



**PROCUREMENT INTEGRITY CONSULTING SERVICES, LLC**

*"Specializing in assessment and mitigation strategies for procurement integrity to reduce the risk of financial and reputation losses"*

## ***Comparative Procurement Analysis***

### ***Ohio Department of Administrative Services (DAS) Office of Information Technology (OIT)***

#### ***Executive Summary***

In September 2017, an independent comparative analysis of DAS OIT's procurement practices of acquiring information technology (IT) contractors was contracted by the Office of Inspector General (OIG). The comparative analysis focused exclusively on DAS OIT's practices between April 2015 - September 2017, regarding contracting of non-competitive IT executive consulting services of specific individuals and the DAS OIT's use of the Controlling Board (CB) waiver authority.

In summary, DAS OIT non-competitive procurement practices (regarding specifically named individuals) during the period under review, was not done to obtain the best cost for the benefit of the state and did not align with DAS procurement policy for a fair and equitable opportunity for all qualified vendors. DAS OIT procurement data indicates a circumvention of the competitive requirements; however, it is beyond the scope of this engagement to determine if it was done with self-serving malicious intent or motivated for mission success. Regardless, the procurement practices used within the DAS OIT does not send a message to the

workforce or the contracting community of a commitment of procurement integrity and creates opportunities for abusive and potential fraudulent activity.

In addition, the DAS OIT non-competitive contracting of specific individuals was not sufficiently justified, lacked any cost comparison, does not have documented contractor performance data, and occurred due to a lack of sound procurement integrity controls. For example, the DAS procurement handbook lacks any clear requirement to write a justification or even document the performance of contractors for the type of non-competitive procurements used by OIT. Additionally, the DAS procurement handbook did not have a requirement to obtain competitive quotes for the type of procurements used by OIT. The DAS procurement handbook only "encourages" the obtaining of 3-bids for the type of procurements OIT utilized. Also missing from the handbook, was a lack of segregation of procurement authority thereby, fostering an atmosphere of which DAS OIT senior leadership's decision were unchallengeable. A senior government employee outside the influence of the DAS OIT with the authority and responsibility of questioning non-competitive procurements would have reduced the likelihood of these types of procurement awards from occurring.

Lastly, DAS procurement method of initiating a state term schedule (STS) for contractor's consideration with an "Agency Letter of Interest" is not consistent with other states and creates a "sole-source" environment potentially limiting open



competition.

During the course of this comparative analysis, DAS and the CB initiated new procurement integrity requirements that will better ensure the fair and equitable treatment of contractors and enhance the safeguards in the expenditure of the state's limited tax dollars. To assist DAS in their pursuit for continued process improvements, the following "Considerations" are included within this final report:

- Establish a requirement for sufficient written justification for non-competitive awards along with other procurement integrity controls identified herein.
  - Update and issue policy of obtaining a minimum of three quotes and making its vendor selection based on lowest cost or best value.
  - Establish a reasonable range of labor rates (i.e. fee structure) of equivalent positions across all labor categories.
  - Establish a *Contractor Performance Assessment* process that is based on objective facts which can be supported by program and contract management data.
  - Explore adopting a competitive STS contracting method currently utilized by other states and discontinue the use of the "*Letter of Agency Interest*."
  - Create and assign an independent "*Competition Advocate*" with the responsibility of challenging barriers to the process of and promoting full and open competition.
- Determine the viability of developing a *Procurement Integrity Assurance Initiative* designed to assist management in combating procurement fraud and/or abuse and preserving organizational integrity.

## *Background*

Each fiscal year, Ohio state agencies spend more than two billion dollars to purchase supplies and services necessary for their daily operations. The general principle in the Ohio state procurement system is that, except for relatively small purchases of goods and services and other specific types of purchases statutorily exempt, purchases made by the agencies of the Ohio state government should be procured using the competitive selection provisions of state law through the Department of Administrative Services (DAS). However, it is acknowledged within Ohio state law that this may not always be advantageous, so the State Controlling Board (CB) is authorized to waive these statutory competitive selection requirements.

One office within DAS is the Office of Information Technology (OIT), which has the responsibility of delivering statewide IT and telecommunication services to state government agencies, boards, and commissions. Over the last several years the OIT has utilized the services of various independent contractors (IC) to support their mission's responsibilities. Several of these IC services were for executive consulting services supporting the state's IT optimization initiatives.

In April 2017, concerns had been raised by legislators, government officials, and the media, regarding the OIT non-competitively awarding millions of dollars in IT contracts for executive consulting to specific individuals and companies without seeking CB approval. It was reported that the executive consultants were frequently paid more than \$200 an hour, often to two (2) specific companies - Advocate Solutions, LLC. (formerly Government Consulting Resources, Ltd), and Stonyhurst Consulting, LLC., (*hereafter referred to as Stonyhurst*). It is noted that several employees of Advocate Solutions (*hereafter referred to as Advocate*) were former Ohio OIT senior staff members prior to joining Advocate.

Issues surrounding the concerns included whether:

- The State paid significantly more than if routine competitive purchasing procedures had been used;
- The awarding of specific IT contracts to Advocate and Stonyhurst for executive consulting services may have been inconsistent with current Ohio purchasing laws, policies, and practices;
- The contract awards, and their contract renewals, were done to favor prior OIT senior members; and
- The purchasing method used opened the state to fraud and/or abuse.

In September 2017, Procurement Integrity Consulting Services (PICS) was hired by the Office of Inspector General (OIG) to perform an independent contracting comparative analysis of specific DAS OIT procurement practices and contract awards. The comparative analysis focused exclusively on DAS's procurement policies, procedures, and the practice of contracting non-competitive IT executive consulting services, along with the use of the CB waiver authority for specific contracts and other non-traditional processes. The review period principally covered April 2015 through September 2017, and focused solely on the contracting activity of DAS OIT.

## ***Company & Assessors***

PICS is a woman-owned small business specializing in developing, assessing, and structuring mitigation strategies, within procurement operations to ensure contracting integrity, efficiency, and compliance. Bringing a combined seventy plus years of government and private sector experience with over forty years in executive leadership, Ms. Sheryl Steckler and Mr. Tom Caulfield formed PICS to assist clients in safeguarding against unnecessary financial losses and reputational damages related to procurement fraud and abuse.

Ms. Sheryl Steckler was formerly the Inspector General for Palm Beach County and the Department of Children and Families in the State of Florida. Ms. Steckler has extensive executive leadership experience in government oversight and regulations, which include over 30 combined years in contract oversight, investigations, audits, and criminal justice related positions. Ms. Steckler holds a master's degree in Public Administration and a bachelor's degree in Criminology, and is currently a Certified Inspector General and Certified Inspector General Investigator.

Mr. Tom Caulfield was a former member of the U.S. Department of Justice National Procurement Fraud Taskforce. Mr. Caulfield spent over 38 years in federal government service, his assignments included responsibilities at the senior executive level in oversight, risk mitigations, criminal investigations, anti-fraud strategies, white-collar crime investigations, and professional development and training. He holds degrees in Criminology and Criminal Justice and currently is a Certified Fraud Examiner, Certified Inspector General, and Certified Inspector General Investigator.

