

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: COURTNEY AVERY,) OEIG Case #18-01396
WILLIAM DART, and)
DEBBIE MAGERL)

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Commission to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut its factual allegations or legal conclusions before the Commission.

The Executive Ethics Commission (“Commission”) received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Courtney Avery, William Dart, and Debbie Magerl at their last known addresses.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

I. BACKGROUND AND ALLEGATIONS

The Health Facilities and Services Review Board (HFSRB) is a State agency that approves or disapproves applications for the construction or expansion of health care facilities, and promotes the development of facilities.¹ The HFSRB issues permits or exemptions to health care facilities through its Certificate of Need program, also referred to as the “CON” program.²

By statute, the Illinois Department of Public Health (IDPH) is required to provide certain operational support to the HFSRB.³ Pursuant to interagency agreements, IDPH provides support

¹ <https://www2.illinois.gov/sites/hfsrb/About/Pages/default.aspx> (last visited May 14, 2019).

² <https://www2.illinois.gov/sites/hfsrb/CONProgram/Pages/default.aspx> (last visited May 14, 2019).

³ See 20 ILCS 3960/4(a).

to the HFSRB for its procurements, as well as operational support for certain core HFSRB functions. The agreements state that “[t]he support provided by the [IDPH] to the HFSRB shall be purely ministerial in nature.” The agreements further state that IDPH retains substantive decision-making authority over the functions and services IDPH employees provide to the HFSRB, as well as over the day-to-day management, supervision, and discipline of any assigned IDPH employees.

Prior to his retirement in 2017, Don Williams was an IDPH employee who provided support services to the HFSRB; he then was awarded two 75-day IDPH appointments and an HFSRB contract following his retirement. Courtney Avery is the HFSRB’s Administrator.

On June 29, 2018, the OEIG received a complaint alleging that Ms. Avery created the specifications for the procurement awarded to Mr. Williams to provide services to the HFSRB, and that she wrote Mr. Williams’ resume submitted as part of the bid for this procurement. The OEIG expanded the investigation to also examine whether other State employees took improper actions to steer this contract to Mr. Williams.

II. INVESTIGATION

A. Don Williams’ Employment History With IDPH

IDPH personnel records indicate that Mr. Williams began working at IDPH in 1984, and became an Administrative Assistant I in 1995. According to his position description, Mr. Williams’ job duties as an Administrative Assistant at IDPH included:

- managing and maintaining the HFSRB’s databases, and
- conducting investigations and studies of a limited scope regarding Certificate of Need activities.

Mr. Williams’ most recent annual salary as an IDPH employee was \$75,816.

Mr. Williams retired from IDPH on July 31, 2017. Following his retirement, Mr. Williams immediately returned to work for IDPH as an Administrative Assistant I through two consecutive 75-day temporary appointments, the first from August 1, 2017 to January 31, 2018, and the second from February 5, 2018 to June 26, 2018.⁴

B. Procurement Of An HFSRB Contract To Fill Mr. Williams’ Position

⁴ State employees who retire from State employment and then return to State employment may continue to receive their State pension payments if they are re-employed by the State for 75 working days or less in a calendar year (referred to in this report as a “75-day appointment”). Retirement benefits also are unaffected if a retired employee returns to State employment “on a contractual basis.” See State Employees’ Retirement System of Illinois, Retiree & Survivor Benefits Handbook (Tier 1), at 9 (Jan. 2017), https://www.srs.illinois.gov/PDFILES/Tier%201/retireehb_17.pdf (last visited May 15, 2019).

The Illinois Procurement Code and related rules promote competition in the procurement of State contracts.⁵ For a “small purchase” such as the procurement of the HFSRB contract examined in this investigation, a Request for Quote is posted in an electronic procurement system, BidBuy, and potential vendors respond to it.⁶ The contract is awarded to the lowest-cost bidder that meets the mandatory qualifications set out in the Request for Quote.

Records obtained in the investigation reflect that on June 26, 2018 at 10:00 a.m., a Request for Quote was published in BidBuy. The Request for Quote solicited bids for a contract for 2,000 hours of services between July 1, 2018 and December 31, 2019, for IDPH/HFSRB.⁷ The Request for Quote described various services that would be required under the contract, including:

- managing and maintaining the HFSRB’s databases, and
- conducting investigations and studies of a limited scope regarding Certificate of Need (“CON”) activities.

The Request for Quote listed IDPH Public Service Administrator Debbie Magerl as the contact person for the procurement.

The Request for Quote also listed various “MANDATORY QUALIFICATIONS,” including:

- seven years working knowledge of the Health Facilities Planning Act and Title 77 of the Illinois Administrative Code: Public Health;⁸ and
- advanced knowledge of the “CON” database.⁹

Bidders were also required to submit a professional resume.

Three quotes were submitted in response to the June 26, 2018 Request for Quote. BidBuy records reflect that Mr. Williams electronically submitted a quote for \$40 per hour (or a total of \$80,000, based on 2,000 hours) on June 27, 2018 at 12:59 p.m. The other two quotes were both from [Vendor agent 1]/[Vendor], for \$32.50 per hour (or a total of \$65,000, based on 2,000 hours); the second [Vendor] quote appears to be a duplicate of the first.

According to emails reviewed in the investigation, at State Purchasing Officer Alyson Moore’s direction,¹⁰ Ms. Magerl emailed [Vendor agent 1] that the required professional resume and other supporting documents were not included with the quotes, and gave her another

⁵ See, e.g., 30 ILCS 500/1-5; 44 Ill. Admin. Code §§ 1.5 & 1.8(c).

⁶ State Purchasing Officer Alyson Moore described this general process in her OEIG interview. For small purchases over \$10,000, small businesses must be solicited first, and a non-small business may be selected only if no small businesses are acceptable or if another justification warrants doing so. CPO - GS Notice 2018.10 (June 21, 2018).

⁷ A Request for Quote for the same services had previously been issued, directed to small businesses; no responses were received.

⁸ The Health Facilities Planning Act, 20 ILCS 3960/1, *et seq.*, is the HFSRB’s enabling statute. Title 77 of the Illinois Administrative Code contains regulations pertaining to IDPH, as well as other rules relating to public health.

⁹ As discussed in greater detail below, the CON database is a database that is unique to the HFSRB.

¹⁰ Independent State Purchasing Officers are appointed by the Chief Procurement Officer to review and approve State agency procurement activities. 44 Ill. Admin. Code § 1.1005(e); 30 ILCS 500/10-10(a).

opportunity to supply the required documents. The documents produced during the investigation do not reflect that [Vendor agent 1] supplemented her submission, and in an October 10, 2018 OEIG interview, [Vendor agent 2] confirmed that they did not provide additional documentation.

A contract was executed between Mr. Williams and the HFSRB on July 27, 2018. It stated that Mr. Williams would provide services to the HFSRB from July 1, 2018 (or upon execution, whichever was later) to December 31, 2019, and would be compensated at a rate of \$40 per hour, up to \$80,000.

C. Interview Of Mr. Williams About His Duties At IDPH And His HFSRB Contract

The OEIG interviewed Mr. Williams on March 14, 2019. He said that when he was an IDPH employee, he officially reported to IDPH Deputy Director Bill Dart, but that unofficially HFSRB Administrator Courtney Avery was his supervisor.

Mr. Williams said he is doing the same duties under the HFSRB contract as he had been doing as an IDPH employee, although he noted that he has picked up some additional duties as other employees left. Mr. Williams said that the “CON” (Certificate of Need) database takes most of his time. He said that the CON database already was in use when he arrived at IDPH in 1984, and that he started inputting data into it two or three years later. Mr. Williams said he has worked with the database since that time, other than for two or three years around 2000, when he worked in another IDPH section. Mr. Williams said that other than the IDPH employee who taught him how to use the database and an employee who did data entry during the years when he worked in the other section, he is the only one who has worked on the database since the mid-1980s; he said that both of those other employees are now retired.

Mr. Williams said he enters data from applications into the CON database, and calculates applicable fees. He said that the application then goes to reviewers, who draft a report, and then he inputs information from the report into the CON database and files the report. Mr. Williams said he also runs reports off the database. When asked what he does to maintain the CON database, Mr. Williams said he keeps it up to date, but otherwise does not do much maintenance on a day-to-day basis; he said that he relies on an IDPH information technology troubleshooter named [IDPH Employee 1] when software changes need to be done. Mr. Williams said that in addition to entering data into the CON database, his duties include opening the mail, preparing “merge” letters for permits, and tracking projects for compliance. Mr. Williams estimated that it would take three to four months to train someone with a knowledge of computers on the CON database, and noted that he performs other duties as well.

Mr. Williams said that it was his idea to ask about a contract, and that he talked with “everybody” about it. He said that in April 2018, “all of ‘em,” including Ms. Avery, Mr. Dart, and Ms. Magerl, were talking about doing a contract. Mr. Williams said that he knew Ms. Avery or somebody else was going to put out a contract on BidBuy, but said he did not remember who told him that. Mr. Williams said there was never any talk of him training anyone to replace him as his 75-day appointment was expiring.

Mr. Williams said that his current contract with the HFSRB runs through December 2019, and that he generally has been working three days per week. Mr. Williams said that as of the date of his interview he had grossed only \$25,000 on the contract, and that he does not expect to get anywhere near the \$80,000 cap by the time his contract expires in December 2019. Mr. Williams said he is continuing to collect his State pension and Social Security benefits while he is on the contract.

