State of New York
Office of the Inspector General

Investigation of Improper Outsourcing of Confidential Records

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Inspector General

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EXECUTIVE SUMMARY

The New York State Division of Criminal Justice Services (DCJS) referred to the Inspector General a complaint alleging that an unauthorized release of private and confidential data had occurred on a project valued at $3.45 million and involving the scanning and indexing of 22 million fingerprint cards maintained by DCJS. Specifically, the New York State Industries for the Disabled, which coordinates state contracts employing individuals with disabilities, reported that Focused Technologies, a private contractor on the project, and its principals, Charles Tobin and Julie Benware, improperly transmitted electronic images of fingerprint cards from a secure DCJS warehouse to a company in India. The Inspector General commenced an investigation and subsequently referred its findings to the New York State Attorney General. The Inspector General continued her investigation and assisted the Attorney General in an investigation conducted under the authority of the New York State False Claims Act that ultimately resulted in an agreement between the State, Focused Technologies, Tobin and Benware.

The investigation revealed that in 2008 and 2009, Tobin and Benware covertly, and without DCJS authorization, outsourced project work on the DCJS contract to a company in India while falsely representing to DCJS and Industries for the Disabled that the contract was fully executed by Focused Technologies's staff at a secure DCJS facility as set out in contract provisions. The contract required the on-site scanning and indexing of more than 22 million New York State fingerprint cards, which contain such personal, private and sensitive information as Social Security numbers and fingerprint images, among other identifiers. However, without the knowledge of DCJS and Industries for the Disabled, Tobin and Benware covertly subcontracted the indexing – the manual typing of certain information appearing on each fingerprint card – of more than 16 million fingerprint cards to a company in India. Notably, these improper actions by Tobin and Benware were not detected despite specific and reasonable security measures implemented by DCJS.

Tobin's and Benware's conduct violated the New York False Claims Act, Section 63(12) of the Executive Law, New York State's Preferred Source program, and contract provisions. The completion of the investigation, and the resolution of potential civil claims that could be brought by the Attorney General, requires Focused Technologies and Tobin to pay more than $3 million to the State of New York. Focused Technologies must also employ a monitor for five years to ensure its compliance on any future Preferred Source projects. Benware is required to pay $50,000 to the state. Additionally,

on any new Preferred Source contracts obtained by Focused Technologies or Tobin within two years, 69 percent of the labor hours of any such contract must be performed by individuals with disabilities.

The Inspector General determined that the outsourcing of fingerprint card images by Focused Technologies to the Indian company constituted an "acquisition without valid authorization" of private information maintained by DCJS. The investigation did not uncover any evidence that the information contained on the fingerprint cards was re-disclosed or otherwise utilized, and the Indian company asserted that it deleted all fingerprint cards after Focused Technologies confirmed receipt of the processed data. The Inspector General, however, determined that the unauthorized acquisition by itself compromised the security, confidentiality, or integrity of personal information maintained by a state entity and in an abundance of caution advised DCJS to post notification of the Inspector General's findings, which DCJS has agreed to do.

THE INSPECTOR GENERAL FOUND THAT FOCUSED TECHNOLOGIES IMPROPERLY OUTSOURCED CONFIDENTIAL DCJS RECORDS TO A COMPANY IN INDIA

The DCJS Contract with Industries for the Disabled

New York State agencies purchase goods and services in accordance with State Finance Law using processes meant to ensure fair, open and transparent competition. State Finance Law accords priority to "preferred sources" of goods and services as a means to "advance special social and economic goals." In mid-2008, DCJS approached Industries for the Disabled to facilitate a Preferred Source contract for an imaging and indexing project. Industries for the Disabled contracted with Northeast Career Planning, a vocational rehabilitation agency, to provide a portion of the workforce needed on the project, and with Focused Technologies, a private company, to perform the actual project work. Under the Preferred Source program, more than 50 percent of the labor hours on the contract must be performed by individuals with disabilities. Focused Technologies, located in Albany County, was co-owned at the time by Charles Tobin and Julie Benware. Benware subsequently left Focused Technologies and Tobin is currently its sole owner.

The DCJS Project Specifications

DCJS maintains a repository of criminal history records and other information that includes more than 40 million fingerprint images associated with arrests and incarcerations, as well as those submitted by applicants for certain occupations or licenses where a criminal history background check is

authorized by law. As of 2008, approximately 22 million of the fingerprint images were paper documents stored in a leased warehouse in Albany. As part of a broader initiative to digitize its records, and because the lease on the warehouse was set to expire in early 2009, DCJS decided to procure services to scan the fingerprint cards into digital images and index the images by a unique identifier, the New York State Identification Number (State Identification Number).

On July 1, 2008, DCJS issued specifications for its Central Files Scanning project. Due to the highly confidential and personal nature of the records – fingerprint cards contain such information as the individual's name, address, date of birth, Social Security number, physical characteristics, reason for fingerprinting, signature and, as expected, fingerprint images – DCJS required significant security requirements in the project specifications. These included that "[a]ll document handling and scanning will be done at the [DCJS] Central Files site in Albany, NY." Additionally, DCJS required that the contractor's employees on the project provide "appropriately signed confidentiality paperwork," later understood to mean criminal background checks.

Focused Technologies's Proposal

In August 2008, DCJS's specifications were provided by Industries for the Disabled to Focused Technologies for its review and consideration. According to Industries for the Disabled representatives, Focused Technologies was a likely candidate for the project due to its prior work history involving scanning and indexing and its close proximity to the DCJS warehouse.

