Audit Report

Department of General Services
Office of Procurement and Logistics

November 2013

OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

- This report and any related follow-up correspondence are available to the public through the Office of Legislative Audits at 301 West Preston Street, Room 1202, Baltimore, Maryland 21201. The Office may be contacted by telephone at 410-946-5900, 301-970-5900, or 1-877-486-9964.

- Electronic copies of our audit reports can be viewed or downloaded from our website at http://www.ola.state.md.us.

- Alternative formats may be requested through the Maryland Relay Service at 1-800-735-2258.

- The Department of Legislative Services – Office of the Executive Director, 90 State Circle, Annapolis, Maryland 21401 can also assist you in obtaining copies of our reports and related correspondence. The Department may be contacted by telephone at 410-946-5400 or 301-970-5400.

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

Thomas J. Barnickel III, CPA
Legislative Auditor

November 8, 2013

Senator James C. Rosapepe, Co-Chair, Joint Audit Committee
Delegate Guy J. Guzzone, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Department of General Services (DGS) - Office of Procurement and Logistics (OPL) for the period beginning July 1, 2009 and ending August 19, 2012. OPL manages the centralized procurement of certain goods and services for State agencies, including the procurement of contracts for the design and construction of certain State facilities. OPL also oversees the State's Automated Fuel Management Program and printing and graphic services; manages State records, inventories, and surplus property; and administers DGS' minority business enterprise program.

Our audit disclosed OPL could not demonstrate that certain procurement awards made on a centralized basis for the use of State agencies represented the best value to the State. The structure of the five-year $305 million State fuel contract procurement may have limited competition, resulting in only one bidder being eligible for the contract award, and certain aspects of the procurement were not adequately disclosed to the Board of Public Works. OPL also did not timely obtain certain deliverables from the vendor and did not ensure the propriety of rates charged by the vendor. In addition, OPL participated in several Intergovernmental Cooperative Purchasing Agreements (ICPAs) on behalf of the State; however, for four ICPAs valued at $41.5 million, OPL could not substantiate that vendors were selected via competitive procurement or adequately document its assertions that the ICPAs benefited the State.

Our audit also disclosed that a planned deliverable under the $3.7 million eMaryland Marketplace (eMM) contract was not implemented as intended and OPL did not seek to modify the related contract price. The eMM system is an Internet-based procurement system managed by OPL. The system was supposed to interface with the State's Financial Management Information System (FMIS), but that enhancement was deemed impractical and has not been implemented.

Furthermore, OPL assessed an eMM fee, intended to fund the maintenance of the system, on certain contracts that were not authorized for such fees. For example, OPL assessed fees on the aforementioned State fuel contract that was not procured via eMM.

OPL did not properly monitor providers that, by State law, receive procurement preferences for State agency purchases. For example, OPL did not determine and publish the fair market prices of all goods and services provided by Maryland Correctional Enterprises. Finally, OPL did not exercise adequate control and oversight over DGS-controlled Statewide purchasing transactions, State property, and DGS equipment.

DGS' response to this audit, on behalf of OPL, is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during our audit by OPL.

Respectfully submitted,

Thomas J. Barnickel III, CPA
Legislative Auditor

Table of Contents

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

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

Executive Summary

Legislative Audit Report on the
Department of General Services
Office of Procurement and Logistics (OPL)
November 2013

- **The structure of the five-year $305 million State fuel contract procurement may have limited competition, resulting in only one bidder being eligible for the contract award. OPL did not consider rebidding the contract to provide greater assurance that the State received the best value. OPL also did not timely obtain certain contract deliverables, such as proof of insurance, and did not ensure State agencies were billed the proper fuel rates (Findings 1 and 2).**

  OPL should ensure that future procurements are structured to promote maximum competition and consider rebidding large value contract procurements when sufficient competition is not obtained. OPL should also ensure that the contractor provides all contract deliverables in a timely manner and that agency personnel are provided with the information to verify vendor invoices.

- **A deliverable specified under the $3.7 million eMaryland Marketplace (eMM) contract was not implemented as intended and OPL did not seek to modify the related contract price. In addition, certain features of eMM that would enhance the documentation, security, and efficiency of procurements, such as the electronic bid function, were not being used by State agencies (Findings 3 and 4).**

  OPL should seek to modify the contract and adjust the related payments. OPL should also take appropriate action (such as pursue a change in State law and/or regulations if necessary) to require the use of the aforementioned eMM features by State agencies.

- **OPL did not document that it was in the best interest of the State to participate in certain Intergovernmental Cooperative Purchasing Agreements (ICPAs) valued at $41.5 million. ICPAs are contracts that are intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing. OPL also did not ensure one ICPA vendor was pricing its goods in accordance with the related contract, resulting in certain pricing discrepancies going undetected (Findings 5 and 6).**

OPL should ensure that a written determination for using an ICPA is prepared and that such a determination is properly substantiated. OPL should also ensure that the ICPA vendors price their goods and services in accordance with related contracts.

- **OPL assessed fees on certain contracts without statutory authority, without disclosing the fees to appropriate control agencies, and without ensuring that vendors subsequently remitted the fees (Finding 7).**

  OPL should assess only fees that are properly authorized, obtain control agency approval for the aforementioned fees, and ensure that all contract fees are subsequently remitted by the vendors**.**

- **OPL did not ensure that prices of goods and services offered by providers that receive preferences for State agency purchases of goods and services were set at fair market value. For example, OPL did not determine and publish the fair market prices of all goods and services offered by Maryland Correctional Enterprises. OPL also did not adequately monitor the State's Employment Works Program (EWP) designed to facilitate the distribution of the State's procurements of goods and services among community service providers and businesses owned by individuals with disabilities (Findings 8 and 9).**

  OPL should ensure the current prices of goods and services offered by these providers are set at fair market prices and publish the prices at least annually, as required. In addition, OPL should take the specific recommended actions to improve monitoring of the EWP.

- **OPL did not exercise appropriate oversight over DGS-controlled Statewide purchasing transactions, State property, and DGS equipment (Findings 10 – 13).**

  OPL should take the recommended actions to improve oversight in these areas.

Background Information

Agency Responsibilities

The Department of General Services (DGS) – Office of Procurement and Logistics (OPL) manages the centralized procurement of certain goods and services for State agencies, including the procurement of contracts for the design and construction of certain State facilities. OPL also oversees the State's Automated Fuel Management Program and printing and graphic services; manages State records, inventories, and surplus property; and administers DGS' minority business enterprise program. According to the State's records, during fiscal year 2012, the value of statewide procurements awarded by OPL totaled approximately $563 million, and OPL's operating expenditures totaled approximately $7.7 million.

Status of Findings From Preceding Audit Reports

We reviewed the status of the seven findings included in our preceding audit report dated May 5, 2010. We determined that OPL satisfactorily addressed four of these findings. The remaining three findings are repeated in this report.

We also determined the status of the equipment finding contained in our preceding audit report on the Department of General Services' (DGS) – Office of the Secretary and Other Units, dated January 6, 2011. DGS has designated OPL as the unit responsible for State agency property oversight. The finding was not satisfactorily addressed and is repeated in this report.

