

Audit Report

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**Maryland Public Broadcasting Commission**

March 2010

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**OFFICE OF LEGISLATIVE AUDITS**  
DEPARTMENT OF LEGISLATIVE SERVICES  
MARYLAND GENERAL ASSEMBLY

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**DEPARTMENT OF LEGISLATIVE SERVICES**  
**OFFICE OF LEGISLATIVE AUDITS**  
**MARYLAND GENERAL ASSEMBLY**

March 8, 2010

**Karl S. Aro**  
Executive Director

**Bruce A. Myers, CPA**  
Legislative Auditor

Senator Verna L. Jones, Co-Chair, Joint Audit Committee  
Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Maryland Public Broadcasting Commission (MPBC) for the period beginning April 1, 2006 and ending April 21, 2009. MPBC is responsible for operating and maintaining a system of regional and local facilities to provide educational and cultural television and radio programs throughout the State. MPBC is also responsible for the preparation, content, and presentation of such programs to the general public.

Our audit disclosed that MPBC did not comply with applicable State regulations related to a procurement for direct marketing and fundraising services. Specifically, MPBC made payments to a contractor through August 2007, totaling approximately \$1 million, without obtaining competitive bids, executing a written contract, and seeking approval from the Board of Public Works, as required by State Procurement Regulations. In addition, our review disclosed other significant issues related to a contract, totaling \$1.7 million, that was awarded to this contractor for the same services for the period beginning August 2007. For example, the methodology used to evaluate the vendor financial proposals received by MPBC only considered a small portion of the bid costs and the bid evaluation and award processes were not adequately documented. Moreover, MPBC did not adequately monitor the contract, did not receive adequate documentation from the contractor to support that all services paid for had been received, and made certain overpayments to the contractor totaling approximately \$68,000.

Several other procurement and disbursement deficiencies were noted. For example, MPBC did not obtain supporting documentation to ensure the propriety of payments for certain contractual services, and certain duplicate payments were made to one vendor. Finally, internal control and record keeping deficiencies were noted with respect to equipment and cash receipts.

An Executive Summary of our findings can be found on page 5. MPBC's response to this audit, which includes our comments addressing certain disagreements, is included as an appendix to this report.

Respectfully submitted,

Bruce A. Myers, CPA  
Legislative Auditor

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



# Executive Summary

## Legislative Audit Report on Maryland Public Broadcasting Commission (MPBC) March 2010

- **MPBC obtained direct marketing and fundraising services, and made related payments totaling approximately \$1 million, without soliciting competitive bids, executing a written contract, and obtaining approval from the Board of Public Works (BPW), as required by State Procurement Regulations. In addition, the methodology used by MPBC to evaluate the vendor financial proposals received for a contract that was subsequently awarded for such services only considered a small portion of the bid costs. Furthermore, the bid evaluation and award processes were not adequately documented. MPBC also did not adequately monitor this contract and paid certain unsupported invoices resulting in contractor overpayments of \$68,000.**

MPBC should comply with State Procurement Regulations. Specifically, where applicable, MPBC should solicit competitive bids, properly evaluate related vendor proposals and document this process, request BPW approval, execute written contracts, monitor vendor performance, and ensure that all requests for contract payments are accompanied by proper supporting documentation. In addition, MPBC should obtain reimbursement from the contractor for the aforementioned \$68,000.

- **Several additional procurement and disbursement deficiencies were noted. For example, MPBC did not obtain supporting documentation to ensure the propriety of certain vendor billings, and made duplicate vendor payments totaling \$64,000, that were later refunded by the vendor.**

MPBC should only pay vendor invoices that are adequately supported and/or examine vendor records, as permissible. In addition, MPBC should implement effective procedures to prevent duplicate vendor payments and take immediate action to recover any such payments.

- **We also noted internal control deficiencies related to equipment and cash receipts. For example, MPBC did not conduct physical inventories of its equipment, as required, and lacked adequate controls over certain cash receipts.**

MPBC should take the recommended actions to improve the internal controls in these areas.

## **Background Information**

### **Agency Responsibilities**

The Maryland Public Broadcasting Commission (MPBC) is responsible for operating and maintaining a system of regional and local facilities to provide educational and cultural television and radio programs throughout the State. MPBC is also responsible for the preparation, content, and presentation of such programs for the general public. MPBC operates six television stations located in Annapolis, Baltimore, Frederick, Hagerstown, Oakland, and Salisbury. MPBC is governed by an 11-member commission, whose members are appointed by the Governor.

According to the State's records, during fiscal year 2009, MPBC's operating expenditures totaled approximately \$28 million. These expenditures consisted of \$16.4 million in special funds (primarily from viewer and corporate contributions), \$9.4 million in State general funds, and \$2.2 million in federal funds.

### **Financial Statement Audits**

In compliance with the audit requirements established by the Corporation for Public Broadcasting (a federally-funded, not-for-profit organization that provides funds to MPBC and other public broadcasting entities), MPBC engaged an independent certified public accounting firm to perform audits of the combined financial statements of MPBC and the Maryland Public Broadcasting Foundation, Inc., an affiliated nonprofit foundation. In the related audit reports for the fiscal years ended June 30, 2006, 2007, and 2008, the firm stated that the combined financial statements presented fairly, in all material respects, the financial position of MPBC and the Foundation, and the respective changes in net assets and cash flows for the years then ended in conformity with the Financial Reporting Guidelines prescribed by the Corporation.