As pertinent to the investigation, on September 4, 2008, Focused Technologies submitted a "price per document" proposal to Industries for the Disabled for the project. Focused Technologies's proposal stated that 50 scanning workstations, 10 indexing workstations, 10 export and audit workstations and up to four computer servers would be utilized on the project. The proposal described project parameters including that "[a]ll work must be completed at DCJS Central Files…in Albany" and "[a]ll staff must be fingerprinted and complete Level II Background review." Reflecting the sensitive and confidential nature of the records, the proposal stated that Focused Technologies's computer network at the warehouse "will not [have] any exit points out of the physical location" and "[a]ll equipment utilized for this project will be reformatted and wiped clean to ensure that the confidentiality of the process is maintained." Indeed, regarding a "detachable storage device" that held scanned images, the proposal asserted that Focused Technologies "will not remove this device or any other

hardware from the production facility because of the confidential nature of the records." This contract was executed by Tobin as president of Focused Technologies.

DCJS Contracts for the Central Files Scanning Project

In an agreement dated November 25, 2008, DCJS entered into a contract with Industries for the Disabled for the fingerprint record scanning and indexing project. This agreement retroactively encompassed the time period of September 1, 2008 up to December 31, 2009. Supplementing the security requirements included in the project specifications, described above, the agreement contained further explicit safeguards regarding the confidentiality of the project records and restrictions on dissemination. These included the following:

> (§ 6) CONTRACTOR shall provide all labor, personnel, materials, and equipment necessary to render all of the record management and digital imaging services requested by and provided to DCJS under the AGREEMENT.
>
> (§ 12) All records…shall be considered confidential . . . and shall in no way be disclosed, reproduced or in any way made available to any person, corporation or governmental entity that is not a party to this AGREEMENT.
>
> (§ 13) Only employees of the CONTRACTOR shall have the authority to view and handle the documents and records provided to CONTRACTOR by DCJS. CONTRACTOR agrees that its employees will not disclose to any person, corporation or governmental entity that is not a party to this AGREEMENT any of the information contained within the documents or records…as such information is confidential…
>
> (§ 14) The services to be provided by CONTRACTOR to DCJS under this AGREEMENT shall not be subcontracted or assigned to another entity without the express written permission of DCJS.

Notably, the terms and conditions contained in DCJS's project specifications were incorporated by reference in the contract, requiring "all services and work of CONTRACTOR shall comply with the specifications and standards of DCJS as defined in [the DCJS specifications]." The agreement's total anticipated cost was approximately $3.45 million dollars.

Focused Technologies projected that the scanning and indexing would commence in August 2008 and ambitiously forecasted that more than 80 percent of the work would be completed by mid-January 2009. To expedite the process, DCJS agreed to extend the hours of operation at the warehouse to include weekday double shifts and weekend hours. However, the project was not substantially completed until the end of 2009.

Commencement of the DCJS Project

In August 2008, Focused Technologies installed furniture and equipment at the DCJS warehouse. Servers were installed to collect the scanned images of the fingerprint cards. As the contract prohibited dissemination of fingerprint records outside of the warehouse, the facility's computer system was not connected to the Internet. Moreover, Focused Technologies employees were fingerprinted, and DCJS conducted criminal background checks pursuant to the terms of the contract. In addition, the employees were required to utilize DCJS-issued identification cards, sign in and out of the warehouse, and surrender their cell phones at the commencement of each shift.

Scanning and indexing began at the warehouse in or around September 2008, and the project was fully operational shortly thereafter. In one half of the warehouse, DCJS staff prepared boxes of fingerprint cards for processing, while Focused Technologies ran its operation in the other half. Day and evening shifts, as well as Saturday shifts, were used to expedite the project. Workstations were equipped with approximately 40 scanners and 20 indexing computers. Focused Technologies employees placed fingerprint cards in scanners, scanned both sides, and re-boxed the cards. Employing a double-blind indexing process, the scanned fingerprint images were then to be viewed by two Focused Technologies employees, each of whom would identify the State Identification Number and type the number into a database. Another employee would then check the accuracy of the indexing by comparing the two independently-entered identification numbers and resolving discrepancies. A Focused Technologies project manager, Ashley Peterson, oversaw the process at the warehouse each day.

Focused Technologies periodically issued invoices for payment for completed work to Industries for the Disabled which, in turn, invoiced and received payments from DCJS. The payments would then be forwarded to Focused Technologies, less a fee paid to Industries for the Disabled. Focused Technologies also filed Quarterly Employment Reports with Industries for the Disabled listing the projects on which it was working as well as identifying the number of employees with disabilities who were employed on the project and the hours they worked. The Quarterly Employment Reports were executed by Tobin for Focused Technologies.

Project Indexing Outsourced to Company in India

The investigation revealed that soon after the project's commencement, Focused Technologies co-owners Tobin and Benware secretly circumvented the terms of the contract and began to outsource project indexing to a company in India. As early as mid-October 2008, Tobin and Benware entered into an agreement with an Indian company to index a portion of the approximately 22 million fingerprint cards that Focused Technologies was obligated by contract to process on its own. The Indian company, which was known to Tobin, was unaware of Focused Technologies's agreement with Industries for the Disabled and DCJS, and the requirement that the majority of the work was to be performed by individuals with disabilities. Likewise, the Indian company did not know of the prohibitions on outsourcing, the requirement for employee criminal background checks, and other security components set forth in the agreement. The Indian company, which cooperated with this investigation, provided documentation describing its role in the project and its agreement with Tobin and Benware.