Findings and Recommendations

Statewide Fuel Contract

Background
The Department of General Services (DGS) – Office of Procurement and Logistics (OPL) procured a new Statewide fuel contract effective August 1, 2012. The total value of the five-year contract was approximately $305 million and included provisions for two additional two-year extensions. Agencies are invoiced directly by the fuel vendor for all fuel used under the contract. As of October 28, 2012, the vendor had billed approximately $16 million for the first three months of the contract.

Finding 1 (Policy Issue)
OPL structured the State fuel contract procurement in a manner that may have limited competition resulting in only one bidder being eligible for the contract award.

Analysis
The structure and language of the State fuel contract request for proposals (RFP) may have limited competition and resulted in only one bidder being eligible for the contract award. The RFP for the new contract included (1) replacement of the fuel card readers and the fuel management information system, (2) maintenance of the State's fuel pumps, (3) providing motor fuel (diesel and unleaded) to the State's fuel pumps, and (4) providing bulk motor and heating fuel across the State. Previously, the maintenance of fuel pumps and the provision of motor fuel to the State's fuel pumps were provided by one vendor, and the bulk motor and heating fuel services were provided by seven vendors under 13 contracts based on the type of fuel and the geographic region.

The RFP provided three scenarios for bidding on the contract (see box) and included the following statement:

> While the objective is to award to one prime contractor who would be responsible for all aspects of the contract, it is recognized that it may be in the State's best interest to award to multiple contractors based upon the various technical and financial options offered.

<u>Fuel Contract Bid Scenarios</u>

1. Propose on all RFP tasks.
2. Propose on all RFP tasks except the supply and delivery of bulk fuel.
3. Propose on only the supply and delivery of bulk fuel (some or all types and regions).

This stated preference to use one vendor to meet all contract requirements, as well as the RFP's bid scenario structure, may have limited the number of bidders. According to DGS, 113 vendors were notified of the solicitation, but only 7 vendors submitted a proposal. In fact, four of the aforementioned eight vendors previously under contract with the State did not bid on the new contract. Proposals submitted by three of the seven vendors were determined to be unacceptable by OPL. Of the four acceptable vendor proposals, one vendor submitted a proposal for bid scenario two, two vendors submitted proposals for bid scenario three, and only the winning vendor submitted a bid to provide all the tasks in the RFP under bid scenario one.

Given that only four acceptable bids were received and DGS' desire to award the contract as proposed in the RFP, OPL's only option was to select the one vendor who satisfied the RFP requirements. Specifically, the structure of the RFP provided OPL with two options when evaluating the bids: (1) award the contract to one vendor bidding on scenario one that covered all tasks or (2) award the contract to multiple vendors bidding on scenarios two and three that, collectively, addressed all tasks in the RFP. However, the two vendors who bid on scenario three submitted bids for only 11 of the 24 bulk fuel options in the RFP and, therefore, did not satisfy all the contract requirements. Since OPL chose to continue with the award, the only option available was to select the one acceptable bidder for scenario one, essentially making this a single bid procurement.

The limited competition for this procurement was also noted by the Maryland Board of Contract Appeals (MBCA) in a related bid protest. The bid protest in August 2012 by a losing bidder was denied because of its untimely filing; however, the MBCA observed that, while OPL "reserved the right to select a combination of proposals if in the State's best interest, no combination of proposals in this case would satisfy all of the State's fuel needs." Accordingly, the MBCA noted that OPL "had no option" other than to award the contract to a vendor who bid on all tasks.

In view of the large contract value, we believe OPL should have considered rebidding the contract using a different procurement structure and/or methodology. This could have provided greater assurance that the State received the best value. For example, cost savings may have been possible if OPL would have provided more flexibility in the bidding options, such as allowing it to select bids on a piecemeal basis. We compared the financial proposals from the two vendors who bid on scenario three with the prices offered by the winning vendor. Our comparison disclosed that one of these vendors could have supplied 8 of the 11 bulk fuel options for $502,286 per year (in delivery and administrative fees) based on estimated fuel usage, resulting in savings of $206,162 per year (or approximately $1 million over the five-year contract).

Finally, when seeking contract approval, OPL did not clearly advise the Board of Public Works (BPW) in the agenda item that this was essentially a single bid award. Rather, the presentation of the bids on the agenda item gave the impression that a competitive bid process had occurred because the price proposal for the vendor who bid on scenario two was presented as though the vendor had bid on all tasks. Specifically, OPL combined the bid information from the bidder on scenario two with the two vendors who bid on parts of scenario three and used certain assumptions to "create" an overall artificial bid amount. The agenda item showed that the winning vendor had the lower overall pricing. Although the narrative of the agenda item acknowledged that awarding to the vendor who bid on scenario two would require OPL to award to the other bidders for the bulk fuel scenario, and that the related bids did not cover all 24 bulk fuel options, the presentation was, at least, ambiguous.

Recommendation 1
We recommend that OPL

a. **ensure that future RFPs are structured to promote maximum competition,**
b. **evaluate the circumstances when sufficient competition is not obtained to determine if rebidding large value contract procurements would be in the State's best interest, and**
c. **provide BPW with clear and accurate information when requesting approval for contract awards.**

Finding 2
OPL did not timely obtain certain contract deliverables from the fuel vendor and did not ensure the propriety of motor fuel rates, as required by its procedures.

Analysis
OPL did not timely obtain certain contract deliverables from the Statewide fuel vendor and did not follow its procedures designed to ensure the propriety of motor fuel rates. Specifically, our review disclosed the following conditions:

- OPL did not obtain required fuel variance reports that could readily identify possible misuse of fuel purchases. The DGS *Handbook for Fleet Managers* requires that State agencies review available fuel usage reports generated by the commercial fuel services vendor. However, the reports were not provided by the vendor for the first five months of the contract until after our inquiry. Although OPL provided agencies with access to certain fuel usage data, the required fuel variance reports provide the most efficient way for agency employees to identify potential billing or usage irregularities (such as by flagging abnormal fuel usage).

- OPL did not obtain proof of the required insurance from the vendor until we requested it four months after the execution of the contract. The RFP required the winning bidder and its subcontractors to purchase and maintain comprehensive third-party legal liability insurance (for example, commercial general liability insurance of $2 million) and submit certificates of insurance within five business days following notice of the recommended award.

- For the first four months of the contract, OPL did not provide State agency personnel with the daily motor fuel rates to verify the propriety of amounts directly invoiced to them by the vendor. OPL also did not perform random verifications of fuel invoices as required by its policies. For example, during a three-month period, OPL only verified the fuel rates for 8 of the 334 locations billed by the vendor even though its policy required it to randomly select 20 percent of billed locations monthly to ensure that the related agencies were charged the correct price per gallon in accordance with the contract.

Recommendation 2
We recommend that OPL

a. obtain contract deliverables (such as fuel variance reports and proof of insurance) in a timely manner,
b. provide agency personnel with information necessary to ensure that fuel invoices are accurate, and
c. perform random verifications of fuel invoices as required by its policies.

eMaryland Marketplace

Background

eMaryland Marketplace (eMM) is an Internet-based, interactive procurement system managed by OPL. State laws and regulations generally provide that eMM is to be used by State agencies, counties, municipalities, public institutions of higher education, public schools, and other entities to publish solicitations for goods and services greater than $15,000 and to publish awards greater than $25,000.

