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Office of the Inspector General

Investigation into Allegations of Misconduct Relating to the New York State Fair

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EXECUTIVE SUMMARY

The Inspector General received allegations that New York State Department of Agriculture and Markets officials engaged in misconduct in two competitive procurements relating to the New York State Fair, which Agriculture and Markets operates. Specifically, it was alleged that First Deputy Commissioner Robert Haggerty and State Fair Director Daniel O'Hara engaged in inappropriate contact with a vendor bidding to provide catering and restaurant services in the Empire Room at the Fair, and that after selecting a vendor, agency officials negotiated a contract that deviated materially from terms of the Request for Proposals (RFP), thereby creating an unfair procurement. It was further alleged that during the procurement of an electronic ticketing system for the State Fair, Haggerty improperly consulted with representatives of a vendor, then manipulated the procurement to favor a proposal from that vendor. Finally, it was alleged that Fair management failed to provide adequate security at the Fair and allowed two employees to maintain sleeping quarters on the Fairgrounds.

Upon conducting an investigation of the allegations, the Inspector General determined that Agriculture and Markets' practices in these substantial procurements were seriously flawed. Specifically, the Inspector General found that Agriculture and Markets issued a flawed RFP for the Empire Room to which a single vendor responded with an incomplete bid. Following an irregular and flawed evaluation conducted by, among others, Haggerty and O'Hara, Agriculture and Markets accepted the bid, then finalized a contract with the sole bidder, Charlie's at the Fair, containing provisions which deviated in material ways from terms of the RFP to the benefit of the vendor. Rather than issue a new and corrected RFP, Agriculture and Markets chose to proceed with a flawed procurement. When the Office of the State Comptroller questioned the contract – which it ultimately rejected – Agriculture and Markets Supervising Attorney Michael McCormick responded with information that was inaccurate and misleading. In addition, O'Hara acted irresponsibly by failing to disclose his past association with owners of the selected firm and failed to recuse himself from the evaluation process.

Regarding the electronic ticketing procurement, the Inspector General found that Haggerty met and repeatedly communicated with representatives of Veritix, an electronic ticketing vendor, and utilized information provided by Veritix in developing the RFP for the procurement. Haggerty continued to have direct involvement in the procurement, and Veritix was permitted to bid on the electronic ticketing contract, in apparent violation of State Finance Law. Given that the ticketing system represented a new program for Agriculture and Markets, heightened scrutiny by Counsel's Office throughout the procurement process was warranted, but did not occur.

Haggerty proceeded to taint the procurement process further by selecting himself as an evaluator of the submitted bids. When the Agriculture and Markets Director of Fiscal Management and General Counsel both disqualified the Veritix proposal because it failed to include required components, Haggerty canceled the procurement rather than proceed without the Veritix bid.

The Inspector General's investigation also found breakdowns in Fair management resulting in inadequate inventory control of Fair property. In addition, Fair officials failed to address longstanding situations in which two Fair employees used Fairground facilities for their personal lodging, and, in the case of one of the employees, for storage of large amounts of personal possessions. Systemic deficiencies in the Fair's security system also were identified.

The Inspector General notes that the present investigation is the third investigation by this office in approximately 27 months concerning operations, management, or procurement problems at Agriculture and Markets. An August 2010 report revealed serious deficiencies in Agriculture and Markets procurements pertaining to the State Fair, as well as breakdowns in Fair management. A July 2011 report detailed further significant problems in Agriculture and Markets' procurement practices.

The findings of the instant investigation demonstrate that Agriculture and Markets officials failed to correct previously identified problems. Notably, at the time of the prior procurements, Haggerty, McCormick, and O'Hara were all serving in the positions they continued to hold when the procurements examined in this report were conducted. In addition, in the wake of the Inspector General's 2010 report, Fair senior management, including O'Hara, were on notice of systemic management and oversight deficiencies at the Fair and remained in place to implement reforms recommended by the Inspector General. As the instant investigation also reveals, management failed to make such changes to ensure the safety and security of the Fairgrounds and accountability to the public.

The Inspector General recommended that Agriculture and Markets conduct a thorough review of its procurement procedures and practices. Additional formal training on the procedures, as well as ethics issues, should be provided to staff. Periodic audits should be conducted to ensure compliance. It was also recommended that Agriculture and Markets conduct a thorough review to assess the effectiveness of the State Fair's management and ensure that inventory and security improvements are implemented.

Agriculture and Markets should review the conduct of officials responsible for procurements and Fair management, and take appropriate action. The Inspector General is also referring this report to the Joint Commission on Public Ethics and the State Fair Advisory Board.

Agriculture and Markets advised the Inspector General that, in response to this report, it has taken a number of actions to reform procurement practices, including the establishment of a joint procurement work group with the New York State Office of General Services (OGS). OGS has assumed overall responsibility for State Fair Procurements. Agriculture and Markets' Internal Control Officer and the State Fair Advisory Board's Audit Committee will assume greater responsibility for Fair oversight, and the agency will contract with an independent outside auditor to conduct a financial and operational audit of the Fair. Training of Agriculture and Markets employees on ethics issues has been scheduled. The Fair's electronic inventory system has become operational, and physical security improvements are underway.

As a result of the Inspector General's findings, Agriculture and Markets has disciplined officials responsible for agency procurement and Fair management. First Deputy Robert Haggerty, General Counsel Ruth Moore, Supervising Attorney Michael McCormick, and State Fair Director Daniel O'Hara are no longer employed by Agriculture and Markets.

INTRODUCTION AND BACKGROUND

ALLEGATIONS

In 2010 the New York State Inspector General released a report identifying improper procurement practices and criminal activity at the State Fair. In 2011, the Inspector General issued another report describing serious misconduct relating to a procurement at Agriculture and Markets. Since the publication of those reports, the Inspector General received complaints alleging further misconduct and mismanagement regarding the State Fair by Agriculture and Markets officials.

