



# INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA OFFICE OF TECHNOLOGY (IOT)  
TITLE: IOT PROCUREMENT  
CASE ID: 2018-07-0220  
DATE: November 8, 2018

*Inspector General Staff Attorney, Heidi Adair, after an investigation by Inspector*

*General Special Agent Mark Mitchell, reports as follows:*

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse, and wrongdoing in the executive branch of state government. IC 4-2-7-2(b). The OIG also investigates criminal activity and ethics violations by state workers. IC 4-2-7-3. The OIG may recommend polices and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. IC 4-2-7-3(2).

## **Background**

On July 28, 2018, the OIG received an anonymous complaint alleging that an IOT employee (the Employee) had used a “pay to play” tactic on a bidder for a Request for Proposals (RFP). Specifically, the Reporting Party (RP) alleged that earlier in 2018, the Employee stated that the RP’s company had all the proper qualifications to work for IOT but that the company would not be considered in the running for the contract unless he/she showed some “commitment” to doing business with IOT. The RP claimed he/she was then introduced to the Employee’s “side business” of custom goods. The RP said it was clear that this meant that he/she needed to “pay to play” through the Employee’s side business in order to do business with IOT.

## Investigation

OIG Special Agent Mark Mitchell conducted an investigation into this matter. Special Agent Mitchell first interviewed IOT's Appointing Authority and the State's Chief Information Officer (CIO). The CIO explained that IOT uses Managed Service Providers (MSPs) for projects and that the Employee may talk to MSPs about projects, but the Employee does not make decisions in awarding projects. Rather, IOT awards projects to the lowest bidder.

Special Agent Mitchell examined a list of MSP projects bid for in 2018, as well as a list of all approved vendors that can respond to MSP bids. He found that the Employee was a scorer on one Request for Information (RFI). An RFI is an information gathering process and does not lead to a contract award. Conversely, RFPs involve a full bidding process. The investigation revealed only one RFP that the Employee was involved with during the time frame in question; however, he did not act as a scorer on this RFP. In sum, Special Agent Mitchell found no evidence that the Employee was involved in actual decision making or awarding of RFPs to any bidder during the time frame included in the RP's complaint.

Special Agent Mitchell also interviewed the Employee. The Employee explained that he has never had a one-on-one meeting with a representative of a company involved in the RFP process. Rather, all the RFPs he has been involved with were in group settings and typically with two to four IOT personnel involved in the meetings.

The Employee confirmed that he creates custom goods and has been doing so for approximately a year as a hobby. He maintains a Facebook page where he posts pictures of the goods. The Employee explained that he considers this a hobby rather than a business even though he has sold some of his goods. To date, he said he had sold about twenty goods but that the money he earns just covers the cost and materials of his labor. He stated that he has never told anyone that they would not be considered in the running for an IOT contract if they did not purchase goods from him, nor ever suggested anything of the sort.

The Employee said the only good he had ever sold to anyone associated with a company involved with IOT was to a manager (the Manager) with a company (the Company). The Company does not contract directly with the State, but the State could potentially obtain the Company's services by purchasing them through a reseller (the Reseller). The Employee said the Manager became aware of him making custom goods through a conversation they had about their hobbies during an earlier business meeting. The Employee said the Manager asked him to craft a good as a gift to the Manager's father. The Employee agreed and received a \$150 check from the Manager upon completion of the good. Special Agent Mitchell later obtained a photo of this good and the check. He also examined a copy of the Special Procurement Form regarding the proposed agreement between the Reseller and IOT.

Special Agent Mitchell examined the Employee's state outlook email account for any activity related to the sale of his goods and found two email strings relating to this query. One was a brief exchange from a fellow IOT employee thanking him for a good she bought from him for her son's birthday. The other was a string of communications over nine days between the Employee and the Manager discussing specifications of the good the Employee made for him. Special Agent Mitchell also viewed the Employee's Facebook page and retrieved the names of individuals who posted reviews of the Employee's goods and then searched their names in the Employee's outlook account. None of these names were found in his email account or as employees of IOT.

### **Conclusion**

Special Agent Mitchell's investigation revealed no evidence to support the RP's "pay to play" allegations; therefore, the OIG closes the complaint for insufficient cause.

Although the investigation found no merit to the original allegations, it revealed that the Employee violated the Code of Ethics' rule regarding the use of state property, which is found in IC 4-2-6-17, and IOT's Limited Personal Use of State Property/Resources policy. This policy

allows for certain limited personal use of state property, but it prohibits such use of state property/resources for an outside commercial activity. Special Agent Mitchell's review of the Employee's emails show that he used his state email account and state computer to secure an order for his outside hobby/business from the Manager. Because this was the only order secured using state property and the email exchange was limited in duration, the OIG declines to file an ethics complaint with the Commission in this case.

### **Recommendations**

Based upon the investigation described in this Report, the OIG makes the following recommendations to IOT. The goal of these recommendations is to help IOT employees understand the steps they should take to avoid violations of the use of state property rule and avoid the appearance of impropriety.

#### **Recommendation 1**

The OIG recommends that IOT's Appointing Authority or Ethics Officer distribute a written notice to all IOT employees reminding them that if they engage in any outside business, they must do so on their own time, without using state time or state property/resources. The reminder should note that while IOT's Limited Personal Use of State Property/Resources permits limited use of state property for purposes other than official state business, it prohibits employees from using any state property for outside commercial activity, and that doing so is considered both a violation of IOT's policy and the Indiana Code of Ethics.

#### **Recommendation 2**

The OIG also recommends that IOT caution its employees about selling goods or services to those who have a business relationship with the agency. IOT employees should be aware of IC 4-2-6-7, which prohibits a state employee from receiving compensation (1) for the sale of any property or service that substantially exceeds that which the employee would charge in the ordinary course of business; and (2) from any person whom the state employee knows, or in the

exercise of reasonable care and diligence should know, has a business relationship with the agency in which the employee holds a position.

The first subsection of this rule references a sale that “substantially exceeds” that which the employee would normally charge; thus, the OIG recognizes that not every transaction involving a person with whom the state employee’s agency has a business relationship would violate the rule. Even if an employee sells an item for a price that does not exceed the amount normally charged, this type of transaction may still cause an appearance of impropriety. As such, the OIG recommends that IOT employees who engage in outside businesses refrain from selling their goods and services to individuals who have a business relationship with the State. At a minimum, if an IOT employee still wishes to sell something to a person who has a business relationship with the State, he/she should take certain cautionary steps, such as documenting the transaction and verifying that it does not violate IC 4-2-6-7(1).

### Recommendation 3

Lastly, IOT employees whose duties involve interacting with individuals who have or could potentially have a business relationship with the agency should be mindful of their conversations with these individuals. The OIG recognizes that casual conversations will occur organically as state employees are performing their jobs. Nevertheless, we encourage state employees, especially those involved in the contracting process or having discretionary decision making in contracting, to use extra caution when conversing about any outside business in which they have an interest or while in the presence of a vendor, bidder, contractor, or the like. Because the perception of a “pay to play” environment is one of the most serious threats to the integrity of state government, the safest course of action is to avoid such conversations altogether with potential or current vendors or contractors. Public corruption reduces confidence in government, creates citizen apathy and inhibits robust economic development. The Office of the Inspector

General will always take such allegations seriously, investigate them thoroughly and recommend strategies to combat both actual abuse and perceptions of abuse.

Dated: November 8, 2018

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

---

Lori Torres, Inspector General