In August 2011, OPL entered into a five-year $3.7 million contract with a new vendor to develop, operate, and maintain a new eMM system; the contract included a provision for a five-year extension option at a cost of approximately $2.4 million. The contract also provided for the vendor to add an application that would allow agencies to buy from Statewide contracts through eMM and to enhance the ability of eMM to interface with the State's Financial Management Information System (FMIS). These enhancements were included to address concerns noted in a fiscal year 2007 Governor's Transition Report that recommended an "overhaul" of eMM.

Finding 3
A contract deliverable was not implemented as intended and OPL did not seek to modify the related contract price.

Analysis
OPL did not require the contractor to develop the interface between eMM and FMIS, which was a deliverable specified in the eMM contract. Furthermore, OPL did not seek to modify the related contract price. The interface was highlighted in the agenda item submitted to BPW when the eMM contract was approved, as it was one of the recommendations in the aforementioned Governor's Transition Report. The interface was intended to provide efficiencies in the procurement process and to enable more comprehensive monitoring of Statewide purchasing activity.

The eMM vendor's project delivery schedule submitted with its technical proposal indicated that the interface was to be completed by October 17, 2011. However, as of July 10, 2013 the interface had not been implemented. The December 2012 deliverable schedule showed that the interface was 22 percent complete, which we were advised related to proposed approaches and design. Since that time, no additional progress had been made toward the implementation of the interface. We were advised by OPL management that the task may be implemented in the future; however, a formal plan to do so has not been established. In this regard, we were subsequently advised by the State's Department of Information Technology (DoIT) that the interface was impractical.

OPL also did not reduce the contract price for the interface deliverable that has not been implemented. Specifically, as of July 13, 2013, the vendor continued to invoice, and OPL continued to pay, $73,483 each month to the vendor which, according to the financial proposal, was the amount to be paid for all tasks, including the interface. Furthermore, OPL could not readily determine the value of the interface deliverable and the amount to recover from the vendor. In this regard, OPL did not require the vendor to provide line item pricing for major deliverables, thus precluding effective monitoring to ensure contract payments were for services and deliverables received.

State regulations governing the procurement of information technology (IT) contracts require BPW approval for contract modifications that materially change the scope of the original contract. We were advised by BPW staff that the aforementioned change constituted a material change to the contract scope and, therefore, warranted BPW approval. Although DoIT has delegated authority from BPW for IT contracts, OPL exercised significant control over this contract.

Recommendation 3
We recommend that OPL

a. **seek to modify the contract to eliminate the interface and adjust the related payments;**
b. **in conjunction with DoIT, notify BPW of any such changes to the contract and seek approval; and**
c. **ensure future contract financial proposals are sufficiently detailed and that resultant contract terms associate payments with specific measurable deliverables.**

Finding 4 (Policy Issue)
Certain features of eMM that would enhance the documentation, security, and efficiency of procurements were not being used by State agencies.

Analysis
Certain features of eMM that would enhance the documentation, security, and efficiency of procurements were not being used by State agencies. While OPL did use the eMM bid function to receive bids, our review of 11 State agencies disclosed that 10 did not use the eMM bid function to receive bids and the remaining agency only used eMM for bid collection on a limited basis. We were advised by these agencies' procurement officials, that these agencies generally received the bids via hard copy mail or by email and relied on manual controls over the bids.

Although eMM has the ability to handle all aspects of the bidding process, including bid submission and tabulation, State laws and regulations currently only require agencies to use the system for posting the solicitation and the final award. The eMM bid function helps ensure the integrity of the bidding process via automated online controls that restrict access to bid documents to authorized users and prevent access to bids prior to the scheduled opening date. Accordingly, we believe the bid function should be used by State agencies to enhance controls over the procurement process.

Recommendation 4
We recommend that OPL take appropriate actions to require the use of the eMM bid feature by State agencies under its authority. For example, OPL could pursue a change in State law and/or regulations, in conjunction with BPW, if necessary.

Intergovernmental Cooperative Purchasing Agreements

Background
State law defines an Intergovernmental Cooperative Purchasing Agreement (ICPA) as a contract that is intended to promote efficiency and savings that can result from intergovernmental cooperative purchasing. State law allows agencies to participate in ICPAs that are entered into in a manner consistent with the purposes set forth in State procurement law, which include fostering effective broad-based competition. State law further provides that a written determination be prepared for participation in an ICPA that includes a statement that the ICPA will provide cost benefits to the State, promote administrative efficiencies, or promote intergovernmental cooperation.

ICPAs are procured by one or more federal, state, or local government agencies and consolidate the procurement of specified goods and services on behalf of multiple users. The entities forming the ICPA are "lead entities" and all other users of the ICPA are "participating entities." ICPAs generally offer certain discounts for both the lead and participating entities. The lead entities generally collect a fee (such as 0.5 percent) from the vendors based on the volume of purchases by the participating entities.

OPL participated in 26 ICPA contracts during the period from July 1, 2009 through August 19, 2012, from which OPL issued 44 related blanket purchase orders, with a total estimated value of $68 million, for use by State agencies. We reviewed OPL's participation in 4 ICPAs for which the blanket purchase orders had an estimated value of approximately $41.5 million. These ICPAs and related contracts were procured via multistate ICPAs for (a) maintenance, repair, and operations products; (b) pharmaceuticals; (c) tires; and (d) copying equipment and services.

Finding 5
OPL did not document its assertion that it was in the best interest of the State to participate in certain ICPAs.

Analysis
OPL did not document its assertion that it was in the best interest of the State to participate in the four ICPAs tested. Specifically, for one of the ICPA contracts for which the blanket purchase order had an estimated value of $3.1 million, OPL could not provide us with the procurement officer's written determination as required by State law. For the three other ICPAs, for which the blanket purchase orders had an estimated value of $38.4 million, the procurement officer's determinations stated that participating in the ICPA would provide cost benefits to

the State, promote administrative efficiencies, and promote intergovernmental cooperation; however, OPL could not substantiate these assertions. For example, OPL could not provide any analyses of comparable pricing from prior State contracts or pricing estimates from other vendors that would support the use of the ICPAs. Furthermore, although we were advised that the aforementioned ICPAs were competitively procured by the lead entities, OPL management could not provide us with any documentation to support this and could not document that it reviewed the pricing under other ICPAs that offered similar goods or services to determine which ICPA offered the best pricing.

OPL also could not always document its justification for selecting specific vendors for ICPAs that offered participating entities choices among several qualified vendors. Rather than allow State agency personnel to choose from these qualified vendors when making purchases, OPL pre-selected the vendor for each blanket purchase order for use by State agencies. However, for two of these ICPAs, OPL could not document why it selected the specific vendors. Our comparison of the vendor prices for one of these ICPAs disclosed that 20 of the 62 items offered by the selected vendor (or one-third) were offered at a lower cost by one or both of the other vendors available under the ICPA. Since prices differ among qualified vendors depending on the items, it appears more appropriate to allow State agencies to choose which qualified vendor can provide the needed goods and services at the best price, rather than restrict the choice to one particular vendor.

A similar condition concerning the failure to determine whether participating in an ICPA was in the best interest of the State was commented upon in our two preceding audit reports.

Recommendation 5
We recommend that OPL

a. comply with State law and ensure that a written determination for using an ICPA is prepared and that such a determination is properly substantiated (repeat), and
b. provide State agencies with the option to purchase goods and services from any qualified vendor under an ICPA.

Finding 6
OPL did not ensure an ICPA vendor was pricing its products in accordance with the ICPA contract, resulting in certain pricing discrepancies going undetected.

