

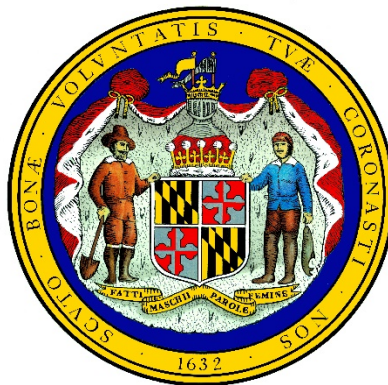
Audit Report

Office of the State Prosecutor

June 2024

Public Notice

In compliance with the requirements of the State Government Article Section 2-1224(i) of the Annotated Code of Maryland, the Office of Legislative Audits has redacted cybersecurity findings and related auditee responses from this public report.



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

Joint Audit and Evaluation Committee

Senator Clarence K. Lam, M.D. (Senate Chair)	Delegate Jared Solomon (House Chair)
Senator Joanne C. Benson	Delegate Steven J. Arentz
Senator Paul D. Corderman	Delegate Andrea Fletcher Harrison
Senator Katie Fry Hester	Delegate Steven C. Johnson
Senator Shelly L. Hettleman	Delegate Mary A. Lehman
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Senator Cory V. McCray	Delegate Julie Palakovich Carr
Senator Justin D. Ready	Delegate Stephanie M. Smith
Senator Bryan W. Simonaire	Delegate M. Courtney Watson
Senator Craig J. Zucker	One Vacancy

To Obtain Further Information

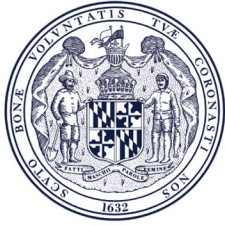
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Gregory A. Hook, CPA
Legislative Auditor

June 25, 2024

Senator Clarence K. Lam, M.D., Senate Chair, Joint Audit and Evaluation Committee
Delegate Jared Solomon, House Chair, Joint Audit and Evaluation Committee
Members of Joint Audit and Evaluation Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Office of the State Prosecutor (OSP) for the period beginning May 16, 2019 and ending June 30, 2023. OSP is an independent agency within the Executive Branch responsible for investigating and, where warranted, prosecuting criminal offenses under the State election laws, Public Ethics Law, and bribery laws, and certain multi-jurisdictional crimes and criminal offenses committed by a State or local official.

Our audit disclosed that OSP did not comply with certain State Procurement regulations for a major system procurement. Specifically, OSP purchased a third-party case management system and related system maintenance services without a competitive procurement process, written contract, or publication of the solicitation and award on *eMaryland Marketplace Advantage*, and without control agency approval. Payments to this vendor totaled approximately \$131,000 between June 2020 and July 2023.

Furthermore, our audit disclosed cybersecurity-related findings. However, in accordance with the State Government Article, Section 2-1224(i) of the Annotated Code of Maryland, we have redacted the findings from this audit report. Specifically, State law requires the Office of Legislative Audits to redact cybersecurity findings in a manner consistent with auditing best practices before the report is made available to the public. The term “cybersecurity” is defined in the State Finance and Procurement Article, Section 3.5-301(b), and using our professional judgment we have determined that the redacted findings fall under the referenced definition. The specifics of the cybersecurity findings were previously communicated to those parties responsible for acting on our recommendations.

OSP's response to this audit is included as an appendix to this report. We reviewed OSP's response and noted general agreement to our findings and related recommendations, and while there are other aspects of the response which will require further clarification, we do not anticipate that these will require the Joint Audit and Evaluation Committee's attention to resolve. Additionally, in accordance with our policy, we have edited OSP's response to remove references to certain state agencies. Finally, consistent with State law, we have redacted the elements of OSP's response related to the cybersecurity audit findings.

We wish to acknowledge the cooperation extended to us during the course of this audit by OSP and its willingness to address the audit issues and implement appropriate corrective actions.

Respectfully submitted,

A handwritten signature in black ink that reads "Gregory A. Hook". The signature is written in a cursive style with a prominent initial "G".

Gregory A. Hook, CPA
Legislative Auditor

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Background Information

Agency Responsibilities

The Office of the State Prosecutor (OSP) is an independent agency within the Executive Branch. OSP investigates and, where warranted, prosecutes criminal offenses under the State election laws and Public Ethics Law, the bribery laws, and offenses constituting criminal malfeasance, misfeasance, or nonfeasance in office (when committed by a State or local official), as well as multi-jurisdictional crimes. OSP conducts these investigations on its own initiative or at the request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State’s Attorney.

According to the State’s records, during fiscal year 2023, OSP’s expenditures totaled approximately \$2.3 million, of which approximately \$1.9 million was for salaries, wages, and fringe benefits as noted in Figure 1.