Specifically, the Inspector General received allegations that Agriculture and Markets officials engaged in improper conduct relating to the procurement of a caterer to operate the Empire Room at the Fair. It was specifically alleged that inappropriate contact occurred between the bidder, Charlie's at the Fair, and First Deputy Commissioner Robert Haggerty and State Fair Director Daniel O'Hara. It was further alleged that Agriculture and Markets' contract with Charlie's at the Fair deviated materially from terms of the RFP, thereby creating an unfair procurement. The Inspector General also received an allegation that Haggerty engaged in improper contacts with a lobbyist and manipulated the procurement process for an electronic ticketing system at the Fair to benefit a favored bidder. In addition, the Inspector General received allegations that a former Fair employee stole copper wire and scrap material from the Fairgrounds and that two Fair employees maintained sleeping quarters on the Fairgrounds, one of whom stored a large amount of personal property in several horse stalls previously reserved for rental to horse owners.

OVERVIEW OF THE STATE FAIR'S HISTORY AND MANAGEMENT

The New York State Fair first opened in September 1841 in Syracuse, sponsored by the New York State Agricultural Society with the assistance of a state grant. The two-day fair, which drew an estimated 10,000 to 15,000 visitors, featured speeches, animal exhibits, plowing contests, and samples of manufactured goods. Later, the State Fair became an annual event growing in size and prominence, and rotated annually among various cities in the state. In 1889, the Agricultural Society was donated a 100-acre tract of land bordering Syracuse in the Town of Geddes, Onondaga County, and this property has served as the permanent home of the annual State Fair since 1890. Commonly known as the Fairgrounds, this site has grown into a 375-acre complex with 20 major exhibit buildings and other structures. The 2012 Fair, held from August 23 to September 3, attracted 845,595 attendees.

The annual State Fair is not the only event held on the property. Numerous events such as music concerts, animal shows, sporting competitions, banquets and other catered events are scheduled throughout the year on the grounds.

Legislation enacted in 2009 transferred Fair management and property from the Industrial Exhibit Authority to the New York State Department of Agriculture and Markets. Management of the Fair, including functions such as payroll, financial management, personnel, and procurements, were shifted to the Division of the State Fair within Agriculture and Markets.

Day-to-day management and oversight of the Fair is provided by the State Fair Director, who is appointed by the Commissioner of the Department of Agriculture and Markets, and assisted by Agriculture and Markets staff. Daniel O'Hara has served as Fair Director since February 2007, reporting to the First Deputy Commissioner of the Department of Agriculture and Markets. Robert Haggerty, who served in the latter position from 2008 until his termination on June 10, 2012, took an active role in the Fair's management. Haggerty reported to Commissioner Patrick Hooker, who headed the agency from 2007 to 2011, and then to Darrel J. Aubertine, the current Commissioner who was appointed on January 10, 2011.

The 2009 legislation also re-established the State Fair Advisory Board, with which Agriculture and Markets is to "consult" for "advice and counsel" in operating the State Fair.[1] The Board's 11 members, who are unpaid, are appointed by the Governor and members of the Legislature. The Board has three standing committees – the Audit Committee, Agriculture Committee, and Outreach Committee – as well as an Ad Hoc Committee created to develop a new mission statement for the Fair.

THE INSPECTOR GENERAL FINDS DEFICIENCIES IN AGRICULTURE AND MARKETS' PROCUREMENTS AND OPERATIONS AT THE STATE FAIR

LONGSTANDING PROCUREMENT PROBLEMS AT AGRICULTURE AND MARKETS

Misconduct by Agriculture and Markets officials relating to procurements is not limited to the matters described in the instant investigation. In fact, significant problems in agency procurements were the subject of two other reports of investigation by the Inspector General within approximately the last 27 months.

[1] New York State Agriculture and Markets Law Section 16.

In a report released in August 2010, the Inspector General concluded, among other findings, that Agriculture and Markets and State Fair officials "flagrantly violated state procurement law" when contracting for wireless Internet services, a booking agent for the Fair's 2008 concert series, and a boxing promoter for the 2009 Fight Night at the Fair. As the report concluded, the officials "displayed either ignorance or a lackadaisical attitude toward compliance with the law, all of which contributed to the recurring breaches of the State Finance Law." A month prior to the issuance of the report, in July 2010, a complainant notified the Inspector General of suspicions that another agency official had engaged in serious misconduct concerning a procurement. It was alleged, and the Inspector General's ensuing investigation corroborated, that Deputy Commissioner Jerry Cosgrove had improperly involved himself in a farmland protection grant procurement. Specifically, Cosgrove, who headed the division which administered the farmland protection program, attempted to manipulate the awarding of a grant by directing subordinates to improperly modify the scoring of competing applications. Agriculture and Markets terminated Cosgrove's employment in November 2010, based on information the investigation had obtained at that time. The Inspector General's report on the Cosgrove matter was issued in July 2011.[2]

Responses of Agriculture and Markets to the Inspector General's Reports

The Inspector General's 2010 report recommended that Agriculture and Markets, in consultation with Office of General Services, the Office of the State Comptroller, and the State Procurement Council, "comprehensively review the Fair's procurement practices and take steps to ensure that procurements involving the State Fair are conducted fairly and in conformance

[2] The Inspector General's 2010 and 2011 reports can be accessed at: http://www.ig.ny.gov/

with all applicable statutes and regulations." In response to this recommendation as well as the findings of misconduct in the then ongoing Cosgrove investigation, Agriculture and Markets took action intended to strengthen procurement practices and promote ethical conduct by employees.

Agriculture and Markets Develops Procurement Procedures

An Agriculture and Markets "Contract Work Group" developed a "Contract Management Manual" which includes a step-by-step procedure for procurements utilizing a Request for Proposals (RFP), among other components.[3] The work group consisted of Haggerty, General Counsel Ruth Moore, Director of Fiscal Management Lucy Roberson, State Fair Director Daniel O'Hara, and other agency staff with a role in procurement/contract management. In December 2010, the new manual was distributed to work group members and other staff with procurement/contract management responsibilities with the stated purpose to "bring the Department to a consistent and thorough approach to contract development and management."