The first documented contact between Focused Technologies and the Indian company regarding the project occurred on October 15, 2008 when Tobin e-mailed a company representative requesting a price quote for indexing services. The e-mail read:

> ". . . I have a new project that I would like for you to review. I copied a project spec sheet and a zip file of 300 samples to your FTP site. Please review and ask any questions or provide a price if you don't have any questions. We have already started this project so your quick review and response is important. The documents are of a sensitive nature so please stress the confidentiality of the records."

Following an exchange of emails in which Tobin and the representative discussed pricing and confidentiality concerns, the Indian company agreed to undertake the project. Thereafter, from October 2008 through September 2009, fingerprint card images were electronically transmitted from Focused Technologies to the Indian company. This was accomplished by Tobin, Benware, and Peterson, the operations manager, who, on a near daily basis, surreptitiously copied images onto portable hard drives. They then carried the hard drives to Focused Technologies's offices, where,

during evening hours, Tobin and Benware transmitted the data to India. During the course of this approximately year-long activity, Tobin and Focused Technologies filed false Quarterly Employment Reports with Industries for the Disabled in which they failed to list any hours worked by employees of the Indian company, which would have revealed the improper outsourcing. In total, the Indian company performed approximately 37.5 percent of the project work. As a result, Focused Technologies did not utilize a workforce of individuals with disabilities to perform more than 50 percent of the project's work hours, in violation of the preferred source contract. Notably, these improper actions by Tobin, Benware, and the operations manager were not detected despite the specific and reasonable security measures implemented by DCJS, as described above.

According to representations made by the Indian company, the State Identification Number from each card was indexed utilizing a double-blind procedure. The data were then transmitted back to Focused Technologies and reviewed by Tobin, Benware, and Peterson, the project manager. Despite being unaware of the security requirements mandated under the preferred source contract, the Indian company represented that it had implemented safeguards that included restricting access to the production facility, use of a secure data room, no Internet connectivity in production area, employee identification checks, and prohibition of employee electronic devices in the production area. In addition, the company represented that pursuant to its agreement with Focused Technologies, it deleted all fingerprint card images shortly after Focused Technologies confirmed receipt of the processed data. Focused Technologies paid the Indian company a total of approximately $82,000 for 45 weeks of work, processing approximately 16 million fingerprint cards.

Tobin and Benware Admit Wrongdoing and Enter into an Agreement with the State

According to Tobin, he outsourced project work to the Indian company after he purported he was unable to recruit and train a sufficient number of employees to properly complete the project on schedule. The outsourcing also resulted in substantial savings in production costs for Focused Technologies. Tobin admitted that he advised neither DCJS nor Industries for the Disabled of his and Benware's actions, which were only known to one other Focused Technologies employee, the operations manager. The investigation confirmed that DCJS and Industries for the Disabled had no knowledge of the outsourcing. Both DCJS and Industries for the Disabled cooperated with this investigation.

Additionally, Tobin testified that an undetermined number of the 16 million fingerprint cards transmitted to India had been cropped so as to show only each card's State Identification Number, but no other information. However, Tobin further testified that at some point he ceased cropping the images, purportedly due to technical difficulties, and thereafter full images of fingerprint cards, including Social Security numbers and other personal data, were transmitted to the Indian company. Significantly, Tobin testified that he had no current means for determining which specific fingerprint cards had been sent to India, in either cropped or uncropped form. As a result, it is impossible to determine which of the 22 million cards were sent to India, and therefore compromised.

Like Tobin, Benware testified under oath and admitted to her complicity in the outsourcing. Although claiming that she initially resisted the plan, she knowingly participated in the transfer of records to the Indian company and took no action to halt the practice or alert DCJS or Industries for the Disabled. Peterson, the project manager, initially provided testimony under oath in which she denied any involvement in or knowledge of the outsourcing. In subsequent testimony, Peterson recanted her earlier claims and admitted her role in the outsourcing.

Pursuant to an agreement with the State, appended to this report, Tobin and Benware admitted their wrongdoing regarding the improper outsourcing violated New York State's False Claims Act. In the agreement, Focused Technologies and Tobin agreed to: (1) pay the State $3,050,000 over a three-year period; (2) meet a goal of 69 percent of labor-hours performed by individuals with disabilities on all new Preferred Source contracts entered into during a two-year period; and (3) retain an independent monitor, at Focused Technologies's own expense, for a period of five years, who will annually report on compliance to the Attorney General, Inspector General, and Industries for the Disabled. In the agreement, Benware agreed to pay $50,000 to the State.

New York State Technology Law - Internet Security and Privacy Act

State Technology Law establishes requirements for the protection of private information maintained by state agencies as computerized data. Private information is defined in the law as personal information combined with other identifiers, such as Social Security numbers. The law requires agency action in the event of "unauthorized acquisition or acquisition without valid authorization of computerized data which compromises the security, confidentiality, or integrity of personal information maintained by a state entity."

The Inspector General determined that the outsourcing of fingerprint card images by Focused Technologies to the Indian company constituted an "acquisition without valid authorization" of private information maintained by DCJS. The investigation did not uncover any evidence that the information contained on the fingerprint cards was re-disclosed or otherwise utilized, and the Indian company asserted that it deleted all fingerprint cards after Focused Technologies confirmed receipt of the processed data. The Inspector General, however, determined that the unauthorized acquisition by itself compromised the security, confidentiality, or integrity of personal information maintained by a state entity and in an abundance of caution advised DCJS to post notification of the Inspector General's findings, which DCJS has agreed to do.