Figure 1
OSP Positions, Expenditures and Funding Source

Full-Time Equivalent Positions as of June 30, 2023		
	Positions	Percent
Filled	13	100.0%
Vacant	0	0.0%
Total	13	
Fiscal Year 2023 Expenditures		
	Expenditures	Percent
Salaries, Wages, and Fringe Benefits	\$1,777,613	76.5%
Technical and Special Fees	136,555	5.9%
Operating Expenses	409,293	17.6%
Total	\$2,323,461	
Fiscal Year 2023 Funding Source		
	Funding	Percent
General Funds	\$2,323,461	100.0%
Total	\$2,323,461	

Source: State financial and personnel records

Findings and Recommendations

Information Systems Security

We determined that Finding 1 related to “cybersecurity,” as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Consequently, the specifics of the following finding, including the analysis, related recommendation(s), along with OSP’s response, have been redacted from this report copy.

Finding 1
Redacted cybersecurity-related finding.

Procurement

Finding 2
OSP did not comply with certain aspects of State procurement regulations when it purchased a third-party case management system and related maintenance services.

Analysis

OSP did not comply with certain aspects of State procurement regulations when it purchased a third-party electronic case management system and related maintenance services as a sole source procurement. During the period from June 2020 to July 2023 OSP paid the vendor \$131,000 for a case management system and related maintenance services.

OSP obtained the services of a vendor to provide a case management system without a competitive procurement process and without preparing the required written sole source procurement justification prior to the procurement. OSP management advised that it selected the vendor based on interviews conducted with other State and local entities and its determination that using other vendors would not be cost effective. However, OSP could not provide documentation to support that other vendors were not cost effective, and an informal agency determination of cost-effectiveness does not justify the use of a sole source procurement. Further, OSP management provided correspondence from the Department of Information Technology (DoIT) management which indicated that a competitive procurement may be needed. Finally, we noted that OSP did not

have a signed contract with the vendor, did not publish the solicitation and award on *eMaryland Marketplace Advantage (eMMA)*, and did not obtain control agency approval, as required by State procurement regulations.

State procurement regulations stipulate that the sole source procurement method can only be used when no other source for the item is acceptable or suitable, and its use must be supported with a written justification approved by the agency head. Furthermore, procurement regulations require formal written contracts with certain critical provisions and sole source contract awards are required to be published on *eMMA* within 30 days. Regulations further provide that sole sourced contracts valued at \$100,000 or greater require approval by the Department of General Services – Office of State Procurement and the Board of Public Works.

Recommendation 2

We recommend that OSP comply with State procurement regulations by adequately documenting the justification for this sole source award, execute a written contract, publish the contract award on *eMMA*, and retroactively obtain control agency approval, as applicable.

Information Systems Security

We determined that Finding 3 related to “cybersecurity,” as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with the State Government Article 2-1224(i). Consequently, the specifics of the following finding, including the analysis, related recommendation(s), along with OSP’s response, have been redacted from this report copy.

Finding 3
Redacted cybersecurity-related finding.

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Office of the State Prosecutor (OSP) for the period beginning May 16, 2019 and ending June 30, 2023. 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 OSP's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included procurements and disbursements, and payroll.

Our assessment of internal controls was based on agency procedures and controls in place at the time of our fieldwork. Our tests of transactions and other auditing procedures were generally focused on the transactions occurring during our audit period of May 16, 2019 to June 30, 2023, but may include transactions before or after this period as we considered necessary to achieve our audit objectives.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, tests of transactions, and to the extent practicable, observations of the OSP's operations. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk, the timing or dollar amount of the transaction, or the significance of the transaction to the area of operation reviewed. As a matter of course, we do not normally use sampling in our tests, so unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, unless sampling is specifically indicated in the finding, the results from any tests conducted or disclosed by us cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as expenditure data) and the State's Central Payroll Bureau (payroll data), as well as from the contractor

administering the State's Corporate Purchasing Card Program (credit card activity). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during the audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

OSP'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. As provided in *Government Auditing Standards*, there are five components of internal control: control environment, risk assessment, control activities, information and communication, and monitoring. Each of the five components, when significant to the audit objectives, and as applicable to OSP, were considered by us during the course of this audit.

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 the OSP'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 OSP that did not warrant inclusion in this report.

State Government Article Section 2-1224(i) requires that we redact in a manner consistent with auditing best practices any cybersecurity findings before a report is made available to the public. This results in the issuance of two different versions of an audit report that contains cybersecurity findings – a redacted

version for the public and an unredacted version for government officials responsible for acting on our audit recommendations.