This manual's procedure identifies the unit or official responsible for each step in the procurement from the "idea" stage to the development of the RFP and evaluation instrument; to the evaluation, scoring, and ranking of competing proposals; to the recommendation of award; to final approval of the award by executive management. According to the procurement procedures detailed in the manual, the leading role in a given procurement is assigned to the particular division, or program area, within the agency most directly involved in the service or commodity

[3] The manual superseded a Division of Fiscal Management procedure which provided a flow chart of basic procurement procedures.

being procured. The relevant division, in conjunction with the Division of Fiscal Management[4] and Counsel's Office, drafts the RFP and the evaluation instrument (scoring sheet) to be used in evaluating proposals. The relevant division and Fiscal Management review submitted proposals to determine if they meet minimum qualifications as defined in the RFP, with ineligible proposals rejected at that point. Qualifying proposals are forwarded to the division for rating and ranking by an evaluation team; however, the procedures do not indicate how or by whom evaluators are selected. Fiscal Management is responsible for scoring the fee or cost components of proposals. The division is then responsible for making an award recommendation.

The manual also notes the importance of ethical behavior by agency officials, stating that "to maintain the Department's integrity and the respect of contract control agencies, our contractors and the public, our services must reflect a standard of personal and professional conduct that is above reproach." To this end, the manual refers to the relevant sections of the Public Officers Law, including the "code of ethics" in Section 74, which states in part, "[a]n officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person."

In response to the Inspector General's investigative findings, Agriculture and Markets also hosted a series of training sessions for agency employees on ethics issues, conflicts of interest, and fraud prevention. This training was provided in February and May 2011 by the

[4] In addition to its role in procurements, Fiscal Management is responsible for the agency's budgeting, purchasing, travel expenditures, and related financial matters.

Commission of Public Integrity (now the Joint Commission on Public Ethics) and the Inspector General's Office, respectively.

Separation of Agency Executive Management From Key Stages of Procurements

In light of the misconduct of Deputy Commissioner Cosgrove and the Inspector General's findings, Haggerty emphasized to the Inspector General the importance of excluding executive management from critical aspects of the procurement process. While the Cosgrove investigation was ongoing, Haggerty described steps he claims to have taken toward this end:

> One of the things in response to Jerry's situation that we did do, is that I took contract management out of the front office. That's a direct response because I believe that an individual who is a political appointee who has those outside stakeholder contacts and may have gotten their job as a result of support from a community on the outside is more apt to fudge the process. We would no longer have [procurements] managed by individuals who were exempt-class employees.

Indeed, the change Haggerty reported he had implemented is consistent with the procurement procedure contained in the Contract Management Manual that the agency had just implemented. Notably, the procedures do not call for any role for executive staff in the development of the RFP or the evaluation of proposals. Rather, the procedures only describe a role for executive management in giving final approval to the RFP and evaluation instrument (scoring sheet) prior to issuance, and in approving the resulting award recommendation.

However, Haggerty's assertions were belied by his own subsequent actions. As revealed in the instant investigation, only a few months following his statements in the Cosgrove investigation, and soon after the release of the Inspector General's report of that investigation, Haggerty directly inserted himself in critical aspects of two new significant procurements pertaining to the State Fair. In doing so, he acted inconsistently with not only his own stated reforms, but also the agency's newly implemented procurement practices. The Inspector General's current investigation also found serious missteps by other Agriculture and Markets officials.

PROCUREMENT OF AN OPERATOR FOR THE EMPIRE ROOM AT THE STATE FAIR

In the spring of 2011, the Department of Agriculture and Markets decided to seek a new vendor to provide catering and restaurant services in the Empire Room at the State Fair. Located in the Art and Home Center on the Fairgrounds, the Empire Room for years has been considered the Fair's premier venue for banquets, receptions, and other catered events.

Beginning in 1990, Catering with a Flair operated the catering and restaurant business for the Empire Room. The Inspector General's August 2010 report, however, raised serious questions about a substantial price discount Catering with a Flair provided to former State Fair Director Peter Cappuccilli for rental of the Empire Room for his daughter's wedding reception.[5] On May 31, 2011, Agriculture and Markets advised Catering with a Flair that it was terminating its contract on November 30, 2011, almost three years ahead of its scheduled expiration in June 2014.

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[5] The Inspector General referred the findings regarding Cappuccilli's receipt of this improper benefit to the New York State Attorney General's Office, which brought criminal charges against Cappuccilli. On July 11, 2011, Cappuccilli pleaded guilty to official misconduct and agreed to pay $50,000 in restitution to the state. Cappuccilli served as Fair Director from 1995 until his resignation in 2005.

On July 18, 2011, Agriculture and Markets issued a Request for Proposals for a new vendor to operate the Empire Room under a contract which "will begin on September 1, 2011, and will end on January 5, 2017."[6] The RFP was listed in the State Contract Reporter and e-mailed directly to 96 potential vendors with a bid submission deadline of August 18, 2011. Interested vendors were advised of a mandatory meeting on July 26, 2011 to tour the Empire Room and ask questions about the RFP. Seven firms attended the meeting, but only one, Charlie's at the Fair, ultimately submitted a proposal. Given the wide dissemination of the RFP and the prominence of the Empire Room in Fair operations[7], that only one vendor submitted a bid was notable. As Lucy Roberson, Director of Agriculture and Markets' Division of Fiscal Management, testified, "There were flaws in the RFP. There was only one response." Indeed, the Inspector General's investigation revealed that Agriculture and Markets officials both drafted a defective RFP and conducted a flawed RFP review and evaluation process.

The Empire Room RFP was Flawed and Was Inconsistent with Agency Policy

The RFP for the Empire Room procurement was drafted by Agriculture and Markets Supervising Attorney Michael McCormick. Having Counsel's Office assume this role was inconsistent with the agency's newly adopted procurement procedures, which indicate that the relevant division – in this case, the Division of the State Fair – is primarily responsible for this step. In addition, as described below, the RFP contained significant deficiencies.

[6] To accommodate the fact that Catering with a Flair remained under contract through November 30, 2011, the RFP stated that the new vendor "shall accept bookings and reservations for events to be held on and after December 1, 2011."

