of travel reimbursement: (See rider for more information on each question)
- Tab 3:** Rider to OFT Policy on Ethics Responsibilities of [ ]OFT Employees as referenced in Attachment A to OFT Policy on Ethics Responsibilities of [ ]OFT Employees
- Tab 4:** Documentation regarding ethics training for Rico Singleton (with redactions)
- Tab 5:** Documentation regarding Procurement Lobbying Law training for Rico Singleton (with redactions)
- Tab 6:** 2009 audit report by OSC regarding OFT's discretionary contracts and OFT's response available on OSC's public facing website
- Tab 7:** List of discretionary contracts reviewed by OSC in this audit and provided to OFT by OSC
- Tab 8:** Emails from procurement record provided to OSC auditors in this audit (with redactions)

\* See State Comptroller's Comments on page 91.

- Tab 9:** Receipt of Bids Log from procurement record provided to OSC auditors in this audit  
**Tab 10:** Emails from procurement record provided to OSC auditors in this audit (with redactions)  
**Tab 11:** B-1184 for a procurement provided to OSC auditors in this audit  
**Tab 12:** Emails from procurement record provided to OSC auditors in this audit (with redactions)  
**Tab 13:** Procurement timeline provided to OSC auditors in this audit

**TAB 1**



 <p><b>IT Policy Name:</b></p> <p><b>Ethics Responsibilities of CIO/OFT Employees</b></p>	<b>No:</b> CIO-P06-004
	<b>Effective:</b> 05/04/2010
	<b>Issued By:</b> Melodie Mayberry-Stewart State Chief Information Officer Director Office for Technology <b>Published By:</b> Enterprise Strategy & Acquisitions Office <b>Policy Owner:</b> Counsel & Legal Services

### 1.0 Purpose

The purpose of this policy is to ensure New York State Chief Information Office/Office for Technology (CIO/OFT) employees are aware of their responsibilities under the State ethics laws. Many situations arise in the course of employment that could, if not handled properly, result in an inadvertent violation of the State ethics laws. For example, accepting gifts from certain sources, participating in certain outside activities, hiring a spouse or relative as a CIO/OFT consultant, accepting honoraria or travel reimbursement, working as a CIO/OFT consultant within two years of leaving CIO/OFT's employment, and running for political office are some situations which could present a conflict of interest or other ethics violations.

### 2.0 Scope

This policy applies to all CIO/OFT employees.

### 3.0 Policy Statement

#### A. State Law and the "Code of Ethics".

1. Each State employee receives a copy of the New York State "Code of Ethics" from CIO/OFT Human Resources when they are hired. This is a personal guide to the laws governing ethical behavior for State officers and employees.
2. The Code of Ethics is designed to prevent any possible conflict between an employee's personal interest and official duties.
3. Pursuant to Public Officers Law § 10, employees are required to take and file an Oath of Office.

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4. Employees are required to sign a statement affirming that they have received a copy of the Code and agree to conform to the provisions described in it.
5. It is the employee's responsibility to understand and comply with all state and federal ethics laws.
6. Employees are required to undergo ethics training within one month of their hire, and then biennially thereafter, starting with FY 2008-2009.

**B. Financial Disclosure by State Employees.**

1. Annual statements of financial disclosure are required of all policymakers and of those who -- unless exempted by the NYS Commission on Public Integrity -- earn compensation in excess of the job rate of a Salary Grade 24.
2. The statement requires filers to provide information concerning their personal financial interests, including for example a list of major assets, sources of income, liabilities, names of spouses and unemancipated children, whether they are licensed by or do business with a State agency, offices held with a political party, sources of gifts, reimbursements, trusts, deferred income, real property, and other information.
3. Disclosure documents must be filed by May 15<sup>th</sup> of each calendar year in which the required filers are employed by New York State. However, the New York State Commission on Public Integrity can exempt from filing individuals at Salary Grade 24 or higher who are not policymakers and who do not perform certain job duties. See: <http://www.nyintegrity.org/online/>

**C. Restrictions Concerning Conflicts of Interest.**

Officers and employees of State government may not engage in activities that would create or appear to create a conflict with their public duties. Specifically, officers and employees may not:

1. sell goods or services to the State or any agency of the State except through a competitively bid contract;
2. appear before any State agency or render services for compensation in a matter before any State agency in connection with such matters as the purchase or sale of goods; rate making, funding or licensing;
3. have any interest in or engage in any business or activity "in substantial conflict" with the discharge of their public duties. This restriction prohibits them from:
  - i. disclosing confidential information acquired in the course of their official duties or using such information to further their personal interests;
  - ii. using or attempting to use their official positions to secure unwarranted privileges or exemptions for themselves or others;
  - iii. giving a reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties, or that they are affected by the kinship, rank, position or influence of any party or person.

State officers and employees should conduct themselves in ways to avoid suspicion among the public that the employees are likely to be engaged in acts that are in violation of the public's trust.

**D. Restrictions Concerning Outside Activities.**

The Ethic's Commission's regulations restrict the outside activities of State officers and employees as follows:

1. Certain high level officials, including all policymakers, are barred from serving as an officer of any political party or organization or serving as a member of a political party committee, including district leader or member of a national committee;
2. No salaried State officers or employees may engage in any outside activity which interferes or is in conflict with their duties;
3. For policymakers, prior agency approval is required before engaging in any outside activity if the amount to be earned is more than \$1,000 annually; prior Commission on Public Integrity approval is required if the amount is more than \$4,000.

CIO/OFT's work rules require that in order to avoid a conflict of interest or the appearance of one, **all** CIO/OFT employees must, at time of appointment and thereafter as appropriate, obtain prior written approval before commencing any outside employment, compensated or non-compensated, including self-employment. Previously approved activities by other State agencies will be reviewed by CIO/OFT.

**E. Restrictions Concerning the Acceptance of Honoraria and Travel Reimbursement.**

To avoid conflicts of interest and the appearances of such conflicts, State officers and employees may accept reimbursement of travel expenses or honoraria only under certain circumstances. The source of the payment is critical.

In addition, the Commission's regulations require prior approval or subsequent reporting depending upon the nature and/or amount of the payment and the position of the individual receiving the payment. If an employee is offered air or ground travel reimbursement, or reimbursement for lodging or meals, to attend or speak at an event, this invitation must be vetted with the ethics officer before acceptance. To assist with that, provide a fully completed questionnaire (the template is attached hereto as Attachment "A") four (4) weeks before the event.

#### **F. Restrictions Concerning the Acceptance of Gifts.**

The gift provision of Public Officers Law § 73(5)(a) was amended by the Public Employee Ethics Reform Act of 2007. Advisory Op. No. 08-01 was published by the Commission on Public Integrity to help State officers and employees determine whether a gift may be accepted under current law.

#### **Gift Defined**

A gift is anything of more than *nominal value*, in any form, given to a State officer or employee. Gifts include, but are not limited to, money, service, loan, travel, lodging, meals, refreshments, entertainment, discount, forbearance or promise. "Nominal value" is considered such a small amount that acceptance of an item of nominal value could not be reasonably interpreted or construed as attempting to influence a State employee or public official. For example, a regular cup of coffee or a soft drink are considered "nominal" and may be accepted, depending on the context in which the item was offered; but a meal or an alcoholic beverage would not be considered "nominal."

#### **Impermissible Gifts**

State officers and employees may not accept gifts of more than *nominal value* under circumstances where it may reasonably be inferred that the gift was intended to influence the State officer or employee in the performance of his or her official duties. Soliciting, offering or accepting gifts having values greater than "nominal" is prohibited, unless such gift (1) comes within one of the exceptions to the definition of gift when offered by lobbyists or clients to public officials or (2) will be considered a "permissible gift" when offered by disqualified sources to State officers and employees.

A gift that cannot be accepted cannot be donated or given away. A gift that could not be given to a State officer or employee by a disqualified source may not be directed by the State officer or employee to a third party, including (a) the State officer or employee's spouse, parent, sibling, child, relative or friend; and (b) to any other person or entity designated by the State officer or employee, including a charitable entity, on behalf of such officer or employee.

Disqualified Source

Formerly, gifts from a disqualified source with a value of \$75 or more were *per se* impermissible. The *nominal value* limitation replaces the \$75 limitation. Previously, gifts from a disqualified source with a value of less than \$75 were not *per se* impermissible, but were subject to further analysis under the conflict of interest provisions of the Code of Ethics statute, Public Officers Law § 74. These provisions, which still apply, prohibit State officers and employees, including *per diem* and unpaid members of boards and authorities, from soliciting, accepting or receiving a gift of any value if to do so would constitute a substantial conflict with the proper discharge of his or her duties in the public interest or if it would cause the State officer or employee to violate any of the standards of the Code of Ethics (Public Officers Law § 74(3)).