FINDINGS AND RECOMMENDATIONS

The investigation revealed that Charles Tobin and Julie Benware, the principals of Focused Technologies at the time of this investigation, improperly outsourced to a company in India private and confidential data as part of a DCJS project involving the scanning and indexing of 22 million fingerprint cards. Tobin and Benware falsely represented to DCJS and Industries for the Disabled that the contract was fully executed by Focused Technologies's staff at a secure DCJS facility per contract provisions. These improper actions by Tobin and Benware were not detected despite the security measures implemented by DCJS.

Tobin's and Benware's conduct violated the New York State False Claims Act, New York State's Preferred Source program, and contract provisions. As noted above, the Inspector General determined that the unauthorized acquisition of information compromised the security, confidentiality, or integrity of personal information maintained by a state entity, and DCJS has agreed to the Inspector General's recommendation to post notification of the Inspector General's findings on its website.

An agreement requires Focused Technologies and Tobin to pay more than $3 million to the State of New York. Benware is required to pay $50,000 to the state. Focused Technologies must also meet a goal of 69 percent of labor-hours performed by individuals with disabilities on all new Preferred Source contracts during a two-year period. Additionally, Focused Technologies must retain an independent monitor, at its own expense, for a period of five years, to ensure its compliance on future Preferred Source projects and annually report on the same to the Attorney General, Inspector General, and Industries for the Disabled.

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

IN THE MATTER OF AN INVESTIGATION BY ATTORNEY GENERAL ERIC T. SCHNEIDERMAN OF FOCUSED TECHNOLOGIES IMAGING SERVICES, CHARLES TOBIN, AND JULIE BENWARE.

Assurance No. 16-072

ASSURANCE OF DISCONTINUANCE

On March 13, 2015, the Office of the New York State Attorney General ("OAG") began a joint investigation with the Office of the New York State Inspector General ("NYSIG") into conduct by Focused Technologies Imaging Services, LLC. ("Focused"),[1] and its co-founders Charles Tobin ("Tobin") and Julie Benware ("Benware") (Focused, Tobin, and Benware hereinafter collectively the "Respondents").

The joint investigation commenced after the NYSIG informed the OAG that its own investigation, begun in 2012, had uncovered evidence that the Respondents secretly and in violation of the New York False Claims Act outsourced approximately 37.5% of the work that they were obliged to perform in connection with a $3.45 million contract to digitally scan and index approximately 22 million fingerprint cards for the New York State Division of Criminal Justice Services ("DCJS").

The NYSIG's investigation began after the prompt and helpful reporting of a possible fraud by the New York State Industries for the Disabled ("NYSID"), a non-profit entity that among other things facilitates government contracting for disabled persons, to the United State Attorney's Office in the Northern District of New York and

[1] "Focused Technologies Imaging Services, LLC." was until 2010 a partnership known as "Focused Technologies" with two equal 50% partners: Charles "Chuck" Tobin and Julie Benware.

DCJS. DCJS subsequently referred the allegations to the NYSIG.

The OAG's investigation into the conduct at issue (the "Investigation") was undertaken under the authority of section 63(12) of the Executive Law and the New York False Claims Act, N.Y. State Finance Law § 187 *et seq.* ("NYFCA") and its accompanying regulations, 13 N.Y.C.R.R. § 400.2. This Assurance of Discontinuance ("Assurance") contains the findings of the Investigation and the relief agreed to by the OAG on behalf of the State of New York (the "State") and by Respondents.

ATTORNEY GENERAL'S FINDINGS

The Respondents

1. Focused is a document scanning and indexing company located in Menands, New York.

2. Tobin is a co-founder and the sole owner of Focused.

3. Benware is a co-founder and former 50% equal partner with Tobin of Focused.

The DCJS Scanning and Indexing Project

4. In June 2008, DCJS needed to digitally scan and index approximately 22 million confidential fingerprint cards. These fingerprint cards contained data and information that must be provided to the State by all New York State law enforcement officials, prisoners, parolees, arrestees, and personnel undergoing background checks, among others. In addition to fingerprints, the millions of cards in almost each and every case contained, among other things, a unique New York State identification number ("SID") that DCJS assigns to any individual it fingerprints, the individual's Social Security number, the reason that the individual was fingerprinted, and other personal

information such as date of birth and basic physical characteristics.

5. In or about June 2008, DCJS began the process of soliciting venders, through NYSID, to digitally scan and index all of the fingerprint cards. The indexing of the cards involved the creation of a searchable computerized database of the digitized images. To create this database, workers had to manually type the SID into a computer database for each scanned image of a fingerprint card. On or about November 25, 2008, DCJS entered into a $3.45 million dollar contract with NYSID (hereinafter referred to as the "DCJS Contract") to perform the scanning and indexing. The DCJS Contract was deemed retroactive to September 1, 2008.

6. The DCJS Contract was entered into as part of the State's "preferred source" program under Section 162 of the State Finance Law (the "Preferred Source Program"). The Preferred Source Program is intended to advance the social goal of providing economic opportunities for the blind, disabled, and veterans. The Preferred Source Program is, in part, administered by certain facilitating non-profits, such as NYSID. Under the program, NYSID contracts with state agencies and assigns (subcontracts) the actual work to qualified for-profit companies, which must perform a majority of the labor hours on the contract—that is, greater than 50% of the hours worked—using individuals with disabilities.

7. Focused was the for-profit company to which NYSID assigned the DCJS Contract. Focused began work on the DCJS Contract in or about September 2008 and substantially completed such work in or about September, 2009.