D. Discussions About Filling Mr. Williams' IDPH Position

1. Interviews of IDPH Personnel Bill Dart and Debbie Magerl

The OEIG interviewed then-IDPH Deputy Director Bill Dart and IDPH Public Service Administrator Debbie Magerl about discussions regarding filling Mr. Williams' former IDPH position following his retirement.¹¹ Mr. Dart said he had worked for IDPH since 2010, and that he was the Deputy Director of the Office of Policy, Planning, and Statistics. Ms. Magerl said that her duties include handling personnel issues and procurements for the Office of Policy, Planning, and Statistics, and that she was IDPH's contact person for the HFSRB procurement examined in this investigation.¹² Ms. Magerl said she reported to Mr. Dart in 2018. Ms. Magerl said that she has known Mr. Williams for approximately 25 years, and that they worked together in the same office.

Mr. Dart said that Mr. Williams' retirement from IDPH in 2017 caught IDPH off guard, and that to keep things flowing smoothly with the HFSRB, IDPH agreed to rehire Mr. Williams on a 75-day appointment. Mr. Dart said that IDPH rehired Mr. Williams on a second 75-day appointment in 2018.

Mr. Dart and Ms. Magerl said they had a discussion with Ms. Avery and then-HFSRB Board Chair Kathryn Olson in April 2018¹³ about how to address the approaching expiration of Mr. Williams' second 75-day appointment.¹⁴ Mr. Dart said that IDPH was willing to hire a new IDPH employee to replace Mr. Williams, and that he had spoken to Ms. Avery about it. However, Mr. Dart and Ms. Magerl said Ms. Avery and Ms. Olson did not want the person to be under IDPH control; Mr. Dart added that Ms. Avery disliked him, and he believed she resisted the idea of IDPH hiring an employee in part because she did not want the position to report to him.¹⁵ Mr. Dart said that the HFSRB also was concerned about the expense of maintaining a full-time employee at IDPH, for which the HFSRB would have to pay, and Ms. Magerl said there was a previous

¹¹ Mr. Dart was interviewed on August 8 and December 5, 2018, and Ms. Magerl was interviewed on December 5, 2018 and May 8, 2019. Mr. Dart left his IDPH position in approximately April 2019.

¹² According to Ms. Magerl's job description, her job duties include "develop[ing], coordinat[ing], review[ing] and track[ing] contracts and grant agreements for services for compliance with department and state procurement rules for [the Office of Policy, Planning and Statistics]."

¹³ According to the OEIG's review of Ms. Avery's Outlook calendar, it appears that this discussion occurred on April 19, 2018.

¹⁴ Ms. Magerl recalled that the Deputy Director of IDPH's Office of Human Resources, Siobhan Johnson, also participated in the discussion.

¹⁵ Various other individuals interviewed in the investigation confirmed that Mr. Dart and Ms. Avery did not get along, and in her OEIG interview Ms. Avery described their relationship as "nice, professional, hostile," depending on the day and issue.

understanding that as IDPH staff retired, their positions would be filled by the HFSRB. Mr. Dart said that Ms. Avery or Ms. Olson ultimately made the decision to proceed with a procurement.¹⁶ According to Mr. Dart and Ms. Magerl, no one in the discussion was pushing for Mr. Williams.

2. Interview of HFSRB Administrator Courtney Avery

On April 17, 2019, investigators interviewed Courtney Avery. She said that she became a member of the HFSRB's Board in approximately 2007, and has been the HFSRB's Administrator since approximately December 2010. Ms. Avery stated that as the Administrator, she oversees the HFSRB's staff, and she reports to the HFSRB Board Chair. Ms. Avery noted that the Board Chair position has been vacant since July 2018, however, and that there is no Acting Board Chair. Ms. Avery said she has known Mr. Williams since she arrived at the HFSRB, and that they have a professional relationship.

Ms. Avery said she, Ms. Olson, Mr. Dart, and Ms. Magerl attended the April 2018 meeting to discuss options to cover the Administrative Assistant duties in Springfield.¹⁷ According to Ms. Avery, the HFSRB was not hiring any new employees at that time, and she explained that because of the Health Facilities Planning Act's "sunset" provision in effect at that time, any employee the HFSRB hired would be out of a job after December 2019.¹⁸ Ms. Avery said that "our goal was to get the position covered by Don Williams." She explained that Mr. Williams was knowledgeable and was available to move right into the position without the wasted time of training a new person as the HFSRB's sunset date approached, and "so we figured that was our best option." Although she initially said she did not know how long it would have taken to train someone with general computer database experience to learn Mr. Williams' job, she eventually estimated that it probably would have taken about three months.

Ms. Avery said that in mid- to late April, after the meeting with Ms. Magerl and the others, she talked to Mr. Williams about the possibility of him continuing to work after his 75-day appointments ended, and said she brought it up. Ms. Avery said that Mr. Williams asked questions

¹⁶ Another method of State hiring is through a personal services contract, which is a temporary contract that outlines specifically-identified and limited services to be provided. Personal services contracts generally must comply with the same competitive hiring procedures that apply to many regular State hires (sometimes referred to as Illinois Personnel Code-covered, "*Rutan*-covered" positions), including posting positions and conducting standardized interviews. In their interviews, Mr. Dart, Ms. Magerl, and Ms. Avery stated that they discussed whether the HFSRB could hire someone under a personal services contract. However, Ms. Avery stated that she later learned that doing a personal services contract was not an option due to a change in Central Management Services' (CMS) process. Mr. Dart and Ms. Magerl said that the personal services contract option was not considered attractive because the process would be lengthy, and a replacement for Mr. Williams was needed by June; Ms. Magerl added that they were unsure whether CMS would approve a personal services contract. Investigators confirmed that in an email sent shortly after the April 2018 meeting, IDPH's Human Resources Deputy Director reported to Mr. Dart, Ms. Magerl, and Ms. Avery that she had checked with CMS regarding doing a personal services contract, and had been told "that we would have to proceed as if it were a code-covered, *Rutan* covered position." Although the OEIG recognizes the possibility that an agency might attempt to use a procurement to avoid the process required for a personal services contract, investigators did not uncover sufficient evidence to conclude that the decision to proceed with a procurement in this case was done to purposely avoid complying with Code-covered hiring requirements.

¹⁷ Ms. Avery said she thought Ms. Johnson either attended the meeting or was consulted periodically during the meeting by telephone.

¹⁸ The Health Facilities Planning Act is the HFSRB's enabling statute. See 20 ILCS 3960/19.6 (eff. June 30, 2009 to Nov. 27, 2018) (providing that the Health Facilities Planning Act would be repealed on December 31, 2019).

about the workload and expectations, and that when he was told that the job could be done in two or three days a week he was fine with that.

Ms. Avery said that the Health Facilities Planning Act's sunset provision has since been extended ten years,¹⁹ and therefore the HFSRB can look to their hiring needs again. She said that the only reason the HFSRB has not hired a permanent Administrative Assistant to replace Mr. Williams now is that there is no Board Chair to authorize the hire.

E. The Request For Quote

As noted above, the Request for Quote that was issued to the public on June 26, 2018, described the services that would be required under the contract as the same services Mr. Williams had been performing as an IDPH employee, and listed required qualifications that appeared tailored to Mr. Williams' particular experience, including seven years working knowledge of the HFSRB's enabling statute, and advanced knowledge of the CON database. Accordingly, the OEIG examined how the Request for Quote came to be drafted in that form.

1. Emails Regarding the Request for Quote

Investigators reviewed the State email accounts of various personnel involved in the procurement, and identified an email from Ms. Avery to Ms. Magerl, dated May 2, 2018, that requested feedback on a draft of the Request for Quote. That draft Request for Quote included mandatory qualifications of advanced knowledge of the CON database, and seven years knowledge of the Health Facilities Planning Act and Title 77. Ms. Magerl forwarded the draft Request for Quote to Mr. Dart on May 4, 2018; he responded later that day: "Not sure about all the mandatory quals but would let the SPO/APO . . ." ²⁰ Ms. Magerl then emailed Ms. Avery suggested revisions to the Request for Quote, which did not address the mandatory qualifications.

2. Interview of Ms. Avery

In her interview, Ms. Avery said that she drafted the Request for Quote. She said she obtained Administrative Assistant job descriptions from Ms. Magerl, and copied language from them into the Request for Quote. When asked why knowledge of the CON database was added as a required qualification, Ms. Avery said that it was probably brought to her attention that that was a "chunk" of what Mr. Williams did. Ms. Avery said she did not recall who brought it to her attention, but thought it probably was HFSRB General Counsel Jeannie Mitchell. Ms. Avery said she did not recall whether Ms. Magerl provided feedback on the Request for Quote, and said she doubted that they discussed the mandatory qualifications of knowledge of the CON database and seven years knowledge of the Health Facilities Planning Act.

Ms. Avery described the CON database as "the Board's bible," and added that she "needed someone to come in with that skill set." Ms. Avery agreed that the CON database was unique to

¹⁹ See P.A. 100-1138 (amending the Health Facilities Planning Act, effective November 28, 2018, to extend the repeal date by ten years, to December 31, 2029).