[7] In late 2011, while the procurement for a new vendor was ongoing, Agriculture and Markets commenced an approximately $850,000 renovation and improvement of the Empire Room, making the space more attractive to potential vendors.

First, the RFP lacked substantive minimum qualifications, or a specifically defined performance threshold, which bidders were required to meet for their proposals even to be considered. While the Empire Room RFP did include “qualifications” for review by Fiscal Management staff prior to actual scoring of the bid by agency evaluators, the “qualifications” were devoid of any substantive requirements and merely were written to ensure only that the bid was received on time, that the proposer attended the mandatory pre-bid meeting, and that it contained both a technical component and a license fee component. Commenting on this deficiency, Roberson testified:

> We missed that [the RFP] didn’t have minimum qualifications, and now every RFP we do has minimum qualifications, and there’s some sort of threshold that they have to meet. That one didn’t have a threshold.

According to Roberson, the RFP should at least have contained a minimum requirement pertaining to the nature and extent of each bidder’s catering experience.

A second, critical flaw in the RFP was the negligent inclusion of an extra fee on wine sales the operator would be required to remit to the state. The RFP stated that the operator of the Empire Room must pay a licensing fee of at least 25 percent of gross receipts on the sale of beer and liquor *and* a $3 fee on each 750 mL bottle of wine sold ($5 per 1.5 liter bottle). Roberson testified that the $3 per bottle fee would impose an unfair burden on the operator and asserted it had been included in the RFP “by mistake.” McCormick also termed the fee inclusion “a mistake,” testifying that it apparently “crept in” when language from a different State Fair concession contract was inadvertently copied in the drafting process. Other evidence also indicates that inclusion of the fee was unintended: the section of the RFP describing how proposals must be submitted made no mention of the fee, and the license fee form that bidders were instructed to complete contained no space for the bottle fee.

Describing how a flawed solicitation was issued, Roberson candidly acknowledged that "[t]he RFP went out without a lot of review." Emma Graham, then a Contract Management Specialist responsible for managing the Empire Room procurement, testified similarly: "[The RFP] suddenly appeared, and 'hurry up and get it out' . . . I reviewed it minimally to make sure the dates were right and that kind of thing . . . but I didn't read for content."[8]

McCormick e-mailed a draft of the RFP to Haggerty, Roberson, and State Fair Director Daniel O'Hara for "comments and edits."[9] Prior to its issuance, the flawed RFP was approved by Haggerty, McCormick, Roberson, and O'Hara.

Irregularities in the Evaluation of Charlie's at the Fair's Proposal Mar the Procurement

As discussed above, only one firm, Charlie's at the Fair, submitted a proposal in response to the Empire Room RFP. The Inspector General's investigation identified a number of irregularities in the process by which the Charlie's proposal was reviewed and evaluated.

A significant lapse occurred in the first step in the process, which requires Fiscal Management to review the minimum qualifications of submitted proposals to determine eligibility for further consideration. As noted, the Empire Room RFP failed to include

[8] Surprisingly, Graham also noted that, even if she had read the RFP for content, "it would have been meaningless to me."

[9] Troy Waffner, the Fair Assistant Director, and Steve McGrattan, an Agriculture and Markets employee who assisted in managing procurements, were copied on the e-mail.

substantive minimum qualifications, only requiring that the bid arrive on time, that the proposer attended the mandatory pre-bid meeting, and that the submission contain both a technical component and a license fee component. Nonetheless, even these bare-bones standards should have been reviewed. However, the Inspector General's investigation found no record that Fiscal Management staff performed this required step. A "qualifications" sheet that staff should have completed, dated, and signed was not produced. A similar omission occurred with respect to the review of the license fee component of the Charlie's at the Fair proposal. Procedures require Fiscal Management staff to perform and document this step. While a maximum cost fee score of 40 was given to the proposal, required documentation relating to this procurement step does not exist. Specifically, the "Proposal Qualification and Evaluation" form for the license fee, which should have been completed, dated, and signed by the evaluator, was not completed.

These lapses represent more than procedural oversights: they indicate that two required steps in the procurement process might not have been conducted as required. Moreover, these errors created a material gap in Agriculture and Markets' official record of the Empire Room procurement, weakening accountability, and further reflect the carelessness with which the procurement was conducted.

A further serious irregularity occurred when the technical component of Charlie's at the Fair's proposal was evaluated and scored. Haggerty selected the evaluation team, which consisted of O'Hara, Agriculture and Markets Economic Development Specialist Timothy Pezzolesi, and Haggerty himself. Although requested by the RFP, the Charlie's at the Fair bid failed to include a proposed layout for utilization of the Empire Room. Instead, the proposal stated that a layout would be provided at a later date after renovations of the room were complete. Despite this omission, rather than circle "no" on their scoring sheets to signify that a layout was not provided, and include a note of explanation, as the scoring form directed, both Haggerty and O'Hara circled "yes," indicating that a layout had been submitted. Pezzolesi properly circled "no."

Haggerty and O'Hara then proceeded to rate the non-existent layout, both unaccountably giving it a maximum score of 6. Pezzolesi appropriately scored it a "0." When asked by the Inspector General to explain the scoring, Haggerty asserted it was an oversight, testifying "I obviously did it in a hurry . . . I obviously made a mistake." O'Hara testified that he discussed the absent layout with McCormick, who apparently advised him he could still proceed with the evaluation, but did not tell him what score to assign. According to O'Hara, he then "automatically gave it a '6,'" adding, "In retrospect, I should have put an 'N/A' [not applicable]."

Even while acknowledging his scoring "mistake," Haggerty in his testimony initially took the position that because Charlie's at the Fair was the only bidder and apparently had satisfied the minimum qualifications, he did not consider the score assigned to any item in the proposal as important:

> Once Charlie's at the Fair met these minimum quals, they were going to get the contract whether I scored them at zero or 100, it didn't matter. They were the only bidder. This is totally irrelevant to the awarding of that contract.