8. In addition to the requirements of the Preferred Source Program, Focused had to comply with security provisions included in the DCJS Contract. The purpose of

these provisions was to protect and keep confidential the sensitive personal information contained on the fingerprint cards. The security provisions required Focused, among other things, to do the following: (i) only use employees on the project that had passed a DCJS background check; (ii) refrain from subcontracting any of the work without express written approval from DCJS; (iii) in no way disclose, reproduce or make available these confidential records to any person, corporation or governmental entity that is not a party to the agreement; and (iv) perform all of the work at a secure DCJS warehouse.

Covered Conduct

9. The State asserts that it has certain civil claims, including but not limited to claims under the False Claims Act, against all of the Respondents for the following conduct, which will be referred to herein as the "Primary Covered Conduct:"

a. In October 2008, in violation of the DCJS Contract provisions, Tobin secretly solicited and retained a document-handling business located in Mumbai, India, to index more than 16 million of the fingerprint cards; that is, to manually type the SID on each of these cards into a searchable electronic database.

b. Tobin, and other Focused personnel acting at his direction, including Benware, secretly arranged for scanned images of the DCJS fingerprint cards to be uploaded onto a server to be accessed by employees of the Indian company in Mumbai. Employees of the Indian company obtained the images and typed the SID numbers found on the images into a searchable database. As indexing was completed, the employees of the Indian company uploaded it onto a server that Tobin, Benware, and other

Focused employees used to obtain the indexed database.

c. At all times DCJS remained unaware of the outsourcing to India. Because of this, DCJS did not perform any background checks on any employee of the Indian company, with the result that none of the employees of the Indian company who worked on the indexing project for Focused were subjected to a background check.

d. Focused paid the Indian company just over $82,000 for indexing more than 16 million of the 22 million fingerprint cards between October 2008 and September 2009. Overall, the Indian company performed approximately 37.5% of the work on the contract.

e. Respondents' use of the Indian company as described herein violated the terms of the DCJS Contract because it failed to meet the security provisions described in the foregoing paragraph 8, and because it resulted in the failure to use individuals with disabilities to perform greater than 50% of the hours of work as required by the DCJS Contract.

f. Respondents concealed their use of the Indian company on the DCJS Contract. To help conceal the outsourcing to India, Focused, at Tobin's direction, filed false quarterly employment reports ("QERs") with both NYSID and DCJS. These reports purported to represent all of the hours worked on the project, and specified the number of hours worked on the DCJS Contract by individuals with disabilities and the number of hours worked on the DCJS Contract by workers without disabilities. The reports indicate that just over 50% of the labor hours on the project were

performed by individuals with disabilities. These reports were false because they did not account for any of the work done by the Indian company. In fact, because of the outsourcing, approximately only 31% of the labor hours for the DCJS Contract were performed by individuals with disabilities.

g. At all times the Respondents knew that Focused's claims for payment under the DCJS Contract were false and fraudulent because of the work that had been secretly and in violation of the New York False Claims Act outsourced to the Indian company, in violation both of the security provisions of the DCJS Contract, and the requirements of the Preferred Source Program that a majority of the work was to be performed by individuals with disabilities.

Additional Covered Conduct

10. The State also asserts that it has certain civil claims, including but not limited to claims under the New York False Claims Act, against Focused and Tobin (but not Benware) for the following conduct, which will be referred to herein as the "Additional Covered Conduct."

a. In 2014 and 2015, Focused and Tobin submitted false "vendor responsibility questionnaires" to the State certifying that in the previous five years neither Focused nor any individual that could authorize contracts on behalf of Focused was "[t]he subject of an investigation, whether open or closed, by any government entity for a civil or criminal violation for any business related conduct."

b. Prior to the 2014 submission, Focused had been served with an investigatory subpoena issued by the NYSIG in relation to the outsourcing work on the DCJS Contract.

c. Prior to the 2015 submission, Focused had additionally been served with an investigatory subpoena issued by the OAG in relation to the outsourcing work on the DCJS contract.

RELIEF

WHEREAS the NYSIG has concluded its own findings with a report, "Investigation into the Release of Confidential State Criminal Justice Records by Focused Technologies" ("NYSIG Report"), attached as APPENDIX A to this Assurance, that confirm OAG's Findings above;[2]

WHEREAS, the Respondents admit to the OAG's Findings 1-10 above;

WHEREAS Respondents are willing to accept this Assurance voluntarily as a settlement of the Investigation;

WHEREAS, the OAG finds the relief contained in this Assurance appropriate, and in the public interest;

WHEREAS, Respondents and OAG each believe that the obligations imposed by this Assurance are prudent and appropriate;

WHEREAS, OAG is willing to accept the terms of this Assurance pursuant to N.Y. Executive Law § 63(15) in lieu of commencing a statutory proceeding and to discontinue the Investigation; and further,

[2] Respondents have not seen the Inspector General's report as of the signing of this document, and are not aware of its contents.

WHEREAS, both the OAG and the NYSIG do not oppose the Respondents remaining eligible to receive contracts under the Preferred Source Program or to otherwise work on contracts entered into by the State of New York or New York local governments if and only if Respondents completely and at all times fulfill and adhere to the obligations imposed by this Assurance;[3]

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Respondents and the OAG that in consideration of the making and execution of this Assurance, Respondents and the OAG agree as follows:

Payment and Compliance Terms

11. Focused and Tobin (jointly and severally) shall pay to the OAG the amount of three million fifty thousand dollars ($3,050,000.00) in penalties, fees and costs as follows:

    a. One million five hundred fifty thousand dollars ($1,550,000.00) within ten (10) days of the Effective Date of this Assurance;

    b. Seven hundred fifty thousand dollars ($750,000.00) within eighteen (18) months of the Effective Date of this Assurance; and

    c. Seven hundred fifty thousand dollars ($750,000.00) within three years of the Effective Date of this Assurance.