Analysis
OPL did not ensure an ICPA vendor was pricing its products in accordance with the ICPA contract, resulting in certain pricing discrepancies going undetected. Specifically, for one ICPA contract for maintenance, repair, and operations products, with an estimated value of $4 million, the vendor maintained a website with pricing for Maryland State agencies purchasing under the ICPA. However, OPL did not compare the prices on the website with the related pricing per the ICPA contract. Our comparison of 20 items disclosed that the website pricing for the State was up to 33 percent higher than the ICPA contract prices for 17 of the items tested. For example, the price for an air circulator for State agencies ($127) was 33 percent higher than the price per the ICPA contract ($95).

OPL was not aware of these discrepancies until we brought them to its attention and could not provide an explanation. In response to our inquiries, the vendor advised OPL that the website pricing reflected updated pricing for these items under the ICPA; however, OPL had not confirmed that the updated prices were approved by the ICPA as required by the ICPA contract.

Recommendation 6
We recommend that OPL ensure that ICPA vendors price their goods and services in accordance with ICPA contract pricing and take corrective action when discrepancies are noted, including the aforementioned pricing issues.

Contract Fees

Finding 7
OPL assessed fees on certain contracts without statutory authority, without disclosing the fees to appropriate control agencies, and without ensuring that vendors subsequently remitted the fees.

Analysis
For certain contracts, OPL assessed fees without proper authorization and without ensuring the vendors subsequently remitted the fees. The revenue from these fees was used by DGS to fund operating expenses. Our review disclosed the following conditions:

- OPL assessed a one percent eMaryland Marketplace (eMM) fee on certain contracts that were not authorized for such fees. These fees were to be included in the prices of the goods and services purchased by State agencies. State law generally provides OPL with the authority to assess an eMM fee subject to BPW approval. On August 10, 2011, BPW authorized OPL to assess an eMM fee on DGS-controlled electronically procured contracts. However, our review disclosed that OPL assessed the eMM fee on contracts that were not procured electronically via eMM. For example, $242,000 of the $580,000 in eMM fees collected during the period from July 1, 2012 through January 31, 2013 was from the Statewide fuel contract for which only the solicitation, and not the procurement, was made via eMM. Furthermore, $177,000 in fees was collected from three of the ICPA contracts mentioned in Finding 5 that were not solicited, procured, or advertised on eMM. BPW staff and legal counsel to the Maryland General Assembly agreed that the law's reference to procuring a contract electronically is intended to include conducting the procurement electronically and not merely posting a notice of solicitation.

- OPL assessed fees on the State's fuel vendor (in addition to the eMM fee noted above), which were then included in the prices charged to State agencies and other entities purchasing fuel under the contract (such as local governments), but did not disclose the full extent of the fees to the Department of Budget and Management (DBM). OPL assessed the vendor $0.01 per gallon (or $224,950 per year based on the estimated fuel usage) for all fuel sold under the contract. The fee is in addition to the longstanding fee assessed on fuel disbursed at the State fuel pumps. OPL last received DBM approval in fiscal year 1998 for the fee on fuel disbursed at the State fuel pumps but never received any approval for the $0.01 per gallon fee.

- OPL assessed another fee on the value of purchases made under the State's contract for maintenance, repair, and operations products without authorization. We were advised by legal counsel to the Maryland General Assembly that fees could be charged by one agency to another, but a general prerequisite would be inclusion of the fee revenue in the budget (to demonstrate legislative acknowledgement of the arrangement). However, in this case, the fee was not accurately disclosed in OPL's budget and was not properly accounted for. Specifically, OPL budgeted for and recorded this fee as eMM fee revenue. During the first nine months of calendar year 2012, OPL collected approximately $192,500 in related fees under this contract.

- OPL did not ensure that the vendors remitted all of the aforementioned contract fees. Although the vendors submitted reports of the related contract activity and the fees due, OPL did not verify any of the information reported. As a result, there is a lack of assurance that the fees assessed were subsequently remitted to OPL.

Recommendation 7
We recommend that OPL

a. **only assess fees that are properly authorized;**
b. **obtain DBM approval for the aforementioned fees and, in the future, obtain appropriate approvals prior to assessing fees; and**
c. **develop procedures to ensure all contract fees are subsequently remitted to OPL by the vendors.**

Monitoring of Providers With Procurement Preferences

Background
State laws and regulations provide for procurement preferences to benefit disadvantaged individuals or representative organizations. Specifically, State law provides that, when goods or services can be supplied at prices that do not exceed the prevailing market prices, State aided or controlled entities shall give procurement preferences to Maryland Correctional Enterprises (MCE), Blind Industries and Services of Maryland (BISM), the Employment Works Program (EWP), and individuals with disability-owned businesses (collectively referred to as preferred providers).

State law requires OPL to independently determine and report the fair market values of MCE items for State agency personnel to compare with MCE's established prices. Pricing for goods and services available from the other preferred providers is to be set at fair market value as determined by their respective pricing committees. For example, the BISM pricing committee includes the Secretary of DGS, the Secretary of Public Safety and Correctional Services, the President of BISM, and a member of the Executive Board of the National Federation of the Blind of Maryland. DGS is also required to compile, publish, and distribute, at least annually, a listing of goods and services available from each of the preferred providers and the fair market prices of those goods and services.

Finding 8
OPL had not determined and published the fair market prices of MCE's goods and services and did not publish the fair market prices of BISM's goods and services, as required.

Analysis
OPL had not determined and published the fair market prices of MCE's goods and services, and did not publish the fair market prices of BISM's goods and services. According to the State's accounting records, during fiscal year 2012 State agencies spent approximately $10.2 million and $4.4 million on purchases from MCE and BISM, respectively. Our review disclosed the following conditions:

- Since 2003, OPL had not independently determined and published the fair market prices of MCE's goods and services as required by State law. OPL advised us that MCE's prices published on its website reflected the fair market prices. However, OPL management only reviewed prices for new items and price changes for existing items that had been set by MCE to determine if they reflected fair market prices. Furthermore, OPL could not provide documentation to support the extent of prices reviewed. Finally, these reviews were not independent because OPL relied on pricing data provided by MCE. State law provides that State agencies shall purchase any good and service available from MCE that is provided at a price not exceeding the prevailing average market price, as determined by DGS. State agencies are permitted to procure an item from another vendor, presumably at a cost savings, if MCE's price is higher than the OPL-determined prevailing average market price.

- OPL did not publish the fair market prices of BISM's goods and services as required by State regulations and, instead, directed State agencies to the prices published on BISM's website. OPL management advised us that BISM's prices reflected the fair market prices as determined by the BISM pricing committee. However, our review disclosed that the committee (of which the Secretary of DGS is a member) only reviewed pricing for new items and for price changes submitted by BISM; we were advised that such reviews were based on data provided by BISM and, therefore, were not independent. Furthermore, the pricing committee last met in July 2012 to approve price increases and new items, and we noted that, as of October 2013, the prices for some of these items have since increased.

Consequently, State agencies were not given adequate information to facilitate compliance with the law and may be paying more than the fair market prices for goods and services procured from MCE and BISM. A similar condition regarding the verification of MCE pricing was commented upon in our two preceding audit reports.

