



Commonwealth of Massachusetts
Office of the State Auditor
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Making government work better

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Statewide Review of the Procurement and Utilization of Information Technology Training Services

For the period July 1, 2009 through June 30, 2011



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INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Office of the State Auditor (OSA) conducted a performance audit of the procurement and utilization of information technology (IT) training services by selected Executive Offices for the period July 1, 2009 through June 30, 2011. The Executive Offices included in our audit were Administration and Finance, Energy and Environmental Affairs, Health and Human Services, Housing and Economic Development, Labor and Workforce Development, and Public Safety and Security, as well as the Massachusetts Department of Transportation¹. Each Executive Office consists of multiple Executive Department agencies whose mission it is to serve the needs of the citizens of the Commonwealth.

Our audit examined the procedures followed by Executive Offices to procure IT training services to determine whether the procurement practices for these services were in compliance with applicable state laws, rules, and regulations and each agency's own internal policies and procedures. We also assessed whether the agencies fully utilized the IT training services that they purchased.

We found that, during the audit period, although Executive Offices procured IT training services in accordance with applicable laws, rules, and regulations, agency policies and procedures need to be strengthened relative to ensuring foreign corporations doing business in Massachusetts are properly registered with the Secretary of the Commonwealth of Massachusetts as required by state law.

Highlight of Audit Findings

Chapter 156D, Section 15.03(a), of the Massachusetts General Laws requires that non-Massachusetts corporations (foreign corporations) seeking to transact business in the Commonwealth must file a Foreign Corporation Certificate of Registration with the Corporations Division of the Secretary of State no later than 10 days after they begin doing business in the state. The purpose for filing this certificate is so that the Corporations Division can ensure foreign corporations comply with various requirements of Chapter 156D, including having to maintain a registered office and a registered agent in the Commonwealth. Further, Chapter 156D is intended to protect an agency's litigation exposure in the event of a contractual dispute. However, we found that three of 37 vendors in our sample were foreign corporations that did not file the required Foreign Corporation Certificate of Registration. These three foreign corporations had contracts totaling

¹ The OSA audit did not include the Executive Office of Education, which comprises 29 campuses divided into three segments: 15 community colleges, nine state universities and the five University campuses.

\$4,745,128 with six Executive Office agencies: Administration and Finance, Housing and Economic Development, Health and Human Services, Labor and Workforce Development, Public Safety and Security, and the Massachusetts Department of Transportation.

Recommendations of the State Auditor

Executive Office agencies, in conjunction with other appropriate state agencies such as the Secretary of State and the Operational Services Division, should develop an effective process to verify that foreign corporations file the required Foreign Corporation Certificate of Registration in accordance with Chapter 156D.

OVERVIEW OF AUDITED AGENCIES

The eight Executive Offices were established pursuant to Chapter 6A, Section 2, of the Massachusetts General Laws. Each Executive Office is headed by a cabinet Secretary, who reports to the Governor. A description of the seven Executive Offices included in our audit, each of which has clearly defined responsibilities, follows:

- Executive Office for Administration and Finance (EOAF): EOAF, which is composed of 16 agencies, develops and executes fiscal and administrative policies that ensure the financial stability and efficiency and effectiveness of state government in the furtherance of the Governor's agenda for the benefit of all residents of the Commonwealth.
- Executive Office of Energy and Environmental Affairs (EOEEA): The agencies of EOEEA preserve land and open space, enforce pollution laws, review the environmental impact of major real estate and infrastructure developments, and provide opportunities for outdoor recreation at state parks and beaches.
- Executive Office of Health and Human Services (EOHHS): EOHHS serves as the principal agency for managing health and human services operations throughout the Commonwealth.
- Executive Office of Housing and Economic Development (EOHED): EOHED agencies are responsible for the regulation and development of business activity throughout the Commonwealth; they provide leadership, professional assistance, and financial resources to promote affordable housing opportunities for residents of the Commonwealth. EOHED also oversees consumer affairs, including the regulation of banks.
- Executive Office of Labor and Workforce Development (EOLWD): EOLWD is responsible for enhancing the quality, diversity, and stability of the Commonwealth's workforce by making available new opportunities and training, protecting the rights of workers, preventing workplace injuries and illnesses, ensuring that businesses are informed of all employment laws impacting them and their employees, providing temporary assistance when employment is interrupted, promoting labor-management partnerships, and ensuring equal access to economic self-sufficiency and opportunity for all citizens of the Commonwealth.
- Executive Office of Public Safety and Security (EOPSS): EOPSS is responsible for the policy development and budgetary oversight of Executive Office agencies, independent programs, and several boards that aid in crime prevention, homeland security preparedness, and ensuring the safety of residents and visitors in the Commonwealth.
- Massachusetts Department of Transportation (MassDOT): Consisting of four divisions-- Highway, Mass Transit, Aeronautics, and the Registry of Motor Vehicles--in addition to an Office of Planning and Programming. MassDOT's mission is to "deliver excellent customer service to people who travel in the Commonwealth, and to provide our nation's safest and