A "disqualified source" is an individual who, on his or her own behalf or on behalf of a non-governmental entity on its own behalf, which:

1. Is regulated by, or regularly negotiates with, appears before, does business with, seeks to contract with or has contracts with the State agency with which the State officer or employee is employed or affiliated; or
2. Is required to be listed on a statement of registration as required by the Legislative Law (lobbyists who expend, incur or receive more than \$5000 annually), or is the spouse or unemancipated minor child of an individual who is required to be so listed; or
3. Is not required to be so listed but lobbies or attempts to influence action or positions on legislation or rules, regulations or rate-making before the State agency with which the State officer or employee is employed or affiliated; or
4. Is involved in litigation, adverse to the State, with the State agency with which the State officer or employee is employed or affiliated, and no final order has been issued; or
5. Has received or applied for funds from the State agency, including participation in a bid on a pending contract award, at any time during the previous year up to and including the date of the proposed or actual receipt of the gift; or
6. Seeks to contract with or has contracts with a State agency other than the agency with which the State officer or employee is employed or affiliated when the officer or employee's agency is to receive the benefits of the contract.

Exceptions to the Definition of Gift/"Permissible Gifts"

A gift does not include:

1. anything for which a State officer or employee pays market value;
2. anything for which the State has paid or secured by State contract;
3. rewards or prizes given to competitors in contests or events, including random drawings open to the public; and

4. exceptions to the definition of gift when offered by lobbyists or clients to public officials or will be considered a "permissible gift" when offered by disqualified sources to State officers and employees. The exceptions are as follows:
- a. complimentary attendance, including food and beverage, at **bona fide** charitable or political events, and food and beverage of a nominal value offered other than as part of a meal;
  - b. complimentary attendance at a widely attended event when it has been determined in advance that an employee's attendance at the event is related to the attendee's duties and responsibilities as a public official or State employee or allows the public official or State agency head to perform a ceremonial function appropriate to his or her position.
    - *Under no circumstances may travel or lodging, entertainment collateral to the event, or meals taken other than in a group setting with all others in attendance be accepted as part of a gift.*
  - c. Awards, plaques and other ceremonial items publicly presented and in recognition of or having a nexus to a State employee's or public official's official public services, provided they are of the type customarily bestowed at such ceremonies;
  - d. Honorary degrees bestowed upon a public official by a public or private college or university;
  - e. Promotional items having no substantial resale value such as pens, mugs, calendars, hats, and t-shirts which bear an organization's name, logo, or message in a manner which promotes the organization's cause;
  - f. Broad-based discounts for goods and services made available to **all** State employees;
    - *any other type of discount offered to a select group of State employees or public officials must be assessed on a case-by-case basis.*
  - g. Gifts from a family member, member of the same household, or person with a personal relationship with the public official, including invitations to attend personal or family social events when the circumstances establish that it is the family, household or personal relationship that is the primary motivating factor;
  - h. Contributions within the limitations established by Article 14 of the Election Law such as a gift, subscription, outstanding loan, advance, deposit of money made in connection with the nomination for election or election of a candidate or to promote a ballot proposal; funds received by a political committee from another political committee, provided the funds do not constitute a transfer; and any payment by any person other than a candidate, made in connection with the nomination or election of a candidate, including but not limited to compensation for personal services;
  - i. Reimbursement of travel, transportation, meals and accommodations expenses for an attendee, panelist or speaker at informational events when such reimbursement or payment is made by a governmental entity or by an in-state accredited public or private institution of higher education that hosts the event on its campus; provided, however, that the public official may only accept lodging from an institution of higher education (A) at a location on or within close proximity to the host campus; and (B) for the night preceding and the night of the days on which the attendee, panelist or speaker actually attends the event;
  - j. Provision of **local** transportation to inspect or tour facilities, operations or property owned or operated by the entity providing such transportation;

- k. Meals for participants at a professional or educational program when the meals or refreshments are provided to all participants;
- l. Gifts for customary or special occasions which are modest, reasonable, given on special or unique occasions that occur in the personal life of a State employee or public official, such as marriage, illness, retirement or death in a family;
- m. Invitations to State agency heads or their designee to attend a function or event in his or her official capacity sponsored by any person or entity – provided, however, such events should be those that would normally appear on such agency head's work schedule and would likely be publicized – and, if the invitation includes travel or lodging expenses that are to be reimbursed by such person or entity, the requirements of 19 NYCRR § 930.6 must be met;
- n. Gifts to a State agency having statutory authority to accept gifts, considering the source, timing and amount of the contribution before accepting it.

Non-perishable gifts to a State employee or agency head with the intent that the gift be shared among others in the agency are to be returned to the donor with a letter explaining that gifts cannot be accepted. If the item is perishable, the item can be placed in a "break room" so that any employees can partake in it and a letter is to be sent to the donor advising that gifts cannot be accepted and should not be sent in the future. Or, the item can be donated to a local charity and a similar letter sent advising that gifts cannot be accepted and should not be sent in the future.

**Gifts to the Agency: Somewhat different rules apply to gifts offered to the agency (as opposed to individual agency employees). If you are approached with an offer of a gift which will benefit the agency as a whole, please contact the agency ethics officer to determine whether the gift may be accepted.**

#### **G. Post-employment Restrictions.**

Although these restrictions do not apply while an individual is in State service, every State officer and employee should keep in mind that when he or she leaves State service, the following restrictions apply:

- **Two-year bar** -- Former State officers or employees may not, within a period of two years after leaving State service, appear or practice before their former agency or receive compensation for any services rendered in relation to any case, proceeding, application or other matter before their former agency.
- **Lifetime bar** -- Former State officers and employees may not appear, practice, communicate or otherwise render services before any State agency, or receive compensation for such services in relation to any case, proceeding, application or transaction with which they were directly concerned and in which they personally participated while in public service, or which was under their active consideration. See <http://www.nyintegrity.org/pubs/leavingstateservice.html>

- An **exception** to the foregoing revolving-door prohibitions exists which permits a former officer or employee to contract with any state agency to render services if, prior to engaging in such service, the agency head certifies in writing to the State Commission on Public Integrity that such former officer or employee has expertise, knowledge or experience with respect to a particular matter which meets the needs of the agency and is otherwise unavailable at a comparable cost. If approval of the contract by the State Comptroller is required under State Finance Law § 112, the Comptroller must also review and consider the reasons for the certification. These reviews are followed by the State Commission on Public Integrity's review and, if the Commission on Public Integrity approves, the revolving-door activity is permitted.

#### **H. Restrictions Concerning Political Activities.**

Both New York State and Federal laws regulate political activity by CIO/OFT employees. State officers and employees are often interested to seek elected political office or to volunteer for political campaigns. However, in doing so, they must ensure that they do not violate the Law, including the code of ethics, contained in Public Officers Law §74. In general, State officers and employees must pursue a course of conduct that will not raise suspicion among the public that they are likely to be engaged in acts in violation of the public trust.

For those planning to participate in campaigns, the following is offered as a guide to help candidates and political workers avoid violations of law. Note: Not all of the items listed are applicable to those who currently hold a State office and are seeking re-election.