### **Status of Findings From Preceding Audit Report**

Our audit included a review to determine the status of the four findings contained in our preceding audit report dated September 8, 2006. We determined that MPBC satisfactorily resolved three of those findings. The remaining finding is repeated and appears as two findings in this report.



# Findings and Recommendations

## Direct Marketing and Fundraising Services

### Background

During the period from November 2005 to June 2009, the Maryland Public Broadcasting Commission (MPBC) obtained services from one vendor for direct marketing and fundraising services totaling approximately \$2.3 million. The vendor was to support membership fundraising, help MPBC increase its net revenues and number of contributors, and assist MPBC in developing improved relationships with donors. The vendor was to accomplish this by developing an annual marketing plan, acquiring mailing lists, managing the lists of donors, and managing all aspects of the production and mailing of MPBC's direct marketing campaign.

### Finding 1

**MPBC obtained direct marketing and fundraising services and made related payments, totaling approximately \$1 million, without soliciting competitive bids, executing a written contract, and requesting approval from the Board of Public Works (BPW).**

### Analysis

During the period from November 2005 to August 2007, MPBC obtained direct marketing and fundraising services totaling approximately \$1 million from one vendor in violation of State Procurement Regulations. Specifically, MPBC procured these services without soliciting competitive bids, executing a written contract with the vendor, and requesting approval from BPW. We were advised by MPBC that, prior to November 2005, this vendor provided these same services to the Maryland Public Broadcasting Foundation, an affiliated entity to MPBC. Similar conditions regarding the failure to solicit competitive bids and execute contracts were commented upon in our preceding audit report.

We were advised by MPBC that, although it had taken action to procure these services by competitive bidding, the procurement process was cancelled, primarily due to issues relating to the financial specifications. MPBC also advised us that it replaced a senior management employee on the contract evaluation committee during this process due to a potential conflict of interest. Based on MPBC's referral of this issue, the State Ethics Commission subsequently determined that this employee's involvement was not a violation of Maryland's ethics laws.

State Procurement Regulations generally require that competitive bids be obtained for all procurements over \$5,000 and that written contracts be prepared. The Regulations also generally require that procurements of services in excess of \$200,000 be approved by BPW.

Also, see Finding 2 for other findings related to the procurement, monitoring, and payment of these services.

### **Recommendation 1**

**We recommend that MPBC comply with State Procurement Regulations.**

**Specifically, we recommend that MPBC**

- a. obtain competitive bids for procurements in excess of \$5,000 (repeat);**
- b. execute written contracts prior to permitting vendors to render applicable services (repeat); and**
- c. disclose the aforementioned situation to BPW and, in the future, obtain the required BPW approval for procurements in excess of \$200,000.**

### **Finding 2**

**Certain other significant issues were identified related to a subsequent contract that MPBC awarded to the same vendor for direct marketing and fundraising services totaling at least \$1.7 million.**

### **Analysis**

Significant issues were identified related to a \$1.7 million contract for direct marketing and fundraising services that MPBC subsequently awarded to the aforementioned vendor (see Finding 1). The contract covered the period from August 22, 2007 to July 31, 2009, and provided for two one-year options for \$850,000 per year. Specifically, we noted the following conditions:

- MPBC evaluated the financial proposals that were submitted by the six bidders by placing 99 percent of the weight on consulting costs even though these costs were a small portion of the proposals. In fact, such costs accounted for only 9 percent of MPBC's total vendor payments made to the winning bidder during fiscal year 2009. This is significant because the evaluation methodology used by the committee effectively ignored all other costs (such as printing) included in the proposals. In addition, bulk-printing discounts, which were offered by all of the bidders except the winning bidder, were not considered by the committee when it evaluated the proposals.
- According to the RFP, technical proposals carried greater weight than financial proposals in determining the contract award. However, MPBC lacked adequate documentation (such as proposal evaluation forms prepared

and signed by evaluation committee members) to support that the bidders' technical proposals had been evaluated, and to support the weight given to these proposals in relation to the financial proposals. Lastly, the committee members did not sign the bid ranking summary document to substantiate their concurrence with the contract award decision.

- MPBC lacked documentation to substantiate that the vendor had mailed all required fundraising literature billed to MPBC and paid for under the contract. For example, we were advised by MPBC management that donor mailings were “seeded” as a way to verify delivery to all applicable donors.<sup>1</sup> However, MPBC was unable to provide us with documentation to substantiate that it had confirmed the receipt of such mailings with the “seeded” employees. In addition, MPBC could not provide documentation to support that the vendor had actually purchased certain other mailing lists for which the vendor was reimbursed. Consequently, MPBC lacked assurance that the fundraising literature it paid for was actually mailed by the vendor to all applicable donors, as required by the contract. According to its records, during fiscal year 2009, MPBC paid the vendor approximately \$66,000 for mailing list services.
- MPBC did not adequately monitor the vendor's billings for postage and printing costs, and the resultant payments, since MPBC generally did not obtain or request documentation (such as receipts), as required by the contract, to support the related billings. Our test of three payments, totaling approximately \$133,000, made by MPBC to the vendor during calendar year 2008 for postage disclosed that MPBC lacked adequate documentation to support any of the related charges. We also noted that the vendor's invoices for printing costs lacked information (such as the types of envelopes and letters used for certain direct mailings) needed by MPBC to ensure the accuracy of the billings.