## ***Scope & Methodology***

The scope of the review period was April 2015 through September 2017 and covered the following areas:

- a) If contract award of non-competitive IT executive consulting services to Advocate and Stonyhurst was consistent with current Ohio procurement policies and to determine if the staff augmentation contract should have been considered.
- b) If DAS utilized due diligence (i.e. acted with a certain standard of care in fact and/or appearance) in awarding specific IT contractors [Advocate and Stonyhurst] state term schedule (STS) status.
- c) If the utilization of the CB waiver was required for the IT contract services in the sample set.
- d) If the contract records of the sample set were documented sufficiently to justify a non-competitive procurement, utilization of the waiver authority, and/or other non-traditional processes for Advocate and Stonyhurst.
- e) If the contracting methods used to procure IT contracts were consistent with other common procurement processes of like services and size contracts of other federal and state government organizations.
- f) If the method used to procure these IT contracts was done to ensure the most cost effective method of contracting IT services.
- g) If the method used to procure these IT non-competitive contracts created any opportunities for procurement abuse and/or fraud.

The methodology used during this comparative analysis included a review of all relevant State of Ohio DAS policies, procedures, practices, and operations (not a performance audit) utilized for the procurement of IT executive consulting services during the review period, with the main focus on contracts involving Advocate Solutions, LLC and Stonyhurst Consulting, LLC. The comparative analysis included a sample set, agreed upon by PICS and Ohio OIG, of specific IT contracts identified by the Ohio OIG and the staff augmentation contract with Knowledge Services. During the analysis, other technical opinions of current and former government procurement officials and IT experts external to the State of Ohio were collected and consolidated in the overall analytical findings.

**\*\*Note:** All information, conclusions and considerations for improvements in this comparative analysis are formulated and based on the data provided by the Ohio OIG or available on the DAS public website.

## ***State of Ohio Controlling Board, Department & Policy Requirements***

### ***➤ Controlling Board (CB)***

The CB which was first created in the General Appropriation Act of 1917, is a mechanism for handling certain limited day-to-day adjustments needed in the Ohio State budget and purchasing. The CB is a legislative body comprised of seven members and provides oversight to ensure that funds appropriated by the Ohio legislature are used appropriately, and consistent with the original legislative intent. The CB's waiver of standard competitive purchasing acknowledges the practical realities of running a government the size of Ohio and the need to allow for flexibility when such flexibility makes sense.

Each year, DAS requests CB authority to waive competitive selection requirements to establish and/or renew contracts under various procurement authorities. One key waiver request relevant to this comparative analysis has occurred for the last twenty years - when DAS has requested the CB to allow DAS to enter into Multi-Award-Contracts (MAC) without competitive selection. Each year that request has been approved. MACs are contracts that include more than one supplier for the same or comparable supplies or services. MACs are awarded under the premise that all state agencies which purchase these supplies or services, will purchase from one of the designated contractors, although the state offers no assurance of minimum quantities to any single MAC contractor. MAC's are a common procurement method and bring quicker, and oftentimes, easier contracting as the upfront negotiation and pricing tool, which are by definition, considered fair and reasonable. STS contracts, which were the primary procurement method used to acquire the executive consulting services of Advocate and Stonyhurst, are a form of a MAC.

### ***➤ Department of Administrative Services (DAS)***

The Ohio DAS provides centralized services, specialized support and innovative solutions to state agencies, boards and commissions, as well as local governments and state universities. As reported on their website, they have more than 40 program areas serving Ohio government customers, who

in turn directly serve the interests of Ohio citizens. They help procure goods and services, deliver information technology, mail, recruit and train personnel, promote equal access to the state workforce, lease and manage office space, process payroll, print publications, and perform a variety of other services. To provide these services, DAS is organized into the divisions of Equal Opportunity, General Services and Human Resources as well as the Office of Collective Bargaining and the OIT.

DAS General Services Division, performs a variety of functions including procurement, which during the time of the comparative analysis, was comprised of three major procurement divisions: State Printing and Mail Services, OIT, and Office of Procurement Services (OPS)<sup>1</sup>. These divisions maintain or award contracts for a variety of supplies and services to include, but not limited to: printing and mailing services, telecommunications, computers and software, food, medical supplies, consulting services, janitorial and housekeeping services, vehicles, copiers, maintenance, and many more product and service areas.

### ➤ *DAS Procurement Policy Requirements*

DAS procurement policy requires that certain state organizations receive first consideration on agency requirements for certain types of supplies and services. Agencies must first check whether these organizations have the capability of meeting the agency's requirements, either through existing contracts, or new contracts that can be created to meet the need. Examples of the state organizations include, the Ohio Penal Industries, the Community Rehabilitation Programs, and the Department of Mental Health and Addiction Services, Office of Support Services. Once a determination is made, the required service or good is not available from any of the required state resources, the agency must consider making the purchase from existing DAS MAC contracts.

STS, which is a common MAC, are multiple year term contracts, normally one to three years, which are awarded to several contractors for the same or comparable goods or services; although the state offers no assurance of any minimum purchases to any single STS contractor. Each contractor awarded a STS contract is required to identify the specific goods and/or services they will provide at a specific price. Agencies may purchase any dollar amount from an STS contract without the need for any further competitive process, as STS contracts have been exempted from competitive requirements each year by the CB for the last twenty years. MACs include "*Mandatory Term Contracts*," "*Optional Contracts*," and "*State Term Contracts*" (STS). During the time of this comparative analysis, DAS had 547 STS contracts, of which 239 were for computer hardware, software, and IT services available to state agencies for expedited purchasing of various goods and services. The principle procurement method used by DAS OIT for the executive support services of Advocate and Stonyhurst was STS.

DAS procurement policy<sup>2</sup> states that when utilizing the STS option, agencies are *encouraged* to compare the offerings of multiple STS contractors, thereby ensuring the best price and value are obtained for the state. Further, when using an STS, agencies are also advised to *avoid* directing

---

<sup>1</sup> During the course of the PICS comparative analysis, DAS was reorganizing their procurement operations and centralizing them under one Chief Procurement Officer.

<sup>2</sup> State of Ohio Procurement Handbook for Supplies and Services.

significant amounts of business to a limited number of vendors or suppliers. Where DAS procurement policy *encourages* comparing offerings from multiple STS contractors, DAS Directive No GS-D-12 (effective date: 09-01-2008) *requires* agencies to obtain a minimum of three quotes from various STS suppliers offering similar or like items. The three quote requirement is further referenced within a DAS “*Request for Supplies/Services/Equipment*” form noting three quotes are *required* for any purchase over \$500. It further contains that the OIT Business Office can assist in obtaining the quotes.

- ***Obtaining a STS contract***

The decision to enter into or renew a STS contract is based upon the State's need for a specific supply or service as determined by the various agencies and/or procurement divisions. Companies identified for potential STS contracts can be determined by agency requirements or the company proactively soliciting to DAS. Those companies identified for consideration of an STS contract by the agency are recommended by a “*Letter of Agency Interest.*” Within the letter, the requesting agency identifies their interest in purchasing either goods or services from the named company along with the anticipated amount of spending for that good/service over an anticipated period of time. The letter does not make any assurance of any minimum purchases to the identified contractor.