²⁰ The ellipsis is reproduced from the quotation and was not added by the OEIG.

the HFSRB, and said she was not aware of anyone other than Mr. Williams and a former HFSRB statistician who could meet the mandatory qualification of knowledge of the CON database.²¹

Ms. Avery said that the Health Facilities Planning Act guides the HFSRB's day-to-day operations. She explained that the Request for Quote's mandatory qualification of seven years working knowledge of that Act meant that a vendor would have to have worked with the Act for at least seven years to qualify for the contract; in selecting that amount of time, Ms. Avery said she examined the learning curve and how long she and others took to learn the Act, but that ultimately, she "just arbitrarily used seven years." Ms. Avery acknowledged that there would be no one except Mr. Williams and other longtime IDPH employees who could meet this mandatory qualification.

Ms. Avery acknowledged that she understands that procurements are a competitive process. She said she went through the process in accordance with what her liaison (Ms. Magerl) and Human Resources told her to do.

3. Interview of HFSRB General Counsel Jeannie Mitchell

Investigators interviewed HFSRB General Counsel Jeannie Mitchell on May 2, 2019. Ms. Mitchell said she did not recall suggesting that Ms. Avery add a requirement to the Request for Quote that the vendor have advanced knowledge of the CON database, and that she did not think she would have done so because the HFSRB potentially could have trained someone to do the work; she also said that she was not the one "spearheading" the process.

Ms. Mitchell described the CON database as Mr. Williams' "baby," and said that the mandatory qualifications of knowledge of it and the HFSRB statute probably would have restricted potential bidders to essentially Mr. Williams and another former Administrative Assistant. Ms. Mitchell said that potentially could have been a problem, but that she did not think she brought it up at the time. Ms. Mitchell said that Ms. Avery did not say anything about creating the Request for Quote requirements for Mr. Williams, but that she might have mentioned Mr. Williams being able to fulfill the requirements.

4. Interviews of Ms. Magerl

In her OEIG interviews, Ms. Magerl said that Ms. Avery drafted the Request for Quote, and that Ms. Avery called and emailed her with questions about the procurement process and what to do for the Request for Quote. Ms. Magerl said that Ms. Avery occasionally asked her questions about past job descriptions, and so she believed that Ms. Avery took much of the language for the Request for Quote from Mr. Williams' previous job description.

Ms. Magerl said that she (Ms. Magerl) did not add the CON database knowledge requirement to the Request for Quote. Ms. Magerl said that the CON database is a database of HFSRB projects and survey data, and that it is a computer program that is unique to the HFSRB.

²¹ In his OEIG interview, Mr. Williams said that he and the IDPH information technology troubleshooter, [IDPH Employee 1], were the only ones who would meet the mandatory qualification of having a working knowledge of the CON database, although he agreed that with time, someone else with computer experience could be trained on it.

Ms. Magerl acknowledged that making knowledge of the CON database a mandatory qualification in the Request for Quote was limiting, but said that it was necessary to know it to do the job. She said that she did “not really” have any concerns about the Request for Quote’s requirements of seven years knowledge of the Health Facilities Planning Act and knowledge of the CON database.

Ms. Magerl said that Mr. Dart reviewed all Requests for Quote, although his approval was not required for HFSRB procurements. She said she sent the Request for Quote for the HFSRB contract to Mr. Dart, he made edits, and she sent them to Ms. Avery. Ms. Magerl said that Mr. Dart did not recommend any changes to the mandatory qualifications section, and that she did not talk to him about it. Ms. Magerl said she also did not talk to Mr. Dart about his statement in his May 4, 2018 email to her that he was “Not sure about all the mandatory quals but would let the SPO/APO . . .,” but that she suspected he was questioning the requirements of seven years knowledge of the Health Facilities Planning Act and knowledge of the CON database because the other qualifications were not the type of thing anyone would question.

Ms. Magerl said she forwarded the Request for Quote to IDPH Agency Procurement Officer Joel Meints, because he is required to approve it, and then Mr. Meints forwarded it to State Purchasing Officer Alyson Moore for her approval. Ms. Magerl said she did not talk to either of them about the Request for Quote, and that they did not ask her any questions about it. Ms. Magerl acknowledged that Mr. Meints and Ms. Moore probably had no idea what the CON database is.

5. Interview of Mr. Dart

In his interview, Mr. Dart told investigators that when he saw a draft of the Request for Quote, it struck him as odd that it required experience with the CON database. Mr. Dart explained that the database was unique to the HFSRB and Mr. Williams would be one of the few people, if not the only person who had that credential. Mr. Dart said he did not say anything about this to anyone at that time, however, because he did not feel it was his job and he was confident that someone else would remove the requirement.

6. Interviews of Agency Procurement Officer Joel Meints and State Purchasing Officer Alyson Moore

Investigators interviewed IDPH Agency Procurement Officer Joel Meints and State Purchasing Officer Alyson Moore about their review of the Request for Quote.²² Mr. Meints stated that he has been the Agency Procurement Officer at IDPH since March 2018, and that in that position he is responsible for approving procurements at IDPH and ensuring that IDPH follows the Procurement Code.²³ State Purchasing Officer Alyson Moore told investigators that she has been the State Purchasing Officer assigned to oversee IDPH’s procurements since approximately September or October 2017, and noted that IDPH handles the HFSRB’s procurements.

Mr. Meints said he approved the Request for Quote for the HFSRB procurement and submitted it to Ms. Moore for her approval. Mr. Meints said he did not know what the CON database is, or whether it is unique to the HFSRB. He said that if the CON database is unique to

²² Mr. Meints was interviewed on December 5, 2018, and Ms. Moore was interviewed on February 4, 2019.

²³ Mr. Meints also is the IDPH’s Assistant Deputy Director of Finance and Administration.

the HFSRB, making proficiency in it a mandatory qualification in the Request for Quote could have limited competition. However, he said he relies on staff in the relevant division, including Ms. Magerl, to know about the contents of a Request for Quote, and to know and point out that a mandatory qualification could limit competition.

In her OEIG interview, Ms. Moore said that when an agency she oversees identifies a procurement need, the agency submits a description to her of what it is looking for. Ms. Moore said that she reviews the agency's specifications to make sure they are not too narrow, and ensures that the procurement is as competitive as possible. Ms. Moore said that with a small purchase procurement, such as the HFSRB procurement, the contract is awarded to the lowest cost responder that meets the mandatory qualifications, and that there is no other evaluation.

Ms. Moore said she approved the Request for Quote for the HFSRB procurement. She said that she did not know what the CON database was, other than what the procurement documents said about it, and that she did not ask anyone at the HFSRB or IDPH about it. Ms. Moore said the agency identified its need as being someone who knew the CON database, and although this may have limited the pool of eligible candidates, that was the need. She said she trusted that IDPH and the HFSRB knew what skill set they were looking for.

F. Allegation That Mr. Williams Received Improper Assistance In The Procurement Process

The OEIG also examined whether Ms. Avery and others provided Mr. Williams improper assistance in the procurement process.²⁴

1. Emails Regarding Mr. Williams' Resume

Investigators identified an email from Mr. Williams to Ms. Avery dated May 3, 2018, almost eight weeks before the Request for Quote issued to the public. Mr. Williams' email to Ms. Avery had the subject line, "resumee [sic] you asked for." The email did not include any text in the body, but attached Mr. Williams' resume.

On June 26, 2018 at 3:19 p.m., several hours after the Request for Quote was published, and before Mr. Williams' bid was submitted in BidBuy, Ms. Avery sent an email to Mr. Williams with the subject line "Don Williams Professional Resume," which attached Mr. Williams' resume;

²⁴ In the course of reviewing emails regarding the procurement of the HFSRB contract, investigators discovered that before the Request for Quote was issued to the public, IDPH Deputy Director Bill Dart sent an email to three other IDPH employees (not Mr. Williams) regarding HFSRB's decision to not hire an administrative assistant, and attached the Request for Quote. One of the recipients of this email, who worked closely with Mr. Williams, forwarded the email to Mr. Williams the day before the Request for Quote became public, not recalling the Request for Quote was attached. While "[p]rocurements that require notice shall not be distributed to vendors prior to the date the notice is first published ...", 44 Ill. Admin. Code § 1.1595, in this case, both Mr. Dart and the employee forwarding the email did not do so to provide the vendor an advantage. Rather, it appears to be a case of misjudgment or lack of knowledge of procurement rules. In addition, Mr. Williams did not recall receiving the email, and it does not appear that he used the advance notice of the Request for Quote to his advantage. For these reasons, the OEIG is not making a finding with regard to the Request for Quote being sent to Mr. Williams prior to its publication.

the body of the email contained no text. Eleven minutes later, Mr. Williams forwarded the email and his attached resume to Ms. Magerl, also with no text in the body of the email. The versions of Mr. Williams' resume sent from Ms. Avery to Mr. Williams, and then from Mr. Williams to Ms. Magerl were substantively the same, and were substantively the same as the version previously emailed from Mr. Williams to Ms. Avery on May 3, 2018.

However, the version of Mr. Williams's resume that was subsequently included as part of his bid in response to the Request for Quote contained additional language that had not appeared in the versions discussed above. Unlike the version Mr. Williams sent Ms. Magerl on June 26, 2018, the version submitted for Mr. Williams' bid listed his qualifications as including the following experience:

Responsible for carrying out administrative support activities pertaining to program requirements of the Health Facilities & Services Review Board (HFSRB) as mandated under the Health Facilities Planning Act, Title 77 of the Illinois Administrative Code: Public Health and other statutorily mandated programs.