#### **For candidates:**

1. Consider whether the office sought might conflict with your State position. While a prospective candidate, you should seek an opinion from your employing agency and the State Commission on Public Integrity. Should an incompatibility be found, you may be prohibited from seeking office. [If you have been designated as a policymaker by your appointing authority and currently hold a non-State public office for which approval has not been obtained, you should seek such approval as soon as possible.]
2. Campaign on your own time. Depending on the amount of time you will devote to the campaign, you should discuss requesting a leave of absence with your supervisor.
3. Avoid using your State position to gain any special advantage over a political opponent.
4. Form a separate entity to receive campaign contributions. Take care in soliciting and accepting contributions. If they come from individuals or entities that do business with your agency, they might constitute illegal gifts or give rise to actual or apparent conflicts of interest.
5. Do not use any State resources to aid the campaign. This rule applies to telephones, office supplies, postage, photocopying machines or support staff assistance.
6. Do not in any way indicate in your campaign literature or speeches that the State or your agency endorses your candidacy or positions. You may, however, use the name of your



employing agency and description of your State position in a campaign biography. See [http://www.nyintegrity.org/pubs/political\\_activities.html](http://www.nyintegrity.org/pubs/political_activities.html)

**For others participating in campaigns:**

1. You may serve on campaign or fundraising committees of political candidates, but you must be careful not to create suspicion among the public that you are violating your public trust by improperly soliciting or accepting contributions from individuals or entities under your agency's jurisdiction. Questions about such contributions should be directed to the Commission on Public Integrity, which has addressed some of these issues in [Advisory Opinion No. 92-16](#).
2. Follow Civil Service Law 107. It protects State employees from discriminatory practices based on their political affiliations.
  - i. Appointments, selections to or removals from office and employment status may not be affected or influenced by political opinions or affiliations.
  - ii. An official's authority or position may not be used to coerce, intimidate or otherwise influence other State employees to give money or service for any political purpose, to influence the political action of any person or entity, or to interfere with any election. A State officer or employee may not be compelled or induced to pay any political assessment or contribution.
  - iii. State offices may not be used for soliciting or collecting any political contributions.
3. Abide by Election Law 17-158. It prohibits those who hold public office -- or those nominated or seeking a nomination -- from corruptly using or promising to use, directly or indirectly, any official authority or influence to secure or help secure any office or public employment. Restrictions include making offers to procure any nomination or appointment for any public office.
4. Comply with the Hatch Act. (See below).

**THE FEDERAL HATCH ACT**

The "Hatch Act" is a federal law which restricts the political activity of certain governmental employees, including state employees. CIO/OFT employees, at all grade levels, are subject to the Hatch Act if, as a normal and foreseeable incident of their principal position or job, they perform duties in connection with an activity financed in whole or in part by federal funds.

Here is a description of the various political activities to which the Hatch Act applies:

**A. Activities Prohibited Under the Hatch Act.**

1. CIO/OFT Employees may not be candidates for public office in partisan elections.

2. CIO/OFT Employees may not use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office.
3. CIO/OFT Employees may not directly or indirectly coerce contributions from other state or local employees.
4. CIO/OFT Employees may not orchestrate a "write-in" candidacy during a partisan election.

**B. Activities Which Do Not Violate the Hatch Act.**

1. CIO/OFT Employees may be candidates for public office in nonpartisan elections, i.e., an election where no candidates are running with party affiliation.
2. CIO/OFT Employees may hold elective office in political parties, clubs and organizations.
  - a. NOTE, HOWEVER, THAT NO HEAD OF A NEW YORK STATE DEPARTMENT OR A POLICYMAKER MAY SERVE AS AN OFFICER OF ANY POLITICAL PARTY OR POLITICAL ORGANIZATION (19 NYCRR 932.2[a]), NOR MAY A HEAD OF A NEW YORK STATE DEPARTMENT OR POLICYMAKER SERVE AS A MEMBER OF ANY POLITICAL PARTY COMMITTEE INCLUDING POLITICAL PARTY DISTRICT LEADER OR MEMBER OF THE NATIONAL COMMITTEE OF A POLITICAL PARTY (19 NYCRR 932.2[b]). To find out whether you have been designated as a policymaker, please contact the CIO/OFT Human Resource Office.
3. CIO/OFT Employees may be appointed to fill a vacancy for elective office.
  - a. NOTE, HOWEVER, THAT A POLICYMAKER CANNOT HOLD ANY OTHER PUBLIC OFFICE OR PUBLIC EMPLOYMENT FOR WHICH MORE THAN NOMINAL COMPENSATION IS RECEIVED WITHOUT OBTAINING PRIOR APPROVAL FROM THE STATE COMMISSION ON PUBLIC INTEGRITY. 19 NYCRR 932.3(b). If in doubt, please contact CIO/OFT's Ethics Officer at 473-5115 for an analysis of your situation.
4. CIO/OFT Employees may actively campaign for candidates for public office in partisan and nonpartisan elections.
5. CIO/OFT Employees may contribute money to political organizations.

6. CIO/OFT Employees may attend and give a speech at a political fundraiser, rally or meeting.

The penalty for violating the Hatch Act can be termination of the violator's governmental employment. If you are considering engaging in political activity, do not try to determine on your own whether or not the Hatch Act prohibits your political activity. Instead please contact CIO/OFT's Ethics Officer at 473-5115 for an analysis of your situation.

#### 4.0 Compliance

Since violators face serious penalties, CIO/OFT officers and employees must understand their duties under the State ethics laws. CIO/OFT requires all CIO/OFT employees to complete ethics training, generally within one month of employment at CIO/OFT and every two years thereafter. A one hour on-line training module is available online through the New York State Commission on Public Integrity; to obtain a password and user id to take the training, e-mail [IntegrityEd@newyork.usa.com](mailto:IntegrityEd@newyork.usa.com). You can also sign up to take a live training class through the New York State Commission on Public Integrity by calling 518-408-3976. Provide a certificate of completion to the agency ethics officer in the agency's Office of Counsel and Legal Services.

#### 5.0 Definitions

A complete listing of defined terms for NYS Information Technology Policies, Standards, and Best Practice Guidelines is available in the "NYS Information Technology Policies, Standards, and Best Practice Guidelines Glossary" (<http://www.cio.ny.gov/policy/glossary.htm>).

#### 6.0 Contact Information

Questions concerning this policy may be directed to:

- **CIO/OFT'S ETHICS OFFICER @ CIO/OFT COUNSEL AND LEGAL SERVICES**  
(518) 473-5115, Rm. 2405 Swan St., Core 4

If you are aware of misconduct by a state official, report it to the NYS Inspector General's office at 1-800-367-4448 or [inspector.general@ig.state.ny.us](mailto:inspector.general@ig.state.ny.us). See CIO-PO4-011, "Working with the Inspector General", for any questions on reporting employee misconduct.

**7.0 Revision Schedule and Review History**

Date	Description of Change
05/01/2006	Original Policy Issued
05/01/2008	Revised and Updated
12/01/2008	Revised to Include Required Annual Training
08/24/2009	Revised for Clarity and Change in Contact Information
05/04/2010	Revised to include Travel Reimbursement restrictions and rider.

**8.0 Related Documents**

Proposed Public Speaking Engagements Policy

CIO-P06-004 Attachment "A"

Questions to answer when submitting a request to accept an invitation to participate at an event in your official capacity, with an offer of travel reimbursement: (See rider for more information on each question).

1. What date and time are you scheduled to speak?
2. Have you attached an invitation?
3. Is your attendance, appearance or participation part of your official job duties?
4. Is your attendance, appearance or participation for a State purpose?
5. What is the State purpose?
6. Is the purpose to speak or learn about a particular program you operate, manage or oversee?
7. Is the invitation to attend a conference hosted by a professional organization?
8. If so, how will it increase your level of knowledge, skills, or expertise?
9. What is the organization?

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10. Are its members or directors "disqualified sources"?<sup>1</sup>
11. Have you provided a full accounting of the expenses that will be reimbursed, including travel, meals and lodging, with an accurate cost estimate attached to each item?
12. Do you anticipate the expenses will exceed the allowable government rate?
13. If so, are you willing and able to pay the difference?
14. Are you scheduled to arrive a reasonable time before you are scheduled to speak?
15. Are you scheduled to leave a reasonable time after you have completed your engagement?

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<sup>1</sup> A contractor, a lobbyist who appears before this agency, a person or entity in litigation against this agency, or a grantee of this agency

## RIDER

Reimbursement for travel expenses from the federal government, other State or municipal government entities, non-State agency organizations or individuals (including businesses) for travel related to your official duties<sup>2</sup> is allowed under the following conditions:

(1) You file a written request with the agency ethics officer within a reasonable period of time in advance of the event or activity for approval to receive travel reimbursement in accordance with these rules;

- This is best accomplished by sending me an e-mail at least four (4) weeks in advance of the scheduled event attaching a copy of the invitation, and answers to the following questions.

(2) Your appearance, presence or participation at the event is for a State agency purpose and would benefit the State agency involved; or your appearance, presence or participation is at a meeting, seminar, or conference of a not-for-profit professional organization ( for example, NASCIO) and will result in increased knowledge in your subject matter area which would benefit this agency;

- When you send me the request for approval under these ethics rules, include a clear statement that your appearance, presence, or participation is for a State agency purpose, what that purpose is, and the manner in which your appearance, presence or participation will benefit this agency. If your attendance relates directly to a project or program offered by this agency, reference that as well. If you are attending an event held by a not-for-profit professional organization, describe how your attendance will result in an increased knowledge in your subject area.

