



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA DEPARTMENT OF ADMINISTRATION (IDOA)

TITLE: IDOA PROCUREMENT PROCESS

CASE ID: 2017-09-0198

DATE: May 27, 2020

The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after an investigation by Director of Investigations Darrell Boehmer, reports as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in state executive branch agencies. Ind. Code § 4-2-7-2(b). The OIG investigates criminal activity and ethics violations by state employees. Ind. Code § 4-2-7-3(3). The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code § 4-2-7-3(2). The OIG also may advise an agency on implementing policies and procedures to prevent and reduce the risk of wrongful acts within the agency. Ind. Code § 4-2-7-3(8).

I. Background

A. Complaint and Overview of Investigation

On September 12, 2017, the OIG received a complaint alleging that the State's procurement process, which the Indiana Department of Administration (IDOA)¹ manages, requires state

¹ Pursuant to Ind. Code § 5-22-4-1, IDOA is the purchasing agent for most state agencies within the executive branch of state government.

purchasing agents to purchase certain items from a specific vendor (Vendor), often times for an inflated price. The complaint alleged that the State has a Quantity Purchase Agreement (QPA)² with the Vendor, and the Vendor consistently charges a higher price, sometimes fifty percent to one hundred and fifty percent higher, than other suppliers for the same items.

The complaint also alleged that IDOA has made it more difficult in recent years for agencies to purchase items from other suppliers outside of the Vendor's QPA. The complaint explained that IDOA previously required agency purchasing agents to receive quotes from the Vendor and two other suppliers. The agency purchasing agent could then purchase from another supplier outside the Vendor's QPA if the two quotes resulted in a combined average cost savings of ten percent or more. The complaint alleged that IDOA then changed the process to require quotes from three other suppliers, and the agency purchasing agent could purchase from another supplier outside the Vendor's QPA only if the combined average of the three quotes resulted in a cost savings of ten percent or more. Finally, the complaint alleged that IDOA changed the process again to allow the Vendor to rebid the quote if the combined average of the three quotes showed a combined average cost savings of ten percent or more. The complaint alleged that IDOA provided the Vendor with its competitors' pricing to give the Vendor an unfair advantage in submitting a new bid. The complaint also alleged that this new process made it difficult for a state agency to make necessary purchases in a cost-effective and timely manner.

OIG Director of Investigations Darrell Boehmer conducted an investigation into this complaint. During the course of the investigation, Director Boehmer examined many documents

² According to IDOA's website, QPAs are "contracts between the state and vendors in which commodities are supplied to Indiana state agencies on an on-going, as-needed basis. QPAs benefit the state by enabling the state to aggregate its purchases to achieve bulk pricing. QPAs are awarded via the competitive bid process." <https://www.in.gov/idoa/2448.htm>.

related to executive branch agency purchases, including emailed invoices and bids. He subpoenaed documents from the Vendor, such as pricing lists. Director Boehmer also interviewed several individuals, including the reporting party³, a purchasing agent for a large executive branch agency and employees of IDOA.

B. Overview of IDOA's Procurement Process

During the course of the investigation, Director Boehmer received a high-level overview of IDOA's QPA purchasing process from an employee of a large executive branch agency, who oversees some of the agency's purchasing. She stated that agency purchasing agents place most orders to purchase goods and IDOA reviews the orders. She explained that orders for items listed on the QPA must be made through the QPA. If an agency wants to purchase an item on the QPA from a different vendor, the agency must get three bids from other suppliers. If the average of those bids is within ten percent of the QPA vendor's bid, then the agency must purchase from the QPA vendor. If the average of those bids is ten percent or less than the QPA vendor's bid, then the QPA vendor has a chance to come within ten percent of the average of the three quoted bid prices. If the agency purchasing agent wants to purchase outside of the QPA, they must get approval from IDOA before doing so.

The OIG also reviewed IDOA's Delegation of Purchasing Authority Program (DPAP) Manual⁴ to get a better understanding of the process for purchasing from or outside of the QPA. According to IDOA's website, DPAP is the program under which IDOA trains agency-nominated purchasing agents in the requirements for procurement. IDOA may grant agency purchasing agents authority to make purchases for their agencies on behalf of IDOA under the DPAP program.

³ The OIG maintains the confidentiality of the identity of any reporting party who submits a complaint to the OIG pursuant to Ind. Code § 4-2-7-8.

⁴ The DPAP Manual can be found at: https://www.in.gov/idoa/files/ProcTraining_DPAPManual.pdf.

The DPAP Manual requires purchasing agents to check the QPA to see if an item is available through the QPA before buying the item. The purchasing agent must purchase the item through the QPA or receive IDOA's approval for an exception to buy outside of the QPA. The DPAP Manual explains that a purchasing agent may request an exception from IDOA if the purchasing agent can achieve more than a ten percent savings by buying outside of the QPA. The purchasing agent must receive three quotes from outside vendors using the procurement rules for the dollar amount of the purchase. He or she must also include Indiana Correctional Industries⁵ and Ability Indiana⁶ in the solicitation in addition to the three quotes. If the average cost of the three quotes does not amount to a savings of more than ten percent, then the purchasing agent must buy from the QPA. If the average cost of the three quotes indicates a savings of more than ten percent, then the purchasing agent can request an exception and must receive IDOA's approval before making the purchase outside of the QPA. The DPAP Manual also requires the agency purchasing agent to order from the QPA if the purchase is an emergency. The DPAP Manual does not specify how IDOA will decide whether to approve an exception to allow a purchasing agent to buy outside of the QPA.

