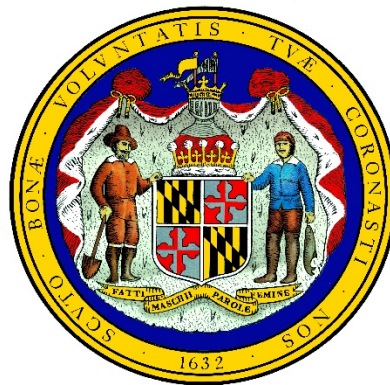


Audit Report

Office of People's Counsel

April 2025



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

Joint Audit and Evaluation Committee

| | |
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To Obtain Further Information

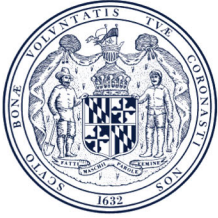
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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Brian S. Tanen, CPA, CFE
Legislative Auditor

April 8, 2025

Senator Shelly L. Hettleman, 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 People's Counsel (OPC) for the period beginning February 22, 2021 and ending December 8, 2024. OPC is an independent State agency that represents Maryland's residential consumers of certain regulated services (including electricity, natural gas, telephone, and private water services) on matters and in proceedings before the Public Service Commission, federal agencies, the appellate courts, and the General Assembly.

Our audit disclosed that OPC awarded contracts to vendors that were not registered or in good standing with the State. Additionally, OPC did not obtain prior approval from the Office of the Attorney General for sole source procurements and did not solicit and publish contract awards on *eMaryland Marketplace Advantage* as required.

Finally, our audit included a review to determine the status of the two findings contained in our preceding audit report. We determined that OPC satisfactorily addressed both of these findings.

OPC's response to this audit is included as an appendix to this report. We reviewed the response to our finding and related recommendations, and have concluded that the corrective actions identified are sufficient to address all audit issues. We wish to acknowledge the cooperation extended to us during the audit by OPC.

Respectfully submitted,

Brian S. Tanen

Brian S. Tanen, CPA, CFE
Legislative Auditor

Background Information

Agency Responsibilities

The Office of People’s Counsel (OPC) is an independent State agency that represents Maryland’s residential consumers of certain regulated services (including electricity, natural gas, telephone, and private water services). OPC advocates on behalf of residential consumers and their interests on matters and in proceedings before the Public Service Commission, federal agencies, the appellate courts, and the General Assembly. According to the State’s records, OPC’s expenditures were approximately \$7.1 million during fiscal year 2024 (see Figure 1).

Figure 1
OPC Positions, Expenditures, and Funding Source

| Full-Time Equivalent Positions as of June 30, 2024 | | |
|---|---------------------|----------------|
| | Positions | Percent |
| Filled | 20 | 90.9% |
| Vacant | 2 | 9.1% |
| Total | 22 | |
| Fiscal Year 2024 Expenditures | | |
| | Expenditures | Percent |
| Salaries, Wages, and Fringe Benefits | \$3,306,075 | 46.3% |
| Technical and Special Fees | 3,321,194 | 46.6% |
| Operating Expenses | 506,977 | 7.1% |
| Total | \$7,134,246 | |
| Fiscal Year 2024 Funding Source | | |
| | Funding | Percent |
| Special Fund | \$7,134,246 | 100.0% |
| Total | \$7,134,246 | |

Source: State financial and personnel records

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the two findings contained in our preceding audit report dated September 16, 2021. We determined that OPC satisfactorily addressed both of these findings.

Findings and Recommendations

Consulting Services Contracts

Background

The Office of People’s Counsel (OPC) procures consulting services to assist with matters for which it does not have technical expertise in cases before various regulatory bodies and the courts. For example, these consulting services could include expert testimony from economists, accountants, telecommunication experts, or engineers on utility rate cases presented before the Public Service Commission. The need for these services may vary from year to year depending on case activity and is often unknown in advance.

According to OPC records, between July 2021 and December 2024, OPC awarded 236 contracts primarily for consulting services to 48 vendors totaling approximately \$10.6 million. Specifically, OPC awarded 167 sole source contracts totaling \$7.8 million and 69 competitively procured contracts totaling \$2.8 million.