Recommendation 8
We recommend that OPL

a. **independently determine and publish the fair market prices of MCE's goods and services (repeat); and**
b. **in conjunction with the BISM pricing committee, determine the fair market prices of BISM's goods and services and compile and publish the fair market prices, as required.**

Finding 9
OPL lacked adequate procedures and controls over the Employment Works Program (EWP).

Analysis
OPL lacked adequate procedures and controls over the EWP. State law establishes the EWP under DGS to facilitate the distribution of State agency procurement contracts for goods and services among community service providers[1] and businesses owned by individuals with disabilities. The law further provides that DGS is to designate Maryland Works, Inc., or another appropriate coordinating entity (CE), to identify potential contracts for procurement, establish procedures for the selection of providers, provide training and assistance to participating providers, and monitor EWP providers. Finally, the law establishes a pricing and selection committee[2] to provide specified oversight and to ensure the related goods and services are provided at fair market value. Our review of OPL's procedures and controls over the EWP disclosed the following conditions:

- OPL did not establish procedures for selecting the CE and determining the reasonableness of its fees charged to the community service providers. OPL has used Maryland Works, Inc. as the CE since 1985, has made no recent

[1] Community service providers are not-for-profit entities accredited by the State Department of Education's Division of Rehabilitation Services for participation in the EWP and are operated in the interest of individuals who have a mental or physical disability, including blindness.
[2] The pricing and selection committee for the EWP includes the following members or their designees: the Secretaries of Transportation; General Services; Labor, Licensing, and Regulation; and Public Safety and Correctional Services; the President of BISM; and the Assistant Secretary for Vocational Rehabilitation within the State Department of Education.

efforts to competitively procure these services, and could not substantiate the ongoing use of this vendor as the CE. According to a December 2004 BPW agenda item, OPL tried to competitively procure these services at that time but only received a single proposal from the current CE.

OPL also could not document that the fees collected by the CE from EWP providers were reasonable; such fees may ultimately be passed on to State agencies using the providers. The CE generally collects a 3.2 percent fee from the providers on all sales under EWP contracts. OPL could not readily provide us with the amount paid to the CE and the related EWP providers. Our review of the CE's most recent publicly available federal tax return, disclosed that the CE collected approximately $881,000 in EWP fees during calendar year 2011. Based on the aforementioned fee, we estimate that associated sales under EWP contracts totaled $27.5 million.

- OPL did not monitor the CE to ensure it was fulfilling all of its responsibilities required under State law. For example, OPL management advised us that the CE provided the required training, but could not document that such training was performed.

- OPL could not document that the pricing and selection committee performed functions for EWP as required by law. For example, there was no evidence that the committee had reviewed the CE's process for soliciting services from all available community service providers and was matching them to the procurement needs of the State.

  OPL could also not document that the committee determined the fair market prices of the goods and services to be provided by the community service providers selected by the CE. OPL management advised us that the CE performed a cost analysis to ensure that the pricing for the selected providers reflected the fair market value, which was then reviewed by the committee. However, the CE only provided the committee with the prices for the selected provider for its review and did not provide a cost analysis. Since the CE receives a 3.2 percent fee from each vendor's sale, there is a lack of independence and no assurance that the prices paid by the State for the goods and services are reasonable.

A Memorandum of Understanding (MOU) establishing the specific responsibilities of all parties and how they should be carried out (such as selecting the community service providers for the specific contracts and training and monitoring the providers) could enable OPL and the committee to more effectively monitor the CE.

Recommendation 9
We recommend that OPL

a. **establish procedures for the selection of the CE, including the related compensation;**
b. **enter into a formal MOU with the CE to establish the specific responsibilities;**
c. **monitor the CE to ensure that it is providing the goods and services required by State law and the MOU; and**
d. **ensure the pricing and selection committee performs its functions as required, including determining the fair market value of EWP goods and services.**

Statewide Purchasing Transactions

Finding 10
OPL did not conduct audits of delegated procurement activity, which totaled approximately $55.3 million during fiscal year 2012.

Analysis
OPL did not conduct audits of State agencies' delegated procurement activity. OPL has jurisdiction over the procurement of commodities and, as permitted by State procurement regulations, has delegated the authority for certain procurements (such as purchases up to $25,000) to individual State agencies. According to OPL records, State agencies made 18,239 procurements for commodities totaling approximately $55.3 million during fiscal year 2012 (generally excluding purchases made with the State's corporate purchasing card).

As of March 7, 2013 OPL had not conducted any audits during fiscal years 2012 and 2013 and had only conducted audits of four agencies during fiscal year 2011 and three agencies during fiscal year 2010. In addition, the audits were not always documented. For example, our review of the fiscal year 2011 audits disclosed that OPL could provide documentation (such as test schedules) for only two of the four audits and could provide the letter to the agency communicating the results of the audit for only one of the audits. OPL management advised us that its ability to conduct these audits has been negatively impacted by DGS staffing shortages.

The audits are important because they can identify instances in which agencies have not complied with State procurement regulations (such as the requirement to obtain competitive bids). For example, for one of the aforementioned two documented audits, OPL tested 18 procurements totaling $203,127 and noted inadequate documentation (such as a lack of evidence of competition) for 10 of the procurements totaling $95,480. Our fiscal compliance audits of State agencies also often identify instances in which agencies fail to procure goods and services in accordance with State regulations. Given its representation regarding staffing shortages, OPL could consider conducting a limited number of focused audits on the riskier delegated purchases. For example, of the $55.3 million in delegated purchases, more than $30 million related to small purchases that on average are individually insignificant, yet there were 349 sole source procurements totaling $6.3 million that pose a greater risk of agency noncompliance.

Consistent with its jurisdiction over the procurement of commodities, State procurement regulations permit OPL to audit State agency procurements. OPL has established an audit process, and its procedures provide that agency audits will be scheduled on a two-year, rotating basis. The audits are designed to ensure that the agencies complied with State procurement regulations, that State contracts were used when applicable, and that the agencies did not exceed the assigned delegated authority. If an agency is determined to be non-compliant, delegated authority may be rescinded at OPL's discretion.

Recommendation 10
We recommend that OPL conduct audits of delegated procurements in accordance with its procedures and ensure that the results of the audits are documented.

Finding 11
Proper internal control was not established over statewide purchasing transactions.

Analysis
OPL did not fully use the security features available on the State's Financial Management Information System (FMIS) to establish proper internal controls over DGS' statewide purchasing transactions (such as blanket purchase orders). Specifically, OPL had not established online approval requirements for purchasing transactions that DGS personnel initiated on behalf of other State agencies. As a result, 14 DGS employees could process statewide purchasing transactions without independent approvals. Most of these employees could process transactions up to $1 billion without independent approvals.

A similar condition was commented upon in our two preceding audit reports. According to the State's accounting records, during fiscal year 2012, OPL processed Statewide purchases totaling approximately $536 million primarily for other State agencies.

Recommendation 11
We recommend that OPL fully use the available FMIS security features by establishing adequate independent online approval requirements for all critical purchasing transactions (repeat).

State Property Management Oversight

Finding 12
OPL did not adequately monitor State agency compliance with State property inventory standards and did not take corrective action when deficiencies were identified.