Once a company is identified for consideration of an STS contract, they are instructed to download the instructions and forms from the DAS procurement website, that are needed to initiate an offer to establish an STS contract. As reported by a DAS Enterprise Information Technology Contracting Program Administrator, the process for obtaining a new STS contract is that after a STS offer is received, it is checked for completeness. The offer must contain various documents including a Secretary of State Certification and Affirmative Action Plan, acceptance letters, descriptions of services, pricing, subcontractors if appropriate, and acceptance of standard contract terms and conditions. For IT services, the OIT ensures the potential contractor aligns with IT optimization and established enterprise standards as described in the OIT service catalog. If the labor categories offered and hourly rates are over \$200, the rate is verified as being acceptable to management.

## ***CONTRACTORS***

- ***Advocate Solutions, LLC. (Advocate)***

Advocate as reflected on their “*LinkedIn*” profile states they are “*a privately held company providing professional services to public and private sector clients. Advocate provides clientele nationwide with a broad range of management consulting and advisory services.*” Advocate Solutions was originally named Government Consulting Resources (GCR – established in 1995) and was changed to Advocate Solutions, LLC, on February 24, 2014.

The germane contracts related to the scope of the PICS’s competitive analysis were Advocate Solutions’ STS contracts awarded in whole or part to provide OIT executive consulting services of Mr. Rex Plouck and Mr. Peter Quinn (Advocate employees). Mr. Plouck and Mr. Quinn were identified by the OIG as two of the individuals to be reviewed during the comparative analysis.

### ➤ ***Stonyhurst Consulting, LLC.***

Stonyhurst, as reflected on their website states they are “*a leading Information Technology Strategy, Sourcing, and Advisory boutique that is exclusively focused on the needs of innovative public and private sector clients.*” Ohio DAS procurement records reflect Stonyhurst, has been awarded one (1) STS contract, initiated in March 2015, expiring June 2019. Under this one STS contract, related to the scope of the PICS’s competitive analysis, are awards in whole or part to provide OIT executive support for IT Optimization initiatives, by Mr. Steve Zielenski (Stonyhurst employee). Several of the OIT STS awards also listed other Stonyhurst employees to provide services for the OIT, however, Mr. Zielenski, like Mr. Plouck and Mr. Quinn, was also identified by the OIG to be reviewed during the comparative analysis.

### ➤ ***Knowledge Services***

Knowledge Services, was founded in 1994, and has provided Managed Service Provider (MSP) program services for 12 years and currently has approximately 1500 employees in offices throughout North America. Knowledge Services was contracted in 2015 by DAS as the Ohio IT Staff Augmentation Services Contract and is used by the State and other public sector organizations as the preferred method for procuring hourly time and material resources. Knowledge Services’ contract dated on October 7, 2015 is the full-service MSP responsible for overseeing all service delivery activities for the staff augmentation contract, including:

- Agency consultation
- Vendor response management and performance oversight
- Candidate evaluation and validation
- Interview facilitation
- Invoice processing
- Help desk support

Knowledge Services’ contract was included in the comparative analysis at the direction of the OIG to determine if the executive services of selected Advocate and/or Stonyhurst STS contracts could have been performed under the Knowledge Services contract.

## ***Contracting Data Sample Set Analysis & Results***

**Advocate Solutions LLC** - The relevant OIT STS contracts awarded in whole or part for executive consulting services of Mr. Plouck and Mr. Quinn are detailed below and have a total value of \$4,855,517.50:

- STS contracts #533897 and #534044, containing seven (7) release and permits<sup>3</sup> (R&P), 18792, 19920, 21066, 23252, 27608, 29180, and 29745, respectively, spanning the period of services from June 2011 through July 2017<sup>4</sup>.

---

<sup>3</sup> R&Ps are initiated by the agency(s) to document contract service requirements.

<sup>4</sup> The span of the contracts reviewed beyond the original scope of this comparative analysis occurred at the request of the OIG and agreed to by PICS.

- Both Mr. Plouck and Mr. Quinn throughout all of the R&Ps were proposed at an hourly labor rate of \$216.75, which is a 35% discounted rate from the Advocate negotiated STS rate for “Executive Consultants” at \$332 an hour.
- None of the seven (7) R&Ps were competed with other STS qualified contractors therefore no comparative quotes exist. The R&Ps reflected the individuals were providing subject matter expertise and executive level support for ongoing strategic planning and implementation of IT Optimization initiatives as well as program management and project recovery support.
- The total net value of the seven (7) R&Ps was \$4,447,709.50, accounting for 20,520 executive labor hours.
- STS contract #534044, also included R&P #32706, dated August 21, 2017, which was awarded after a competitive procurement process, under OIT Request for Quote-144 (RFQ<sup>5</sup>). The RFQ-144 reflected the OIT was seeking to identify a pool of sixteen (16) senior level candidates to provide in-depth expertise and experience in six (6) disciplines. Review of the RFQ revealed Mr. Plouck was competing within the Program/Project Management discipline, which the OIT was willing to select up to five candidates. The evaluation team scored and screened 32 potential candidates and reduced the number to 23 candidates to be interviewed for the final selections across the six (6) disciplines.
  - On August 2, 2017, Mr. Plouck was selected as one of the final candidates for his proposed discipline with an aggregate score ranking him third (3<sup>rd</sup>) of the four (4) final candidates selected.
  - As a result of the RFQ-144 process, R&P #32706 was awarded with a description of service for Mr. Plouck to provide subject matter expertise and executive level support for program/project management. Mr. Plouck’s proposed labor rate was \$216.00 an hour, with an 18.5% discount from the Advocate Rate of \$265.
  - Under this RFQ, Mr. Plouck was classified at a lower labor category than all of the prior R&Ps, even though the description of services for each were similar or identical as the prior.
  - R&P #32706 had a total value of \$409,224 for Mr. Plouck’s services which is equal to 1,895 labor hours.
- Mr. Quinn had left employment with Advocate and believed to be currently employed out of the state, and therefore was not proposed as a candidate under RFQ-144.

*Note:* During the period under review for the comparative analysis, along with the aforementioned Advocate STS contracts, two (2) Competitive Sealed Proposal (CSP) contracts were also awarded to Advocate, 0A1139 and 0A1147. Both of which were competitively awarded following the appropriate CSP requirements as identified in the DAS procurement manual. Neither of these contracts appear to include executive consulting services of Mr. Plouck or Mr. Quinn.

**Stonyhurst Consulting, LLC.** - Mr. Zielenski has been providing contracting service for DAS OIT before he became a partner in Stonyhurst. Prior to Stonyhurst, Mr. Zielenski was an

---

<sup>5</sup> RFQs are the solicitation methods used to allow all qualified STS contractors the opportunity to bid on identified contract requirements in the RFQ.

employee of Top5 Incorporated (*hereafter referred to as Top5*). According to procurement records found within DAS OIT, Top5 was a full service management consulting and integration firm with approximately 150 active consultants providing IT consulting services for large-scale transformations and initiatives. Top5 has been providing contracting services for DAS OIT as early as 2008.

Within Stonyhurst STS contract 534498, R&P #26586, dated April 28, 2015 (which is the first R&P under the contract), DAS OIT was requesting the contracting services of a new company (Stonyhurst) as a replacement for the services being provided by Top5. Within R&P #26586, DAS OIT Chief Information Officer (CIO) Stuart Davis notified the procurement division that “*Top5 is not in good standing with the State and have had a history of late revenue share filing and payments. Top5 is not renewing their STS. Stonyhurst Consulting is a new STS vendor with no direct business relationship with Top5.*”

A review of DAS OIT procurement records identified a “*Letter of Agency Interest,*” dated February 24, 2015, signed by the State CIO (Stuart Davis) identifying DAS OIT’s desires in purchasing IT services from Stonyhurst and supported their application for a STS contract. The letter further reflected DAS OIT anticipated spending more than \$1,500,000 on purchases over the FY16-17 biennium.