Haggerty went so far as to claim that the procurement could not be halted after the evaluation phase had begun. "[Charlie's at the Fair] met the minimum quals," Haggerty testified. "We do not -- you don't stop, once you have started." However, when questioned further on this point, Haggerty acknowledged that that Agriculture and Markets has the authority to cancel a procurement at any time and issue a new RFP.[10] Nonetheless, the procurement proceeded with Charlie's at the Fair as the sole bidder.

The evaluators' overall scoring of the Charlie's at the Fair proposal is noteworthy. Both Haggerty and O'Hara gave the proposal perfect scores: a 6 on all five "technical" components" (including the absent layout) and a maximum score of 5 on six "experience" components. In contrast, Pezzolesi scored all five technical components less than 6 (including, as noted, a 0 for layout) and three of the five experience components less than 5. Unlike Haggerty and O'Hara, Pezzolesi conducted a considered evaluation, despite the fact that a single bid was received.

The evaluation process for Charlie's at the Fair was further inconsistent with Agriculture and Markets' new standards with respect to the requirement that evaluators meet both before and after scoring to discuss any issues with the procurement. Neither a pre-evaluation or post-evaluation meeting occurred in this instance. These meetings, had they been conducted, would have provided another opportunity for the involved officials to identify and resolve problems in

[10] In fact, as discussed later in this report, Haggerty did just that – order a rebid – after problems arose in the evaluation of proposals for an electronic ticketing system for the State Fair.

the RFP and evaluation, as described above, and ensure that they moved forward with a legitimate, competitive process that would best benefit New York consumers and taxpayers.[11]

As is clear from the above findings, Haggerty played a role in the Empire Room procurement, most directly and significantly in the evaluation of the Charlie's at the Fair proposal. Haggerty's actions overstepped the boundaries for executive staff he articulated during the Cosgrove investigation, and were inconsistent with Agriculture and Markets' then newly implemented procurement procedures, which do not contemplate involvement by executive management until after the evaluation is complete and recommendations made.

As reflected in Haggerty's own prior comments, the involvement of executive management in an ongoing procurement poses potential problems. For example, an executive participating in the evaluation of a proposal might influence, directly or indirectly, the judgment of other evaluators who are subordinates of the executive. In the Empire Room procurement, Haggerty not only selected the evaluation team, but served on it along with the Fair Director, his direct subordinate, and Pezzolesi. Concerns about objectivity also may arise in instances, such as the Empire Room procurement, if an executive serves as an evaluator and also has responsibility for approving or rejecting an award recommendation resulting from that evaluation.

[11] Further, the new standards also required that the evaluation instrument include a "[s]tatement identifying the number, composition, and qualifications of evaluation team." No such statement appears on the Charlie's procurement record.

O'Hara Failed to Disclose Past Association with Charlie's at the Fair Owners

The Inspector General's also uncovered a relationship between Fair Director Daniel O'Hara and the owners of Charlie's – James Bova, Michael Kyle, and Thomas Centore. Specifically, O'Hara previously worked for the Niagara Mohawk Power Corporation (Niagara Mohawk),[12] where Bova, Kyle, and Centore are employed, and he overlapped with them at Niagara Mohawk for 14 years. O'Hara asserted that while employed at Niagara Mohawk, he did not directly interact with any of the three individuals, as they worked in different divisions.

In addition, O'Hara served as director of development at the Association for Retarded Children (ARC) of Onondaga from 2000-2005, during which time Kyle served on that organization's board of directors. Although O'Hara stated that he did not recall any interaction with Kyle while at ARC, Kyle testified that he interacted with O'Hara during monthly board meetings.

O'Hara acknowledged that he has occasionally interacted with Bova, as members of Bova's family are longtime operators of a food concession at the Fair. O'Hara testified that he did not discuss the Empire Room procurement during these encounters. O'Hara also claimed that he has not socialized with Bova, Kyle, or Centore.

O'Hara testified that when he reviewed the resumes of Charlie's at the Fair's owners as part of his evaluation of the bid, he recognized their names and realized that he and they had a common employment history. He failed, however, to disclose this history to Haggerty, his

[12] Niagara Mohawk was acquired by National Grid in 2002.

immediate supervisor, or to any other agency official. Haggerty advised the Inspector General that O'Hara should have made such a disclosure. In addition to serving as an evaluator of the Charlie's at the Fair proposal, O'Hara also participated in contract negotiations with Charlie's owner following the selection of the firm as the Empire Room vendor.

O'Hara also acknowledged in his testimony that his failure to recuse himself from the process could create at least the "appearance of a conflict":

> In retrospect, I would recuse myself . . . . To err on the side of minimizing the appearance of a conflict, I wish I had thought it through at the time. When Bob [Haggerty] said, "You're going to review this [with] Tim," I wish I had analyzed it a little deeper and said, "Wait a minute, years ago I worked with these guys at Niagara Mohawk, I don't want the appearance of a conflict."

Agriculture and Markets' Director of Fiscal Management Lucy Roberson testified that she only learned after the procurement that O'Hara had worked at Niagara Mohawk at the same time as Charlie's owners. She similarly testified that O'Hara should have recused himself from evaluating Charlie's bid. Ruth Moore, then Agriculture and Markets General Counsel, also testified that O'Hara should have recused himself.

The Inspector General's August 2010 report revealed a multitude of improper and questionable actions by State Fair and Agriculture and Markets officials with respect to the procurement of a booking agent for music acts at the 2008 Fair. Among actions described in the report were O'Hara's inappropriate contacts with a potential bidder which he failed to bring to the attention of Agriculture and Markets officials in a timely manner. Given that O'Hara was implicated in the Inspector General's prior investigation and report regarding procurement practices, his failure to disclose his past association with Charlie's at the Fair owners and to recuse himself from the evaluation process and contract negotiations is more disturbing. Notably, then Agriculture and Markets Commissioner Patrick Hooker, commenting on the Inspector General's findings, stated that O'Hara and other Fair officials faced a "steep learning curve" regarding procurements.