most reliable transportation system in a way that strengthens our economy and quality of life.”

During the audit period, the agencies within their respective Executive Office contracted for a broad range of information technology (IT) goods and services, some of which included an IT training component associated with their respective mission-critical applications. Furthermore, depending on the business requirements of the individual agencies, either contracts were negotiated with vendors to include IT training in the total cost of the contract, or IT training was identified in the statement of work as a separate line item with a specified cost under the terms and conditions of an Operational Services Division (OSD) statewide contract. OSD is the Commonwealth’s central procurement agency whose primary role is to coordinate the procurement activity for commodities and services on statewide contracts.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of the procurement and utilization of information technology (IT) training services by Executive Offices for the period July 1, 2009 through June 30, 2011. The OSA conducted this performance audit in accordance with generally accepted government auditing standards with one exception, which is described below. 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.

We did not test the operating effectiveness of internal controls related to training procurement and utilization, due to the following: (a) a scope limitation (external to the auditee) restricted our ability to identify all IT training expenditures made by Executive Offices during the audit period, and (b) no formal records of attendance from trainings are maintained by Executive Office personnel, as their respective staff are not subject to Continuing Professional Education (CPE) requirements. Although testing was not conducted, we determined that each of the agencies visited had established internal written policies and procedures relative to the procurement of IT goods and services, including IT training, and we determined the policies to be adequate and in compliance with applicable laws, rules, and regulations.

The objectives of our audit were to (1) determine whether the procedures followed by Executive Offices to procure IT training services during our audit period were in compliance with applicable state laws, rules, and regulations and their own internal policies and procedures and (2) whether Executive Office agencies fully and effectively utilized all the IT training services they purchased during the audit period. As noted above, we did not perform a comprehensive test of the effectiveness of internal controls in place and in effect at the agencies in our sample.

In order to achieve our audit objectives, we conducted interviews with senior staff from OSD, the Office of the State Comptroller (OSC), and the Commonwealth's Human Resources Division (HRD). The purpose of these interviews was to obtain an understanding of procedures in place for the procurement and accounting of IT training. We also utilized the Commonwealth Information Warehouse (CIW) to identify, to the extent possible, vendors that provided IT services to all

Executive Offices during our audit period. In addition, we conducted interviews with Executive Office senior management to request copies of contracts that contained an IT training component along with evidence that training was performed as required by the contract.

As part of our audit, we:

- Cross-referenced hardcopy Massachusetts Management Accounting and Reporting System (MMARS) documentation to electronic data obtained from the CIW to determine whether contract-related information was recorded in an accurate, timely, and consistent manner.
- Determined whether contract approvals were within appropriate delegations of authority and separation of duties.
- Examined Internal Control Plans and Internal Control Questionnaires with regard to procurement of IT goods and services.
- Investigated whether vendors providing IT goods and services to Executive Office agencies were in compliance with laws and regulations requiring registration with the Office of the Secretary of State.
- Reviewed OSD's Commonwealth Procurement Access and Solicitation System (CommPASS) statewide contract for the purchase of training services that could include training for IT.
- Reviewed OSD's CommPASS statewide contracts for the purchase of computer software and related services and IT solution providers and technical services.
- Reviewed all applicable laws, regulations, guidelines and other pronouncements relative to the procurement of goods and services, specifically 801 Code of Massachusetts Regulations 21.00 relating to contracts that may include IT training.
- Conducted site visits at Executive Office locations throughout the Commonwealth to review compliance with established policies, procedures, and regulatory mandates for IT training