The State Finance and Procurement Article, Section 3.5-301(b), states that cybersecurity is defined as “processes or capabilities wherein systems, communications, and information are protected and defended against damage, unauthorized use or modification, and exploitation.” Based on that definition, and in our professional judgment, we concluded that certain findings in this report fall under that definition. Consequently, for the publicly available audit report all specifics as to the nature of cybersecurity findings and required corrective actions have been redacted. We have determined that such aforementioned practices, and government auditing standards, support the redaction of this information from the public audit report. The specifics of these cybersecurity findings have been communicated to OSP and those parties responsible for acting on our recommendations in an unredacted audit report.

OSP’s response to our findings and recommendations is included as an appendix to this report. Depending on the version of the audit report, responses to any cybersecurity findings may be redacted in accordance with State law. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise OSP regarding the results of our review of its response.

APPENDIX

STATE OF MARYLAND



OFFICE OF

THE STATE PROSECUTOR

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June 3, 2024

Gregory J. Hook, CPA
Legislative Auditor
Office of Legislative Audits
Maryland General Assembly
351 West Camden Street, Suite 400
Baltimore, Maryland 21202

Dear Mr. Hook:

Enclosed is our response to the Office of Legislative Audits draft audit report on the Office of the State Prosecutor for the period beginning May 16, 2019, and ending June 30, 2023. We very much appreciate the time and effort of your team in conducting the audit. As reflected in our response, and as stated in prior discussions with your team, we concur with two of the reports' findings, and disagree with certain aspects of the other finding. Details are provided in our response. We are available to discuss this matter further if desired, as we respect the role of your office and would like to reach a consensus on these issues.

Please do not hesitate to contact our office with any questions about our response or the audit in general.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Howard III".

Charlton T. Howard III
State Prosecutor

Office of the State Prosecutor

Agency Response Form

Information Systems Security

The Office of Legislative Audits (OLA) has determined that Finding 1 related to “cybersecurity,” as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with State Government Article 2-1224(i). Although the specifics of the finding, including the analysis, related recommendation(s), along with OSP’s responses, have been redacted from this report copy, OSP’s responses indicated agreement with the finding and related recommendations.

Finding 1
Redacted cybersecurity-related finding.

Agency Response has been redacted by OLA.

Office of the State Prosecutor

Agency Response Form

Procurement

Finding 2

OSP did not comply with certain aspects of State procurement regulations when it purchased a third-party case management system and related maintenance services.

We recommend that OSP comply with State procurement regulations by adequately documenting the justification for this sole source award, execute a written contract, publish the contract award on *eMMA*, and retroactively obtain control agency approval, as applicable.

Agency Response	
Analysis	
Please provide additional comments as deemed necessary.	Although a small agency without a dedicated procurement team, OSP consulted extensively with other state agencies, in particular the Department of Information Technology (DoIT) and one other state agency, as well our legal counsel and the Maryland Procurement Manual and other relevant regulations, prior to proceeding with a sole source small procurement of the chosen electronic case management system, and to the best of our ability duplicated the previous process followed by another state agency in acquiring the same system. OSP fully documented in the paperwork accompanying the application for grant funds utilized in this project, and in multiple emails and other written documents, the rationale underlying the procurement, and subsequently conducted an extensive review to identify a case management system which would best meet OSP's unique requirements. We believed that absent contravening regulations, and given the guidance provided by the Maryland Procurement Manual, as well as other state agencies, the procurement cost (under \$50,000) and unique qualifications of the chosen system, as well as other relevant circumstances, justified the use of a Sole Source Small Procurement, within the authority of OSP to execute, for a year's software license.

Office of the State Prosecutor

Agency Response Form

OSP nonetheless acknowledges the concerns raised by OLA. Given the success of the system after the initial year trial, and our subsequent year sole source small procurement purchases (under \$30000 per year), it makes sense to obtain additional documentation and seek a longer-term procurement to enhance the transparency of the procurement, ensure seamless agency operations, and remove any question of regulatory compliance. Accordingly, we will adopt their recommendations to engage in a new contract process.

Upon being notified by OLA that a separate, standalone memorandum justifying the sole source selection was required, the OSP agency head authored a memorandum documenting the purchase justification and provided a copy to the OLA Audit Team.

As to why a sole source procurement was necessary, OSP has unique agency electronic data management requirements, as it is the only agency of its kind in the state, and indeed in the US, where all investigation and prosecution functions regarding crimes within the agency's jurisdiction, as well as civil litigation regarding those matters, are embodied in one stand-alone organization. Thus, a case management application had to support investigative factors such as law enforcement reporting, the ability to handle evidence review and documentation in complex financial matters, search warrant support, confidential informant management, criminal intelligence collection, and forensic support; litigation factors such as discovery, motion practice, appellate and post-conviction practice, attorney work product protection filter team and restricted data compartmentalization, and on site trial support; as well as administrative factors regarding agency metrics and mandatory reporting. Accordingly, OSP needed a system which supported all those functions. After raising the topic, as noted in the OLA Report, our assigned DoIT Project Officer subsequently concurred with our determination.