The Contract for Empire Room Operation Substantially Deviated from Terms of the RFP

On September 1, 2011, Agriculture and Markets notified Charlie's at the Fair that it had been selected as the firm to operate the Empire Room.[13] Thereafter, Agriculture and Markets officials and Charlie's at the Fair representatives engaged in negotiations resulting in a contract agreement in January 2012. McCormick was primarily responsible for negotiating on behalf of Agriculture and Markets, but Haggerty and O'Hara were involved as well. The Inspector General's investigation revealed that the contract was seriously flawed as it contained provisions which deviated materially from the terms of the RFP.

Per Bottle Fee for Wine Sales is Waived

As described above, Agriculture and Markets officials had negligently included a per bottle fee for wine sales in the Empire Room RFP which the selected vendor would be required to remit to the state in addition to a minimum of 25 percent of gross alcohol sales. During the contract negotiations, McCormick agreed to waive the per bottle fee requirement, and it was not

[13] Interestingly, the owners of Charlie's at the Fair first learned of their selection from an article in the Syracuse *Post-Standard* newspaper. The article, under the headline "Charlie's at the Fair takes over catering at the state fair's Empire Room," was posted on the newspaper's Web site on September 1 at 12:20 a.m. and updated three minutes later. It was not until 4:24 p.m. that day that Agriculture and Markets notified Charlie's co-owner James Bova by e-mail of the selection.

included in the signed contract. The waiver resulted in an increase in net revenues the operator would receive and a reduction in the revenues remitted to the state.[14]

In making the decision to waive the fee, McCormick consulted with Haggerty, who approved the change, although he stated he was not aware of the details concerning the fee issue. Haggerty testified as follows:

> I was told . . . that there was a problem with a paragraph that was lifted from a previous RFP for a different type of vendor on the Fair, and that they were going to change that. Sometimes you just say "okay."

Taken in the best possible light, this testimony makes clear that Haggerty abrogated his responsibility and was at best negligent in failing to ensure that there was not a materially significant alteration to the contract that conflicted with the RFP.

Definition of Empire Room Premises is Expanded

The RFP described the premises available to the selected operator as "the Empire Room located in the Art and Home Center" on the State Fair property, covering 6,000 square feet with an approximate seating capacity of 350 persons. According to Agriculture and Markets' minutes of the mandatory, pre-bid meeting, this definition of the premises was reiterated to potential bidders at the meeting, who were told: "The RFP covers the Empire Room only." [Emphasis supplied]

[14] McCormick asserted that Charlie's at the Fair's offer to pay a fee of 28 percent of gross sales of alcohol more than made up for the elimination of the per bottle fee. This assertion is wrong and reflects McCormick's incorrect reading of his own RFP.

In the contract signed by Agriculture and Markets and Charlie's at the Fair, however, the definition of the premises was expanded to include both the Empire Room and the Somerset Room, a separate space located on the floor below the Empire Room and consisting of 2,900 square feet with a seating capacity of 175 persons.[15] As with the wine fee waiver, this revision to the contract provided the selected operator a benefit not communicated to other potential bidders, namely, 50 percent more space and seating capacity for the same monthly fee.

Despite the clear language of the RFP and its reiteration at the mandatory meeting, McCormick attempted to legitimize the contractual definition when he subsequently told the Office of the State Comptroller (discussed in more detail below) that the two rooms "traditionally" had been viewed in combination. Haggerty, in his testimony to the Inspector General, also sought to justify the change, stating that some Agriculture and Markets staff considered the Somerset Room an adjunct space to the Empire Room. In fact, under the previous contract for operation of the Empire Room, the then vendor was allowed use of the Somerset Room without additional charge.

However, given that the RFP explicitly referenced the Empire room and defined the space specifically as encompassing 6000 square feet with seating for 350, it is difficult to give credence to alternative points of view regarding the intent of the RFP as to the benefit conferred in the contract. Moreover, the previous RFP and resulting contract included the Empire Room, Somerset Room, and Martha Eddy Room. To the extent that any confusion existed within

[15] The contract also provided that while planned renovations to the Empire Room were underway, the operator would be allowed to use, without additional charge, the Martha Eddy Room, which is located on the same floor and is similar to the Empire Room in size and seating capacity. This accommodation was not included in the RFP or mentioned at the pre-bid meeting.

Agriculture and Markets regarding how the term "Empire Room premises" is defined, this uncertainty should have been resolved prior to issuance of the Empire Room RFP. McCormick admitted as much when he testified, "That RFP should say, 'The Empire Room, consisting of [in addition to the Empire Room] the Somerset Room' . . . but it doesn't."

Agency Agrees To Provide Tables and Chairs, Contrary to the RFP

The RFP stated that the Empire Room's selected operator "shall be responsible for providing all equipment, utensils, tables, chairs, flatware, preparation and serving equipment, decorating and all that is necessary to operate the license." Similarly, at the mandatory meeting, the question was posed, "Are the tables and chairs included?" According to the minutes of the meeting, Agriculture and Markets officials answered "no," reiterating the language of the RFP. Yet, in the contract with Charlie's at the Fair approved by Agriculture and Markets, "all . . . tables and chairs" were listed as agency property, which the vendor would not be required to provide. When the Inspector General questioned McCormick about this provision of the contract deviating materially from the terms of the RFP, and how that change could have influenced the bids, the following exchange occurred:

> Q: But you don't know how many vendors may have submitted proposals had those terms (tables and chairs) been consistent with what ultimately was in the contract?
>
> A: I seriously doubt the tables and chairs make or break this contract.
>
> Q: But you don't know that.
>
> A: I don't know that, but I seriously doubt it.

Asked further about the difference between the RFP and contract on the matter of the table and chairs, McCormick testified, “I agree there’s an inconsistency.”