At our request, MPBC subsequently attempted to obtain from the vendor documentation to support certain payments for postage and printing costs that we tested. However, the vendor was unable to provide MPBC with documentation for two payments totaling approximately \$99,000 for postage that were made by the vendor during calendar year 2008. While MPBC subsequently obtained from the vendor other documentation related to certain printing costs, based on our review of this documentation, we determined that,

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<sup>1</sup> “Seeding” in this context is the practice of imbedding certain names, in this case MPBC employees, in a donor mailing list unbeknownst to the vendor, with whom MPBC can later confirm the receipt of the mailing and, therefore, conclude that the billed service was performed.

during fiscal year 2009, MPBC overpaid the vendor approximately \$68,000 (primarily for printing costs). According to its records, during fiscal year 2009, MPBC paid the vendor approximately \$510,000 for postage and printing costs.

The MPBC senior management employee (the same employee noted in Finding 1) responsible for the ongoing monitoring of this contract, including the approval of invoices for payment, also served as the MPBC representative in a broadcast industry cooperative workgroup that included the aforementioned vendor. In addition, a subordinate of this employee was on the contract evaluation committee for this procurement, which was composed of five members. Considering the various conditions noted in Findings 1 and 2, taken collectively, we referred these matters to the Office of the Attorney General – Criminal Division.

### **Recommendation 2**

**We recommend that MPBC**

- a. ensure that the methodology used for evaluating vendor bid proposals places appropriate emphasis on the various financial factors included in the calculation of the applicable bid amounts and is adequately documented, and that documentation is maintained to substantiate the concurrence by evaluation committee members of bidder rankings;**
- b. verify that the vendor is reimbursed only for mailing lists purchased, and that direct mailings are delivered, as required, and maintain documentation of such verifications; and**
- c. ensure that vendor invoices for postage and printing include detail information and supporting documentation as required, examine the vendor's records as provided for in the contract to ensure the propriety of payments made, and recover any amounts paid (including the aforementioned \$68,000) that were not adequately supported.**

## **Disbursements and Procurements**

### **Finding 3**

**MPBC made certain payments for contractual services without obtaining and reviewing supporting documentation and made duplicate vendor payments.**

### **Analysis**

MPBC did not obtain and review required documentation (such as contractor employee timesheets) to support certain paid vendor invoices. Specifically, MPBC contracted with certain vendors to obtain various technical services (such as for the design and programming of interactive web-based online games for children). The related contracts provided that the vendors would bill MPBC based on the number

of hours worked by its employees to complete specific tasks and hourly rates stipulated in each contract. We tested 22 payments, totaling approximately \$1 million, that MPBC made to the aforementioned vendors during the period from July 26, 2007 to April 14, 2009. Our test disclosed that MPBC had not received adequate documentation, or examined the vendors' records as provided for in the related contracts, to support the number of hours billed on 12 of the tested payments, totaling \$414,000, that were made to four vendors.

We also noted that, during January 2009, MPBC made three duplicate payments to one of these contractors that resulted in overpayments totaling \$64,000. Although MPBC did not detect that these overpayments had occurred, the vendor detected the overpayments and refunded the \$64,000 to MPBC in June 2009.

Collective payments made by MPBC to the aforementioned four vendors totaled approximately \$3.1 million during fiscal years 2007 through 2009.

### **Recommendation 3**

#### **We recommend that MPBC**

- a. obtain from contractors adequate documentation (such as authorized time sheets), as required, to support all billed charges, and review such documentation to ensure that such charges are in accordance with the related contracts;**
- b. obtain and review documentation supporting amounts previously billed and paid under the aforementioned contracts, and pursue recovery of any paid charges that are not adequately supported; and**
- c. in the future, implement procedures to prevent duplicate vendor payments.**

#### **Finding 4**

**MPBC did not follow certain State procurement regulations for the awarding of three contracts totaling \$1.7 million.**

#### **Analysis**

MPBC did not follow all State procurement regulations for the awarding of three of six contracts tested; the three contract amounts totaled approximately \$1.7 million. Specifically, for one \$706,000 contract for the purchase of a broadcast server, MPBC did not disclose to the Department of Budget and Management and to BPW that it had awarded the contract as an emergency procurement. In addition, none of the three contract awards, which were each in excess of \$25,000, was published in *eMaryland Marketplace*.

State Procurement Regulations require that State agencies disclose to BPW and to the applicable control agency, within 45 days, any contract over \$25,000 awarded on the basis of an emergency procurement, and that all contract awards over \$25,000 be published in *eMaryland Marketplace*. A similar condition regarding publishing contract awards was commented upon in our preceding audit report.