(3) The travel expenses, if not reimbursed, could be paid by this agency according to its travel reimbursement procedure;<sup>3</sup>

- Provide an accounting (as detailed as possible) of the expenses being covered and their cost. For example, if the host is offering to pay the cost of a round trip ticket to California, a hotel and meals, include the cost of each item. Remember that you can only receive reimbursement at the government rate.

(4) The reimbursed expenses are limited to the amount the agency would reimburse you under its travel rules or regulations; that is, you can only be reimbursed at "government rate";

- See note above. This means that you, not the host or this agency, must absorb any expenses above the government rate. For example, if the host is offering to pay the cost of a round trip ticket to California, you may only accept reimbursement at the coach class

<sup>2</sup> If the invitation is for travel unrelated to your official duties, other rules apply.

<sup>3</sup> See CIO/OFT Policy No. CIO-B09-001 and OSC Travel Guidelines at [osc.state.ny.us/agencies/travel/travel](http://osc.state.ny.us/agencies/travel/travel).

rate; if you want to fly first class, you (not the agency) would have to pay the amount above coach.

(5) You may only be reimbursed for food and lodging expenses for as long as you are reasonably required to be present at the event and reimbursement can only be for you (not family members or others accompanying you);

- This means that you cannot show up a week early and leave a week after the event ends, and enjoy the trip at the expense of the host. If there's extensive travel needed to arrive at the destination, a day ahead of time would be acceptable. If you want to include a weekend and that would reduce the flight cost, you typically could do that so long as you pay for your hotel and meals before the event. If you want to bring a friend or family member, you have to do that at your own expense. The idea here is that you cannot receive more than you would if the State were paying for your attendance.

(6) Under no circumstances may you receive reimbursement for expenses from a "disqualified source"; that is, from a contractor, a lobbyist who appears before this agency, a person or entity in litigation against this agency, or a grantee of this agency.

- When you make your request for approval to travel in accordance with these ethics rules, I need to know exactly who is extending the invitation, and who will be paying for your travel. If it is an event planning organization, I will need to know who the event sponsors are. For example, if you received an invitation from Event Planning Associates, but the event sponsor is Oracle, a contractor, that would be a disqualified source, and you would not be able to accept travel reimbursement to attend.
- In keeping with the letter and the spirit of the regulations, we may only accept travel reimbursement when it is clear that the host is not being used as a subterfuge to offer reimbursement from an entity or individual who would otherwise be disqualified from providing travel reimbursement. Accepting travel reimbursement from a host organization that is merely passing through funds from individuals or entities that would otherwise be barred from providing such reimbursement may be a violation of one or more of the prohibitions contained in Public Officers Law. This is why I will need to know the true source of the travel reimbursement.

Remember-- If you are reimbursed for travel expenses from a person or entity in an amount which exceeds \$1,000, you must report it in your financial disclosure filing.

Additionally, the Executive Chamber has asked for more information on requests that need their approval. For those requests, I have been asked to research and provide information on the lobbying and campaign contribution activity of the event host, any sponsors, and corporate board members. I have also been asked to research the employers of the board members to determine their lobbying activity, levels of campaign contributions and contracting within New York.

If the invitation includes waiver of a registration fee to attend a conference, this is considered a gift, and different rules apply. Please identify any gifts offered as part of the invitation, and the value of the gifts.



If you are simply being asked to speak at an event with no offer to reimburse travel, and the event is generally open to a wide audience of attendees, and you will receive a meal along with all other attendees, the meal is a gift which you may accept, and you may accept the invitation to speak at the event.

**TAB 2**

CIO-P06-004 Attachment "A"

Questions to answer when submitting a request to accept an invitation to participate at an event in your official capacity, with an offer of travel reimbursement: (See rider for more information on each question).

1. What date and time are you scheduled to speak?
2. Have you attached an invitation?
3. Is your attendance, appearance or participation part of your official job duties?
4. Is your attendance, appearance or participation for a State purpose?
5. What is the State purpose?
6. Is the purpose to speak or learn about a particular program you operate, manage or oversee?
7. Is the invitation to attend a conference hosted by a professional organization?
8. If so, how will it increase your level of knowledge, skills, or expertise?
9. What is the organization?

CIO-P06-004

Page 13 of 17

10. Are its members or directors "disqualified sources"? <sup>1</sup>
11. Have you provided a full accounting of the expenses that will be reimbursed, including travel, meals and lodging, with an accurate cost estimate attached to each item?
12. Do you anticipate the expenses will exceed the allowable government rate?
13. If so, are you willing and able to pay the difference?
14. Are you scheduled to arrive a reasonable time before you are scheduled to speak?
15. Are you scheduled to leave a reasonable time after you have completed your engagement?

---

<sup>1</sup> A contractor, a lobbyist who appears before this agency, a person or entity in litigation against this agency, or a grantee of this agency

**TAB 3**

## RIDER

Reimbursement for travel expenses from the federal government, other State or municipal government entities, non-State agency organizations or individuals (including businesses) for travel related to your official duties? is allowed under the following conditions:

(1) You file a written request with the agency ethics officer within a reasonable period of time in advance of the event or activity for approval to receive travel reimbursement in accordance with these rules;

- This is best accomplished by sending me an e-mail at least four (4) weeks in advance of the scheduled event attaching a copy of the invitation, and answers to the following questions.

(2) Your appearance, presence or participation at the event is for a State agency purpose and would benefit the State agency involved; or your appearance, presence or participation is at a meeting, seminar, or conference of a not-for-profit professional organization ( for example, NASCIO) and will result in increased knowledge in your subject matter area which would benefit this agency;

- When you send me the request for approval under these ethics rules, include a clear statement that your appearance, presence, or participation is for a State agency purpose, what that purpose is, and the manner in which your appearance, presence or participation will benefit this agency. If your attendance relates directly to a project or program offered by this agency, reference that as well. If you are attending an event held by a not-for-profit professional organization, describe how your attendance will result in an increased knowledge in your subject area.

(3) The travel expenses, if not reimbursed, could be paid by this agency according to its travel reimbursement procedure;<sup>3</sup>

- Provide an accounting (as detailed as possible) of the expenses being covered and their cost. For example, if the host is offering to pay the cost of a round trip ticket to California, a hotel and meals, include the cost of each item. Remember that you can only receive reimbursement at the government rate.

(4) The reimbursed expenses are limited to the amount the agency would reimburse you under its travel rules or regulations; that is, you can only be reimbursed at "government rate";

- See note above. This means that you, not the host or this agency, must absorb any expenses above the government rate. For example, if the host is offering to pay the cost of a round trip ticket to California, you may only accept reimbursement at the coach class

<sup>2</sup> If the invitation is for travel unrelated to your official duties, other rules apply.

<sup>3</sup> See CIO/OFT Policy No. CIO-B09-001 and OSC Travel Guidelines at [osc.state.ny.us/agencies/travel/travel](http://osc.state.ny.us/agencies/travel/travel).

rate; if you want to fly first class, you (not the agency) would have to pay the amount above coach.

(5) You may only be reimbursed for food and lodging expenses for as long as you are reasonably required to be present at the event and reimbursement can only be for you (not family members or others accompanying you);

- This means that you cannot show up a week early and leave a week after the event ends, and enjoy the trip at the expense of the host. If there's extensive travel needed to arrive at the destination, a day ahead of time would be acceptable. If you want to include a weekend and that would reduce the flight cost, you typically could do that so long as you pay for your hotel and meals before the event. If you want to bring a friend or family member, you have to do that at your own expense. The idea here is that you cannot receive more than you would if the State were paying for your attendance.

(6) Under no circumstances may you receive reimbursement for expenses from a "disqualified source"; that is, from a contractor, a lobbyist who appears before this agency, a person or entity in litigation against this agency, or a grantee of this agency.

- When you make your request for approval to travel in accordance with these ethics rules, I need to know exactly who is extending the invitation, and who will be paying for your travel. If it is an event planning organization, I will need to know who the event sponsors are. For example, if you received an invitation from Event Planning Associates, but the event sponsor is Oracle, a contractor, that would be a disqualified source, and you would not be able to accept travel reimbursement to attend.
- In keeping with the letter and the spirit of the regulations, we may only accept travel reimbursement when it is clear that the host is not being used as a subterfuge to offer reimbursement from an entity or individual who would otherwise be disqualified from providing travel reimbursement. Accepting travel reimbursement from a host organization that is merely passing through funds from individuals or entities that would otherwise be barred from providing such reimbursement may be a violation of one or more of the prohibitions contained in Public Officers Law. This is why I will need to know the true source of the travel reimbursement.