Office of the State Prosecutor

Agency Response Form

OSP then conducted an extensive review of available systems utilized by other state and local agencies, as well as others commercially available.

OSP initially reviewed a number of case management systems utilized by other prosecution, investigation and inspector general agencies, as well as surveying other available systems. In addition, the State Prosecutor, a retired federal law enforcement senior executive, had extensive experience with managing electronic case management systems, including service for several years as the head of the national Law Enforcement Information Exchange (LINX) network, and was very familiar with industry standards and practices. As expected, most systems reviewed by OSP were tailored and marketed to support either the investigative mission or the litigation process, but not both. Based upon OSP's analysis, the system chosen, already utilized, and validated, by several local agencies, including the other state agency previously referenced, was the sole case management application we found which was proven reliable and could be tailored to meet all agency investigation, litigation, and administrative requirements.

As to the procurement process, as noted, OSP is a small agency, consisting at the time of 13 personnel, none of whom were procurement specialists, and so we relied heavily on utilizing the technical and procurement expertise of both the State Department of Information Technology (DOIT) and another state agency, as well as our own assigned Assistant Attorney General. OSP also followed the guidance contained in the Maryland Procurement Manual. As noted, the other state agency, in coordination with DOIT, had previously procured and was currently using the identical system OSP ultimately selected. OSP followed our partners' guidance and/or duplicated their efforts when acquiring the product. In addition, the process was conducted during the COVID epidemic, which posed several logistics and coordination challenges.

Office of the State Prosecutor

Agency Response Form

After determining the chosen system was the only system meeting OSP requirements, DOIT conducted a full examination and validation of the information security provisions required by DOIT for State IT contracts and advised that the system satisfied all requirements.

The vendor provided cost information, which tracked the current costs incurred by another state agency and other local agencies utilizing the system, and was more cost effective than other, less qualified candidates, as well as full licensing agreements for the system, which detailed all contractual obligations. We undertook a final review of all documents with our partners and in consultation with the Maryland Procurement Manual and other regulations. As the purchase costs of this small procurement were under \$50,000, OSP was advised that no additional administrative steps were necessary, and we undertook the purchase utilizing the same purchase order/licensing agreement method as the other state agency adopted.

In a related but separate matter, although the original intent was to utilize DOIT for cloud management services for the system, DOIT later recommended that the most efficient and cost-effective option was to purchase cloud hosting services directly from the chosen vendor, which we did. As with the original purchase, DOIT also reviewed the cloud management services licensing agreement and validated that all information security requirements were satisfied. (Note: As additional validation, DOIT had previously done a full review of the system and approved another state agency's purchase of system services prior to our acquisition.) In our view the relatively small amount for the second purchase (\$13,000) and the unique advantages offered by the vendor also met the criteria for a sole source small procurement, and thus did not trigger additional administrative requirements.

Office of the State Prosecutor

Agency Response Form

	<p>After validating the utility and worth of the application, subsequent year purchases of both the application license and separate cloud services were also under the small procurement threshold and were processed accordingly. As per our review of the Maryland Procurement Manual, notice in eMMA was not required at the time for this type of sole source purchase.</p>		
Recommendation 2	Agree	Estimated Completion Date:	2025
Please provide details of corrective action or explain disagreement.	<p>Given OLA concerns, OSP will adopt OLA’s recommendation. We have already provided written justification for the sole source award and other documentation to OLA, and we will seek a revised contract and other required steps for the agency sole source purchase of the chosen electronic case management system, in consultation with our Counsel, and in compliance with State procurement regulations.</p>		

Office of the State Prosecutor

Agency Response Form

Information Systems Security

OLA has determined that Finding 3 related to “cybersecurity,” as defined by the State Finance and Procurement Article, Section 3.5-301(b) of the Annotated Code of Maryland, and therefore is subject to redaction from the publicly available audit report in accordance with State Government Article 2-1224(i). Although the specifics of the finding, including the analysis, related recommendation(s), along with OSP’s responses, have been redacted from this report copy, OSP’s responses indicated agreement with the finding and related recommendations.

Finding 3
Redacted cybersecurity-related finding.

Agency Response has been redacted by OLA.

AUDIT TEAM

Catherine M. Clarke, CPA, CIA, CFE
Audit Manager

Sporthi J. Carnelio
Senior Auditor