Analysis
OPL did not adequately monitor State agency compliance with State property inventory standards and did not take corrective action when deficiencies were identified. State law provides that DGS is responsible for Statewide inventory standards and DGS designated OPL as the applicable oversight unit to ensure State agencies adequately account for and control State property. We were advised that OPL's oversight was generally limited to following up with State agencies to address property deficiencies disclosed in audit reports issued as a result of our routine audits of State agencies.

Furthermore, OPL's follow-up of our audit findings was insufficient. We reviewed audit reports for 14 agencies with property deficiencies for the period from December 2008 through February 2012, including 7 agencies with findings that were repeated from one or more preceding audit reports. We determined that no OPL follow-up was performed for 5 agencies. For the remaining 9 agencies, OPL merely obtained a verbal or written confirmation from the agencies that the property deficiencies were addressed. In this regard, 3 of the 9 agencies had property findings in their next audit report, including one that continued to have the same deficiency.

In January 2011, the Maryland General Assembly's Joint Audit Committee sent a letter of concern to DGS regarding patterns of State agency noncompliance with procedures for tracking physical inventories of equipment, as noted in our audit reports. DGS responded that it was in the process of establishing a formal audit function that would develop a more robust audit program to better assist State agencies, allow it to work more closely with the secretaries of those agencies, and follow up when further guidance is needed. Our audit disclosed, however, that while OPL continued to follow up with State agencies on deficiencies noted in certain audit reports, it did not develop a more robust audit program as stated in its response.

State law provides that DGS "shall adopt standards for maintaining stores and inventory control for all supplies required by any unit." DGS' *Inventory Control Manual* established under this authority provides guidance, procedures, and controls to State agencies for maintaining State property and provides that DGS will conduct unannounced spot audits of inventory procedures to ensure compliance with the *Manual*. OPL management advised us that it lacks sufficient personnel to follow up on the inventory deficiencies and does not believe that it has the statutory authority to enforce corrective action if an agency does not comply with the requirements and standards of the *Manual*. Nevertheless, OPL should work more closely with the secretaries of State agencies to help correct instances of noncompliance as represented in its response to the Joint Audit Committee.

Recommendation 12
We recommend that OPL monitor State agency compliance with State inventory standards and take appropriate corrective action when deficiencies are identified.

DGS Equipment

Finding 13
OPL did not maintain adequate accountability and control over DGS' equipment.

Analysis
OPL did not maintain adequate accountability and control over DGS' equipment. OPL is responsible for maintaining the DGS equipment inventory, which totaled approximately $10 million as of June 30, 2012 according to its detail records. Our review of procedures and controls over this equipment disclosed the following conditions:

- OPL did not pursue missing equipment noted during its annual inventories of equipment. Specifically, our review disclosed that OPL did not investigate 408 capitalized equipment items totaling approximately $394,000 that were not located during the 2012 physical inventory. In this regard, the detail equipment records indicated that 139 of these items totaling approximately $47,000 either had never been located, or had not been located during a physical inventory since December 2008. The failure to identify and pursue items missing during the inventory was noted in our two preceding audit reports on the DGS – Office of the Secretary.

- OPL did not record equipment purchases in the detail records in a timely manner. Specifically, 71 items totaling approximately $199,000 purchased between April 2010 and November 2012 were not recorded in the detail records as of March 2013. OPL identified these items during its monthly reconciliations of the detail records to the control account but did not ensure the items were subsequently recorded.

- The Annual Report of Fixed Assets submitted as of the end of fiscal year 2012 did not accurately reflect the value of DGS' equipment. The value of equipment reported on the Annual Report ($19 million) exceeded the amount recorded in the detail records ($10 million) by approximately $9 million. OPL management advised us that the difference was related to certain energy efficiency project costs that were not recorded in the detail records. However, OPL could not provide us with any documentation of these expenditures, and energy efficiency project costs would not be considered equipment for reporting purposes since they generally relate to building components.

- Adjustments to the inventory control account were not subject to supervisory review and approval. This is particularly significant because the individual responsible for maintaining the control account also maintained the detail inventory records, was responsible for investigating items that were missing during the physical inventory, and processed excess property disposals.

The DGS *Inventory Control Manual* provides that missing or stolen items are to be investigated, reported, and removed from the records; that equipment purchases be recorded; and that all adjustments to the control account be approved by supervisory personnel.

Recommendation 13
We recommend that OPL comply with the applicable requirements of the *Inventory Control Manual* (repeat).

Audit Scope, Objectives, and Methodology

We have audited the Department of General Services - Office of Procurement and Logistics (OPL) for the period beginning July 1, 2009 and ending August 19, 2012. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OPL's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. We also determined the status of the findings contained in our preceding audit report as well as the status of one finding contained in our preceding audit report on the Department of General Services - Office of the Secretary.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. The areas addressed by the audit included commodity procurement, construction procurement, the statewide fuel management system, eMaryland Marketplace, OPL's use of the State's Financial Management Information System for performing statewide procurement functions, equipment, and State property oversight. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of OPL's operations. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Data provided in this report for background or informational purposes were deemed reasonable, but were not independently verified.

Our audit did not include certain support services provided to OPL by the Department's Office of the Secretary. These support services (such as payroll processing) are included within the scope of our audit of the Department of General Services - Office of the Secretary. Our audit also did not include activities related to the operation and maintenance of Government House. Although the Department receives an appropriation for these activities and OPL is responsible for maintaining the equipment inventory for the Department, these activities are audited as part of the Executive Department - Governor.

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

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

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

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

The response from the Department of General Services, on behalf of OPL, to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise the Department regarding the results of our review of its response.

Martin O'Malley
Governor

Anthony G. Brown
Lt. Governor

Alvin C. Collins
Secretary

MARYLAND DEPARTMENT OF GENERAL SERVICES
OFFICE OF THE SECRETARY

November 5, 2013

Mr. Thomas J. Barnickel III, CPA
Legislative Auditor
Office of Legislative Audits
301 West Preston Street, Room 1202
Baltimore, MD 21201

Dear Mr. Barnickel;

Enclosed are the Maryland Department of General Services (DGS) responses to the Audit Report on the Department of General Services – Office of Procurement and Logistics for the period beginning July 1, 2009 and ending August 19, 2012. As required, a copy of our responses will be sent electronically to your office.

If you should have any questions or require additional information, please contact William Armstrong, Director of Procurement, Department of General Services at 410.767.4045 or via e-mail at William.armstrong@dgs.state.md.us.

Sincerely,

Alvin C. Collins
Secretary

Cc: Bart Thomas, Acting Deputy Secretary, DGS
William Armstrong, Director of Procurement, DGS

301 West Preston Street
Baltimore, Maryland 21201-2305
(410) 767-4960
FAX (410) 333-5480

Toll Free 1-800-449-4347
e-mail: Alvin.Collins@dgs.state.md.us
TTY users 1-800-735-2258

Department of General Services (DGS)
Responses to Draft Audit Report of October 2013 on the Office of Procurement and Logistics

Statewide Fuel Contract

OLA Finding 1 (Policy Issue)
OPL structured the State fuel contract procurement in a manner that may have limited competition resulting in only one bidder being eligible for the contract award.

OLA Recommendation 1:
We recommend that OPL
a. ensure that future RFPs are structured to promote maximum competition,
b. evaluate the circumstances when sufficient competition is not obtained to determine if rebidding large value contract procurements would be in the State's best interest, and
c. provide BPW with clear and accurate information when requesting approval for contract awards.