Agriculture and Markets Approves a Flawed Contract

In his testimony, O’Hara stated that when he reviewed provisions of the proposed contract during the negotiations, he recognized the deviations from the RFP and brought his concerns to Haggerty’s attention. As O’Hara testified, “I would tell Bob on different occasions and on the conference calls that I think that this is wrong.” According to O’Hara, Haggerty was not receptive to further discussion of the matter, apparently because the date for operation of the Empire Room was nearing. Haggerty’s response to his concerns, O’Hara stated, was, “We have to wrap the contract up. Enough is enough.” The provisions of the proposed contract also were the subject of an October 28, 2011, e-mail from O’Hara to Haggerty, McCormick, and Roberson. O’Hara wrote, “I have reviewed the proposed changes with [Charlie’s co-owners] Mike Kyle and Jim Bova and noted that the most critical element of any of their suggested changes is that they comply with the ‘RFP.’” However, in the e-mail O’Hara does not identify the specific changes he is concerned about.

While McCormick had been primarily responsible for negotiating the contract with Charlie’s at the Fair, General Counsel Ruth Moore was assigned to complete the contract before it was given to Haggerty for signature. In her testimony to the Inspector General, Moore stated that she “was brought in when finalizing the contract, four months after the [September 1, 2011] award.” Moore testified that none of her staff had brought to her attention any “issue with the procurement process." However, as General Counsel, Moore had the responsibility to ensure that the contract and other aspects of the procurement were accurate.

Thereafter, Moore forwarded the contract to Haggerty, who signed it on January 10, 2012. James Bova, a Charlie's at the Fair co-owner, had signed it on January 4, 2012.

Surveys of Non-Bidders Underscores Significance of Contract Revisions

Following the receipt of the sole proposal from Charlie's at the Fair, Agriculture and Markets' Division of Fiscal Management surveyed the six firms which attended the mandatory pre-bid meeting but did not submit proposals as well as several firms which received the RFP but did not attend the meeting or offer a bid. As part of this investigation, the Inspector General also surveyed the six firms which attended the meeting but did not bid.

In both surveys, many of the firms indicated that they chose not to bid because they viewed the overall cost of operating the Empire Room under the terms of the RFP as prohibitive. Several firms specifically cited the cost of providing equipment as a problem. The representative of one firm advised the Inspector General that he would have more seriously considered bidding if he had known that the Somerset Room was included in the premises.[16]

[16] Similar to other aspects of the Empire Room procurement, the Agriculture and Markets survey of the non-bidding firms was inadequately documented. The "Empire Room Survey" contained in the Agriculture and Markets procurement file is undated and does not identify the firms contacted or the agency employee who conducted the survey.

In sum, the contract with Charlie's at the Fair, as negotiated and approved by Agriculture and Markets, contained significant provisions which differed materially from the terms of the RFP, all inuring to the benefit of the selected vendor and the detriment of the state. That these changes would be included in a contract could not of course be known to other firms considering whether to submit a proposal to operate the Empire Room. The changes created an unfair procurement, which should have caused Agriculture and Markets to halt the process and issue a revised RFP. McCormick, Haggerty, and Moore share the responsibility for proceeding at this point with a defective procurement.

Agriculture and Markets Provided Inaccurate Information to State Comptroller

Agriculture and Markets approved the contract with Charlie's at the Fair on January 10, 2012 (Haggerty signed as agency representative), and subsequently forwarded it to the Office of the State Comptroller (OSC) for its review, as required by law. In an e-mail dated March 2, 2012, to Emma Graham of Agriculture and Markets' Division of Fiscal Management, OSC's Bureau of Contracts advised that it had questions about a number of provisions in the contract. By e-mail on April 3, 2012, McCormick, through Graham, provided responses to the OSC's concerns which were misleading and inaccurate.

Specifically, OSC questioned whether the limited prior experience of Charlie's at the Fair's owners in food service operation justified the maximum scores of 6 awarded by Haggerty and O'Hara in that portion of the evaluation which assessed experience. In his response, McCormick stated that the scores were based on the evaluators' "personal knowledge" of the owners, and that the evaluators "believe" that Charlie's at the Fair is capable of performing the contract. Further, McCormick purported to explain the rating by the third evaluator (Pezzolesi) despite having no knowledge of this evaluator's reasoning. McCormick's reference to what the evaluators 'personally knew' and 'believed,' or, in the case of Pezzolesi, on what specific facts he based his rating, implies that he had discussed the scores with each of the three evaluators. However, in their testimony, none of the three officials recalled any such discussion with McCormick. Moreover, as McCormick should have known, evaluators in a competitive procurement should only take into account information included in submitted proposals, and not consider their "personal knowledge" of the bidders.

OSC also questioned the contract provision expanding the definition of Empire Room premises to include the Somerset Room, without an additional fee to be paid by the vendor. In his response, McCormick stated that because the Empire Room "traditionally" included the Somerset Room, the contract was written to reflect that purported understanding. Notably, McCormick further stated that "at the mandatory pre-proposal meeting and tour of the facility, the licensee and others inquired whether the Somerset Room was included within the Empire Room's operation, and the Department representatives advised that it was included as part of the Empire Room." This representation by McCormick is squarely contradicted by Agriculture and Markets' minutes of the meeting, which state that potential vendors were informed that the "RFP covers the Empire Room only." It also defies the description of the space in the RFP, which does not include the square footage or seating capacity of the Somerset Room.

OSC also questioned why two evaluators of the Charlie's at the Fair proposal (Haggerty and O'Hara) had indicated a layout was reviewed, and awarded it a maximum score, when in fact no layout had been submitted. As noted, the third evaluator, Pezzolesi, properly indicated the lack of a layout and scored it "0." McCormick's response stated:

> The raters [sic] difference in the RFP's facility layout requirement is based upon the raters [sic] *differing interpretation* of that requirement. The two raters awarding points were *sufficiently assured* by the licensee's agreement to work with the Department, after the Department's renovation of the facility was substantially complete, to determine final layout. [Emphasis added]

Again, McCormick's representations to OSC would have required consultation with the evaluators, which, as noted, and as McCormick ultimately acknowledged, did not occur. When asked by the Inspector General how he developed this response to OSC, he stated: "This is a surmise for my part." Explaining his actions, McCormick added, "I'm trying to salvage this [procurement], to see if we can keep it afloat, because we got our guy [an interested bidder] and we would really not like to have to do this all over again." This stark admission by McCormick clearly shows that his responses to OSC were misleading and motivated entirely to ensure that a contract resulting from a flawed RFP process was approved.