**Recommendation 4**

**We recommend that MPBC comply with State Procurement Regulations by**

- a. reporting to BPW and the applicable State control agency all contract awards over \$25,000 made on the basis of emergency procurements, including the aforementioned contract totaling \$706,000; and**
- b. publishing all contract awards over \$25,000 in *eMaryland Marketplace* (repeat).**

**Equipment**

**Finding 5**

**MPBC did not conduct physical inventories of equipment, as required.**

**Analysis**

MPBC did not conduct physical inventories of equipment, as required. Specifically, MPBC had not conducted a complete physical inventory of its equipment since at least November 2005. Moreover, when MPBC conducted its most recent physical inventory of sensitive equipment items during August 2008, it did not include in the inventory 147 items (such as laptop computers and cameras) totaling approximately \$696,000. The reported book value of MPBC's equipment at June 30, 2009 totaled approximately \$52 million.

The Department of General Services' (DGS) *Inventory Control Manual* requires State agencies to conduct complete physical inventories of all equipment items at least every three years and requires that sensitive equipment items be annually inventoried.

**Recommendation 5**

**We recommend that MPBC conduct physical inventories of equipment as required by the *Inventory Control Manual*.**

## Cash Receipts

### **Finding 6**

**MPBC had not established adequate controls over certain cash receipts and refunds.**

### **Analysis**

Internal controls over mail receipts and credit card refunds, which totaled approximately \$6.4 million and \$78,000, respectively, during fiscal year 2008, were inadequate. Specifically, our audit disclosed the following conditions:

- MPBC did not immediately record checks when received. Rather, at the end of each day, all checks received throughout the day were generally placed in a locked safe and recorded the following day. As a result, checks could be misappropriated without detection.
- MPBC did not adequately control credit card refunds. Specifically, supervisory personnel who authorized such refunds did not forward the related supporting documentation directly to the employee responsible for the subsequent verification of actual refunds made. Instead, the employee who recorded the refunds in the records forwarded the approved refund requests to the employee who verified their propriety. As a result, MPBC lacked assurance that all refunds were authorized and proper.

### **Recommendation 6**

**We recommend that MPBC**

- a. record all incoming cash receipts immediately upon receipt, and**
- b. ensure that supervisory personnel who authorize credit card refunds forward the related supporting documentation directly to the employee who verifies all refunds made.**



## **Audit Scope, Objectives, and Methodology**

We have audited the Maryland Public Broadcasting Commission (MPBC) for the period beginning April 1, 2006 and ending April 21, 2009. 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 MPBC's financial transactions, records and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. The areas addressed by the audit included procurements and disbursements, cash receipts, payroll, and equipment. We also determined the status of the findings contained in our preceding audit report.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of MPBC'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.

MPBC'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 relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect MPBC'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 MPBC that did not warrant inclusion in this report.

MPBC's response 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 MPBC regarding the results of our review of its response.

MARYLAND PUBLIC TELEVISION

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APPENDIX



TV WORTH  
WATCHING

ROBERT J. SHUMAN  
PRESIDENT AND CEO

March 3, 2010

Bruce A. Myers, CPA  
Legislative Auditor  
Department of Legislative Services  
Office of Legislative Audits  
Maryland General Assembly  
301 West Preston Street, Room 1202  
Baltimore, MD 21201

Dear Mr. Myers:

Enclosed please find our response to the draft audit report of the Maryland Public Broadcasting Commission for the period beginning April 1, 2006 and ending April 21, 2009.

Very truly yours,

A handwritten signature in cursive script that reads "Robert J. Shuman".

Robert J. Shuman  
President and CEO

cc: Edward H. Kaplan, Chairman  
Maryland Public Broadcasting Commission

## ***Findings and Recommendations***

### ***Direct Marketing and Fundraising Services***

#### ***Background***

*During the period from November 2005 to June 2009, the Maryland Public Broadcasting Commission (MPBC) obtained services from one vendor for direct marketing and fundraising services totaling approximately \$2.3 million. The vendor was to support membership fundraising, help MPBC increase its net revenues and number of contributors, and assist MPBC in developing improved relationships with donors. The vendor was to accomplish this by developing an annual marketing plan, acquiring mailing lists, managing the lists of donors, and managing all aspects of the production and mailing of MPBC's direct marketing campaign.*

#### ***Finding 1***

***MPBC obtained direct marketing and fundraising services and made related payments, totaling approximately \$1 million, without soliciting competitive bids, executing a written contract, and requesting approval from the Board of Public Works (BPW).***

#### ***Recommendation 1***

***We recommend that MPBC comply with State Procurement Regulations. Specifically, we recommend that MPBC***

- a. obtain competitive bids for procurements in excess of \$5,000 (repeat);***
- b. execute written contracts prior to permitting vendors to render applicable services (repeat); and***
- c. disclose the aforementioned situation to BPW and, in the future, obtain the required BPW approval for procurements in excess of \$200,000.***

**Response:** MPBC disagrees with the Finding in that it omits critical facts and fails to provide the proper context to fully understand the circumstances at the time. This Finding and Finding 2 below focus on MPBC's procurement for and management of direct marketing and fundraising services beginning in or around the summer of 2005. This procurement process ultimately took nearly two years to complete. MPBC consulted with and followed the advice of its control agency, the Department of Budget and Management ("DBM"), to help it navigate through this unusual situation. During that extended period while the procurement process was pending, MPBC by necessity continued to do business with the incumbent vendor. DBM was apprised of MPBC's

actions, approved of them, and MPBC acted appropriately in following the direction of its control agency.<sup>1</sup>

MPBC's contract for direct marketing and fundraising services is critically important to MPBC. Receiving only about one-third of its operating revenue from the State, MPBC relies on individual donations, grants, and other contributions to make up the difference. In order to reach potential donors, MPBC engages in sophisticated mailings that are crafted to elicit responses from a targeted audience. Far from blanket mass mailings, MPBC's mailings require expertise and a specialized knowledge of public television.