DGS Response 1:
DGS disagrees with the finding.

a. DGS agrees that RFP's should be structured to promote maximum competition; however, we disagree with the finding that the State fuel contract was procured in a manner that may have limited competition.

An RFP was written in 2011 after a rigorous process to not only address this audit finding but to move forward with a new fueling system solution that would benefit the State and its drivers in the most streamlined and value oriented manner possible. To that end the RFP, was drafted to generate as much competition as possible. A contract of this size and scope, more than $305 million over five years, does by its size and complexity, narrow the field of those companies who can not only provide the fuel and services, but who possess the financial position to accept the credit risk associated with such an endeavor. The RFP was widely advertised and the Oil distribution community was communicated with not only by email and public solicitation but at industry events.

DGS retained an outside industry consultant to assist in crafting the RFP and in generating additional outreach to the oil industry. Expertise was sought not only from the industry but also from the State's own fuel management experts to participate in the RFP's specifications and to evaluate the responses once received. Round table discussions were hosted by DGS to get as much input as possible to generate interest and to gather pertinent information in order to include the most recent best oil industry and fuel management practices when crafting the RFP.

DGS did not bundle the contract to eliminate competition or SB/MBE, but rather sought to issue a solicitation that would encourage competition and meet the State's socioeconomic policies, all while bringing the best value to the State. A minority participation goal of 15% ($9,123,023) was added to the new fuel contract, where there was none in the previous fuel contracts.

DGS envisioned a solution where Offerors could have submitted a proposal on all tasks or individual tasks under the RFP. This was done so as not to limit the competition, but rather to allow Offerors versatility in meeting the requirements. Those Offerors who could not meet the minimum requirements of the RFP could have formed joint ventures or teaming arrangements to meet all the requirements of the RFP. We understand the policy and importance of competition in public procurements and we felt this structure would encourage competition among the industry, not limit it.[1]

b. DGS agrees with this recommendation and, while we can never be certain of how many vendors will submit bids or proposals in response to our solicitations, DGS has implemented a procedure to monitor anticipated responses to solicitations before the bid or proposal due date to determine whether there will be sufficient competition.

c. DGS acknowledges the importance of providing the BPW with clear and accurate information. It was never our intention to appear to be misleading on the board agenda when requesting approval for the Statewide fuel contract award

OPL Finding 2
OPL did not timely obtain certain contract deliverables from the fuel vendor and did not ensure the propriety of motor fuel rates, as required by its procedures.

OLA Recommendation 2:
We recommend that OPL

a. obtain contract deliverables (such as fuel variance reports and proof of insurance) in a timely manner,
b. provide agency personnel with information necessary to ensure that fuel invoices are accurate, and
c. perform random verifications of fuel invoices as required by its policies.

DGS Response 2:

---

[1] **Auditor's Comment**: In its response, the Department stated that it disagreed with the finding and that it structured the RFP to encourage and not limit competition; nevertheless, it acknowledged that the size of the project would narrow the field of companies who could bid on the contract and suggested that companies could have formed joint ventures or teaming arrangements to meet all the requirements of the RFP. This supports our position that the RFP did ultimately limit competition and that the Department should have considered rebidding the contract using a different procurement structure when the bid results indicated that only one bidder was eligible for the award.

DGS concurs with the finding.

a. OPL will comply with the recommendations to ensure that contract deliverables are obtained in a timely manner.
b. The pricing is currently available on the DGS website.
c. OPL will perform random verifications of fuel invoices as required by its policies.

OLA Finding 3
A contract deliverable was not implemented as intended and OPL did not seek to modify the related contract price.

OLA Recommendation 3:
We recommend that OPL

a. seek to modify the contract to eliminate the interface and adjust the related payments;
b. in conjunction with DoIT, notify BPW of any such changes to the contract and seek approval; and
c. ensure future contract financial proposals are sufficiently detailed and that resultant contract terms associate payments with specific measurable deliverables.

DGS Response 3:
DGS concurs with the finding

a. DGS will request a schedule of values from the vendor. If determined that it is feasible, DGS will request a credit to the account for payments made against the schedule of values.
b. If determined necessary, DGS will request approval of DoIT and seek BPW approval.
c. DGS will include line item data in specifications with the goal of assuring that payments are directly related to specific measurable deliverables.

eMaryland Marketplace

OLA Finding 4 (Policy Issue)
Certain features of eMM that would enhance the documentation, security, and efficiency of procurements were not being used by State agencies.

OLA Recommendation 4:
We recommend that OPL take appropriate actions to require the use of the eMM bid feature by State agencies under its authority. For example, OPL could pursue a change in State law and/or regulations, in conjunction with BPW, if necessary.

DGS Response 4:
DGS concurs with the finding.

DGS will follow-up with this initiative through the Procurement Advisory Committee (PAC) and/or the Senior Procurement Advisory Group (SPAG) to request a review and determination of how this recommendation should be implemented.

Intergovernmental Cooperative Purchasing Agreements

OLA Finding 5
OPL did not document its assertion that it was in the best interest of the State to participate in certain ICPAs.

OLA Recommendation 5:
We recommend that OPL

a. comply with State law and ensure that a written determination for using an ICPA is prepared and that such a determination is properly substantiated (repeat), and
b. provide State agencies with the option to purchase goods and services from any qualified vendor under an ICPA.

DGS Response 5:
DGS concurs with the finding.
a. Although DGS believes that each of the listed ICPA purchases were documented, we will ensure that all future ICPA procurements will be procured under the requirements and proper documentation will be completed and placed in the file.
b. DGS will provide State Agencies with the option to purchase goods or services from multi qualified vendors under an ICPA contract.

OLA Finding 6
OPL did not ensure an ICPA vendor was pricing its products in accordance with the ICPA contract, resulting in certain pricing discrepancies going undetected.

OLA Recommendation 6:
We recommend that OPL ensure that ICPA vendors price their goods and services in accordance with ICPA contract pricing and take corrective action when discrepancies are noted, including the aforementioned pricing issues.

DGS Response 6:
DGS concurs with the finding.

DGS will ensure that ICPA vendors price their goods and services in accordance with ICPA contract pricing and take corrective action when discrepancies are noted.

Contract Fees

OLA Finding 7
OPL assessed fees on certain contracts without statutory authority, without disclosing the fees to appropriate control agencies, and without ensuring that vendors subsequently remitted the fees.

OLA Recommendation 7:
We recommend that OPL
a. only assess fees that are properly authorized;
b. obtain DBM approval for the aforementioned fees and, in the future, obtain appropriate approvals prior to assessing fees; and
c. develop procedures to ensure all contract fees are subsequently remitted to OPL by the vendors.

DGS Response 7:
DGS disagrees with the finding.

a. DGS believes that it is assessing fees that are properly authorized. State Finance and Procurement Article ("SF&P"), §13-226(a) states that a primary procurement unit may conduct procurement, including the solicitation, bidding, award, execution, and administration of a contract by electronic means. Each of these activities are separate and distinct parts of the procurement process. Bidding on an electronic procurement by a bidder constitutes consent by that bidder to conduct all required processes of the procurement of that contract electronically. SF&P §13-226(b). Regarding the eMM fees, SF&P authorizes a unit, with BPW approval, to charge a bidder a fee for conducting the procurement through "electronic means." The use of the broad term "electronic means" implies that the authority under SF&P §13-226(c) to charge a reasonable fee to bidders does not limit the conduct of procurement to only those conducted through eMM, but rather to capture the broad range of procurement processes that can be conducted through electronic means.