Finding 1

OPC awarded consulting services contracts to vendors that were not registered or in good standing with the State, without required approval, and without publishing the solicitation and/or award as required.

Analysis

OPC awarded certain contracts to vendors that were not registered or in good standing with the State, without required approvals, and without publishing the solicitation and/or award on *eMaryland Marketplace Advantage (eMMA)*.¹ We tested 11 consulting services contracts² procured during fiscal year 2023 and

¹ *eMMA* is an internet-based, interactive procurement system managed by the Department of General Services.

² We primarily selected contracts based on materiality of the procurement and method used for the procurement.

2024 (including 6 sole source procurements totaling \$640,000 and 5 competitive procurements totaling \$541,000) and noted the following conditions.

- OPC awarded two contracts to vendors that were not registered or in good standing with the State. Specifically, our testing disclosed that OPC awarded a \$109,200 contract in March 2023 to a vendor that was not registered with the State Department of Assessments and Taxation (SDAT). In addition, OPC awarded a \$97,305 contract in April 2024 to another vendor that had not been in good standing with SDAT³ since November 2021. According to State records, OPC awarded these vendors 11 contracts totaling \$385,000 and 13 contracts totaling \$579,000, respectively, between February 2021 and December 2024.

State procurement regulations and policies require vendors to be registered with SDAT and in good standing to be eligible for an award. Registration with the State helps to ensure that vendors meet all State obligations (such as paying applicable taxes) and that the owners and officers of the business are appropriately disclosed.

- OPC did not obtain prior written approval from the Office of the Attorney General (OAG) for the 6 sole source contracts which were procured in response to threatened litigation. State law requires OAG approval prior to awarding sole source contracts for threatened litigation. Our review disclosed that OAG approval was not obtained until 5 to 13 months after the contracts were awarded. For example, one contract awarded in October 2023 was not approved by OAG until November 2024.
- OPC did not publish contract solicitations and awards on *eMMA*, as required. Specifically, OPC did not publish the solicitations for the 5 competitive procurements tested and as of January 2025, had not published any of the 11 awards on *eMMA* (awarded between 7 and 22 months earlier). State laws and regulations require State agencies to publish competitive solicitations for contracts expected to exceed \$50,000 on *eMMA* and publish awards (including sole source contracts) within 30 days after approval of the contract.

Although OPC management advised us that it believed it was exempt from these requirements due to the confidential nature of the consulting services, State laws and regulations do not include such an exemption. Publishing solicitations and awards on *eMMA* provides improved transparency over State

³ According to SDAT, “*Not in Good Standing*” means the business entity is not in compliance with one or more Maryland laws that apply to businesses and their responsibilities in this State.

procurements, including information about winning bidders and the amount of the related award.

Recommendation 1

We recommend that OPC

- a. ensure vendors are registered and in good standing with the State prior to being selected for award,**
- b. obtain required OAG approval for sole source contracts prior to award, and**
- c. publish contract solicitations and awards (including those noted above) on *eMMA* as required.**

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Office of People’s Counsel (OPC) for the period beginning February 22, 2021 and ending December 8, 2024. 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 OPC’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 purchases and disbursements and payroll. We also determined the status of the findings contained in our preceding audit report.

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 February 22, 2021 to December 8, 2024, 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 OPC'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 a 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 revenue and 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 this 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.

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

OPC's response to our finding 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 OPC regarding the results of our review of its response.

APPENDIX

DAVID S. LAPP
PEOPLE'S COUNSEL

WILLIAM F. FIELDS
DEPUTY PEOPLE'S COUNSEL

JULIANA BELL
DEPUTY PEOPLE'S COUNSEL

— **OPC** —
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DIRECTOR, CONSUMER
ASSISTANCE UNIT

CARISSA RALBOVSKY
CHIEF OPERATING OFFICER

April 7, 2025

Brian S. Tanen, CPA, CFE
Legislative Auditor
Office of Legislative Audits
351 West Camden Street, Suite 400
Baltimore, Maryland 21201

Dear Mr. Tanen,

Enclosed please find the Office of People's Counsel's response to the draft Legislative Auditor's report for the period beginning February 22, 2021 and ending December 8, 2024. OPC is actively working to implement changes to internal procedures to address concerns identified in the audit.