Remember-- If you are reimbursed for travel expenses from a person or entity in an amount which exceeds \$1,000, you must report it in your financial disclosure filing.

Additionally, the Executive Chamber has asked for more information on requests that need their approval. For those requests, I have been asked to research and provide information on the lobbying and campaign contribution activity of the event host, any sponsors, and corporate board members. I have also been asked to research the employers of the board members to determine their lobbying activity, levels of campaign contributions and contracting within New York.

If the invitation includes waiver of a registration fee to attend a conference, this is considered a gift, and different rules apply. Please identify any gifts offered as part of the invitation, and the value of the gifts.

If you are simply being asked to speak at an event with no offer to reimburse travel, and the event is generally open to a wide audience of attendees, and you will receive a meal along with all other attendees, the meal is a gift which you may accept, and you may accept the invitation to speak at the event.



**TAB 4**

*Individual Attendance Report*  
For the Period 01/01/2000 till 01/01/2011

Singleton, Rico - Empire State Plaza, Swan Core 4 - 5th Fl, Albany, 12189

Ethics and New York State Employment on 10/31/2007 held at Online, Online.....A

New York State Executive Budget Process on 10/31/2007 held at Online, Online.....A

[REDACTED] (OFT)

**Subject:** Ethics Training for Senior Staff (Susan Beaudoin)  
**Location:** oft.rm.conf.swan.5

**Start:** Mon 6/29/2009 3:00 PM  
**End:** Mon 6/29/2009 5:00 PM

**Recurrence:** (none)

**Meeting Status:** Accepted

**Required Attendees:** Beaudoin, Susan (CIO); Cates-Williams, Sharon (OFT); Daly, Terri (OFT); Durand, Catherine (OFT); Ellis, Chris (OFT); Healy, Dan (OFT); Lioita, Angela (OFT); Perry, Nancy (OFT); Singleton, Rico (CIO); Mayberry-Stewart, Melodie (CIO); Thayer, Christine (OFT)

**Optional Attendees:** Citone, Shawn (OFT); Heymer, Richard (OFT); Porter, Christina (OFT); Pafundi, Deb (OFT); Vasto, Melinda (OFT)

When: Monday, June 29, 2009 3:00 PM-5:00 PM (GMT-05:00) Eastern Time (US & Canada).

Where: oft.rm.conf.swan.5

\*~\*~\*~\*~\*~\*~\*~\*~\*

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**TAB 5**

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** Friday, March 07, 2008 2:26 PM  
**To:** [REDACTED]  
**Subject:** PLL presentation materials  
**Attachments:** PLLrefresher03.05.08Final.ppt; Recommendations for meetings03.05.08Final.doc; OFT-061-P OFT Procurement Lobbying Procedures.doc; HP decision 3-9-07.pdf

[REDACTED]

Attached is the powerpoint from Wednesday with a couple of tweaks, including the change requested by Melodie. I have attached the embedded Word and pdf attachments because I do not think they will open until they are on a shared drive.

In addition to us, the following people attended the presentation: Vernesha Boone, Brenda Breslin, Damian Carter, Dan Corcoran, Catherine Durand, Karl Felsen, Eileen Fitzsimmons, Dan Healey, Ellen Kattleman, Pam Lacy, Melodie Mayberry-Stewart, Mike Mittleman, Mike Simmonds and Rico Singleton.

I would recommend that when this is posted to OFTEN, some prefatory language should be added to say that (i) it is a general overview of certain aspects of the law, (ii) it is subject to modification in the future, and (iii) staff should feel free to bring questions to Counsel's Office.

I will contact Gail Tassarotti on Monday to get this posted.

[REDACTED]

Trained on March 9, 2010:

Sharon Cates-Williams  
Dave Runyon  
Jack Benson  
Dan Corcoran  
Darlene Wood  
Eileen Fitzsimmons

Trained on March 24, 2010

Melodie Mayberry-Stewart  
Angela Liotta  
Sharon Cates-Williams  
Rico Singleton  
Cathy Durand  
Dan Healey

**TAB 6**

THOMAS P. DiNAPOLI  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

August 13, 2009

Ms. Catherine Durand  
Deputy Chief Information Officer  
Office for Technology  
Swan Street Building  
Core 4, 5th Floor  
Empire State Plaza  
Albany, NY 12223

Re: OFT Procurements

Dear Ms. Durand:

We examined the 9 "T" contracts the Office for Technology (OFT) used to procure services valued at \$386,747 during calendar year 2008.<sup>1</sup> The objective of our examination was to determine if OFT procured services in accordance with State Finance Law (Law) and the State Procurement Guidelines (Guidelines).

**A. Background and Methodology**

"T" contracts are used by agencies to procure services that have multiple payments and do not require the Comptroller's approval. The contract amounts are below the Comptroller's approval threshold. Like any other procurement, however, the Law and Guidelines must be followed.

The State procurement process should facilitate each agency's mission while protecting the interests of the State and promoting fairness in contracting with the business community. Section 163 of the Law and the Guidelines outline the State's procurement process for goods and services.

To accomplish our objective, we obtained and reviewed documents contained in the procurement record and discussed the contract process with OFT Finance Office representatives. In addition, OFT's Finance Office staff reviewed the procurement records for the 9 contracts to identify if any of the required procurement record documents were missing.

<sup>1</sup>We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.



**B. Results of Examination**

OFT did not adequately conduct its procurement process in accordance with the Law and Guidelines for 8 of the 9 procurements examined. The circumstances surrounding OFT's procurement of services leaves OFT open to criticism for not ensuring fair and open competition.

The Law and Guidelines detail that the procurement process should ensure: goods and services acquired meet the agencies' need; the selection of each vendor is documented and justified; the reasonableness of price is documented and justified; and that the State buys from responsible vendors. The Guidelines also require agencies to maintain a Procurement Record (Record) for each acquisition. The Record formalizes and documents the procurement process including documenting decisions on the reasonableness of price, and proof the procurement was properly advertised in the New York State Contract Reporter.

We found OFT did not have complete procurement records containing information necessary to support the procurement process for 8 of the 9 procurements under review. Items missing from the record include: 5 statements of need and the services that will fill that need; 5 justifications for selection of the vendor; 4 justifications for the reasonableness of price; 8 Contract Reporter advertisement; and 5 evaluations of vendor responsiveness and responsibility. **See Attachment A.**

OFT officials attributed the incomplete procurement records to outdated policies and procedures. They also indicated that key procurement staff left OFT employment during calendar year 2008 – the period of our examination. However, we reviewed OFT procurement policies and procedures and found OFT did include Procurement Guideline requirements. We also reviewed OFT employment histories and found OFT's current Purchasing Agent, an employee directly involved in the procurement process, has been in the same procurement role since September 2006. The majority of the purchase requests showed the Purchasing Agent signed them indicating Purchasing Office control over the contracts.

In one example, we found the procurement process for a contract (contract number T000242 for technical writing) suggests favoritism. Initially, OFT valued the contract at \$49,950, which is just below the Comptroller's Office threshold for approving a contract. Additionally, OFT did not advertise the procurement in the Contract Reporter as required by Law. While OFT awarded this contract to an individual from Florida, OFT officials involved in the procurement were unsure how they identified him as a technical writer. Further, the OFT program person dated the Purchase Requisition the day after the vendor signed the contract (i.e., September 25, 2008 and September 24, 2008, respectively). According to OFT's procurement procedures, the program is

Ms. Catherine Durand

Page 3

August 13, 2009

to submit the Purchase Requisition prior to OFT obtaining proposals, selecting a vendor and awarding the contract.

**Recommendation**

*Ensure the procurement process is followed and documented in the procurement records consistent with the Law and Guidelines.*

We would appreciate your response to this report by September 14, 2009, indicating any actions planned to address the recommendations in this report. We thank the management and staff of the Office for Technology for the courtesies and cooperation extended to our auditors.