When DGS brought the proposed eMM fee to the BPW on the August 10, 2011 Agenda Item 1-S, the Board authorized DGS to impose a 1% fee on the value of purchases awarded and/or placed against each contract controlled by DGS. This authorization of a fee imposition is not only on new DGS contracts, but also on orders placed against existing DGS contracts after the effective date, to the extent those contracts have been renewed and/or amended and include the 1% fee. The fee is not imposed against DGS-controlled contracts in place prior to August 15, 2011 that have not been renewed or amended to include the fee.[2]

---

[2] **Auditor's Comment**: In its response, the Department stated that it believes that the eMM fees charged were in accordance with State law. Specifically, the Department's response indicates that any contract it procures is subject to the one percent fee, regardless of whether the contract was electronically procured. However, this is inconsistent with what DGS stated in the August 2011 BPW agenda item authorizing the eMM fee. Furthermore, advice we obtained from BPW staff and legal counsel to the Maryland General Assembly confirmed that the contracts noted in the finding were not eligible for the eMM fee because the contracts were not procured electronically.

b DGS did disclose to DBM the eMM and fuel contract fees during the annual budget preparation process. An overview of the fee structure implementation and collecting was presented as the respective meeting.[3]

c. Procedures will be developed to ensure that these payments are timely and accurate by way of tracking, auditing and enforcement.

Monitoring of Providers with Procurement Preferences

OLA Finding 8
OPL had not determined and published the fair market prices of MCE's goods and services and did not publish the fair market prices of BISM's goods and services, as required.

OLA Recommendation 8:
We recommend that OPL
a. independently determine and publish the fair market prices of MCE's goods and services (repeat); and
b. in conjunction with the BISM pricing committee, determine the fair market prices of BISM's goods and services and compile and publish the fair market prices, as required.

DGS Response 8:
DGS concurs with the finding.

a. DGS will establish procedures and process for determining the fair market prices of MCE's goods and services. It is anticipated that formal documents to incorporate the procedures and process will be issued prior to the beginning of FY15.

b. The " Pricing and Selection Committee", consisting of Department of General Services (DGS), Maryland Correction Enterprise (MCE), Blind Industries Supply Maryland (BISM), National Federation of the Blind (NFB), will determine the fair market prices of the goods and services and compile and publish the fair market prices, as required.

OLA Finding 9
OPL lacked adequate procedures and controls over the Employment Works Program (EWP).

OLA Recommendation 9:
We recommend that OPL

---

[3] **Auditor's Comment**: In its response, the Department stated that it disclosed its fuel contract fees in its annual budgets. Although fuel fee revenues were disclosed in its budgets, the assessment of the additional $.01 per gallon fee was not specifically disclosed.

a. establish procedures for the selection of the CE, including the related compensation;
b. enter into a formal MOU with the CE to establish the specific responsibilities;
c. monitor the CE to ensure that it is providing the goods and services required by State law and the MOU; and
d. ensure the pricing and selection committee performs its functions as required, including determining the fair market value of EWP goods and services.

DGS Response 9:
DGS disagrees with the finding.

a. State Finance & Procurement Article s/s 14-108 (c) authorizes the Secretary of General Services to designate Maryland Works, Inc. "or another appropriate coordinating entity" to facilitate the distribution of procurement contracts for supplies and services among community service providers and individuals with disability owned businesses. Because the statute allows the Secretary to designate a coordinating entity he determines is qualified and best suited to coordinate the distribution of procurement contracts as referenced above.
With regard to the selection of a coordinating entity, DGS will review and update, if necessary, its procedures for the selection and designation of a coordinating entity, including the related compensation.[4]

b. DGS has been working with Maryland Works (CE) to develop and execute an "MOU" which will implement policies and procedures to establish the specific responsibilities and duties of the respective entities. It is anticipated that the "MOU" will be executed on or before December 2, 2013.

c. The Pricing and Selection Committee will ensure that the CE provides the goods and services required by State law and the MOU.

d. Upon execution of the pending "MOU" the Pricing and Selection Committee will ensure that Maryland Works (CE) will perform its functions as required.

Statewide Purchasing Transactions

OLA Finding 10
OPL did not conduct audits of delegated procurement activity, which totaled approximately $55.3 million during fiscal year 2012.

OLA Recommendation 10:
We recommend that OPL conduct audits of delegated procurements in accordance with its procedures and ensure that the results of the audits are documented.

[4] **Auditor's Comment**: In its response, the Department stated that it disagreed with the finding but that it would review and update, if necessary, its procedures for the selection and designation of a coordinating entity, including the related compensation. However, as noted in our finding, there were no procedures for selecting the coordinating entity and determining the reasonableness of its fees.

DGS Response 10:
DGS concurs with the finding.

DGS will review workload demands and develop a schedule to conduct audits of delegated procurements.

OLA Finding 11
Proper internal control was not established over statewide purchasing transactions.

OLA Recommendation 11:
We recommend that OPL fully use the available FMIS security features by establishing adequate independent online approval requirements for all critical purchasing transactions (repeat).

DGS Response 11:
DGS concurs with the finding.

DGS has implemented the full use of available FMIS features by working with the Annapolis Data Center and DOIT security services to establish adequate independent online approval requirements.

State Property Management Oversight

OLA Finding 12
OPL did not adequately monitor State agency compliance with State property inventory standards and did not take corrective action when deficiencies were identified.

OLA Recommendation 12:
We recommend that OPL monitor State agency compliance with State inventory standards and take appropriate corrective action when deficiencies are identified.

DGS Response 12:
DGS concurs with the finding.

OPL continues to enforce the policies and procedures outlined in the DGS Inventory Control Manual. If staffing becomes available, OPL will develop a more comprehensive compliance program.

DGS Equipment

OLA Finding 13
OPL did not maintain adequate accountability and control over DGS' equipment.

OLA Recommendation 13:
We recommend that OPL comply with the applicable requirements of the *Inventory Control Manual* (repeat).

DGS Response 13:
DGS concurs with compliance to the applicable requirements of the *Inventory Control Manual*. DGS has completed the following actions since the July draft audit report:

The physical inventory taken for FY-12 was not completed to the point of reconciliation, to include appropriate missing and stolen reports along with the resultant write off. All of the 408 items cited have been found, inventoried or written off through Reports of Missing or Stolen State Personal Property.

OPL did not record equipment purchases in the detail records in a timely manner. Of the 71 items cited 42 remain with a value of $116,000. DGS expects to clear up the remainder in 90 calendar days.

OPL is working to identify the variance and has contacted the General Accounting Division to properly reclassify the amount to a different ledger code in order to accurately reflect the value of DGS's equipment on the Annual Report of Fixed Assets.

All adjustments to the inventory control will now be subject to supervisory review and approval

OPL concurs regarding compliance with the applicable requirements of the Inventory Control Manual

AUDIT TEAM

Brian S. Tanen, CPA, CFE
Audit Manager

Joel E Kleiman, CPA
Senior Auditor

Michael D. Cheese
Jason M. Goldstein
Robert J. Smith, CPA
Brittany M. Solomon
Staff Auditors

OTHER STAFF WHO CONTRIBUTED TO THIS REPORT
Richard L. Carter, CISA