The resume stated that Mr. Williams had this responsibility from September 2005 to the present.

2. Interview of Mr. Williams

During his interview, when shown his May 3, 2018 email to Ms. Avery attaching his resume, Mr. Williams said Ms. Avery asked him for the resume. He initially said that Ms. Avery needed it to put into BidBuy for Mr. Williams' application, then said that his understanding was that she needed it as a guide to what his job entailed so that she could write the job description for BidBuy, although he said she did not tell him that. When asked whether Ms. Avery asked him questions about his job duties after he sent her his resume, Mr. Williams said, "not really," and added that Ms. Avery knows what he can do.

Mr. Williams said he did his BidBuy application himself, and that it "took forever" to figure it out. He said he thought he did it on his work computer while he was still at IDPH.²⁵ Mr. Williams said the application had to be submitted online, and that he recalled filling in the part with the money. Mr. Williams said he did not know how to attach his resume in BidBuy, and so he probably handed it to Ms. Magerl, emailed it to her, or sent it to her on a disk. Mr. Williams said he did not recall receiving the June 26, 2018 email from Ms. Avery attaching his resume, and did not know why Ms. Avery sent him his resume. He said he did not know why he forwarded his resume to Ms. Magerl eleven minutes after he received it from Ms. Avery that day, unless Ms. Magerl asked him for it. Mr. Williams said Ms. Magerl told him to update the first paragraph in the experience portion of his resume, to add that he was a temporary worker under a 75-day contract; however, he said he did not recall when she asked him to do so, or whether it was before or after he submitted his bid.²⁶

²⁵ Investigators confirmed that in an email dated June 27, 2018 at 8:41 a.m., [IDPH Employee 1] asked an IDPH security employee to keep Mr. Williams' network login active through that day, because "Don will be coming into the office today in connection with his potential contract."

²⁶ Investigators compared the versions of the resume Mr. Williams emailed to Ms. Avery on May 3, 2018; that Ms. Avery emailed to Mr. Williams on June 26, 2018; that Mr. Williams emailed to Ms. Magerl on June 26, 2018; and the

Mr. Williams said that no one told him in advance that he would get the contract, and that he knew it had to go out for bid. He said that Ms. Avery did not give him any help on his BidBuy application before he submitted it. When asked whether Ms. Magerl helped him with his application before he submitted it, Mr. Williams said that she just told him “where to go to get” BidBuy.²⁷ He further said he did his application on his own, and that he wrote his resume with no help or feedback from anyone.

3. Interviews of Ms. Magerl

During her initial interview on December 5, 2018, Ms. Magerl said she did not recall that Mr. Williams emailed his resume to her on June 26, 2018. She said she did not know why he sent it to her, and that she did not ask him to do so. Ms. Magerl said she did not recall talking to Mr. Williams when he sent her the resume, but if she had done so she would have told him that everything must be submitted through BidBuy. Ms. Magerl said she did not give Mr. Williams any help relating to the procurement, other than sending him the BidBuy link, which she said she has done for other vendors as well.

During her May 8, 2019 interview, Ms. Magerl again stated that when Mr. Williams emailed her his resume she told him to put it in BidBuy, and she denied uploading the resume herself or helping Mr. Williams do it. However, she said she reviewed the resume after she received it and thought it was not worded very well; she acknowledged that she was concerned that Mr. Williams might not meet the mandatory qualifications if it was worded that way. Ms. Magerl denied that she told Mr. Williams specifically what to add, but said that she told him to “fix” his resume to make it clearer what his experience was, or to make it “more descriptive of his experience.” Ms. Magerl noted that if Mr. Williams had not had the mandatory qualifications in his resume “they would not have had a bidder.” She agreed that she provided the guidance to Mr. Williams about his resume because he was her friend.

4. Interview of Ms. Avery

Ms. Avery told investigators that she asked Mr. Williams for his resume because it needed to be submitted in BidBuy or for a personal services contract.²⁸ When asked whether she talked to Mr. Williams about why she needed his resume, Ms. Avery said that Mr. Williams already knew that because “we were going through the process of getting him rehired.” Ms. Avery said she would have passed Mr. Williams’ resume along to Ms. Magerl.

Ms. Avery said she did not recall why she sent Mr. Williams’ resume back to him seven weeks after he sent it to her, and that she did not think she advised Mr. Williams to add language to his resume about his experience with the Health Facilities Planning Act and Title 77. Ms. Avery

version submitted as part of Mr. Williams’ bid. All four versions contained Mr. Williams’ 75-day temporary worker information.

²⁷ Investigators confirmed that in a May 24, 2018 email to Mr. Williams, Ms. Magerl wrote that “[i]n order to do business with the State, you are required to register with BidBuy,” and provided a link to the BidBuy website.

²⁸ Ms. Avery said she had considered using a personal services contract to fill Mr. Williams’ position at one point, prior to deciding to proceed with a procurement.

said she did not talk to Mr. Williams about his resume or make changes to it, and that she did not know whether Ms. Magerl had made changes to it.

5. Interviews of Mr. Dart and [IDPH Employee 2]

In his OEIG interviews, Mr. Dart said that approximately the second or third week of June 2018, when he was in his office at the IDPH, he overheard a conversation in the hallway, in which [IDPH Employee 2] said that Ms. Avery was writing Mr. Williams' resume, so that he would be assured of getting the contract with the HFSRB. Mr. Dart said he did not know who the other people in the hallway were, and that he did not follow up with [IDPH Employee 2] about why she thought Ms. Avery was writing Mr. Williams' resume.

Investigators interviewed [IDPH Employee 2] on December 5, 2018. [IDPH Employee 2] said she worked with Mr. Williams before he retired, and that she has continued to see him at work since he came back on a contract. [IDPH Employee 2] said she had no knowledge of Mr. Williams giving his resume to Ms. Avery to review, and did not know if Ms. Avery helped Mr. Williams get the contract with the HFSRB through inside information. However, [IDPH Employee 2] said she overheard a conversation in which Ms. Avery asked Mr. Williams to get his resume in and apply for the position.

G. Conflict Review By The State Purchasing Officer And Procurement Policy Board

The Procurement Code provides that a Chief Procurement Officer or State Purchasing Officer "shall notify the [Procurement Policy] Board if an alleged conflict of interest or violation of the Code is identified, discovered, or reasonably suspected to exist."²⁹ Chief Procurement Office – General Service procedures require the contracting agency to review the vendor's financial disclosures and conflict of interest forms, and submit a conflict of interest review and determination form to the State Purchasing Officer.³⁰ If the State Purchasing Officer determines that a potential conflict of interest exists, he or she submits it to the Procurement Policy Board.³¹ The Chief Procurement Office – General Service procedures indicate that the Procurement Policy Board gathers information, and if it does not view the relationship as creating a potential conflict of interest, it sends the State Purchasing Officer a signed determination form.³²

1. Conflict of Interest Review and Determination Form

Mr. Williams' materials submitted as part of his bid included a Financial Disclosures and Conflicts of Interest form. On the form, a box was checked indicating that Mr. Williams had had State employment in the previous three years, and identified his prior IDPH employment and two 75-day appointments with IDPH.³³

²⁹ 30 ILCS 500/5-5(h).

³⁰ CPO – GS Notice 2016.07 (May 19, 2016).

³¹ 30 ILCS 500/50-5(h) & 50-35(d); CPO – GS Notice 2016.07 (May 19, 2016).

³² CPO – GS Notice 2016.07 (May 19, 2016).

³³ A second conflict of interest form was also submitted for Mr. Williams, relating to his son's State employment with the Illinois Department of Revenue. The State Purchasing Officer and Procurement Policy Board found no conflict relating to that disclosure, and it was not examined further in this investigation.

A Conflict of Interest Review and Determination Form dated July 10, 2018, with a signature in the name of Courtney Avery,³⁴ was submitted to the State Purchasing Officer identifying a potential conflict of interest relating to the proposed contract between the HFSRB and Mr. Williams. The form stated that Mr. Williams had been an Administrative Assistant 1 at IDPH, providing administrative support to the Division of Health Systems Development and Certificate of Need Program; however, the form indicated that Mr. Williams had not been in a position to influence the contract award. A box was checked stating that “I do not view the relationship disclosed above as creating a potential for a conflict of interest based on the circumstance and accordingly request authorization to proceed with the contract.”

The State Purchasing Officer Review and Signature portion of the form was dated July 12, 2018, and had a signature in the name of State Purchasing Officer Alyson Moore. On the form, a box was checked stating: “I find a potential for a conflict of interest and refer this request to the [Procurement Policy Board] for review and recommendation.” A handwritten note on the form stated: “vendor was previously working in the exact position that is now being contracted.”

The Procurement Policy Board Review portion of the form was dated July 16, 2018, and had a signature in the name of Executive Director Matt von Behren. On the form, a box was checked stating: “After careful review of the documentation provided, I do not view the relationship disclosed above as creating a conflict of interest sufficient to preclude the Agency/University from entering into the proposed contract.”