12. Benware shall pay to the OAG the amount of fifty thousand ($50,000.00) in penalties, fees and costs within ten (10) days of the Effective Date of this Assurance.

13. If, within two years of the Effective Date of this Assurance, Respondents enter into any new contract or subcontract in connection with the Preferred Source Program that requires Respondents to perform a majority of the work with individuals

[3] *See generally* NYSIG Report.

with disabilities, the Respondents shall, notwithstanding this requirement, perform sixty-nine (69) percent of the labor-hours of any such contract with individuals with disabilities. "New" as used in this paragraph does not include extensions or renewals of already existing contracts.

Independent Monitor

14. Within sixty (60) days from the Effective Date of this Assurance, Focused shall retain, at its own expense and as set forth below, an independent monitor (the "Independent Monitor") for a period of five (5) years from the date of such Independent Monitor's retention.

15. Focused and the Independent Monitor shall enter into an agreement ("Focused/Monitor Agreement") whereby the Independent Monitor shall monitor and report on Focused's compliance with: (i) any and all requirements of this Assurance; and (ii) any and all terms or conditions of any contract or subcontract obliging Focused to perform any work on behalf of the State or any New York local government (as the terms State of New York and New York local government are defined in sections 188(6) and 188(9) of the New York False Claims Act), including but not limited to any requirements that Focused has agreed to fulfill in connection with contracts under the Preferred Source Program. The contracts described in subsection (ii) of this paragraph are referred to herein as "Government Contracts."

16. The Focused/Monitor Agreement shall be subject to final approval by the OAG and shall at a minimum include the following terms:

a. Procedures, to be determined by the Independent Monitor in its sole discretion, that the Independent Monitor will implement to determine

whether Focused is complying with this Assurance and with the terms of any Government Contract.

b. A requirement that the Independent Monitor shall make an annual written report ("Independent Monitor Annual Report") to the OAG, NYSIG and NYSID that assesses Focused's compliance with its obligations in relation to this Assurance and any Government Contract. The first Independent Monitor Annual Report will be due one (1) year following the Effective Date of this Assurance. Focused shall be entitled to a copy of the Independent Monitor Annual Report.

c. A requirement that the Independent Monitor shall be entitled to obtain from Respondents and/or review all information necessary to accomplish the purposes set forth in this Assurance, including completion of the Independent Monitor Annual Report. The Independent Monitor may, in its sole discretion and at Focused's expense, retain auditors or other agents as are reasonably necessary for the purpose of conducting investigations or audits of Focused.

d. A requirement that Tobin and Focused cooperate fully with the Independent Monitor in the fulfillment of its duties under the Assurance and Focused/Monitor Agreement, and allow the Independent Monitor unfettered access to all information requested by the Independent Monitor for review or examination, including without limitation access to employees, offices, work sites, computer systems, books and records, and internal accounting documents.

e. The Focused/Monitor Agreement shall provide that Tobin's and Focused's compliance with provisions concerning the access to employees and records shall be determined solely by the OAG.

f. A requirement that the Independent Monitor shall, upon request of the OAG or NYSIG and at Focused's expense, provide the OAG and NYSIG with information and/or reports, in addition to the Independent Monitor Annual Report, related to any activity or conduct of Focused in connection with any Government Contract.

g. The Focused/Monitor Agreement shall provide that the Independent Monitor will have the right to communicate with state or federal regulators or prosecutors in addition to OAG, NYSIG, and NYSID, without notice to, or the consent of, Focused or Tobin.

17. Focused and Tobin agree that during the period of the Independent Monitor's retention by Focused OAG shall, in its sole discretion, determine Tobin and Focused's material compliance with: (i) any and all requirements of this Assurance; and (ii) any and all requirements of Government Contracts. Such compliance is an explicit condition precedent to the obligations of the State set out in this Assurance, which may be voided by the State without effect on the obligations of Respondents pursuant to this Assurance.

18. Focused and Tobin agree that in the event that OAG deems the Monitor's reports, or Focused's or Tobin's responses thereto, to be inadequate, OAG will so advise Focused and Tobin and may elect to require Focused and Tobin to remedy the deficiencies identified by the OAG.

19. Focused and Tobin agree that in the event the initial Monitor resigns or is otherwise unable to complete the duties of the Monitor, Focused shall engage another Monitor pursuant to the terms herein governing retention of an Independent Monitor.

Releases

20. In consideration of the obligations incurred by the Respondents herein, the State agrees to release Tobin, Benware, and Focused (and its parents, subsidiaries, affiliated or related entities, their predecessors in interest, and all of its and their current and former officers, directors, employees and agents, including Benware) from any civil or administrative monetary claim (including for attorney's fees, costs, and expenses of every kind and however denominated) the State has or may have for the Primary Covered Conduct and the Additional Covered Conduct; except as provided in Paragraph 22 below.

21. Respondents release New York State, the OAG, and NYSIG, as well their employees, attorneys, and agents ("New York Released Parties") from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that they have asserted, or could have asserted, or may assert in the future against any of the New York Released Parties in relation to the Primary Covered Conduct and the Additional Covered Conduct.