II. Investigation

Shortly after receiving the complaint, Director Boehmer interviewed the reporting party. The reporting party explained that he believed the State was paying more for standard items than the State could pay by purchasing the same items from other sources, such as big box stores, because of IDOA's requirement to purchase from the Vendor's QPA. Similar to what he stated in

⁵ Indiana Correctional Industries is a Division of the Indiana Department of Corrections. It manufactures goods and provides services using offender labor. Indiana Correctional Industries was formerly known as PEN Products. *See* <https://www.in.gov/idoc/indianacorrectionalindustries/>.

⁶ Ability Indiana is a partnership between the State of Indiana and nonprofit organizations employing Hoosiers with disabilities. *See* <https://www.abilityin.org/>.

his complaint, the reporting party alleged that IDOA's process for purchasing outside of the QPA was overly burdensome, caused unnecessary delay and gave the Vendor an unfair competitive advantage. He stated that the process allowed the Vendor to see the other bids and submit a new bid so that the Vendor could come within the allowable price range.

Director Boehmer obtained copies of emailed invoices and bids for various purchases from a purchasing agent within an executive branch agency of state government. He found that the purchasing agent was able to save over \$10,000 during a one month period by purchasing outside of the Vendor's QPA. He talked with a different purchasing agent who stated that the Vendor often charges a price higher than other companies, especially on special purchase items or items that are not in the Vendor's catalogue of goods. This purchasing agent provided two examples where the Vendor charged a higher price than other companies for the same product. In one example, he showed that the Vendor had purchased an item from another supplier and then sold the same item to the State at a fifty percent price increase.

Director Boehmer contacted the Chief Financial Officer (CFO) for an executive branch agency and requested a list of items that the agency purchased from the Vendor that were special purchase items, or items not in the Vendor's catalogue, for a sample month. He found that for items that were not in the Vendor's catalogue, the Vendor quoted the State a price that was often twice the price for the same item from other sources. The CFO stated that the agency was always able to buy around the Vendor's QPA by following IDOA procedures; however, the process was sometimes lengthy and sometimes added time that the agency did not have to purchase a needed item. The CFO stated that IDOA's response time for reviewing requests to buy around the QPA has improved in recent years, and IDOA is usually able to provide a response within a couple of days.

Director Boehmer subpoenaed documents from the Vendor related to the special purchase items about which he had received information from the CFO. In response to this subpoena, Director Boehmer received the Vendor's price lists, the manufacturer's price lists and invoices to the State for the special purchase items. Director Boehmer then compared the information he received from the Vendor with the information he received from the CFO. Based on this comparison, he found that the Vendor charged the CFO's agency, on average, fifty-six percent over the Vendor's direct cost.

Director Boehmer also obtained copies of IDOA's contracts and contract amendments with the Vendor over the last several years. Along with the basic consideration of products for monetary payment outlined in the contract, the OIG found that the contracts contained additional benefits to the State. For example, the contracts required the Vendor to develop a Savings Model in coordination with the State's Contract Manager that would reflect actual savings over the life of the contract. The contracts also contained a volume discounts section, which required the Vendor to "negotiate better pricing, while accomplishing the Ordering Agency's needs, with an Ordering Agency on an individual basis at any time throughout the contract period."

Director Boehmer met with certain IDOA staff members to discuss the complaint and the QPA purchasing process. The IDOA staff members explained that items outside of the Vendor's catalog do not fall under the QPA; therefore, the State does not receive contract pricing for the items. They stated that IDOA recommends agencies get quotes on these items and purchase them according to the DPAP Manual. During the meeting, the IDOA staff members discussed some of the benefits of the QPA system. For example, they pointed out that the State gains an overall cost savings by use of QPAs. Although a state agency may spend more on one specific item by using the QPA, the State will save money on many other items, which results in an overall savings to the

State. The IDOA staff members noted that the QPA process incentivizes vendors to provide large volume discounts because multiple state agencies are purchasing from the QPA.

IDOA staff members explained that the QPA process streamlines state purchasing and increases state agencies' ability to purchase needed items quickly and efficiently. IDOA uses QPAs to purchase items that several state agencies need. Instead of having multiple state agencies undergo the competitive bidding process for the same items on multiple occasions, IDOA uses the QPA process to competitively bid these items for all state agencies at one time.