Our audit of Executive Offices was impaired by factors external to the auditees, resulting in a scope limitation. Specifically, it was our intention to identify and consider for review all contracts containing IT training services. However, based on our interviews with representatives of OSD, OSC, and HRD, we determined that our ability to identify these contracts was limited because MMARS does not have a specific expenditure code for IT training services. Rather, we determined that contracts for many IT-related goods and services are coded in MMARS as either "Software and Information Technology License Renewals" or "IT Professional Services." This restriction resulted in the audit team's inability to identify all IT training expenditures made by Executive Offices during the audit period.

Executive Office staff worked with the audit team in identifying 55 contracts that contained IT training services. However, there was no means to ensure that the auditees correctly identified all contracts containing IT training. Consequently, our conclusions are based solely on our review of the contracts identified by the auditees as containing IT training services. Our report's audit results regarding performance and compliance issues reflect these limitations and do not necessarily reflect the full results that might have been obtained had we been able to identify all of the contracts containing IT training services through MMARS. Based on the audit work that could be performed, we reviewed 55 IT-related contracts totaling \$147,598,531. We verified that 24 of the 55 contracts totaling \$16.4 million had IT training components that did not identify specific costs associated with IT training services. We were able to verify that the remaining 31 contracts specified IT training costs totaling \$2,684,353.

Further, we received verification that some of the IT training was performed in accordance with the terms and conditions of the contracts provided by Executive Office agencies. Our audit evidence consisted of copies of training attendance records, documentation from department heads, training materials, and email confirmations from Executive Office personnel attending the training sessions. However, we found that some agencies did not maintain formal attendance records for IT training, as their respective staffs are not subject to CPE requirements.

AUDIT FINDINGS

INADEQUATE POLICIES AND PROCEDURES TO ENSURE THAT FOREIGN CORPORATIONS DOING BUSINESS IN MASSACHUSETTS ARE PROPERLY REGISTERED

Our audit found that Executive Office agencies need to improve their internal controls over the procurement and utilization of information technology (IT) related services to ensure that non-Massachusetts corporations (foreign corporations) doing business in the Commonwealth comply with Operational Services Division (OSD) procurement guidelines and state laws and regulations relative to being properly registered to do business within the Commonwealth. Chapter 156D, Section 15.03(a), of the Massachusetts General Laws requires foreign corporations that want to do business in Massachusetts to file with the Corporations Division of the Secretary of the Commonwealth a certificate called a Foreign Corporation Certificate of Registration detailing certain corporate information (e.g., entity name, date of incorporation, corporate address) not later than 10 days after they begin doing business in the Commonwealth. In addition, OSD's standard contract form states, in part:

The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein....

The purpose for filing this certificate is so that the Corporations Division can ensure foreign corporations comply with various requirements of Chapter 156D, including having to maintain a registered office and a registered agent in the Commonwealth. Further, Chapter 156D is intended to protect an agency's litigation exposure in the event of a contractual dispute.

Despite this, we found that during our audit period, six Executive Office agencies entered into contractual agreements for IT services with three vendors totaling over \$4.7 million that, contrary to Chapter 156D, Section 15.03(a), did not file a Foreign Corporation Certificate of Registration, as detailed in the following chart:

Summary of Unregistered Foreign Corporations

<u>Executive Department</u>	<u>Vendor</u>	<u>Contract Amount</u>	<u>Cost of IT Training Identified in Contracts</u>
Executive Office for Administration and Finance	SHI International Corp.	\$ 1,410,222	-
Executive Office of Housing and Economic Development	SHI International Corp.	231,750	\$10,300
Executive Office of Health and Human Services	DrFirst, Inc.	798,343	10,000
Executive Office of Labor and Workforce Development	SHI International Corp.	1,990,000	-
Executive Office of Public Safety and Security	Porter Lee Corp.	189,069	-
Executive Office of Public Safety and Security	SHI International Corp.	73,303	2,511
Massachusetts Department of Transportation	SHI International Corp.	<u>52,441</u>	<u>5,500</u>
Total		<u>\$ 4,745,128</u>	<u>\$28,311</u>

Executive Office officials told us that they did not verify each contractor's compliance with Chapter 156D because they assumed that a vendor has submitted the required registration with the Corporations Division if it had received approval from OSD to provide services under a statewide contract. They added that they were not aware of their responsibility to ensure compliance with this requirement.

Recommendation

Executive Office agencies, in conjunction with other appropriate state agencies such as the Secretary of State and the Operational Services Division, should develop an effective process to verify that foreign corporations file the required Foreign Corporation Certificate of Registration in accordance with Chapter 156D.

Auditee's Response

In response to this issue, the Executive Office agencies provided a joint response, which stated, in part:

Our understanding is that neither the OSD statewide contract nor the law requires all foreign corporations to file with the Secretary of State. We confirmed this with an attorney at the Secretary of State who advised us that "the case law only requires registration with the Division if the activity of the Contractor is significant". The audit report does not address

whether the Contractors identified in the report were required by law to file with the Secretary of State due to the significance of the work performed.

Given the factual context of state contracting, where there are over 40,000 vendors across the Commonwealth (and no existing database for identifying which ones are foreign), and where there are over 1,100 vendors on statewide contracts, and where the value of the services provided in this context is estimated by the auditor to be approximately \$28,000 and where the determination as to whether a vendor is required to file with the Secretary of State calls for a legal analysis as to whether the Contractor is foreign and as to whether the activity is "significant", and where the cost to hire attorneys and implement the recommendation would exceed any potential benefit to the state, and in this fiscal environment where state government is doing its best to target high risk activity to prevent and detect fraud, waste and abuse, we do not believe that it would be in the public's best interest in terms of the use of state resources to implement a control that would require hiring attorneys to make this assessment, especially given the fact that this is not an adopted internal control.

Auditor's Reply

As stated in our report, Chapter 156D, Section 15.03(a), of the General Laws requires foreign corporations to file a Foreign Corporation Certificate of Registration with the Corporations Division of the Office of the Secretary of State. Additionally, OSD's standard contract form clearly requires foreign corporations to attest under the pains and penalties of perjury that they have complied with this statute. Since our audit work identified that the contractors in question were foreign corporations, they should have filed the required certificates of registration as required by Chapter 156D. OSA is not aware of any case law that says that a foreign corporation has to file this certificate only if the work it is conducting is "significant." Although in their response the Executive Office agencies argue that the amount of services provided by the vendors in question is not significant, the three vendors in fact provided over \$4.7 million in total services to state agencies during our audit period. In terms of what transactions should be considered significant, it should be noted that Chapter 30B establishes a significance threshold of \$25,000 for procurements conducted by public agencies, above which the agencies are required to obtain competitive sealed bids.

OSA does not believe that making sure that foreign corporations file the required Foreign Corporation Certificate of Registration would require the hiring of additional attorneys. The Secretary of State's website clearly identifies foreign corporations as "All corporations transacting business in the commonwealth and organized under laws of a different state or country." Further, OSD's standard contract form requires all contractors to list their legal name and address on each contract, and the Secretary of State's corporate data base, which is accessible to the public, contains information on all Massachusetts corporations. All of this information is readily available and collectively could be used for making this determination. Finally, the OSA believes that it is in the

best interest of the Commonwealth for Executive Office agencies, in conjunction with other appropriate state agencies such as the Secretary of State and the Operational Services Division, to put in place some type of controls to monitor compliance with this statute so that the state does not assume any unnecessary risk, including liabilities that that might arise relative to foreign corporations doing business in the Commonwealth.