2. Interview of Ms. Moore

In her OEIG interview, Ms. Moore stated that when she received the conflict of interest disclosure regarding Mr. Williams, it “didn’t sit right” with her, and she thought, “no way.” Ms. Moore explained that she believed there was a conflict because Mr. Williams was seeking to reacquire the same job he had previously been doing, and that he would earn \$5,000 more in addition to collecting his State pension. Ms. Moore said she submitted her determination to the Procurement Policy Board, but that Procurement Policy Board Executive Director Matt von Behren did not agree that there was a conflict. Ms. Moore said that once the conflict issue was cleared, she gave her approval to award the contract to Mr. Williams.

Ms. Moore said that if Ms. Avery had helped Mr. Williams with his resume before he responded to the Request for Quote that would probably be a problem. She noted that vendors have the option of asking questions, but that it is a formal process in which they direct their questions to the contact person for the procurement and answers are published in BidBuy.

3. Interview of Procurement Policy Board Executive Director Matt Von Behren

³⁴ In her OEIG interview, Ms. Avery said she had never seen this form, and denied signing it. She said that Ms. Magerl is authorized to use her signature stamp, and said she thought Ms. Magerl had told her that she used it on the form. Ms. Magerl told investigators in her interview that she probably stamped Ms. Avery’s signature on the form, with Ms. Avery’s knowledge.

On February 4, 2019, investigators interviewed Procurement Policy Board Executive Director Matt Von Behren. Mr. Von Behren said that his duties include reviewing and handling potential conflicts of interest that are reported to the Procurement Policy Board. Mr. Von Behren stated that signing off on conflicts of interest has been the Board's practice, and explained that the practice shows that "it's not something we're just letting slide."³⁵

Mr. Von Behren said that when he received the conflict of interest disclosure regarding Mr. Williams, it "raised an eyebrow" for him because Mr. Williams used to work at the agency doing the same job that was contracted out to bid. Mr. Von Behren said he asked himself whether Mr. Williams had had the ability to influence the procurement process as a result of having worked in that division; for example, Mr. Von Behren said he wondered whether Mr. Williams knew the procurement people at the agency, and whether he knew early on that the contract was going out for bid.

Mr. Von Behren said that based on Mr. Williams' prior position at IDPH and his salary there, it did not appear that he had been in a high-level position, and that he noted that Mr. Williams had not worked in procurement. Mr. Von Behren said he does not have subpoena power to bring people in for interviews, and said he did not recall having any conversations with anyone at IDPH about the potential conflict. Mr. Von Behren said he did not know Mr. Williams or Ms. Avery. Mr. Von Behren said he asked Ms. Moore if she had any other information about the situation that was not included on the forms, but that she did not know of anything else.

Mr. Von Behren said he talked to [Attorney], in the Executive Ethics Commission's legal unit, and is "pretty sure" he also talked to State Purchasing Officer [Name] about Mr. Williams' potential conflict. Mr. Von Behren said that everyone he spoke with opined that the situation may not have the best optics, but that there was no violation of the law. Mr. Von Behren said he agreed with that assessment, and that he determined that there was no conflict because he could not point to anything to say that Mr. Williams influenced the process to get the award.

When asked what information would have changed his determination that there was no conflict, Mr. Von Behren said that it would have been a problem if Mr. Williams had known that the contract was going to be put out for bid and what the specifications were before it was made public, if he had helped write the specifications, or if he had received other inside information on the procurement before it became public. Mr. Von Behren said that if such things happened, Mr. Williams should have been disqualified from bidding. Mr. Von Behren said that if procurement staff had helped a bidder with his resume that was then submitted, that would be a "hard no too."

³⁵ Mr. Von Behren opined that arguably, the Procurement Code may not require the Procurement Policy Board to sign off on potential conflicts of interest, especially ones that were disclosed in the bid, citing Section 50-35 of the Procurement Code. The Procurement Code requires the Chief Procurement Officer or State Purchasing Officer to notify the Procurement Policy Board if they identify a conflict of interest or suspect that one exists, and outlines a process the Procurement Policy Board must follow if the conflict was not originally disclosed with the bid. 30 ILCS 500/5-5(h) & 50-35(d). However, Section 5-5(h) of the Code also states that "[a] recommendation of the Board shall be delivered to the appropriate chief procurement officer and Executive Ethics Commission within 7 calendar days and must be published in the next volume of the Procurement Bulletin," without limiting that procedure to undisclosed conflicts. *See* 30 ILCS 500/5-5(h).

III. ANALYSIS

The Illinois Procurement Code reflects the public policy that the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State agency.³⁶ Although the investigation did not reveal sufficient evidence to find that Ms. Avery assisted Mr. Williams in drafting his resume, as alleged in the complaint, the OEIG discovered various other actions Ms. Avery and others took that prevented the procurement process from being competitive. The purpose and/or effect of these actions was to steer the HFSRB contract to Mr. Williams, and prevent other capable vendors from fairly competing for the opportunity to provide the services the HFSRB needed at a lower cost to the State. Although this was a relatively small procurement, and the OEIG recognizes that the HFSRB needed the services, once the HFSRB and/or IDPH chose to use the procurement process, they were obligated to abide by the rules and principles that govern procurements. It is important for State agencies to comply with the Procurement Code's rules and competitive principles in all procurements to which they apply, to avoid fostering a culture that can lead to greater abuses.³⁷

In her OEIG interview, Ms. Avery made clear that she regarded Mr. Williams as her "best option" from the beginning, and said that her "goal was to get the position covered by Don Williams." The evidence gathered in the investigation shows that Ms. Avery, Ms. Magerl, and Mr. Dart's actions and/or inaction improperly steered the contract to Mr. Williams.

First, Ms. Avery drafted the Request for Quote narrowly, so that Mr. Williams would be one of the few vendors, if not the only one, who could meet its mandatory qualifications. To be eligible for the contract, a bidder was required to have advanced knowledge of the CON database, a database unique to the HFSRB that had been used almost exclusively by Mr. Williams for approximately 30 years. The mandatory qualifications also included seven years working knowledge of the HFSRB's enabling statute, which essentially limited eligible bidders to longtime HFSRB and IDPH employees, and perhaps consultants on HFSRB matters. Moreover, there is no reason to believe a vendor with general knowledge and experience in computer databases could not be trained on the CON database and the HFSRB's processes. Mr. Williams described his duties as primarily involving data entry, and acknowledged that he relied on IDPH's IT troubleshooter for more complex tasks relating to the database.

The narrow mandatory qualifications Ms. Avery drafted contravened the Procurement Code and related rules which, to encourage competition, prohibit procurement specifications from being "unduly restrictive."³⁸ The Procurement Code requires specifications to seek to promote overall economy for the purposes intended and encourage competition in satisfying the State's needs.³⁹ As the Administrative Code directs:

³⁶ 30 ILCS 500/1-5.

³⁷ For example, although in this case Mr. Williams' experience likely would have made him a successful candidate for employment if the HFSRB had used an ordinary hiring process, it is conceivable that an agency might attempt to steer a position to an unqualified, uncompetitive candidate by using the procurement process to avoid the regular hiring process.

³⁸ 30 ILCS 500/20-50; 44 Ill. Admin. Code § 1.2050(b)(1). "Specifications" are "any description, provision, or requirement pertaining to the physical or functional characteristics or of the nature of a supply, service, or other item to be procured under a contract." 30 ILCS 500/1-15.95.

³⁹ 30 ILCS 500/20-50.

Specifications . . . shall be written in such a manner as to describe the requirements to be met, without being unduly restrictive or having the effect of exclusively requiring a proprietary supply or service, or procurement from a sole source, unless no other manner of description will suffice.⁴⁰

The Request for Quote for the HFSRB contract was unduly restrictive, and virtually guaranteed that Mr. Williams would be the only qualified bidder.

Ms. Avery maintained that the narrow mandatory qualifications she included in the Request for Quote were needed because it would have taken too long to train someone new to do Mr. Williams' job. However, even under Ms. Avery and Mr. Williams' generous estimate that training would have taken three months, there would have been ample time to train a new employee during the approximately 11 months that elapsed between July 31, 2017, when Mr. Williams retired from IDPH, and June 26, 2018, when his second 75-day appointment ended. Thus, had a Request for Quote been issued that merely required general computer database knowledge and experience, there would have been greater competition for the position, and the HFSRB may have been able to secure a less costly contract with a capable vendor who could be trained to do the work. Although Mr. Williams might have been able to provide the services more cheaply than any other potentially capable vendor, such other vendors would have had no reason to offer a bid in this procurement based on the unduly restrictive mandatory qualifications, and therefore we will never know.

The Health Facilities Planning Act requires IDPH to "provide operational support to the [HFSRB] as necessary, including the provision of office space, supplies, and clerical, financial, and accounting services," and adds that the HFSRB "may contract for functions or operational support as needed."⁴¹ Under its interagency agreements with the HFSRB, IDPH agreed to provide support to the HFSRB for its procurements, as well as operational support for certain core HFSRB functions, although the agreements also state that "[t]he support provided by the [IDPH] to the HFSRB shall be purely ministerial in nature."

Despite the "purely ministerial" language of the interagency agreements, it is clear that in practice, IDPH staff provided substantive support to the HFSRB, and Ms. Avery relied on IDPH for that support. For example, Ms. Magerl and Mr. Dart participated in discussions regarding how to fill Mr. Williams' IDPH position following his retirement. In addition, Ms. Avery asked Ms. Magerl for feedback on a draft Request for Quote, Ms. Magerl and Mr. Dart reviewed the Request for Quote, and Ms. Magerl provided their suggested revisions to Ms. Avery. Ms. Magerl also completed the Conflict of Interest Review and Determination Form for Mr. Williams on Ms. Avery's behalf.