In or about July 2005 when MPBC initiated a procurement for direct marketing services, there already was an existing vendor (the "Vendor") for these services. The Vendor was one of the few direct marketing firms in the country that has experience with public television. It represents approximately 30 public television stations across the country including most of the largest. Given this clientele, the Vendor is able to provide economies of scale which result in lower prices for MPBC. MPBC also benefits by learning from the fundraising experiences of other public television stations.

In or about July 2005, MPBC issued a RFP for direct mailing and fundraising services. That RFP was reviewed and approved by DBM before it was issued. In December 2005, the RFP was reissued to allow additional time for responses. In January 2006, MPBC received four responses to the RFP. In February 2006, an evaluation committee convened to review the responses to the RFP. MPBC's Procurement Officer determined that one of the members of the committee had a potential conflict of interest and dismissed that member. As the Finding notes, there was no actual conflict of interest as determined by the State Ethics Commission, but out of an abundance of caution, MPBC nevertheless removed the employee from the procurement. The committee was reconstituted and ranked the Vendor as having the number one technical and financial proposal. The Procurement Officer accepted the recommendations and selected the Vendor as the contract winner. In or about March 2006, the Vendor executed a contract prepared by MPBC for a three year term beginning in April 2006.

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<sup>1</sup> **Auditor's Comment:** There was no documentation on file to support, nor could existing DBM personnel corroborate, MBPC's assertions that DBM condoned the procurement practices used for this contract. Moreover, DBM personnel do not have the authority to override State procurement law and regulations. Furthermore, the State procurement regulations provide various options when preferred procurement methods cannot be used. Finally, while MBPC's response implies that OLA may not fully appreciate the importance of such a contract as relates to fundraising activities, it is important to note that at no point did OLA recommend, or otherwise suggest, that MPBC not obtain direct marketing and fundraising services. The audit concern was strictly that there was no written contract for the services and that the services were not approved by the BPW as required by State procurement regulations. Despite MPBC's disagreements, it agreed to implement the audit recommendations.

In May 2006, MPBC received a letter of protest from one of the bidders based primarily on the specifications in the RFP. MPBC's Procurement Officer rejected the protest. Nevertheless, after consultation with DBM it was determined that the procurement should be cancelled and that a new RFP should be issued. MPBC and DBM worked closely to prepare a new RFP. An RFP was issued in December 2006. Six responses to the RFP were received by MPBC in March 2007. An evaluation committee of five MPBC employees ranked the Vendor as having the number one technical and financial proposal and the Vendor was selected as the contract winner. In August 2007, DBM and the Board of Public Works ("BPW") approved MPBC's contract with the Vendor.

During this lengthy process it was essential for MPBC to continue with direct mailing and fundraising services. As any public television viewer knows, fundraising is the life blood of public television and MPBC could not continue to operate without it. MPBC conveyed this predicament to DBM, which understood the problem and worked with MPBC to solve it. Initially, when it appeared that the first procurement process would be successful, in or around January 2006 MPBC entered into a short term \$100,000 contract with the Vendor. That contract was reviewed and approved by DBM. When that contract expired, however, and it became clear that the procurement process was still pending and might continue for an extended period of time, DBM advised MPBC to contract with the Vendor on a month by month, purchase order and invoice basis through the FMIS system. DBM's supervising procurement officer explained that it would take just as long for an interim contract to be approved as a permanent contract and to proceed with purchase orders and invoices. MPBC did so until the procurement process was completed and a permanent contract was awarded and approved by the BPW.

Under the circumstances, MPBC believes it acted properly. Working under the guidance and direction of DBM, MPBC went through an extensive competitive bid process. During that unusually long process, MPBC continued doing business with the incumbent Vendor for essential services with the knowledge and approval of its control agency. The Vendor was selected twice by two different evaluation committees as having the best proposal. At the end of the first RFP, MPBC entered into an agreement with the Vendor. Although that contract was never effectuated, MPBC did enter into a short term contract with the Vendor in early 2006. Ultimately, at the conclusion of the competitive procurement process, the BPW approved MPBC's contract with the Vendor.

Notwithstanding the foregoing, and with MPBC's disagreement noted, MPBC will comply with the recommendations.