The relevant R&Ps under Stonyhurst’s STS contract (534498) that were awarded in whole or part to provide DAS OIT executive support for IT Optimization initiatives, by Stonyhurst employee Mr. Zielenski are detailed below and have a total value of \$1,530,250:

- R&Ps, #27424, 27567, 28293, and 29580, respectively, spanning the period of services from June 2015 through July 2017.
- Mr. Zielenski throughout each of the R&Ps was proposed at an hourly labor rate of \$250, which is a 24.24% discounted rate from Stonyhurst Consulting Services’ negotiated STS rate for the labor category of “Principal Lead” at \$330 an hour.
- None of the four (4) R&Ps were competed with other STS qualified contractors, therefore no comparative quotes exist. The R&Ps reflected the services provided were for DAS OIT executive support of IT Optimization initiatives including business case development, opportunity assessment, and cost analysis support and project management for development of statement of work and request for proposal in collaboration with DAS OIT procurement and legal teams.
- The total net value of the four (4) R&Ps as they related to Mr. Zielenski was \$1,044,250, accounting for 4,177 labor hours.
- STS Contract #534498, also included R&P #32655, dated August 8, 2017, which was awarded after a competitive procurement process, under OIT RFQ-144. The RFQ-144 reflected the OIT was seeking to identify a pool of sixteen (16) senior level candidates to provide in-depth expertise and experience in six (6) disciplines. Review of the RFQ revealed Mr. Zielenski was competing within the Procurement and Contracting discipline, the Research discipline, and the Strategy Development discipline. The evaluation team scored and screened 32 potential candidates and reduced the number to 23 candidates to be interviewed for the final selections across the six (6) disciplines.
  - On August 2, 2017, Mr. Zielenski was selected as one of the final candidates for the Procurement and Contract discipline with an aggregate score ranking

him second (2nd) of the three (3) final candidates selected. Mr. Zielenski was not selected for the other two disciplines he was competing within.

- As a result of the RFQ-144 process, R&P #32655 was awarded containing a description of service for Mr. Zielenski to provide ongoing expertise and executive support for IT Optimization initiatives including strategy development, research, business case development, opportunity assessment, and cost analysis to support comprehensive sourcing strategies and development of procurement materials including statement of work and RFP (Request For Proposal) in collaboration with DAS OIT procurement and legal teams.
- R&P #32655 had a total value of \$486,000 for Mr. Zielenski's services which is equal to 1,944 labor hours.

**Other Contractors** – To allow for a suitable comparative analysis of the procurement methods used to obtain the contracting services being provided by the selected individuals of Advocate and Stonyhurst, and its related comparable cost with those of other STS qualified contractors' labor rates, fourteen (14) other IT companies' contracting activities were reviewed. The sample set included both STS and CSP contracting records as appropriate and covered the period of 2015 through 2017. The sample was a judgment sample, a nonrandom sample that was selected based on the opinion of PICS. The comparison was performed exclusively for cost analysis and does not make any theory on the quality of services of Advocate or Stonyhurst compared to other qualified contractor's abilities.

## ***FINDINGS & CONSIDERATIONS***

The format of the "***Findings***" section will first state each of the deliverables independently in the form of a question, and will be followed by a narrative that reports the results of the comparative analysis of the stated question. Each narrative is supported by the specific policies, directives, or instructions that are applicable when appropriate. Lastly, areas for "***Consideration***" are included to assist DAS in effectively enhancing procurement integrity and reducing the possibility of improper contracting found during the comparative analysis occurring in the future.

### **□ NON-COMPETITIVE IT SERVICES**

- a. *(1) Was DAS OIT's awarding of non-competitive IT services during the time of this comparative analysis to Advocate and Stonyhurst consistent with Ohio procurement policies?*

**Finding (1)** - The DAS OIT STS non-competitive procurement practices regarding specifically named individuals of Advocate and Stonyhurst do not align with a fair and equitable opportunity for all qualified STS vendors. Eleven (11) of the thirteen (13) R&P awards to the specific individuals were not openly competed, and thus denied other qualified STS competitors the opportunity to compete and perform the work. In July 2017, when both Advocate and Stonyhurst were required to compete openly in RFQ-144 against other qualified STS bidders, none of the

specifically named individuals of Advocate and Stonyhurst obtained the most preferred contractor selection. Mr. Plouck ranked 3<sup>rd</sup> in his competitive discipline and Mr. Zielenski ranked 2<sup>nd</sup> in his discipline. When reviewing the subsequent R&Ps issued for Mr. Plouck and Mr. Zielenski after the competitive RFQ-144, nearly the same description of services was utilized as the non-competitive awards, therefore reinforcing that their services were in fact able to be competed. One contributing factor that permitted the non-competitive procurement practices of OIT, in regard to the STS contracts in this review, was the lack of any requirement to clearly articulate and support, in writing, a non-competitive award. Other contributing factors will be addressed later with other Findings.

**Finding (2)** - Review of all relevant DAS manuals, DAS directives, CB manual, and codes/laws revealed conflicting and/or a lack of clear policies and procedures relating to the use of non-competitive contracting processes with STS contracts and the number of quotes required for any purchase over a \$500 dollar threshold. In addition, some policies/directives have not been reissued since the 2008-2009 timeframe. It is noted that on June 12, 2017, the CB reflected that all purchases referencing STS contracts in FY 2018 and 2019 now require the receipt of at least three quotes. Additionally, if the new requirement for three quotes is not obtained, a CB waiver of competitive selection prior to creating a purchase order is required. This new directive applies only to STS contracts (see *c.* Controlling Board finding and considerations).

**Consideration (1)** - DAS needs to reinforce, through policy, that all competitive procurements will be fair, open, and transparent, and further to establish a requirement that when STS contracts cannot be competitively awarded by a RFQ and/or by obtaining three quotes, that sufficient written justification is documented as to why the non-competitive process was selected, and certify the accuracy and completeness of the justification. With this written justification, the procurement records will better support the appropriateness of approaching the CB for a waiver of competitive selection. Written justification should include at a minimum:

- Efforts made to find other responsive STS contractors and a determination that none were found;
- How a determination was made that the anticipated cost will be fair and reasonable; and
- Describe any other facts supporting the use of other than full and open competition.

**Consideration (2)** - DAS needs to update and issue (in final form) clear, concise, and uniform contracting policies and procedures to include obtaining a minimum of three quotes and making its vendor selection based on lowest cost or best value. When selecting best value, sufficient written justification must be required to explain why the vendor was selected over all others. Written justification for best value should include at a minimum:

- An explanation of the tradeoff criteria used for the determination, such as enhanced delivery schedule, experience in similar efforts, and/or qualifications of the personnel who will be performing the work; and
- The reason why the price premium is advantageous for the government based upon an assessment of the evaluation factors identified in the solicitation.