Although Mr. Dart recognized that the CON database mandatory qualification was problematic when he reviewed the Request for Quote, he said nothing to Ms. Avery. In addition, although he emailed Ms. Magerl that he was "[n]ot sure about all the mandatory quals," and rationalized that someone else, such as the State Purchasing Officer or Agency Procurement

⁴⁰ 44 Ill. Admin. Code § 1.2050(b)(1).

⁴¹ 20 ILCS 3960/4(a)

Officer, would remove the objectionable requirements, Mr. Dart did not alert those individuals to his concerns. Ms. Magerl was the IDPH procurement contact for the procurement and was aware that the CON database is unique to the HFSRB; although she also reviewed the Request for Quote and was aware that Mr. Dart had concerns about the mandatory qualifications, she did not take action either. Thus, although the IDPH staff's participation in the HFSRB's procurement process may have gone further than the interagency agreements required, once they took on that responsibility and identified a problem with the Request for Quote they should have taken some action.

Given the collaborative, intertwined relationship between the HFSRB and IDPH, it is impossible to identify a single individual as ultimately responsible for the decision to issue the Request for Quote in its unduly restrictive form. This is especially true because the HFSRB and IDPH staff interviewed in the investigation claimed that others were responsible for the decisions made relating to the procurement. According to Ms. Avery, she relied on Ms. Magerl for direction in how to navigate the procurement process. Mr. Dart and Ms. Magerl noted that Ms. Avery drafted the Request for Quote, and Mr. Dart explained that he did not think it was his job to point out the problems he saw with the mandatory qualifications and that he counted on others to identify and raise the issue. Because all of these individuals contributed to the Request for Quote issuing in the form it did, whether through their action or inaction, personnel at both agencies bear some responsibility for preventing the HFSRB procurement from being competitive. The allegation that Ms. Avery, Ms. Magerl, and Mr. Dart's actions or inactions improperly prevented competition in that procurement, in violation of the Procurement Code and related rules, is **FOUNDED**.⁴²

In addition to her actions relating to the Request for Quote discussed above, Ms. Magerl also contravened the Procurement Code's principles of fair competition by giving Mr. Williams guidance in drafting his resume that was submitted as part of his bid. Mr. Williams emailed Ms. Magerl his resume on the afternoon of June 26, 2018, after the Request for Quote had been issued to the public. When Mr. Williams submitted his bid the next day, his resume had been revised to cite his nearly 13 years of experience with the Health Facilities Planning Act and Title 77, showing that he met the mandatory qualification of seven years working knowledge of those laws. Although Ms. Magerl maintained that she did not specifically direct Mr. Williams to add that experience, she admitted that after she received the resume she told Mr. Williams to "fix" it to make it clearer what his experience was, or to make it "more descriptive of his experience," and she acknowledged that she was concerned that Mr. Williams might not otherwise meet the mandatory qualifications in the Request for Quote. Ms. Magerl's assistance to Mr. Williams, a longtime colleague and friend, gave him an unfair competitive advantage, and was an improper action for the contact person for the procurement. The allegation that Ms. Magerl provided improper assistance to Mr. Williams in the procurement, in violation of the Procurement Code's principles of fair competition, is **FOUNDED**.

⁴² The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

IV. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **FOUNDED** – HFSRB Administrator Courtney Avery, IDPH Public Service Administrator Debbie Magerl, and IDPH Deputy Director Bill Dart’s actions and/or inactions improperly prevented competition in the HFSRB procurement, in violation of the Procurement Code and related rules.
- **FOUNDED** – IDPH Public Service Administrator Debbie Magerl provided improper assistance in the HFSRB procurement to prospective bidder Don Williams, in violation of the Procurement Code’s principles of fair competition.

Based on these findings, because currently there is no HFSRB Board Chair, the OEIG recommends that the Office of the Governor take whatever action it deems appropriate regarding Ms. Avery. In addition, the OEIG recommends that the Governor’s Office appoint a Board Chair.

The OEIG also recommends that IDPH take whatever action it deems appropriate regarding Ms. Magerl. Because Mr. Dart is no longer an IDPH employee, the OEIG recommends that IDPH place a copy of this report in his personnel file.

In addition, the OEIG recommends that the Chief Procurement Officer – General Services review the HFSRB procurement and determine whether the contract between Mr. Williams and the HFSRB should be declared void, or if it would be in the best interests of the State to ratify and affirm the contract.⁴³

Finally, the OEIG notes that it is troubling that this flawed procurement proceeded despite the existence of multiple individuals who are responsible for overseeing procurements. Agency Procurement Officer Joel Meints, who is responsible for ensuring that IDPH procurements comply with the Procurement Code, approved the Request for Quote even though he did not know what the CON database was or whether it was unique to the HFSRB; he explained that he relies on staff in the division seeking the procurement, rather than make his own inquiry, to point out that a mandatory qualification could limit competition. To her credit, State Purchasing Officer Alyson Moore appropriately raised various issues throughout the procurement, and brought the potential conflict to the attention of the Procurement Policy Board. However, she also approved the Request for Quote without asking questions about the mandatory qualifications; she explained that she trusted IDPH and the HFSRB to identify their need, even if it may have limited the pool of eligible candidates. Finally, although potential conflicts of interest are required to be reported to the Procurement Policy Board, and that Board’s practice is for Executive Director Matt Von Behren to review and sign off on them, it does not appear that Mr. Von Behren attempted to ask any questions of the agency about what happened in this procurement. While Mr. Von Behren explained that he does not have subpoena power to bring people in for interviews, there is no reason to believe that IDPH and HFSRB staff would not have readily provided information voluntarily. In this case, there were no attempts made by Mr. Von Behren to obtain the facts

⁴³ See 30 ILCS 500/50-60(a).

necessary to better determine whether there was a conflict of interest, even though the issue and concern had been brought to his attention.

The OEIG recognizes that individuals who oversee procurements may not always have the technical knowledge necessary to immediately make determinations about particular procurements, and that it would not be practical for these individuals to do an exhaustive investigation; it is also understandable that issues may occasionally be missed. However, the system relies on these reviewers to provide an effective check on improper procurement practices, especially when alerted to a potential issue. As the OEIG has pointed out in prior procurement investigations,⁴⁴ a lack of inquiry or a narrow view of one's oversight duties, can result in a false sense of security of the procurement review process. Because this is a recurring issue, the OEIG recommends that the Executive Ethics Commission, Governor's Office, and any other appropriate entities consider collaborating with the OEIG to conduct a comprehensive review of the State procurement system, particularly the oversight and review process, to determine whether better practices, guidance, and clarification of expectations are appropriate or could be implemented to assist those tasked with procurement oversight.

No further investigative action is needed, and this case is considered closed.

Date: July 12, 2019

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60602

By: Angela Luning
Deputy Inspector General

John Legan
Investigator #140

⁴⁴ The OEIG also noted concerns about the procurement review process in Case Nos. 17-00626 and 18-01681.



OFFICE OF THE GOVERNOR

207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

JB PRITZKER
GOVERNOR

July 25, 2019

Via e-mail to Fallon Opperman on behalf of:

Susan M. Haling
Executive Inspector General
Office of Executive Inspector General
69 West Washington, Suite 3400
Chicago, Illinois 60602

Re: OEIG Complaint Number #18-01396 Request for Extension of Time

Dear Executive Inspector General Haling:

This letter is in response to the Final Summary Report ("Final Report") issued to the Governor's Office by the Office of the Executive Inspector General ("OEIG") in the above-captioned matter. The OEIG made findings regarding violations of the Procurement Code and recommended that the Office of the Governor take whatever action it deems appropriate.

I write to request an extension of time of at least an additional 60 days, or until September 30, 2019, to implement the OEIG recommendations and provide a response indicating implementation has occurred.

If you have any questions or require further information with respect to this response, please contact [REDACTED]

Sincerely,

[REDACTED]

Juliet Berger-White
Deputy General Counsel
Office of Governor JB Pritzker

From: [Opperman, Fallon](#)
To: [Bult, Sherry](#); [Luning, Angela](#)
Subject: FW: OEIG Case No. 18-01396
Date: Tuesday, July 30, 2019 11:28:45 AM

From: Acharya, Snigdha
Sent: Tuesday, July 30, 2019 11:24 AM
To: Opperman, Fallon <[REDACTED]>
Cc: DeWitt, Justin <[REDACTED]>
Subject: OEIG Case No. 18-01396

Hi Fallon,

Thanks for speaking with me this morning. On or about July 12, 2019, IDPH received the OEIG's Final Summary Report related to OEIG Case No. 18-01396. The OEIG requested IDPH to provide a response to the Report within twenty calendar days.

As we discussed, IDPH requires more time to review the breadth of supporting evidentiary materials and comprehensively address all the complexities of the OEIG's findings. Therefore, we would appreciate a 30 day extension to provide a response to the OEIG.

Thank you in advance for your consideration.