IDOA staff members also stated that use of the QPA system helps increase controls on state purchases. By approving purchases outside of the QPA, IDOA can help ensure that employees are purchasing items in an appropriate and cost-effective manner. If IDOA allowed state employees to purchase items at big box stores or other sources, it would be more difficult for IDOA to provide oversight of these purchases. The oversight IDOA provides helps reduce the possibility of conflicts of interests, bribery and other wrongdoing in state purchasing. Furthermore, IDOA's vendor contract managers are able to build ongoing relationships with QPA vendors and help resolve problems across state agencies when they occur.

The OIG asked IDOA staff members how they approve requests to buy outside of the QPA and whether they allow a QPA vendor to rebid an item after an agency purchasing agent receives quotes from three other bidders pursuant to the process outlined in the DPAP Manual. The IDOA staff members explained that they sometimes allow the QPA vendor to rebid an item, but they only do so under certain circumstances. They explained that the IDOA vendor manager for the QPA will evaluate the agency purchasing agent's request to buy outside of the QPA. The IDOA vendor manager will approve or deny the request based on his or her knowledge of the QPA and the products purchased under it. If the item falls under the QPA, the IDOA vendor manager may ask

the QPA vendor to rebid the item in an effort to get a better price for the State. If the agency wants an item in bulk, the IDOA vendor manager may ask the QPA vendor whether they will provide the State with a bulk discount for the item. The IDOA staff members explained that every situation is different, but in each case, they work to balance the costs of the items with the needs of the state agency.

The OIG also asked if IDOA provides information on the other bidders' quotes to the QPA vendor. IDOA staff members stated that they do not share quotes marked as confidential with the QPA vendor; however, they may provide quotes that are not marked as confidential with the QPA vendor in certain circumstances. For example, they may share quotes that are not marked as confidential with the QPA vendor to share specifications of items or when the bid contains a large number of items. IDOA staff members stated they share these quotes in an effort to obtain the best price possible for the State.

The OIG learned that in early 2018, IDOA issued a request for proposals for the QPA that the Vendor previously held. The OIG obtained a copy of the request for proposals. Effective February 2019, IDOA gave a QPA to two suppliers: the Vendor and a second supplier. An IDOA representative stated that IDOA made this change as part of IDOA's continuous improvement efforts. The new QPAs gave executive branch agencies two options of suppliers from which to purchase the same products. This allowed agencies to receive more competitive pricing for certain products. IDOA staff indicated that since they have issued a second QPA, the number of requests from agencies to purchase outside of the QPA has gone down. In the year that has passed since IDOA awarded the two new QPAs, the OIG has not received any additional complaints regarding overpriced products or delays in orders.

III. Related Investigation

In the fall of 2017, IDOA notified state agencies that the Vendor discovered an error during an internal audit that the Vendor conducted. This error resulted in the Vendor crediting the accounts of most state agencies. The OIG opened a separate investigation into the overcharges to ensure that the Vendor fully reimbursed the State in accordance with the QPA. The Vendor's QPA with the State requires that "[f]or any pricing errors or overcharges discovered by either party, [the Vendor] shall reimburse the State in full for all overcharges. Additionally, [the Vendor] shall pay to the State 15% of [the] total purchase price for all items invoiced at incorrect pricing." Director Boehmer learned that the reimbursements resulted from overcharges attributable to the Vendor's failure to give state agencies a percentage discount as specified by the QPA. He also confirmed that the Vendor issued refunds and/or credits to state agencies for the overcharges and that the Vendor paid the overpayment fee in accordance with the QPA. The OIG closed this investigation after confirming the Vendor's payment⁷.

IV. Conclusion and Recommendation

The OIG found that, on occasion, the use of the QPA system results in state purchasing agents buying certain individual items at a higher price than they could receive from other sources, such as big box stores. Although the QPA process may cost the State more money on certain individual items, the OIG acknowledges that the QPA system provides several valuable benefits to the State that likely outweigh the higher cost on some individual items. These benefits include overall cost-savings across state agencies, better controls on state purchases, improved customer service and easier and more efficient purchasing across state agencies.

⁷ The Inspector General issued a confidential Investigative Report at the close of this investigation with the goal of publicly reporting on the overpayments investigation when reporting on the investigation described in this Report.

Furthermore, the OIG found that many of the concerns in the original complaint have been alleviated because IDOA awarded a QPA to two suppliers, the Vendor and a second supplier, since receiving the original complaint. The addition of a second QPA vendor has increased competition for the Vendor and increased the options for state purchasing agents. The OIG has not received any additional complaints regarding overpriced products or delays in orders since the initiation of this investigation.

The OIG recognizes that IDOA has processes and policies for QPAs in place that work to leverage the State's purchasing power and control state government spending. The OIG commends IDOA for these efforts. The OIG also commends state purchasing agents for their efforts to find the most timely and cost-effective ways to purchase items for their agencies, even when that means purchasing outside of a QPA through IDOA's defined procedures.

The OIG declines to recommend specific action to either IDOA or state purchasing agents as a result of this investigation. The OIG instead relies on both parties to continue their efforts to find ways to purchase items for the State in the most cost-effective and responsible manner possible. This investigation is now closed.

Dated: May 27, 2020

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General