## GOVERNING DIRECTIVES:

- ❖ DAS Directive No. GS-D-12 (09-01-08)
- ❖ DAS Request for Supplies/Services/Equipment
- ❖ State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts
- ❖ Ohio Administrative Code 123:5-1-01 (H)
- ❖ DAS Directive No. GS-D-13 (09-01-09)
- ❖ State of Ohio Procurement Handbook for Suppliers and Services – 6.2 Ethics and the Purchase Requisition
- ❖ Ethics Policy/Procedure PUR-001 (October 1, 2009)

## □ STAFF AUGMENTATION

a. (2) *Should the staff augmentation contract have been considered instead of the Advocate Solutions and/or Stonyhurst Consulting?*

**Finding** - The staff augmentation (Knowledge Services) contract did not need to be used in lieu of the STS option in the Advocate and Stonyhurst contracts reviewed. Staff augmentation is an outsourcing strategy which is used to staff a project and respond to business objectives. Per expert testimony, the statement of work samples reviewed of the individuals in review for Advocate and Stonyhurst did not lend itself to the traditional staff augmentation use. On a staff augmentation contract, one would expect to see a clearly articulated project that the agency is already engaged in and seeking a certain skill set (i.e. a data network programmer for a 6 month engagement to help develop a code as part of this project). The description would be very granular in terms for the skill set and individual being required. Per the statement of works for the above contracts, they did not align to that requirement.

Review of selected contract files did reveal that a DAS Acquisition Analyst did request an explanation as to why the work of Advocate and Stonyhurst could not be performed under the staff augmentation contract to which the OIT responded with text consistent with the independent expert used during this comparative analysis. *“Stonyhurst requests are not considered Staff Aug or Deliverable based requests and they are used for specific projects and bring invaluable expertise.”* *“Stonyhurst provides unique project support expertise and not staff augmentation services - therefore, the KS approach will not work.”* *“KS is standard skill sets such as developers, testers, DBAs, BAs, etc. STS is the appropriate contract vehicle to maintain these critical resources.”*

## □ DUE DILIGENCE IN CONTRACT AWARDING

b. *Did DAS OIT utilize sound due diligence (i.e. acted with a certain standard of care in fact and/or appearance) in awarding of the Advocate and Stonyhurst IT contractor?*

**Finding** - DAS OIT practices in 2015-2017 of awarding (and subsequent renewing) of STS R&Ps to the individuals in review lack any effective procurement integrity controls<sup>6</sup> to ensure a fair,

---

<sup>6</sup> Procurement Integrity Controls are the people, processes, procedures, and/or management systems that are designed to provide reasonable assurance regarding the prevention, detection, prompt reporting, and ability to respond to procurement fraud and abuse.

open, and honest market place for businesses to compete. *“Pursuant to the State of Ohio Procurement Handbook for Suppliers and Services, a good procurement system balances fairness, value, accountability, and flexibility”*... It continues to include *“Taxpayers want accountability to ensure that their hard earned tax dollars are spent wisely and ethically.”* Throughout the review we found no information that suggested any consideration was given to determine if other qualified competitors could have performed the required work. In addition, when renewing the contract services of the individuals mentioned in Advocate and Stonyhurst, minimal justification was presented as to why the individuals’ contract services were necessary to continue. Furthermore, there was no record of a valid contractor performance instrument was being used to ensure satisfactory contractor services was being provided.

The foundation of any procurement integrity business structure is having a sound and effective control system that promotes a commitment to fair, honest, legal, and transparent contracting practices at all levels of the organization. Review of DAS OIT contracting records (on the awarding and renewals of the individuals mentioned in this review) revealed that on multiple occasions, DAS acquisition analysts presented appropriate questions requesting confirmation on the need for the individuals to continue on the effort and why other qualified contractors could not satisfy the requirements. Those questions were answered with minimal responses, appeared to have little impact in changing the procurement actions, and on one occasion, CIO Stuart Davis responded in a manner that suggested he was not appreciative of the questioning by the analyst. These examples, recognizing their limitation in the total number of R&Ps issued throughout DAS, suggest there is a lack of a well-defined separation of authority in the various procurement decision points – no one individual or group of individuals should retain sole authority to make all procurement decisions. During the course of this comparative analysis, DAS appeared to be restructuring their procurement operations into a centralized system. An important step in safeguarding procurement integrity during the restructure is to balance procurement needs and authorizations between the agencies and the procurement office.

Further, DAS OIT contracting records did not contain any documentation reflecting a systematic contractor quality assurance method was being used in the administration of the contractor’s performance mentioned in this comparative analysis. The intent of such documents ensures that the contractor is performing in accordance with established and agreed upon performance metrics, so that DAS receives the quality of services required in the contract. The statement of work (SOW) on four consecutive R&Ps of one of the individuals mentioned in this analysis was examined by a CIO from another state. The CIO indicated that he did not see any descriptions in the SOW that would have allowed him to effectively monitor or evaluate the performance of the contractor. The lack of an objective uniformed contractor performance process, supported by documented program evaluations and contract management data, leaves the state vulnerable to poor contractor performance, no assurances of contractor deliverables, and lacks a system of evidence to support termination and/or continuation of contractors. While examining DAS OIT contracting records, comments were annotated by CIO Stuart Davis that a specifically named contractor was *“not in good standing with the State and have had a history of late revenue share filings and payments.”* This was the only information found to support the need for another contractor to continue the

---

work under a new award.

**Consideration (1)** - Establish a process which ensures clear lines of authority that promotes a separation between the ability to request contract actions and those who authorize and/or approve the requested contract actions. Separation should include:

1. Description of the original need;
2. Verification of the requirements;
3. Verification of specification;
4. Authorization for follow-on; and
5. Authorization for renewals, change orders or contract modifications.

**Consideration (2)** - Establish a *Contractor Performance Assessment* process and reporting system<sup>7</sup> that is based on objective facts and can be supported by program and contract management data. The assessment should include, in part, performance, cost and schedule, both positive and negative.

**Consideration (3)** - Consider establishing an independent *Competition Advocate*<sup>8</sup> which is an employee specifically assigned the task of challenging barriers to the process of and promoting full and open competition. The purpose of the role reflects the belief that competition is the cornerstone of any procurement system and is a critical tool for achieving the best return on investment possible for taxpayers. Competition Advocates normally hold a senior position within the organization, may perform these duties as part of their other responsibilities, and are fully empowered to perform the following:

1. Promoting full and open competition and challenging barriers to it;
2. Reviewing contracting operations to identify –
  - i. Opportunities and actions necessary to achieve full and open competition;
  - ii. The conditions that unnecessarily restrict it;
3. Preparing annual reports for the agency head and procurement executive; and
4. Recommending goals and plans for increasing competition.

#### **GOVERNING DIRECTIVES:**

- ❖ State of Ohio Procurement Handbook for Suppliers and Services – Foreword...
- ❖ State of Ohio Procurement Handbook for Suppliers and Services – 4.2 What: Describing the Purchasing Need
- ❖ State of Ohio Procurement Handbook for Suppliers and Services – 6.2 Ethics and the Purchase Requisition
- ❖ DAS Directive No. GS-D-13 (09-01-09)
- ❖ Ethics Policy/Procedure PUR-001 (October 1, 2009)

---

<sup>7</sup> The federal government hosts a suite of web-enabled applications that are used to document contractor performance information that is required by Federal Regulations. Search for “*Contractor Performance Assessment and Reporting System*” (CPARS).