**Finding 2**

***Certain other significant issues were identified related to a subsequent contract that MPBC awarded to the same vendor for direct marketing and fundraising services totaling at least \$1.7 million.***

**Analysis**

*Significant issues were identified related to a \$1.7 million contract for direct marketing and fundraising services that MPBC subsequently awarded to the aforementioned vendor (see Finding 1). The contract covered the period from August 22, 2007 to July 31, 2009, and provided for two one-year options for \$850,000 per year. Specifically, we noted the following conditions:*

- *MPBC evaluated the financial proposals that were submitted by the six bidders by placing 99 percent of the weight on consulting costs even though these costs were a small portion of the proposals. In fact, such costs accounted for only 9 percent of MPBC's total vendor payments made to the winning bidder during fiscal year 2009. This is significant because the evaluation methodology used by the committee effectively ignored all other costs (such as printing) included in the proposals. In addition, bulk-printing discounts, which were offered by all of the bidders except the winning bidder, were not considered by the committee when it evaluated the proposals.*

**Response:** MPBC disagrees with this Finding. The methodology, particularly the financial component, used to evaluate the bid proposals was very difficult to create. This was due to the unique nature of the services. The services not only involve consulting, list acquisition, and printing and mailing costs which are fairly constant, but also printing a wide range of creative pieces that vary in size, shape, volume, and content. MPBC consulted closely with DBM in drafting specifications that would capture the essence of the services while also being fair to the bidders. MPBC, with DBM's input, did the best it could under the circumstances. But, even after it drafted the specifications, vendors had questions which led to MPBC drafting approximately six addenda to the financial specifications. In the end, the specifications that were used were uniformly applied to all vendors. There was no right or wrong way to do this. MPBC believed it was being consistent and fair.<sup>2</sup>

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<sup>2</sup> **Auditor's Comment:** While it may have been difficult to create the methodology used to evaluate bid proposals, we stand by our position that an evaluation methodology that only considers 9 percent of the contract costs is deficient. Further, MPBC's contention that printing costs (which along with postage account for the majority of the costs) are "fairly standard among vendors" is not factually accurate. As noted in the report, several bidders, but not the winning bidder, offered bulk-printing discounts that could significantly impact actual costs.

Moreover, as the Audit states in the Background section above, “The vendor was to accomplish this by developing an annual marketing plan, acquiring mailing lists, managing the lists of donors, and managing all aspects of the production and mailing of MPBC’s direct marketing campaign.” The emphasis in this contract, by the Auditors own words, is on the creative/consulting and management services that the vendor can provide, not on printing and postage costs, which are fairly standard among vendors. Indeed, while printing and postage costs account for a majority of the contract’s overall spending, this is decidedly not a printing contract.

Nevertheless, even if the methodology suggested by the Finding were used to evaluate the proposals, the results of the procurement would have been the same. The Vendor, the lowest bidder, and the highest ranking technical proposal, would have been the second lowest bidder under the Finding’s suggested methodology. The lowest bidder under the suggested methodology, however, was only the fifth ranked technical proposal. As the number one technical proposal and the number two financial proposal, the Vendor certainly would have been awarded the contract over the number five ranked technical proposal.

- *According to the RFP, technical proposals carried greater weight than financial proposals in determining the contract award. However, MPBC lacked adequate documentation (such as proposal evaluation forms prepared and signed by evaluation committee members) to support that the bidders’ technical proposals had been evaluated, and to support the weight given to these proposals in relation to the financial proposals. Lastly, the committee members did not sign the bid ranking summary document to substantiate their concurrence with the contract award decision.*

**Response:** To the extent that this Finding suggests that the procurement was mishandled or reached the wrong conclusion, MPBC strongly disagrees. To the extent, however, that the Finding’s only point is that there was a lack of documentation, MPBC does not dispute this. As to the evaluation committee, it was comprised of five MPBC employees from five different departments within MPBC, and included MPBC’s Chief Operating Officer. An Assistant Attorney General (“AAG”) monitored the proceedings of the committee. The AAG along with the committee members signed affidavits affirming the objectivity and fairness of the process.<sup>3</sup> The committee members also unanimously

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<sup>3</sup> **Auditor’s Comment:** As MBPC acknowledges, there was a lack of documentation related to the evaluation committee’s review and approval of this contract. While MBPC further indicates that it provided “signed affidavits” to the auditors affirming the committee’s objectivity and fairness, MBPC fails to note that these affidavits were not prepared contemporaneously with the work of the committee, but instead were prepared well after OLA brought this matter to the attention of MBPC management.

acknowledged that the Vendor clearly had the best proposal. MPBC provided the affidavits to the Auditors.

- *MPBC lacked documentation to substantiate that the vendor had mailed all required fundraising literature billed to MPBC and paid for under the contract. For example, we were advised by MPBC management that donor mailings were “seeded” as a way to verify delivery to all applicable donors. However, MPBC was unable to provide us with documentation to substantiate that it had confirmed the receipt of such mailings with the “seeded” employees. In addition, MPBC could not provide documentation to support that the vendor had actually purchased certain other mailing lists for which the vendor was reimbursed. Consequently, MPBC lacked assurance that the fundraising literature it paid for was actually mailed by the vendor to all applicable donors, as required by the contract. According to its records, during fiscal year 2009, MPBC paid the vendor approximately \$66,000 for mailing list services.*

**Response:** MPBC does not dispute that it may not have retained certain documentation, but MPBC did have confirmation that the mailing program was working effectively. MPBC routinely received seeded mail which confirmed that the vendor actually performed the mailings. MPBC had no need to retain copies of the seeded mail once they had been received, but will do so in the future. Moreover, from FY04 through FY08, for example, MPBC’s membership revenue increased by \$1.3 million. This revenue is directly attributable to targeted mailings and the strategic use of mailing lists. Had the mailings not have reached their intended targets, MPBC would not have received the contributions that it did in fact receive.