22. Notwithstanding any term of this Assurance, except as referred to in Paragraph 20, above, the State specifically does not release any person or entity from any of the following liabilities:

a. Any civil, criminal, or administrative liability arising under state tax laws;

b. Any liability to the State of New York (or its agencies) for any conduct other than the Primary Covered Conduct and the Additional Covered Conduct;

c. Any liability based upon such obligations as are created by this Assurance;

d. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;

e. Any liability for personal injury or property damage arising from the Primary Covered Conduct and the Additional Covered Conduct;

f. Any liability for failure to deliver goods or services due; and

g. Any civil or administrative liability of individuals, except as provided for herein.

23. Benware releases Tobin and Focused as well their employees, attorneys, and agents from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that she has asserted, or could have asserted, or may assert in the future against Tobin and Focused related to the Primary Covered Conduct and Additional Covered Conduct.

24. Tobin releases Benware as well her employees, attorneys, and agents from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that he has asserted, or could have asserted, or may assert in the future against Benware related to the Primary Covered Conduct and the Additional Covered Conduct.

25. Focused releases Benware as well her employees, attorneys, and agents

from any claims (including for attorney's fees, costs, and expenses of every kind and however denominated) that it has asserted, or could have asserted, or may assert in the future against Benware related to the Primary Covered Conduct and the Additional Covered Conduct.

MISCELLANEOUS

26. Any payments and all correspondence related to this Assurance must reference the opening caption and AOD No. 16-072.

27. The Attorney General has agreed that it will not prosecute the Respondents, or any current or past officers, directors, employees and agents of Focused, for any alleged violations of law arising from the Covered Conduct or Additional Covered Conduct.

28. NYSID, in a letter attached as APPENDIX B to this Assurance, has agreed not to take any adverse action against Focused and/or Tobin arising from the Covered Conduct or Additional Covered Conduct as long as Focused and Tobin fulfill the terms set forth in this Assurance and the Focused/Monitor Agreement.

29. The State has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Respondents, whether directly or through their respective counsel, and on the OAG's Findings (1 - 10), above. To the extent that any material representations, submissions or omissions by any of the Respondents are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion. The State retains the right to compel compliance with all of the terms of this Assurance.

30. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance. Tobin, Focused, and Benware all represent that this Assurance is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

31. Focused represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized, by the appropriate employees, directors and/or officers of Focused.

32. Respondents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Tobin's, Focused's, or Benware's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party.

33. This Assurance is not intended for use by any third party in any other proceeding.

34. For purposes of construction, this Assurance shall be deemed to have been drafted by all parties to this Assurance and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

35. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

36. This Assurance shall be binding on and inure to the benefit of the parties to it and their respective successors and assigns, provided that no party, other than the

OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

37. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

38. To the extent not already provided under this Assurance, Respondents shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.

39. All notices, requests and other communications to any party to this Assurance shall be in writing and addressed as follows:

Tobin and Focused	Mr. Charles Tobin Focused Technologies, Inc. 279 Broadway – Suite A Menands, New York 12204 Tel.: (518) 935-4135
Benware	Allen Yates, Esq. LeCours, Chertok & Yates, LLP 59 Church Street Saratoga Springs, New York 12866 Tel.: (518) 583-4600
OAG	Taxpayer Protection Bureau 120 Broadway 22th Floor New York, New York, 10271 Tel.: (212) 416-6012

40. Acceptance of this Assurance by the OAG shall not be deemed or construed as an approval by the OAG of any of the practices or procedures referenced

herein, and the Respondents shall make no representation to the contrary.

41. Pursuant to N.Y. Exec. Law § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any civil action or proceeding thereafter commenced by OAG.

42. If, pursuant to N.Y. Exec. Law § 63(15), a court of competent jurisdiction finally determines after all applicable appeals have been exhausted, that Tobin, Focused, or Benware has breached this Assurance, then the party in breach shall pay to the OAG the costs, if any, of such determination and of enforcing this Assurance, including, without limitation, legal fees, expenses, and court costs.

43. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the parties under this Assurance will be the Supreme Court of the State of New York, New York County.

44. This Assurance is effective on the date of signature of the last signatory to the Assurance (the "Effective Date"). Facsimile and e-mail signatures shall constitute acceptable, binding signatures for purposes of this Assurance.

45. This Assurance may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto.

Dated: March 21, 2016

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: _____
Thomas Teige Carroll, Esq.

Bureau Chief
Taxpayer Protection Bureau
Office of the New York Attorney General
120 Broadway, 22nd Floor
New York, New York 10271
Tel.: (212) 416-6012

Attorney for the State of New York

Dated: March 21, 2016

_____
Charles ~~K.~~ J. Tobin

FOCUSED TECHNOLOGIES, INC.

Dated: March 21, 2016

By: _____
Charles ~~K.~~ J. Tobin

President
279 Broadway – Suite A
Menands, New York 12204
Tel.: (518) 935-4135

LAW OFFICE OF WILLIAM FANCIULLO

Dated: March 21, 2016

By: _____
William P. Fanciullo, Esq.

61 Columbia Street, Suite 300
Albany, New York 12210
Tel.: (518) 427- 8261

Attorney for Respondents Charles Tobin and Focused Technologies

Dated: March ___, 2016

_____
Julie Benware

LECOURS, CHERTOK & YATES LLP

Dated: March ___, 2016

By: _____
Allen Yates, Esq.

59 Church Street
Saratoga Springs, NY 12866
Tel.: (518) 583- 4600

Attorneys for Respondent Julie Benware

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto.