<sup>8</sup> Additional information on the role, purpose and responsibilities of a Competition Advocate can be found within the Federal Acquisition Regulation and 41 U.S.C.

## □ CONTROLLING BOARD

c. *Was the utilization of the Controlling Board waiver (i.e. waiving the competitive procurement process) required for the IT contracts in the sample set?*

**Finding** - The sample set used during this comparative analysis included fourteen (14) contracting records (both OIT STS and CSP) covering the period of 2015 through 2017. Each of the CSP procurement records reviewed in the sample set contained the required solicitation documents (RFPs or RFQs) and were appropriately competed; therefore not requiring a CB waiver of the competitive procurement process.

Regarding the STS contracts in the sample set and the awards to Advocate and Stonyhurst, according to the Controlling Board Manual, purchases from STSs do not require CB review, regardless of the amount, because DAS traditionally receives approval by CB covering all agency purchases made under the STS. Neither the DAS procurement handbook, nor any DAS policy prior to June 2017, has any requirements of STS non-competitive contract awards to solicit CB waiver approval.

On June 16, 2017, DAS informed agencies (Guidance #1) of a June 12, 2017, CB authorization to permit agencies to continue to reference several types of state contracts established by DAS for expenditures in excess of \$49,999.99 in FY 2018 and 2019. This specific CB approval came with some conditions that affected STS contracts, specifically the receipt of three quotes. All purchases referencing STS contracts in FY 2018 and 2019 now require the receipt of at least three quotes. It further stated the mere solicitation of the quotes did not satisfy this new three quote requirement. If the new requirement for three quotes is not obtained, a CB waiver of competitive selection prior to creating a purchase order is required.

In DAS's new guidance they reflected "*these new conditions are designed to ensure transparency around agencies' efforts to use a competitive process.*" The DAS then issued four additional guidance during the period of June 23<sup>rd</sup> – September 29<sup>th</sup> to provide more information about enhancing transparency measures and associated reporting requirements related to agencies' use of STS contracts. The new reporting requirement stated DAS was required to provide a report of each agency's use of STS contracts quarterly to the CB. To meet the new reporting requirements, DAS was requiring various statistical data of all purchases made using STS authority. In subsequent questions submitted by agency representatives, DAS was asked if the new reporting requirements applied to other contracts, to which DAS reported the new requirement **only** applied to STS purchases.

**Consideration (1)** - DAS should consolidate all of the recently issued State Term Schedule Guidance (1-5) into a single guidance reducing a miss-interpretation by either an agency employee or effected contractors.

**Consideration (2)** – DAS should ensure the new three quote requirement is not limited to STS awards in FY 2018 and 2019, but becomes a DAS policy, appropriately annotated in the DAS procurement handbook, for all awards under STS authority in the future. DAS should also consider expanding the three quote requirement to not only apply to STS but any "Other/Optional" non-compete type contracts.

## GOVERNING DIRECTIVES:

- ❖ CB Manual – 6. Optional Sources for Purchases Exempt from Controlling Board Review
- ❖ State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts
- ❖ Memorandums Issued by DAS - Enterprise IT Contracting – Guidance 1-5

### □ WRITTEN JUSTIFICATION

- d. Do the contract records of the sample set contain sufficient justification for a non-competitive procurement, utilization of the waiver authority, and/or other non-traditional processes?*

**Finding** - As reported previously, the sample set included both STS and CSP contracting records of fourteen (14) contractors awarded contracts in OIT covering the period of 2015 through 2017. The CSP procurement records reviewed were appropriately competed, therefore not requiring a CB waiver of the competitive procurement process, nor requiring any written justification. No procurement record within the sample set indicated any non-traditional processes were used.

Regarding the STS contracts in the sample set, which included twenty-four (24) R&Ps from companies other than Advocate or Stonyhurst, ten (10) of the R&Ps were competed leaving fourteen (14) that were not competed. Written justification of those not competed were ambiguous and lacked clarity. Examples include: “unique qualifications of the provider,” “better success of the effort,” and “continuity of the effort requiring the purchase of provider’s software.”

As for the seven (7) non-competed Advocate R&Ps and the four (4) R&Ps of Stonyhurst, there was a pattern of insufficient justifications, not unlike that in the sample set, to award sole sourced/non-competed STS contracts. However, the DAS procurement handbook lacks any clear requirement to write a justification for non-competitive STS procurements. Examples of the justification found in Advocate and Stonyhurst records were:

- “Unique qualifications of the individual”;
- “Complexities involved in order to gain appropriate expertise”;
- “If this consultant was not retained, there is a significant risk that these initiatives would not be completed”;
- “Brings invaluable expertise”; and
- “Provides unique project support expertise”.

**Consideration (1)** – When an agency is going to award a contract without providing for full and open competition, there should be sufficient justification for the action in writing; certification for the accuracy and completeness of the justification; and the agency should obtain the approval of appropriate individuals. The requirement for clear written justification ensures sufficient documentation in the procurement files to support the decision to solicit CB waiver of competitive procurement. Written justification should include at minimum:

1. Efforts made to find other responsive contractors and a determination that none were found;
2. How a determination was made that the anticipated cost will be fair and reasonable; and
3. Describe any other facts supporting the use of other than full and open competition.

**Consideration (2)** – The new Guidance (#1 through #5) issued between June 16, 2017 and September 29, 2017, addresses the STS three quote requirement, but needs to be revised to also address the “Other/Optional” non-compete type contracts.

#### GOVERNING DIRECTIVES:

- ❖ **DAS Directive No. GS-D-12 (09-01-08)**
- ❖ **CB Manual – 6. Optional Sources for Purchases Exempt from Controlling Board Review**
- ❖ **State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts**

#### □ CONTRACTING METHODS

- e. *Was the contracting methods used to procure the IT contracts consistent with other common procurement processes of like services and size contracts?*

**Finding** - Review of the sample set which included CSP procurement data containing various RFPs and RFQs revealed the processes used for the contracting and the solicitation are all consistent with comparable federal and state government organizations of like services and size contracts. The contracting method used for STS contracts was generally consistent with the federal government, however, with **one major exception** - the utilization of a “*Letter of Agency Interest*.” A “*Letter of Agency Interest*” is a method used within DAS to permit an agency to submit a letter to the procurement division notifying them of the agency’s interest in potentially purchasing a service from a specific contractor. The letter does not guarantee a contractor will receive a STS contract or any subsequent R&Ps; however, this approach can be abused as it gives a perception of selecting a preferred favorite contractor. Another method for being considered for a STS contract (although no guarantee of being awarded) is where a company submits their desires, via letter, directly to the procurement division. It is also noted that various states have a competitive process for being placed on the STS (see Florida and North Carolina as examples).