- *MPBC did not adequately monitor the vendor’s billings for postage and printing costs, and the resultant payments, since MPBC generally did not obtain or request documentation (such as receipts), as required by the contract, to support the related billings. Our test of three payments, totaling approximately \$133,000, made by MPBC to the vendor during calendar year 2008 for postage disclosed that MPBC lacked adequate documentation to support any of the related charges. We also noted that the vendor’s invoices for printing costs lacked information (such as the types of envelopes and letters used for certain direct mailings) needed by MPBC to ensure the accuracy of the billings.*

*At our request, MPBC subsequently attempted to obtain from the vendor documentation to support certain payments for postage and printing costs that we tested. However, the vendor was unable to provide MPBC with documentation for two payments totaling approximately \$99,000 for postage that were made by the vendor during calendar year 2008. While MPBC subsequently obtained from the vendor other documentation related to certain printing costs, based on our review of this documentation, we determined that, during fiscal year 2009, MPBC overpaid the*

*vendor approximately \$68,000 (primarily for printing costs). According to its records, during fiscal year 2009, MPBC paid the vendor approximately \$510,000 for postage and printing costs.*

**Response:** MPBC does not dispute this finding. As to the estimated overpayment, MPBC agrees that in some instances the invoice prices were inconsistent with the contract prices. The finding noted the overpayment, but did not take into account instances where MPBC paid less than the contract price because of discounts not reflected in the contract. MPBC has done a full accounting of both potential overpayments and underpayments and MPBC is in the process of collecting any overpayments from the vendor.

*The MPBC senior management employee (the same employee noted in Finding 1) responsible for the ongoing monitoring of this contract, including the approval of invoices for payment, also served as the MPBC representative in a broadcast industry cooperative workgroup that included the aforementioned vendor. In addition, a subordinate of this employee was on the contract evaluation committee for this procurement, which was composed of five members. Considering the various conditions noted in Findings 1 and 2, taken collectively, we referred these matters to the Office of the Attorney General – Criminal Division.*

**Response:** MPBC strenuously disagrees with and objects to the preceding paragraph. There is simply no evidence of any criminal conduct in these Findings. Although errors may have been made in the procurement process or in the payment and accounting of a single contract, there is absolutely no basis to refer this matter to the OAG Criminal Division. Moreover, MPBC takes exception to the inclusion of the statement that an MPBC employee served as MPBC's "representative in a broadcast industry cooperative workgroup that included the aforementioned vendor", thereby implying a conflict of interest. Although the statement is factually accurate, it has no relevance to any of the findings. To the extent it was somehow included to imply wrongdoing, the Maryland State Ethics Commission advised the Auditors, as noted in Finding 1, that there was no conflict of interest. Similarly, there was nothing wrong with including one person on the evaluation committee out of five who had knowledge of the subject of the procurement – fundraising. It would have been careless not to do so. The committee was comprised of employees from different departments within MPBC, one of whom was the Chief Operating Officer, and was monitored by an Assistant Attorney General. Here too, the

findings appear to be attempting to suggest some sort of misconduct when in fact there was none. Indeed, no findings in this Audit constitute a crime and MPBC believes that it is irresponsible to suggest that there might be.<sup>4</sup>

***Recommendation 2***

***We recommend that MPBC***

- a. ensure that the methodology used for evaluating vendor bid proposals places appropriate emphasis on the various financial factors included in the calculation of the applicable bid amounts and is adequately documented, and that documentation is maintained to substantiate the concurrence by evaluation committee members of bidder rankings;***
- b. verify that the vendor is reimbursed only for mailing lists purchased, and that direct mailings are delivered, as required, and maintain documentation of such verifications; and***
- c. ensure that vendor invoices for postage and printing include detail information and supporting documentation as required, examine the vendor's records as provided for in the contract to ensure the propriety of payments made, and recover any amounts paid (including the aforementioned \$68,000) that were not adequately supported.***

MPBC provided its response to each separate finding above and noted its disagreement where applicable. Notwithstanding the foregoing, MPBC will comply with the recommendations.

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<sup>4</sup> **Auditor's Comment:** The determination of the commission of a crime or criminal intent is not the purview of either MPBC or the OLA. Such determination is the purview of the Office of the Attorney General – Criminal Division. Accordingly, OLA strongly objects to MPBC's characterization of OLA's referral of this matter to the Criminal Division as "irresponsible." OLA's referral of this matter was based on our professional judgment, experience, and training in handling such matters. In addition, OLA consults with appropriate legal counsel before referrals are made. Moreover, OLA adheres to the requirements of the *Government Auditing Standards* promulgated by the Comptroller General of the United States, which addresses the handling of such matters.