OPC extends its gratitude to you and your professional staff for the manner in which the audit was conducted, and for the constructive recommendations that were made as a result of the audit.

Sincerely,



David S. Lapp, Esq.
People's Counsel

DSL/clr
Enclosure

cc: William F. Fields, Deputy People's Counsel
Carissa Ralbovsky, Chief Operating Officer

Office of People’s Counsel

Agency Response Form

Consulting Services Contracts

Finding 1
OPC awarded consulting services contracts to vendors that were not registered or in good standing with the State, without required approval, and without publishing the solicitation and/or award as required.

We recommend that OPC

- a. ensure vendors are registered and in good standing with the State prior to being selected for award,
- b. obtain required OAG approval for sole source contracts prior to award, and
- c. publish contract solicitations and awards (including those noted above) on *eMMA* as required.

| Agency Response | | | |
|--|--|-----------------------------------|--------------|
| Analysis | | | |
| Please provide additional comments as deemed necessary. | | | |
| Recommendation 1a | Agree | Estimated Completion Date: | June 1, 2025 |
| Please provide details of corrective action or explain disagreement. | OPC will undergo a review of all vendors currently under contract with OPC and provide guidance for corrective action for those who either are not registered with the State or are not in good standing with SDAT. OPC will also revise its award review process to include a mandatory step when proposals are received to research (1) whether the vendor is currently registered with the State, and (2) whether the vendor is in good standing with SDAT, to ensure a vendor is eligible for State contracts before approving an award. | | |
| Recommendation 1b | Agree | Estimated Completion Date: | May 1, 2025 |
| Please provide details of corrective action or explain disagreement. | There are multiple reasons why OAG approval for sole source procurements was received retroactively for the contracts tested by OLA. OPC’s caseload has grown significantly over the past 5 years, as described in the agency’s December 2023 Joint Chairman’s Report (JCR) response to the General Assembly on staffing levels. Between FY 2019 and FY 2023 spending on consulting for legal proceedings grew by 131% in response to OPC’s obligations with respect to the growing number and increased complexity of matters and proceedings (as well as rising consultant rates). Adding to the difficulty of keeping up with extraordinary caseload without additional staffing resources throughout | | |

Office of People’s Counsel

Agency Response Form

| | |
|---|---|
| | <p>the audit period, during this time there was also a prolonged vacancy in OPC’s Administrator/Chief Operating Officer position. From December 2021 to April 2023, this role was filled for less than 4 months after an employee hired in September 2022 left in December 2022. This confluence of circumstances resulted in a backlog and delays in processing contract approvals from OAG.</p> <p>Another reason why OAG approvals for sole source procurements have been sought retroactively is due to the short timeframes for litigation, where expert witnesses need to be engaged quickly to meet procedural deadlines. In some circumstances, it may be difficult to meet these deadlines and sufficiently advocate on behalf of residential utility customers without swift approval of sole source procurements for legal consultants.</p> <p>OPC, now with additional staffing resources and no critical vacancies, will adjust its internal procurement procedures to prioritize the OAG approval process to ensure that OPC receives OAG approval before awards are made, in coordination with OAG to ensure a reasonable timeframe for those approvals.</p> |
| Recommendation 1c | Agree Estimated Completion Date: June 1, 2025 |
| Please provide details of corrective action or explain disagreement. | <p>OPC agrees with this recommendation, with the caveat that confidential information contained in proposal solicitations cannot be published publicly on eMMA without compromising OPC litigation strategy. OPC is in agreement that the agency can publish contract awards on eMMA, and believes it can do so without revealing litigation strategy.</p> <p>OPC will endeavor to post a less detailed Request for Information (RFI) in lieu of publishing its full Request for Proposal (RFP) documentation on eMMA for sensitive procurements. When vendors contact OPC about the RFI, then OPC can share the more detailed RFP.</p> |

AUDIT TEAM

Robert J. Smith, CPA
Audit Manager

Owen M. Long-Grant
Senior Auditor