Within the contracting files reviewed was a February 24, 2015, letter signed by the State DAS CIO, Stuart Davis, addressed to the DAS OIT Procurement Service, with the subject line titled “*Letter of Agency Interest*.” The content within the letter stated the following:

*“The Department of Administrative Services, Office of Information Technology is interested in purchasing IT services from Stonyhurst Consulting, LLC, whose address is listed below, and supports their application for term schedule with the State of Ohio. DAS/OIT anticipates spending more than \$1,500,000 on purchases over the FY16-17 biennium.”*

The STS practice of allowing a company to solicit a “*Letter of Agency Interest*” has the potential of restricting free and open competition from ever taking place by creating a “sole-source environment” (even though the letter does not guarantee any contract work) and removes any opportunity for obtaining the best value in services and cost. Receiving a STS contract should simply qualify a company to openly compete and sell to the state during a specific period of time as reflected in the STS contract for the goods or services agreed upon. By being prequalified, the

contractor receives exposure to state procurement professionals looking to make purchases of needed goods or services and procurement requirements can be filled quicker by the agency.

The “*Letter of Agency Interest*” submitted by DAS CIO Stuart Davis supporting Stonyhurst’s application for a STS contract did not make any commitment to any future or past awards to Stonyhurst, even with the statement of anticipated spending of \$1,500,000 in potential purchases. However, the comparative analysis determined that between June 15, 2015 and the end of 2016, Stonyhurst was awarded \$1,530,250 for executive support of Mr. Zielenski.

**Consideration (1)** – DAS should consider the “implied” nature of the “*Letter of Agency Interest*” and discontinue the practice.

**Consideration (2)** – Explore the value of adopting a competitive STS contracting method currently utilized by other states such as Florida and North Carolina.

#### **GOVERNING DIRECTIVES:**

❖ State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts
--

#### ☐ ***QUALITY AND COST EFFECTIVENESS***

*f. Was the method to procure the IT non- competitive contracts done to ensure the most cost effective method balanced with quality?*

**Finding** - DAS OIT procurement of non-competitive contract services of specific senior executives of Advocate and Stonyhurst were awarded with no documented information demonstrating any consideration in obtaining fair and best cost for the benefit of the state. The absence by the DAS OIT in considering other qualified contractors and/or soliciting bids from multiple qualified STS contractors denies the state of any assurances of obtaining a fair price for the services provided. In regards to Stonyhurst, a record was found where DAS CIO Stuart Davis reported “*Stonyhurst Consulting rates were non-negotiable from the STS due to the duration of the engagement.*” This statement potentially limited the capabilities of the procurement analysts the opportunity to negotiate a lower and more reasonable labor fee structure thereby ensuring the most cost reasonableness for the state.

A review of five other qualified STS contractors that listed identical labor categories as Advocate’s bidding of Mr. Plouck’s “Executive Consulting” revealed Advocates’ labor rates to be between 21.39% and 38.25% higher. Stonyhurst’s labor category for Mr. Zielenski was between 19.58% and 34.32% higher than four other STS contractors listing a labor category of “Principle Lead,” which is what Mr. Zielenski is bid under. Recognizing the limited number of competitor’s labor categories and fee structures reviewed, it still suggest both Advocate and Stonyhurst costs are outside the normal range of its competitors.

Along with comparing labor categories and labor rates, when analyzing the results of the recent July, 2017, OIT RFQ-144, where both Mr. Plouck and Mr. Zielenski did openly compete against other comparable contractors, neither was scored in their discipline as the most preferred contractor. If the 4,177 labor hours Mr. Zielenski was awarded non-competitively under R&Ps

27424, 27567, 28293 and 29580 had been competed, and again the same contractor being ranked higher in RFQ-144 than Mr. Zielenski was selected, in theory the state could have saved approximately \$438,593 [this cost savings is based on an acknowledgment that we are comparing cost saving and not the capabilities of the other contractors to deliver the same quality of services as Mr. Zielenski.]

Further, review of STS procurement bidding records revealed that STS contractors are consistently discounting as much as 35% lower labor rates than their negotiated STS contract amount. The lowest discount identified was 18% of the records reviewed. This pattern of providing discounted labor rates (i.e. fee structure) lends to the question if the state is sufficiently negotiating the labor categories in the best interest of the state. One company has been providing the same 35% discounted rate for one of their most expensive labors for the last eight years.

**Consideration (1)** – Prior to negotiating future STS contracts or renewing current ones, consider establishing a reasonable range of labor rates (i.e. fee structure) of equivalent positions across all labor categories. The range of labor rates should be based on the discounted labor rates which have been offered in the last two years.

#### GOVERNING DIRECTIVES:

❖ State of Ohio Procurement Handbook for Suppliers and Services – Foreword...

#### ❑ PROCUREMENT FRAUD AND/OR ABUSE

g) *Did the method used by OIT to procure specific IT non-competitive contracts create any opportunities for procurement abuse<sup>9</sup> and/or fraud?*

**Finding (1)** - DAS OIT awarding of non-competitive IT STS contracts to preferred contractors leaves the state vulnerable to various opportunities for procurement abuse and/or fraud. DAS OIT's practice of not competing STS contracting for specific IT executive consulting services, not obtaining comparative bids, along with not having a formal contract performance monitoring and oversight process, potentially creates openings for fraudulent schemes like false claims, inflated claims, and/or duplicate claims. The ability to obtain a "Letter of Agency Interest" can create a corrupt procurement environment where paying unethical government employees' bribes and gratuities is required to obtain STS contracts. The letters can also permit an unethical employee to extort payment from a company desiring a STS contract – "pay-to-play" scheme. Lastly, anecdotal information during a 2017 DAS OIT STS procurement suggests inappropriate (i.e. abusive) contracting may have occurred with the intent to circumvent the new three (3) quotes CB notification requirement.

---

<sup>9</sup> *Procurement Abuse* is a contracting action, like inappropriate sole source, that falls short of a criminal or civil violation. However, a prudent procurement professional wouldn't consider it, given the same facts and circumstances, a reasonable or a necessary business practice

DAS OIT STS procurement data indicates a circumvention of the competitive requirements; however, whether these indicators of circumvention were done with self-serving malicious intent or motivated for mission success is beyond the scope of this engagement. Regardless of the true intent, the practices used to procure the services of preferred contractors does not send a message of any commitment to procurement integrity within the DAS OIT.

**Finding (2)** – During the comparative analysis, limited information was found to demonstrate whether DAS has a sound and effective unified approach to reducing the state’s vulnerabilities to procurement abuse and/or fraud (i.e. *Procurement Integrity Assurance Initiative*). Recognizing what occurred in DAS OIT may be an isolated series of inappropriate contracting practices, partially taking place due to an absence of effective procurement integrity controls and partly because of DAS OIT’s specific contractor preference. However, if the contracting practices reflected in this comparative analysis is more systemic across the state government, then the corrosive affect can significantly increase in magnitude regarding waste of government funds, loss of confidence of the people of the state, and additional procurement abuse and/or fraud opportunities.

In order to build the most effective *Procurement Integrity Assurance Initiative (PIAI)*, which contains sound and effective procurement integrity controls, the organization must first identify and understand its unique degree of risks from the traditional schemes of procurement fraud and abuse, along with management determining its risk tolerance. With the knowledge gained from a focused and tailored procurement fraud/abuse risk assessment, the organization is better positioned to design sound, effective, and cost-reasonable procurement integrity controls within their PIAI<sup>10</sup>.

*Note:* \*Prior to the initiation of this comparative analysis, an agreement was reached that any indications of procurement abuse and/or fraud would be provided to the OIG.

**Consideration (1)** – In order to limit the vulnerabilities associated with procurement fraud and abuse, it requires implementing sound procurement integrity controls which have been suggested under **Considerations** throughout this report.