## *Disbursements and Procurements*

### ***Finding 3***

***MPBC made certain payments for contractual services without obtaining and reviewing supporting documentation and made duplicate vendor payments.***

### ***Recommendation 3***

***We recommend that MPBC***

- a. obtain from contractors adequate documentation (such as authorized time sheets), as required, to support all billed charges, and review such documentation to ensure that such charges are in accordance with the related contracts;***
- b. obtain and review documentation supporting amounts previously billed and paid under the aforementioned contracts, and pursue recovery of any paid charges that are not adequately supported; and***
- c. in the future, implement procedures to prevent duplicate vendor payments.***

**Response:** MPBC disagrees with the Finding with respect to the contention that MPBC did not have sufficient documentation to support hours billed by vendors. The contracts referenced in the Finding were not contracts that were to be paid based on the number of hours billed or worked. Instead, they were fixed price agreements that made payments based on task orders.<sup>5</sup> In issuing the task orders, MPBC contracted for a final product that was based on a fixed price. Hours were used solely for the purpose of determining what that fixed price would be. MPBC was not billed for the numbers of hours that were worked, nor did MPBC pay by the hour. MPBC paid agreed, fixed, and fair prices under these contracts. For the design of the web based game noted above, for example, task orders were issued to the vendor. The vendor responded with proposed pricing. The pricing was based on the number of hours the vendor believed would be necessary to complete the task. The parties agreed on a price for the task. Once they did so, the vendor was required to complete the task at the agreed upon price regardless of the hours worked. In this case, the vendor did complete the task satisfactorily and it was paid according to the agreed price schedule. Significantly, both the vendor and MPBC agreed as to the terms of the contract and both fully understood that the contract was to be a fixed price and not an hourly contract. Both parties acted in good faith in accordance with that understanding and each party received exactly what they expected and bargained for.

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<sup>5</sup> **Auditor's Comment:** The actual contract documents provided by MPBC to the OLA contradict MPBC's statement that these were fixed price agreements. The related contracts stated that the vendors were to be paid on either a "cost reimbursable" or "not to exceed" basis and established pre-determined hourly rates.

As to the overpayments, MPBC concurs with the Finding and will be certain the accounts payable clerk posts the invoice date so the RSTARS edit is effective. We believe this was an isolated error and the payments were grouped into a single transaction. We believe there were adequate RSTARS procedures in place to detect duplicate billings, but the accounts payable clerk did not follow the established procedure in this one case. RSTARS control procedures are established by the State Comptroller's Office and agencies are not able to modify those procedures. All agencies follow these procedures. This was one processing error of this type out of thousands of invoices in a three year period.

Notwithstanding the foregoing disagreement noted above, MPBC will comply with the recommendation.

***Finding 4***

***MPBC did not follow certain State procurement regulations for the awarding of three contracts totaling \$1.7 million.***

***Recommendation 4***

***We recommend that MPBC comply with State Procurement Regulations by***

- a. reporting to BPW and the applicable State control agency all contract awards over \$25,000 made on the basis of emergency procurements, including the aforementioned contract totaling \$706,000; and***
- b. publishing all contract awards over \$25,000 in eMaryland Marketplace (repeat).***

**Response:** MPBC concurs with the Finding and will follow the recommendation. MPBC's Procurement Officer notified bidders individually by letter and with the public posting of BPW approvals on line, the Procurement Officer believed that the eMaryland Marketplace posting was redundant. As to the emergency procurement, DBM was notified and was involved in the procurement at issue here. In fact, MPBC notified both DGS and DBM because it was not clear given the equipment involved, which was the appropriate control agency on this procurement. DBM took control of the procurement and worked with MPBC's Procurement Officer. The Procurement Officer, however, left MPBC just after the award of the emergency procurement. The paperwork for BPW approval was prepared and completed but it appears that it was never received by BPW for approval.

## ***Equipment***

### ***Finding 5***

***MPBC did not conduct physical inventories of equipment, as required.***

### ***Recommendation 5***

***We recommend that MPBC conduct physical inventories of equipment as required by the Inventory Control Manual.***

**Response:** MPBC concurs with the recommendation that it comply with the DGS Inventory Control Manual requirements and it has made every effort to do so – expending many man hours to achieve that goal. MPBC has made all departments aware of the DGS requirements, and the DGS Director of Inventory Management recently has visited MPBC and reviewed inventory issues with MPBC staff.

## ***Cash Receipts***

### ***Finding 6***

***MPBC had not established adequate controls over certain cash receipts and refunds.***

### ***Recommendation 6***

***We recommend that MPBC***

- a. record all incoming cash receipts immediately upon receipt, and***
- b. ensure that supervisory personnel who authorize credit card refunds forward the related supporting documentation directly to the employee who verifies all refunds made.***

**Response:** MPBC will comply with the recommendation. An MPBC finance department employee believed that she was following correct procedures by endorsing checks received late in the day and locking them in the safe. In the future, MPBC will leave the mail unopened and locked in the safe until it can be both endorsed and recorded on the log. As to the credit card refunds, the Finding correctly notes that current MPBC procedure requires supervisory approval. MPBC will add to its procedure the extra step of having the supervisor, rather than the employee processing the refund, submit the refund documents to the Business Office.

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