Dated: March 21, 2016

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: _____
Thomas Teige Carroll, Esq.

Bureau Chief
Taxpayer Protection Bureau
Office of the New York Attorney General
120 Broadway, 22nd Floor
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Attorney for the State of New York

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Charles F. Tobin

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William P. Fanciullo, Esq.

61 Columbia Street, Suite 300
Albany, New York 12210
Tel.: (518) 427- 8261

Attorney for Respondents Charles Tobin and Focused Technologies

Dated: March 22, 2016

_____
Julie Benware

Dated: March 22, 2016

LECOURS, CHERTOK & YATES LLP

By: _____
Allen Yates, Esq.

59 Church Street
Saratoga Springs, NY 12866
Tel.: (518) 583- 4600

Attorneys for Respondent Julie Benware

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto.

Dated: March 21, 2016

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

By: _____
Thomas Teige Carroll, Esq.

Bureau Chief
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120 Broadway, 22nd Floor
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Attorney for the State of New York

Dated: March ___, 2016

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Charles F. Tobin

Dated: March ___, 2016

FOCUSED TECHNOLOGIES, INC.

By: _____
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279 Broadway – Suite A
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Albany, New York 12210
Tel.: (518) 427- 8261

Attorney for Respondents Charles Tobin and Focused Technologies

Dated: March 22, 2016

_____
Julie Benware

Dated: March 22, 2016

LECOURS, CHERTOK & YATES LLP

By: _____
Allen Yates, Esq.

59 Church Street
Saratoga Springs, NY 12866
Tel.: (518) 583- 4600

Attorneys for Respondent Julie Benware

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677 BROADWAY, SUITE 1101
ALBANY, NY 12207
(518) 427-9700

KARL J. SLEIGHT

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FAX: (518) 427-0235
KSLEIGHT@HARRISBEACH.COM

March 17, 2016

Gregory M. Krakower
Assistant Attorney General
Office of the Attorney General
120 Broadway
New York, NY 10271

Re: Focused Technologies

Dear Mr. Krakower:

This letter is intended to memorialize the history of the Focused Technologies Imaging Services, Inc. ("Focused") investigation and the position of the New York State Industries for the Disabled, Inc. ("NYSID") concerning an investigation into the activities of Focused, a private sector company, which was approved by the State Education Department to participate in the Preferred Source Program with a non-profit member agency serving individuals with significant disabilities. The Preferred Source Program is specifically designed and administered to employ New Yorkers with disabilities and has been facilitated by NYSID for over 40 years.

By way of background, NYSID utilizes a robust network of processes and protocols to ensure that the Preferred Source Program remains in compliance with the Preferred Source statute and other applicable laws, regulations and guidelines. In October, 2011, NYSID's compliance reporting system detected a potential issue involving a New York State Division of Criminal Justice Services ("DCJS") contract serviced by Focused in partnership with an approved NYSID member. In November, 2011, NYSID hired attorneys and former prosecutors at the law firm of Harris Beach, PLLC ("Harris Beach") to review and assess the situation.

Harris Beach examined a wide array of records and conducted interviews of third parties that led to the conclusion that there was reasonable suspicion to believe that a breach of the DCJS contract may have occurred. By correspondence dated February 6, 2012, the United States Attorney for the Northern District of New York and the Acting Commissioner of the New York State Division of Criminal Justice Services were provided with the report and supporting materials reflecting the Harris Beach and NYSID assessment of the situation.

In March, 2015, the New York State Office of the Attorney General ("NYAG") joined the New York State Office of the Inspector General ("OSIG") in examining the situation and we have been advised that these agencies conducted an extensive and thorough review of the matter. NYSID appreciates both NYAG and OSIG for acknowledging our initial assessment, our prompt reporting, and our subsequent assistance to law enforcement authorities in this matter.

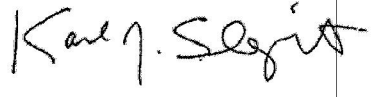
At this juncture, NYSID has been advised by the NYAG that Focused is prepared to acknowledge certain inappropriate actions related to the DCJS contract and enter into an

Assurance of Discontinuance ("AOD") pursuant to Executive Law §63(15). The AOD will impose strict requirements on Focused and its principals, including but not limited to, imposition of an independent monitor who will report to parties including NYSID for up to five (5) years, allow for complete access to all books and records of Focused on an ongoing basis by the independent monitor, and require the filing of annual reports to NYSID and the NYAG by the independent monitor. As a direct result of the intentional and clandestine effort by Focused to circumvent Preferred Source requirements, for the next two years Focused will be required to employ Preferred Source labor at a rate of 69% on any new contracts. NYSID has been advised that this provision and metric is a direct result of misconduct by Focused and it is not intended to be used as a metric or standard beyond the scope of the Focused investigation in the Preferred Source Program.

Finally, the NYAG has advised that it has not found any systemic circumvention of the Preferred Source Program contracts by Focused. As such, the AOD states that both the NYAG and OSIG "do not oppose [Focused] remaining eligible to receive contracts under the Preferred Source Program or to otherwise work on contracts entered into by the State of New York or New York local governments if and only if Respondents completely and at all times fulfill and adhere to the obligations imposed by the [AOD]." Should Focused comply as stated in the AOD, NYSID confirms that it will not take adverse action against Focused or its principal based on the circumstances of this case, so long as they both fulfill the terms and conditions of the AOD and requirements of the independent monitor.

Thank you.

Very truly yours,



Karl J. Sleight

KJS/pjm