Sincerely,

Patrick D. Hall  
Audit Supervisor

cc: Kevin Nephew

Attachment A  
Procurement Record Documents  
January 1, 2008 through December 31, 2008

Contract Number	Vendor	Contract Amount	Statement of Need	Justification of Vendor Selection	Reasonableness of Price	Contract Reporter Ad	Documentation that Vendor is Responsible and Responsible
T000214	Software Solutions	\$49,999	Yes	Yes	Yes	No	Yes
T000216	CGI Technologies	\$49,200	No	No	No	No	No
T000229	CMA Consulting	\$49,000	Yes	Yes	Yes	No	Yes
T000231	New Concepts Consulting	\$49,999	No	No	No	No	No
T000234	Microknowledge	\$40,000	No	No	No	No	No
T000235	Ajilon	\$38,880	Yes	Yes	Yes	No	Yes
T000239	Contingency Alternatives	\$49,999	No	No	No	No	No
T000242	Darrin L. Sharp	\$49,950	No	No	Yes	No	No
<b>Total</b>		<b>\$377,027</b>	<b>5</b>	<b>5</b>	<b>4</b>	<b>8</b>	<b>5</b>



DAVID A. PATERSON  
GOVERNOR

STATE OF NEW YORK  
State Capitol P.O. Box 2062  
Albany, NY 12220-0062  
[www.cio.ny.gov](http://www.cio.ny.gov)

MELODIE MAYBERRY-STEWART, Ph.D.  
CHIEF INFORMATION OFFICER  
DIRECTOR OF OFFICE FOR TECHNOLOGY

September 14, 2009

State of New York  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

Dear Mr. Hall;

We appreciate your review of the "T" contracts for the Chief Information Officer/Office for Technology (CIO/OFT) during calendar year 2008 and are providing responses to your findings. In response to your recommendation to 'Ensure the procurement process is followed and documented in the procurement records consistent with the Laws and Guidelines', we have begun to undertake the following steps:

- o Increased training of purchasing staff in discretionary purchase opportunities with OSC and OGS;
- o Increased program understanding of purchasing procedures from submittal of purchase requisition until issuance of formal purchasing award to promote fairness in contracting with the business community and protecting the best interests of the State.

We would like to clarify that CIO/OFT Finance managers did not indicate that any processing errors were a result of outdated procedures. Managers did acknowledge that procedures were not consistently followed. As a result the increased training planned will incorporate compliance with both CIO/OFT purchasing procedures and State purchasing guidelines.

A number of the errors during the purchasing process were a result of staff turnover during this time. As indicated in your letter the same purchasing agent was involved throughout the purchasing process, however, this individual reported to the director of purchasing who was responsible to ensure adherence to procurement procedures. The director of purchasing position turned over during this period and was vacant for part of the year. To address the errors and lack of adherence to our procurement procedures we are taking the following improvement steps:

- o Review of Finance Service procedures with purchasing staff;
- o Increased review of future "T" contracts within the purchasing area to ensure that the procurement process is followed and documented in procurement record;

- o Recruitment of seasoned purchasing staff to assist in review. Currently, Finance Services remains under targeted fill levels due to budget constraints. However, fill target relief has been obtained and Finance Services managers are looking to recruit more experienced purchasing staff to provide training opportunities.

Finally when the discretionary threshold was changed from \$15,000 to \$50,000, effective April 10, 2006 and covered under OSC bulletin g-225, there was confusion among our staff as to whether the advertising requirements for the Contract Reporter also changed to the \$50,000 limit. We believe the failure to advertise in the Contract Reporter may have been attributable to certain staff misunderstanding that the advertising threshold was not raised to \$50,000 commensurate with the discretionary purchase threshold. We have reinforced with staff that the Contract Reporter advertising threshold remains at \$15,000.

As described above, we have taken a number of steps to address your recommendation. If you have any questions please feel free to contact me.

Sincerely,



Catherine Durand  
Deputy CIO for Shared Services

**TAB 7**

<b>Contract #:</b>	<b>Vendor:</b>	<b>Dollar Amount: (Nearest Dollar)</b>
T000146	Fiber Technologies	\$43,000.00
T000168	Fiber Technologies	\$49,968.00
T000185	Microknowledge	\$49,999.00
T000199	Honeywell	\$46,195.00
T000213	Technology Professionals Group	\$38,558.00
T000214	Software Solutions and Services	\$49,999.00
T000216	CGI Technologies & Solutions	\$49,200.00
T000229	CMA	\$49,000.00
T000231	New Concepts	\$49,999.00
T000233	Acube	\$9,720.00
T000234	Microknowledge	\$40,000.00
T000235	Ajilon	\$38,880.00
T000237	Honeywell	\$13,680.00
T000239	Contingency Alternatives	\$49,999.00
T000242	Damien L Sharp	\$49,950.00
T000246	Honeywell	\$20,520.00
T000253	Nfrastructure	\$49,000.00
T000266	Actuate	\$36,900.00
T000268	Amy C. Chambers	\$45,000.00
T000276	Clearwell Systems	\$30,000.00
T000278	Public Safety Spectrum Trust	\$20,000.00
T000285	Securitas Security Services	\$42,051.00
T002722	Fountains Spatial	\$20,000.00
<b>Total:</b>		<b>\$891,618.00</b>

Supported by Adequate and Proper Documentation:	Dollar Amount for Problem Contracts: (Nearest Dollar)	Stop Gap:
N	\$43,000.00	N
N	\$49,968.00	N
N	\$49,999.00	N
N	\$46,195.00	N
N	\$38,558.00	Y
N	\$49,999.00	Y
N	\$49,200.00	N
N	\$49,000.00	Y
N	\$49,999.00	N
N	\$9,720.00	Y
N	\$40,000.00	N
N	\$38,880.00	Y
N	\$13,680.00	N
N	\$49,999.00	N
Y	\$0.00	N
Y	\$0.00	N
N	\$49,000.00	N
Y	\$0.00	N
Y	\$0.00	N
N	\$30,000.00	N
Y	\$0.00	N
N	\$42,051.00	Y
Y	\$0.00	N
6	\$699,248.00	6



No Reasonableness of Price: Split Ordering

Y	Y
N	Y
Y	Y
Y	N
N	N
N	N
Y	N
N	N
Y	N
N	N
N	Y
N	N
Y	N
Y	N
N	N
N	N
Y	N
N	N
N	N
Y	N
N	N
N	N
N	N
N	N

9	4
---	---

**TAB 8**

**Bluth, Dorah (OFT)**

**From:** McGinty, Mary (OFT)  
**Sent:** Monday, July 13, 2009 12:14 PM  
**To:** Bluth, Dorah (OFT)  
**Subject:** FW: Grant Writer Discretionary Purchase

For procurement record

Mary T. McGinty  
 Contract and Procurement Services  
 NYS Office for Technology  
 518.474.4263  
 Please note change in email address:  
 mary.mcgintry@cio.ny.gov

-----Original Message-----

**From:** [REDACTED]@osc.state.ny.us [mailto:[REDACTED]@osc.state.ny.us]  
**Sent:** Friday, July 10, 2009 4:51 PM  
**To:** McGinty, Mary (OFT)  
**Subject:** RE: Grant Writer Discretionary Purchase

Ok to go ahead. We'll send you a formal letter Ok ing this exemption from advertising next week. When you do your procurement send us the procurement record right away so we can get started. If anything comes up give is a call so we can make sure contract approval will go smoothly.

[REDACTED]  
 Office of the State Comptroller  
 518-474-[REDACTED]  
 [REDACTED]@osc.state.ny.us

"McGinty, Mary  
 (OFT)"  
 <Mary.McGinty@cio  
 .ny.gov>

07/10/2009 04:21  
 PM

[REDACTED]@osc.state.ny.us"  
 [REDACTED]@osc.state.ny.us>

To

cc

"Nephew, Kevin (OFT)"  
 <Kevin.Nephew@cio.ny.gov>,  
 "Mayberry-Stewart, Melodie (CIO)"  
 <Melodie.Mayberry.Stewart@cio.ny.go  
 v>

Subject

RE: Grant Writer Discretionary  
 Purchase

I asked our Director of Customer Network Systems to identify firms with networking contracts since this grant will require a high level of networking technical information. He suggested 4 vendors, including [redacted] which currently is experiencing issues relative to Vendor Responsibility.  
They are, NFrastructure, QOS Networking, and Annese.

Mary T. McGinty  
Contract and Procurement Services  
NYS Office for Technology  
518.474.4263  
Please note change in email address:  
mary.mcginity@cio.ny.gov

-----Original Message-----

From: [redacted]@osc.state.ny.us [mailto:[redacted]@osc.state.ny.us]  
Sent: Friday, July 10, 2009 4:15 PM  
To: McGinty, Mary (OFT)  
Cc: Nephew, Kevin (OFT); Mayberry-Stewart, Melodie (CIO)  
Subject: Re: Grant Writer Discretionary Purchase

You have a lot of IT vendors. How will you select the three?

Also, for the record (you mentioned on the phone) why IT vendors?