Best,

Snigdha Acharya

General Counsel
Illinois Department of Public Health
122 South Michigan Avenue, 7th Floor
Chicago, Illinois 60603
Tel: (312) 814-[REDACTED]
E-mail: [REDACTED]

E-MAIL CONFIDENTIALITY / FOIA EXEMPTION NOTICE: This electronic mail message, including any attachments, is for the intended recipient(s) only. This e-mail and any attachments might contain information that is confidential, legally privileged or otherwise protected or exempt from disclosure under applicable law. If you are not a named recipient, or if you are named but believe that you received this e-mail in error, please notify the sender immediately by telephone or return e-mail and promptly delete this e-mail and any attachments or copies from your system. If you are not the intended recipient, please be aware that any copying, distribution, dissemination, disclosure or other use of this e-mail and any attachments is unauthorized and prohibited. Your receipt of this message is not intended to waive any applicable privilege or claim of confidentiality, and any prohibited or unauthorized disclosure is not binding on the sender or the Illinois Department of Public Health. Thank you for your cooperation.

This e-mail may be exempt from disclosure under the Illinois Freedom of Information Act (5 ILCS 140) pursuant to exemptions under sections 7(1)(f) and/or 7(1)(m).

Ethics Officer FOIA Exemption: Please be advised that documents generated by an ethics officer under the State Officials and Employees Ethics Act, which may include this e-mail, are generally exempt from disclosure under the Illinois Freedom of Information Act, pursuant to 5 ILCS 430/20-95(a).



Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov



**AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY
RESPONSE FORM**

Case Number: 18-01396

Return 20 Days After Receipt

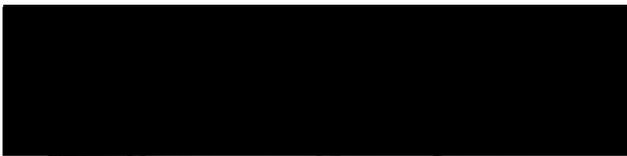
Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

See Attached.

We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within _____ days from the original return date.

We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:



Signature

IDPH CHIEF OF STAFF

Print Agency and Job Title

JUSTIN T. DEWITT

Print Name

8/23/19

Date



525-535 West Jefferson Street • Springfield, Illinois 62761-0001 • www.dph.illinois.gov

August 23, 2019

Susan M. Haling
Executive Inspector General
69 West Washington Street, Suite 3400

Chicago, IL 60602

In Re: OEIG Case No. 18-01396

Dear Executive Inspector General Haling:

Thank you for your communication regarding the above-captioned matter dated July 12, 2019. The Illinois Department of Public Health (IDPH) values the work of the Office of the Executive Inspector General (OEIG) and the opportunity to improve when findings demonstrate failures on the part of IDPH or its employees.

Within its final report, the OEIG issued two findings and one recommendation in relation to IDPH, to which we proffer the following responses:

Finding: *That Courtney Avery, Debbie Magerl and Bill Dart's actions and/or inactions improperly prevented competition in the subject HFSRB procurement, in violation of the Procurement Code and related rules.*

IDPH Response: IDPH concurs with the finding and will implement procurement training for Debbie Magerl, Courtney Avery and HFSRB associated staff to be completed no later than December 30, 2019. Further, the contract for Mr. Don Williams has been voided and his service to IDPH has been terminated. Finally, IDPH will assist HFSRB in posting and filling its vacant staff positions, eliminating the need to retain external personnel to complete HFSRB work.

Finding: *That Debbie Magerl provided improper assistance in the HFSRB procurement to prospective bidder Don Williams, in violation of the Procurement Code's principles of fair competition.*

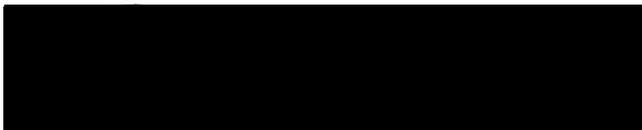
IDPH Response: IDPH concurs with the finding and will implement procurement training for Debbie Magerl to be completed no later than December 30, 2019.

Recommendation: *That IDPH take whatever action it deems appropriate regarding Ms. Magerl.*

IDPH Response: In addition to requiring Ms. Magerl's completion of the aforementioned procurement training, IDPH will counsel Ms. Magerl concerning her inappropriate actions pursuant to applicable bargaining unit processes.

IDPH provides this comprehensive response to the above-captioned case and trusts that OEIG will find it satisfactory and complete. Should there be any questions or concerns, please contact me at your convenience.

Best Regards,



Justin DeWitt, PE, LEED AP
Chief of Staff



OFFICE OF THE GOVERNOR

207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

JB PRITZKER
GOVERNOR

December 5, 2019

Via e-mail to Fallon Opperman on behalf of:

Susan M. Haling
Executive Inspector General
Office of Executive Inspector General
69 West Washington, Suite 3400
Chicago, Illinois 60602

Re: OEIG Complaint Number #18-01396

Dear Executive Inspector General Haling:

This letter is in response to the Final Summary Report ("Final Report") issued to the Governor's Office by the Office of the Executive Inspector General ("OEIG") in the above-captioned matter. The complaint received by the OEIG alleged that Courtney Avery, Administrator of the Health Facilities and Services Review Board ("HFSRB"), created the specifications for the procurement awarded to Mr. Don Williams, a former employee of the Illinois Department of Public Health ("IDPH"), to provide services to the HFSRB and that she had written Mr. Williams' resume submitted as part of the bid for this procurement. The OEIG expanded the investigation to examine whether other State employees took improper actions to steer this contract to Mr. Williams. This letter addresses the three recommendations the OEIG made to the Governor's Office in its Final Report.

First, the OEIG recommended that the Governor's Office appoint a Chairperson to the HFSRB. On October 4, 2019, the Governor's Office appointed Mr. Richard Sewell as Chairperson of the HFSRB. On November 14, 2019, Mr. Sewell resigned as Chairperson because of his out-of-state travel commitments. On December 5, 2019, the Governor's Office appointed Debra Savage as the Chairperson.

Second, the OEIG concluded that the actions and/or inactions of Ms. Avery, Ms. Debbie Magerl (IDPH Public Service Administrator), and Mr. Bill Dart (IDPH's former Deputy Director) "improperly prevented competition in the HFSRB procurement, in violation of



OFFICE OF THE GOVERNOR

207 STATE HOUSE
SPRINGFIELD, ILLINOIS 62706

JB PRITZKER
GOVERNOR

the Procurement Code and related rules.”¹ The OEIG recommended that the Office of the Governor take whatever action it deemed appropriate regarding Ms. Avery. The Governor’s Office discussed this OEIG report with Mr. Sewell during his tenure as Chairperson of the HFSRB, after which the HFSRB met and decided on a course of action regarding Ms. Avery. As a result, the Governor’s Office has asked the General Counsel of the HFSRB to submit a response to the OEIG outlining HFSRB’s decision.

Third, as requested in the Final Report, the Governor’s Office will consider its options for collaborating with the appropriate entities to review the State’s procurement system, particularly the oversight and review process.

If you have any questions or require further information with respect to this response, please contact [REDACTED].

Sincerely,

[REDACTED]
Ann M. Spillane
General Counsel
Office of Governor JB Pritzker

¹ As noted in the Final Report, the IDPH is required to provide certain operational support to the HFSRB, including support relating to procurements.



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

December 9, 2019

VIA ELECTRONIC MAIL

Office of the Executive Inspector General
Attn: Angela Luning, Deputy Inspector General
69 W. Washington Street, Suite 3400
Chicago, IL 60602

Re: OEIG Case No. 18-01396

Dear Ms. Luning:

This letter serves as the response of the Illinois Health Facilities and Services Review Board (HFSRB) to the OEIG's Final Summary Report (Report) for the above-referenced matter. The HFSRB has taken critical steps to ensure that the Procurement Code, its regulations and policies will be adhered to through the appropriate training and oversight of any agency contracts or agreements. The following steps were taken in effort to both address the Report's findings and ensure an enhanced understanding of the Procurement Code and its resulting hiring process:

1) Training Overview

Courtney Avery, as Administrator of the HFSRB, attended and completed training sessions with Sarah Kerley, Policy Advisor at Central Management Services (CMS) and Jan Morrow, Deputy Chief Procurement Officer (Chief Procurement Office, State of Illinois). This training reviewed and emphasized conflict of interest principles in hiring, interviewer certification requirements, the State's Employment Plan for Exempt Employees and necessary compliance with the *Shakman* decrees. The training also incorporated education on the Procurement Code (30 ILCS 500) and the process by which candidates must be hired through a competitive, open and unbiased selection process.

2) Internal Review & Investigation by HFSRB Members

On October 22, 2019, the HFSRB and both its chairman at the time (Richard Sewell) and former chair (Kathryn Olson) met with Ms. Avery in response to the above-referenced matter to ascertain and determine what had occurred during the application process for an administrative assistant position in Springfield. During an extensive executive/closed session with Ms. Avery, the HFSRB inquired about the need for hiring, the history of the candidate, his professional experience and how the personnel process involved the Procurement Code. Ms. Avery explained the circumstances and operational need for the hiring, highlighting her inexperience with the Procurement Code. HFSRB's former chairwoman also provided the historical context as to why the HFSRB needed



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

525 WEST JEFFERSON ST. • SPRINGFIELD, ILLINOIS 62761 • (217) 782-3516 FAX: (217) 785-4111

administrative support in Springfield and how they were advised by their human resources contact to utilize the Procurement Code. Ms. Olson explained she was open to any other candidate who may have applied and qualified for the job. Ms. Olson reiterated that in no way did she witness Ms. Avery (as her supervisor and chairwoman at the time) as trying to avoid Procurement Code requirements. Both Ms. Avery and Ms. Olson stated that they both were trying to fill the administrative position based on a heavy need in Springfield. Prior support staff positions had been eliminated due to a proposed sunset/elimination of the HFSRB and budget cuts under the prior administration. This, Ms. Avery and Ms. Olson explained, was why the hiring process for an administrative assistant had been initiated.