**Consideration (2)** – DAS should determine the viability of performing a procurement fraud/abuse risk assessment and developing a *PIAI* designed to assist management in mitigating the risk to procurement fraud and/or abuse and preserving organizational integrity. The initiative should encompass a series of policies and procedures to prevent, detect, and respond to fraud, with an emphasis on prevention, as well as environmental factors (i.e. “Tone at the Top” and “Commitment to Procurement Integrity”).

#### **GOVERNING DIRECTIVES:**

- ❖ State of Ohio Procurement Handbook for Suppliers and Services – 6.2 Ethics and the Purchase Requisition
- ❖ Ethics Policy/Procedure PUR-001 (October 1, 2009)

---

<sup>10</sup> Three resources that are available to assist DAS in developing their *Procurement Integrity Assurance Initiative*: 1) U.S. Government Accountability Office “Fraud Risk Management Framework,” 2) the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in partnership with the Association of Certified Fraud Examiners (ACFE) “Fraud Risk Management Guide,” and 3) the PICS – “Procurement Integrity Control System®.”

# Governing Directives:

## **DAS Directive No. GS-D-12 (09-01-08)**

When making a purchase from STS contract, agencies are required to obtain a minimum of three quotes from various STS suppliers offering similar or like items.

## **DAS Request for Supplies/Services/Equipment**

Three quotes required for any purchase over \$500.

## **State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts**

When shopping from a STS, agencies are encouraged to compare the offerings of multiple manufacturers or their named distributors on similar items. Agencies are encouraged to request quotations and/or negotiate to obtain the most favorable pricing on these schedules.

## **Ohio Administrative Code 123:5-1-01 (H)**

“Competitive manner” means an open and fair process that promotes competition among prospective bidders or offerors.

## **DAS Directive No. GS-D-13 (09-01-09)**

...Avoid allowing the contractor to steer the agency toward follow-on contracts, or contracts that provide for extending the relationship between the employer and the independent contractor ...  
Avoid career contractors.

## **State of Ohio Procurement Handbook for Suppliers and Services – 6.2 Ethics and the Purchase Requisition**

Ethical conduct means that all potential vendors are given a fair and equal opportunity to offer their supplies and services to the agency. Any action on the part of the agency, indicating that a particular vendor is being treated differently than others, gives rise to unethical conduct by the agency.

## **Ethics Policy/Procedure PUR-001 (October 1, 2009)**

The Director of DAS has delegated authority to the Office of Procurement Services (OPS) to make purchases on behalf of state agencies... This policy and procedure will set forth the guidelines that the OPS will follow to protect this trust and to establish fair and equal treatment of all suppliers who are interested in participating in the procurement of these supplies, services and information technology.

## **State of Ohio Procurement Handbook for Suppliers and Services – Foreword...**

A good procurement system balances fairness, value, accountability, and flexibility....Taxpayers want accountability to ensure that their hard earned tax dollars are spent wisely and ethically.

## **State of Ohio Procurement Handbook for Suppliers and Services – 4.2 What: Describing the Purchasing Need**

Design specs could also be written so tightly that they may unfairly preclude other vendors from offering their supplies or services.

## **State of Ohio Procurement Handbook for Suppliers and Services – 6.2 Ethics and the Purchase Requisition**

Remember: PERCEIVED unethical conduct can have the same impact as actual violations. As a purchasing professional you hold the trust of the public you serve. Don't place yourself, your agency and the state into a position of jeopardizing that trust.

## **State of Ohio Procurement Handbook for Suppliers and Services – 6.2 Ethics and the Purchase Requisition**

. . .The agency should seek information from multiple sources and then prepare a specification that provides all interested bidders with an opportunity to supply the need. Ethical conduct means that all potential vendors are given a fair and equal opportunity to offer their supplies and services to the agency. Any action on the part of the agency, indicating that a particular vendor is being treated differently than others, gives rise to unethical conduct by the agency.

### **DAS Directive No. GS-D-13 (09-01-09)**

Eliminates conflicts of interest through competition where possible. Some contracts require a competitive selection process. Avoid allowing the contractor to steer the agency toward follow-on contracts, or contracts that provide for extending the relationship between the employer and the independent contractor or to other actions that may create the existence of an employee relationship for the contractor. Avoid career contractors.

### **Ethics Policy/Procedure PUR-001 (October 1, 2009)**

The Director of DAS has delegated authority to the Office of Procurement Services (OPS) to make purchases on behalf of state agencies... This policy and procedure will set forth the guidelines that the OPS will follow to protect this trust and to establish fair and equal treatment of all suppliers who are interested in participating in the procurement of these supplies, services and information technology.

### **CB Manual – 6. Optional Sources for Purchases Exempt from Controlling Board Review**

In addition, state agencies have the *option* of purchasing from state term schedules (STS) and multiple award term contracts (MAC). Purchases from MACs and STSs do not require Controlling Board review, regardless of the amount, because DAS traditionally receives approval by Controlling Board covering all agency purchases made under the STS and MAC.

## **State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts**

When shopping from a STS, agencies are encouraged to compare the offerings of multiple manufacturers or their named distributors on similar items. Agencies are encouraged to request quotations and/or negotiate to obtain the most favorable pricing on these schedules. In particular, discounts may be obtained for major purchases exceeding the maximum order limitation (MOL).

### **Memorandums Issued by DAS - Enterprise IT Contracting**

- STS Guidance #1 (June 16, 2017)
- STS Guidance #2 (June 23, 2017)
- STS Guidance #3 (June 30, 2017)
- STS Guidance #4 (August 16, 2017)
- STS Guidance #5 (September 29, 2017)

All purchasing referencing STS contracts require the receipt of at least three quotes. This means that the agency must obtain at least three quotes, not just solicit them.

Applicability: Do these changes also apply to other contracts: specifically multiple award contracts, master maintenance agreements, master license agreements, master service agreements, and master cloud service agreement – No, the new requirements are for State Term Schedule purchases only.

Another new component of the STS contract use is a requirement for DAS to provide a report of each agency's use of STS contracts to Controlling Board members on a quarterly basis.

**DAS Directive No. GS-D-12 (09-01-08)**

When making a purchase from STS contract, agencies are required to obtain a minimum of three quotes from various STS suppliers offering similar or like items.

**CB Manual – 6. Optional Sources for Purchases Exempt from Controlling Board Review**

In addition, state agencies have the option of purchasing from state term schedules (STS) and multiple award term contracts (MAC). Purchases from MACs and STSs do not require Controlling Board review, regardless of the amount, because DAS traditionally receives approval by Controlling Board covering all agency purchases made under the STS and MAC.

**State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts**

When shopping from a STS, agencies are encouraged to compare the offerings of multiple manufacturers or their named distributors on similar items. Agencies are encouraged to request quotations and/or negotiate to obtain the most favorable pricing on these schedules.

**State of Ohio Procurement Handbook for Suppliers and Services – 3.2.2 Optional Contracts**

DAS maintains a number of optional supply and service contracts known as State Term Schedules (STS's) and Master Maintenance Agreements (MMA's). These schedules and agreements are price solicitations that include multiple suppliers for similar types of supplies or services. All agencies may purchase any dollar amount from a STS or MMA, provided that approved funds are available to cover.