[redacted]  
Office of the State Comptroller  
518-474-[redacted]  
[redacted]@osc.state.ny.us

"McGinty, Mary  
(OFT)"  
<Mary.McGinty@cio  
.ny.gov>

07/10/2009 03:46  
PM

[redacted]@osc.state.ny.us"  
[redacted]@osc.state.ny.us>

To

cc

"Nephew, Kevin (OFT)"  
<Kevin.Nephew@cio.ny.gov>,  
"Mayberry-Stewart, Melodie (CIO)"  
<Melodie.Mayberry.Stewart@cio.ny.go  
v>

Subject  
Grant Writer Discretionary Purchase

██████████

Thank you so much for your assistance. CIO/OFT requires the services of a Consultant to respond to the Broadband Stimulus Grant Program. The grant application will be released on 7/14 with responses due back to the FCC/NTIA by 8/14. The Notice of Funds Availability was published last week. As you can see in order for NYS to take advantage of this stimulus funding opportunity we need assistance no later than next week.

We are requesting a waiver from the obligation to post this procurement in the Contract Reporter.

Selection Process:

CIO/OFT will notify 3 of our current IT Vendors of the release of this opportunity immediately. Release of the solicitation will be later today. We are requesting the submission of resumes by COB Monday with selection and award on Tuesday. We plan to require the consultant to be available no later than next Thursday, 7/16.

Prior to the time resumes are due we will have evaluation criteria established. 3 staff members will score the resumes against the established criteria and the award will be based on the highest average score. The weighting of the scores will be Technical 70% and Cost 30%.

The cost will be proposed at an all inclusive hourly rate, with a not to exceed cost of 49,000 for a 60 day engagement. Expertise and time are of the essence and therefore I'm proposing that cost be 30% of the total evaluation.

If you agreed with this proposal will you kindly send me an email to that effect so I can start writing. Thank again, we really appreciate your help.

Mary T. McGinty  
Contract and Procurement Services  
NYS Office for Technology  
518.474.4263  
Please note change in email address:  
mary.mcginity@cio.ny.gov

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**TAB 9**

Receipt of Bids Log

Bidder Name	Contract#	FEIN#	Package Type	Date	Time
Nfrastructure (soft copy)	CMS182A	22-3771456	Email	7/13/09	5:52PM
Nfrastructure (hard copy)	CMS182A	22-3771456	Hand	7/14/09	10:45AM

This is to Certify that I, Justin Engel have been duly authorized  
(Issuing Entity Contact Name)  
to receive bids for Project BBGW09. Such bids were received  
(Project Name or Identifier)  
at the Contracts & Procurement's offices at the time and dates from the bidder's as set forth above.

Signed: *Justin A. Engel*  
Date: 7/13/09  
Witness: \_\_\_\_\_  
Date: \_\_\_\_\_



**TAB 10**

**Bluth, Dorah (OFT)**

**From:** McGinty, Mary (OFT)  
**Sent:** Tuesday, July 14, 2009 4:17 PM  
**To:** Bluth, Dorah (OFT)  
**Subject:** FW: Grant Writer Discretionary Purchase

For the procurement record.

Mary T. McGinty  
Contract and Procurement Services  
NYS Office for Technology  
518.474.4263  
Please note change in email address:  
[mary.mcginity@cio.ny.gov](mailto:mary.mcginity@cio.ny.gov)

-----Original Message-----

**From:** [REDACTED]@osc.state.ny.us [mailto:[REDACTED]@osc.state.ny.us]  
**Sent:** Tuesday, July 14, 2009 3:39 PM  
**To:** McGinty, Mary (OFT)  
**Cc:** Durand, Catherine (OFT); Nephew, Kevin (OFT); McGinty, Mary (OFT); Mayberry-Stewart, Melodie (CIO); Cates-Williams, Sharon (OFT)  
**Subject:** RE: Grant Writer Discretionary Purchase

If its under \$50 K we don't need anything. Best of luck with your grant application!

[REDACTED]  
Office of the State Comptroller  
518-474-[REDACTED]  
[REDACTED]@osc.state.ny.us

"McGinty, Mary  
(OFT)"  
<Mary.McGinty@cio  
.ny.gov>

07/14/2009 03:26  
PM

"McGinty, Mary (OFT)"  
<Mary.McGinty@cio.ny.gov>,  
"[REDACTED]@osc.state.ny.us"  
<[REDACTED]@osc.state.ny.us>

To

cc

"Nephew, Kevin (OFT)"  
<Kevin.Nephew@cio.ny.gov>,  
"Mayberry-Stewart, Melodie (CIO)"  
<Melodie.Mayberry.Stewart@cio.ny.gov>,  
"Cates-Williams, Sharon (OFT)"  
<Sharon.Cates-Williams@cio.ny.gov>,  
"Durand, Catherine (OFT)"  
<Catherine.Durand@cio.ny.gov>

Subject

RE: Grant Writer Discretionary  
Purchase

Hi [REDACTED],

We have completed our review of the mandatory requirements of the solicitation document and the sole response meets all requirements. Given the fact that the not to exceed price is within the discretionary spend limit do we need to do anything else prior to the execution of a Statement of Work and a Purchase Order?

Mary T. McGinty  
Contract and Procurement Services  
NYS Office for Technology  
518.474.4263  
Please note change in email address:  
[mary.mcgintry@cio.ny.gov](mailto:mary.mcgintry@cio.ny.gov)

-----Original Message-----

From: McGinty, Mary (OFT)  
Sent: Tuesday, July 14, 2009 10:33 AM  
To: [REDACTED]@osc.state.ny.us  
Cc: Nephew, Kevin (OFT); Mayberry-Stewart, Melodie (CIO)  
Subject: Re: Grant Writer Discretionary Purchase

Hi [REDACTED],

The proposal submission deadline has passed and we received one proposal. Although I am disappointed with the lack of response, I was not surprise since the mini bid we issued for a longer term solution received no response. I have yet to review the proposal for the mandatory requirements. The proposed not to exceed cost is \$49K making this a discretionary spend. I will keep you informed as we proceed. Thanks for all your help in meeting this urgent need.

Mary

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**TAB 11**

CIO/OFT PURCHASE JUSTIFICATION

Budget B-1184 states "All non-personal service expense must receive strict scrutiny prior to purchase or procurement and all non-critical agency spending should be eliminated."...

**NOTE:** Failure to fully complete this form may result in delays of fulfilling your program request.

(PLEASE COMPLETE THOSE AREAS AS APPROPRIATE)

NPR/PR #:

## Description of Service:

In order to conduct discovery required in the M/A-COM vs. NYS litigation, CIO/OFT is using the Clearwell E-Discovery tool ("Clearwell") on a trial basis, through an arrangement between the vendor and the Office for the Attorney General. The trial period for the use of Clearwell will terminate for CIO/OFT users on August 1, 2010. While CIO/OFT would be able to migrate its data into another OAG e-discovery system called Concordance, CIO/OFT has been informed by the OAG that it would take several weeks to accomplish this, during which time no review could be done and our ability to meet discovery deadlines will be jeopardized. Additionally, migration to Concordance would require CIO/OFT attorneys and paralegals to be trained on the Concordance system, a more cumbersome and less robust discovery tool. The lack of user-friendliness on the Concordance system will lead to increased review times, which will mean that data will not be turned over to opposing counsel as fast as it otherwise would be on Clearwell, further undermining our ability to meet court ordered discovery deadlines.

The full value of the contract will be within the threshold for discretionary spending, and will provide a short term solution while a longer term, more complex e-discovery solution is procured.

## Why Mission Critical:

The State is the defendant in a complex commercial lawsuit in the Court of Claims. This suit was brought by a vendor of the State in response to the vendor's termination in a contract dispute and is seeking \$111M in damages.

Many terabytes of electronic data need to be reviewed in order to properly defend this claim. Discovery is currently ongoing and relevant documents need to be reviewed and filtered for relevancy and privilege before being turned over to Claimants.

CIO/OFT currently has three attorneys working full-time on the M/A-COM litigation. Another attorney is dedicating a large portion of her time to the document review. Two paralegals are also currently dedicated full time on the review. Given the amount of data that must be reviewed, an e-discovery tool that is already in use and which the CIO/OFT staff are familiar with is crucial to performing this task quickly, thoroughly, and accurately.

What will the negative impact be on your mission if this request is denied?