As paperwork was completed and filed, Ms. Olson and Ms. Avery restated that neither of them was alerted by human resources or agency procurement staff about the draft qualifications being overly narrow, mandatory or problematic. Ms. Avery also explained at length to the HFSRB that she had no access to a system called Bid Buy which was an electronic system by which applications to positions are entered. Ms. Avery stated that she could not have assisted the candidate at issue because she had no access to the system. The system would have shown her login or attempted access if she had done so. Ultimately, HFSRB members determined that Ms. Avery did not intend to or contemplate circumvention of the Procurement Code or any of its policies. HFSRB members declined to impose disciplinary action against Ms. Avery based on their internal review and investigation of the report and its findings.

3) Discussion with Legal Counsel

As legal counsel for the HFSRB, I have also had an extensive discussion with Ms. Avery about the OEIG report and its findings. Ms. Avery understands that the Procurement Code is a complex statute that upholds principles of competition and fair selection as it pertains to hiring of individuals and the purchasing of goods/services by the State of Illinois. Opacity and perception in hiring is also a crucial component when filling and considering operational needs within state government. For future purposes, any hiring will be done in accordance with CMS, the CPO and any necessary human resource contacts within IDPH. HFSRB, as required by an intergovernmental agency agreement, will continue to work with IDPH's Office of Human Resources to ensure that its hiring is performed in accordance with the Procurement Code, *Rutan* principles, the CMS Personnel Code and any relevant collective bargaining agreements.

Thank you for your consideration and time in this matter.

Sincerely,


Rukhaya AliKhan
General Counsel & Ethics Officer
Illinois Health Facilities & Services Review Board

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: WILLIAM DART

) #18-01396

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked, the Commission will not make your response public if the redacted report is made public.

X Below is my public response. Please make this response public if the summary report is also made public; or

_____ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.



Respondent's Signature

1/25/2020
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

Please see separate document, a letter,
attached. ~~37~~

William E. Dart, M.B.A.



January 25, 2020

Mr. Stephen Rotello
Executive Ethics Commission
401 S. Spring Street
Springfield, IL 62706

Re: Release of Redacted OEIG Report, #18-01396

Dear Mr. Rotello:

This letter attaches to the form provided where I have selected "please make this response public if the summary report is also made public." I very much appreciate this opportunity.

I did report my concerns regarding this procurement while it was in process. Thereafter, I had confidence in the procurement process. As noted on page 19 of the report, the procurement system relies on the individuals who oversee procurements to provide an effective check. I was not aware that previous OEIG reports had cited concerns about the procurement review process.

I had no role in the approval process of this contract. This was an HFSRB matter. I did not see the communications to the APO/SPO. HFSRB staff did not discuss this matter with me. I was, however, available if to all these individuals.

Furthermore, I was not certain that other vendors, particularly those with database expertise could not bid, especially since CON programs exist in many states. Also, I had no specific knowledge of 44 IL Admin. Code 1.2050(b)(1), which is cited on page 17 of the report.

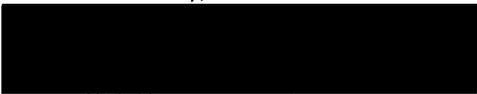
I would request that my statement to the IDPH ethics officer about this matter be added to my personnel file. That statement shows that I again expressed concerns.

Finally, as the process is reviewed, these dates from the report ought to be illuminated:

- June 26, 2018 – RFQ is published (page 3 of report),
- June 29, 2018 – OEIG receives a complaint on this (page 2 of report),
- July 27, 2018 – contract in question is executed (page 4 of report).

I had not authority over HFSRB. I provided feedback which was ignored.

Sincerely,



William Dart

RECEIVED
FEB 05 2020
EXECUTIVE ETHICS COMMISSION

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: COURTNEY AVERY) #18-01396

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked, the Commission will not make your response public if the redacted report is made public.

Below is my public response. Please make this response public if the summary report is also made public; or

Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

[Redacted Signature]

Respondent's Signature

2-5-2020

Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

Public response is attached; sent to attention
of Stephen J. Botello, EEC
Requested redactions: any information which personally
identifies me or being responsible for violation
of the Illinois Procurement Code.



STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD

69 WEST WASHINGTON, SUITE 3501 • CHICAGO, ILLINOIS 60602 • (312) 814-4825

February 5, 2020

Stephen J. Rotello
401 South Spring Street
513 William Stratton Building
Springfield, Illinois 62706



EXECUTIVE ETHICS COMMISSION

Re: Response to Release OEIG Case #18-01396

Dear Mr. Rotello:

I am receipt of the Executive Ethics Commission's (the Commission) summary report (the Report) from the Office of the Executive Inspector General (OEIG) for the Agencies of the Illinois Governor that addresses allegations of misconduct against myself.

I understand that the Commission is considering publication of a redacted version of the Report and the ultimate jurisdiction authority responses thereto pursuant to section 20-52 of the State Officials and Employees Ethics Act. In your letter dated January 14, 2020, you enclosed a "draft version" of the redacted report and responses. I ask that if there are any changes in the redacted report that I am advised of those changes.

I respectfully request that the OEIG Report not be published by the Commission.

This request is based on the following reason(s):

In my review of 30 ILCS 500/20-5 Method of Source Selection and ILCS 500/20-20 Small Purchases which states:

Sec. 20-5. Method of Source Selection

Unless otherwise authorized by law, all State contracts shall be awarded by competitive sealed bidding, in accordance with Section 20-10, except as provided in Sections 20-15, 20-20, 20-25, 20-30, 20-35, 30-15, and 40-20. The chief procurement officers appointed pursuant to Section 10-20 may determine the method of solicitation and contract for all procurements pursuant to this Code.

Sec. 20-20. Small purchases.

(a) Amount. Any individual procurement of supplies or services not exceeding \$100,000 and any procurement of construction not exceeding \$100,000, or any individual procurement of professional or artistic services not exceeding \$100,000 may be made without competitive source selection. Procurements shall not be artificially divided so as to constitute a small purchase under this Section. Any procurement of construction not exceeding \$100,000 may be made by an alternative competitive source selection. The construction agency shall establish rules for an alternative competitive source selection process. This Section does not apply to construction-related professional services contracts awarded in accordance with the provisions of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act.

Given the statutory language in Section 20-20, it is incomprehensible to understand how the Procurement Code was violated and that I improperly prevented competition in the HFSRB procurement process. The Report appears to conflict with the cited statute.

In addition, I point out that page 19 of the original OEIG Report states the following:

“As the OEIG has pointed out in prior procurement investigations, a lack of inquiry or a narrow view of one’s oversight duties, can result in a false sense of security of the procurement review process. Because this is a recurring issue, the OEIG recommends that the Executive Ethics Commission, Governor’s Office, and any other appropriate entities consider collaborating with the OEIG to conduct a comprehensive review of the State procurement system, particularly the oversight and review process, to determine whether better practices, guidance, and clarification of expectations are appropriate or could be implemented to assist those tasked with procurement oversight.”

Please note that “procurement oversight” is *NOT* in-line with the duties and responsibilities as specified in my job description. Those duties are handled by the Illinois Department of Public Health (IDPH) via an inter-agency agreement.

Given the language cited in the Report, it is difficult to understand how I am solely responsible for improper procurement practices. Especially after 4 levels of review from the following individuals:

Joel Meints, IDPH Agency Procurement Officer;
Alyson Moore, State Purchasing Officer;
Director Matt von Behren, Procurement Policy Board; and
[REDACTED], Executive Ethics Commission.

None of those individuals made any attempt to alert me to a potential issue with the mandatory qualifications. I would add that had I been alerted, I would have complied and made the appropriate adjustment as advised.

I would also note that the Illinois Health Facilities and Services Review Board (HFSRB), Chairperson was informed that due to a change at Central Management Services, the option for a personal services contract was closed to HFSRB and therefore would need to use another system. As noted on page 5 footnote 16 of the Report, IDPH’s Human Resources Deputy Director reported to Mr. Dart, Ms. Magerl, and Ms. Avery that she had checked with CMS regarding a personal services contract and had been told “that we would have to proceed as if it were a code-covered, Rutan covered position.” *Please note that all HFSRB positions are non-code.* The Report further states that “Although the OEIG recognizes the possibility that an agency might attempt to use a procurement to avoid the process required for a personal services contract, investigators did not uncover sufficient evidence to conclude that the decision to proceed with a procurement in this case was done to purposely avoid complying with Code-covered hiring requirements”.

Again, I respectfully request that OEIG Case #18-01396 not be published or if published redacted any information which personally identifies me as being responsible for violation of the Illinois Procurement Code. Thank you for your consideration of this request.

Sincerely,

[REDACTED]
Courtney Avery