Without the use of Clearwell, CIO/OFT will be delayed while data is removed from the current Clearwell trial system and loaded onto Concordance. There will be additional delays due to training and learning how to

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use Concordance efficiently. In light of the discovery schedule posted by the Court in this lawsuit, sanctions by the Court of Claims may result if not completed in a timely manner.

How does this request service Agency/Customer groups?  
Identify:

1) Who? and,

This request directly services CIO/OFT Counsel and Legal Services, and indirectly services the CIO/OFT and the State as respondent in the litigation. This request also services the Office of Attorney General, as the Clearwell product enables that office to fulfill the obligations under the discovery laws to produce relevant documents which are filtered for privilege in a timely manner.

2) For what purpose do we supply these needs? (Be Specific)

To assist with document review and litigation involving the State.

Term (must be specific dates):

6 months from time of approval.

If supplies, how long will they last (months/days):

N/A

Will you need to duplicate this order again during the FY? - Yes / No:

If Yes, why?

No.

OFT #1/08

**TAB 12**

[REDACTED] (OFT)

From: [REDACTED]@osc.state.ny.us  
Sent: Thursday, September 02, 2010 11:04 AM  
To: Nephew, Kevin (OFT)  
Cc: [REDACTED] (OFT)  
Subject: Re: Clearwell T contract on SWN litigation

Kevin,  
I don't have any concerns and will grant you the exemption however I need a copy of the DOB approval for my files. Thanks.

"Nephew, Kevin (OFT)"  
<Kevin.Nephew@cio.ny.gov>  
08/30/2010 03:53 PM  
To: [REDACTED] ( [REDACTED]@osc.state.ny.us)"  
<[REDACTED]@osc.state.ny.us>  
cc: [REDACTED] (OFT)"  
<[REDACTED]@cio.ny.gov>  
Subject: Clearwell T contract on SWN litigation

The write up below is the overview of the e-discovery tool produced by Clearwell. We had not started the process until we got our DOB approvals (which we have now). Based on our estimates the cost will be approximately \$30,000. We are requesting exemption from the Contract Reporter notification given the need to get the solution in as soon as possible.

The product we are currently using is made available to us through OAG to review and filter e-mails for the SWN litigation. Given the timeframe for responding to opposing counsel we must be able to access the data immediately. Given that we are using a loaned product, we need a CIO/OFT license to utilize the software. Without the license it will be a difficult process to migrate and use the data. This will add substantial time delays that become problematic in light of the discovery schedule imposed by the Court.

If you are agreeable with the exemption from the Contract Reporter advertisement please confirm for our procurement record.

Kevin



**TAB 13**

TO: THE FILE

FROM: Deb Mainville

RE: TIMELINE: T-000285 SECURITY GUARD SERVICES  
Swan Street Data Center - Albany, NY

- December, 2010 CIO/OFT was preparing to start the mini bid process to secure continued Security Guard Services for the Swan Street Data Center. Incumbent -- SECURITAS USA, INC. - Mini Bid #CMS1059 - was to expire April 30, 2011.
- OGS Purchasing Memo dated June 30, 2010/Award 19098 (Attached), stated, "The Office of General Services has been advised by the State Comptroller that it will no longer approve any mini-bids under the statewide security guard backdrop contract. Agencies needing Security Guard Services must follow the State Finance Law competitive bidding Requirements (issue IFB/RFP or use discretionary purchasing authority) to obtain those services. For further Guidance on agency specific procurements, please contact the Office of the State Comptroller, Bureau of Contracts." The OGS Purchasing Memo disallowed the use of mini bids for the Security Guard Service procurement -- this was due to the prevailing wage requirement.
- January 14, 2011 Requested and received a Prevailing Wage Case Number from the NYS Department of Labor.
- March 14, 2011 CIO/OFT decided the best way to proceed, and not incur a gap in security service coverage, was to pursue the OSC recommended discretionary purchase authority as a bridge for 4 months pending the agency's preparation of an IFB to pursue a long term contract through the IFB process.
- March 18, 2011 teleconference conducted with both the Department of Taxation and Finance and the Department of Motor Vehicles -- both agencies were working to procure security guard services via IFBs. They established a Not To Exceed (NTE) rate of \$19.15.
- March 23, 2011 OSC advised the discretionary purchase needed to be advertised for 15 days in the Contract Reporter. The ad was placed as advised. The Mandatory Requirements match those that the incumbent, Securitas, met for the initial contract.
- April 18, 2011 as a result of the advertisement in the Contract Reporter, CPS received unsolicited bids. CIO/OFT CPS conducted bid opening. One bidder listed \$18.59 as the NTE rate, to include prevailing wage rate.
- April 20, 2011 teleconference with Securitas USA, INC, and CIO/OFT. CIO/OFT was able to secure NTE of \$18.59 with vendor. The rate is lower than the rate that Tax and Finance and Dept. of Motor Vehicles negotiated with Securitas for the same services. CIO/OFT exercised its discretionary authority to award the contract to Securitas USA, Inc. for the term of May 1 - Aug 31, 2011.

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## State Comptroller's Comments

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1. We are heartened by this new administration's stated commitment to ethics and integrity, which includes a collaborative environment, an open door policy and reduced reliance on contracts that deviate from normal procurement processes. However, these abuses were flagrant, significant and not well hidden; yet no one stepped forward to question these actions, clearly indicating that the tone set by these top officials had permeated the organization's understanding of what type of behavior was acceptable. Despite new management's best efforts, such attitudes and behaviors do not change overnight. Therefore, while we support management's new directions, we will also continue to monitor and scrutinize OFT procurement activity in the foreseeable future to ensure that similar problems do not recur.
2. OFT officials point out that we found problems with only 2 of 19 non-discretionary procurements. They add that these transactions took place in 2009 and were attributable to Mr. Singleton. We find it unacceptable that fully 10 percent of the procurements we examined exhibited significant problems, including management override of established procedures, loss of state money, unfair bidding practices and inappropriate negotiations with vendors. Moreover, the issues surrounding the CA/CMA contract continued to be mismanaged long after Mr. Singleton left OFT employment (See page 13). As our audit report points out, in May 13, 2010, the former General Counsel signed an agreement between OFT and CA whereby OFT improperly obtained \$222,743 in credits from CA.
3. We acknowledge that OFT provided staff, including Mr. Singleton, with ethics training in the past. However, we question the effectiveness of this training when high level people can commit flagrant acts and not be reported or otherwise called to account for their actions by other employees and training participants. As our report points out, other high level OFT staff, including the CIO and General Counsel had knowledge of and played a role in the improper transactions we have identified. (see pp. 6, 15, 16).
4. As noted elsewhere in this report, OFT officials were not always forthcoming with information during our audit. We requested a listing of all Enterprise License Agreements (ELAs) in which OFT was involved. We were informed by management that there were only two such ELAs, neither of which was with IBM. Had we been made aware of this procurement, we would have reviewed it.
5. Our recommendation is meant to provide additional guidance for OFT to consider in implementing future procurements.
6. Our audit reaffirms the problems found in 2009 and shows that they continued for periods beyond then. We examined seven discretionary purchases that occurred subsequent to the 2009 audit and found continuing problems such as favoritism, split ordering, and failure to document the reasonableness of price.

7. We considered the information provided in OFT's response and now conclude that there are three cases where the procurement record is incomplete. None of these files contain support for OFT's efforts to establish the reasonableness of the price paid in the procurement. We have revised our report accordingly.
8. For this transaction, OFT asked vendors for proposals on a Friday, with their responses due the following Monday; only one business day later. This hardly allows for effective competition. While OSC staff told OFT they would not require additional documentation be submitted to OSC, this does not release OFT from its responsibility to adequately address the reasonableness of the price paid.
9. Once again, there was no documentation to support that OFT had assessed the reasonableness of the purchase price.
10. We acknowledge that five of the transactions date back to 2008 and we have revised our report accordingly.
11. We strongly disagree with OFT's assertion that there were only a few isolated document production delays. Subsequent to our draft report being issued, we provided OFT officials with three representative examples of obstacles we encountered. However, throughout the process our staff faced many other delays and roadblocks. For example, OFT officials insisted on reviewing all documents and emails before they were provided to our auditors. Further, OFT staff were not allowed to meet with our auditors unless a management representative, such as the General Counsel or the Director of Internal Audit, was present. Each of these obstacles increases the level of risk with respect to the veracity of the information that the auditors ultimately received. Consequently auditors had to perform additional costly and time consuming steps to establish a basis for reliance. This lack of access to staff and information raises additional concerns that auditors may have been precluded from identifying additional abuses that may have existed during the audit period.