It should be noted that the Inspector General's August 2010 report on State Fair procurements also criticized the actions of McCormick. Specifically, with respect to the Fair's $127,500 no-bid contract with a boxing promoter in 2009, the report found that McCormick displayed a "nonchalant attitude" toward the contract and attempted to justify the lack of a competitive procurement with an "ill-conceived" claim of an exception in the State Finance Law. In addition, the report found that McCormick, when questioned by the Inspector General, initially denied knowledge of, or maintaining any records on, the boxing contract; then, several days later, he “produced his three-inch thick file on the boxing contract, and his recollection regarding the matter was revived.”

The Inspector General’s 2010 report further revealed a multitude of improper and questionable actions by State Fair and Agriculture and Markets officials with respect to the procurement of a booking agent for music acts at the 2008 Fair. As the report stated, McCormick requested of OSC an “emergency” exception to State Finance Law requirements based on misleading information.

Charlie’s at the Fair Begins Operating Without a Contract

OSC was not satisfied by Agriculture and Markets’ response to its concerns. By letter dated June 5, 2012, OSC advised Agriculture and Markets that the Empire Room procurement must be re-bid. As a result, Agriculture and Markets began development of an RFP for a new procurement for the Empire Room in conjunction with the New York State Office of General Services, which will be assisting on all future State Fair procurements. The new RFP has not yet been issued.

Charlie’s at the Fair began operations at the Empire Room on December 1, 2011, even though a contract with Agriculture and Markets had not been finalized, nor, as required, approved by OSC. Michael Kyle, a co-owner of Charlie’s, testified he was aware of this requirement, both from his review of the RFP, which stated that the “agreement shall be effective only upon the approval” of OSC, and from Agriculture and Markets’ award notification, which stated that work may commence “only after formal contract approval.” However, Kyle stated that Agriculture and Markets officials indicated that to him operations should begin by on December 1. The Inspector General asked officials involved in the procurement about this matter. While the officials denied instructing Charlie's to begin operations, none doubted that direction had been communicated.

Pending the completion of a new procurement, Charlie's at the Fair is operating the Empire Room through a series of monthly licenses issued by Agriculture and Markets and OGS which will continue until the end of 2012.

TAINTED PROCUREMENT OF AN ELECTRONIC TICKETING SYSTEM

The Inspector General also received an allegation that Agriculture and Markets First Deputy Commissioner Robert Haggerty engaged in improper actions regarding the procurement of an electronic ticketing system for the State Fair. Specifically, it was alleged that Haggerty had improper contact with a lobbyist for Veritix, an electronic ticketing firm, prior to issuance of an RFP, and engaged in improper actions during the evaluation of bids to favor Veritix.

Haggerty Advocates for Ticketing System and Meets with Representatives of Veritix

The Inspector General learned that the idea of installing an electronic ticketing system at the Fair had been considered as early as the 1990's, but that nothing came of these discussions until Haggerty assumed the position of First Deputy Commissioner in 2008. Numerous Agriculture and Markets officials testified that Haggerty was a strong advocate for electronic ticketing at the Fair. In the words of Lucy Roberson, Director of Fiscal Management, Haggerty was “in love with the new technology available.” Ruth Moore, then the agency’s General Counsel, recalled that Haggerty had a “passion” for an electronic ticketing system.

In or around May 2011, Haggerty contacted Patrick Brown and David Weinraub of the Albany-based lobbying firm Brown & Weinraub. Haggerty testified that he had known both individuals for years, and that he contacted them because he knew that their firm represented Veritix, an electronic ticketing company. In response, Brown e-mailed Haggerty on May 11, 2011, attaching information about Veritix and adding, “Give me a call when you can and we will put you together with these guys so you can understand their capabilities.” On May 23, 2011, Haggerty e-mailed Brown, stating that he had reviewed the Veritix information and had also viewed the company’s Web site. In the e-mail, Haggerty provided a brief outline of the Fair’s ticketing needs and stated, “I would welcome the opportunity to meet with your client and discuss their software/services.” On July 10, 2011, Haggerty and Weinraub met for what Haggerty testified was a “social” lunch.

As he had requested, on August 19, 2011, Haggerty met with Michael Boxley, a Brown & Weinraub lobbyist, and two representatives of Veritix in Haggerty’s Agriculture and Markets office to discuss electronic ticketing. According to a September 12, 2011, follow-up e-mail to Haggerty from Cheryl Unser of Brown & Weinraub, the discussion included a presentation by Veritix about its electronic ticketing product as well as an offer of suggestions relating to technical aspects of an electronic ticketing system at the Fair. In the same e-mail, Unser stated, “Thank you again for taking the time to visit with our client Veritix and learning about their unique ticketing solution. As promised, as the department reconsiders its ticketing policy and plans for upcoming fairs and events, we recommend you consider the following be included in any solution." Unser's e-mail contained several specific ideas suggested for inclusion in an electronic ticketing system at the Fair.

Haggerty Uses Information from Prospective Vendor to Draft Ticketing RFP

Following the meeting with Veritix, Haggerty moved ahead with the procurement of an electronic ticketing system for the State Fair. The objective of the procurement was to retain a vendor that, prior to the 2012 Fair, would install an electronic ticketing system that would enable Fair goers to purchase tickets for the Fair and Grandstand online and then gain paperless access to the Fair as a whole and to particular Grandstand events. It was also intended that the system would be capable of collecting electronic data of Fair attendance and admission revenue. The system envisioned was extensive, involving electronic scanning capability at all eight Fair gates connected to an independent computer network. At the time, Ticketmaster provided ticketing services for the Fair under a contract that expired in May 2012.

Several Agriculture and Markets officials with key procurement responsibilities testified to the Inspector General that they considered the electronic ticketing plan overly ambitious and rushed. Moore stated that she did not understand why Haggerty felt so strongly about the plan, which she thought was not feasible on the timeline envisioned by Haggerty. Fair Director Daniel O'Hara testified that he feared Haggerty's plan would create "a tough situation" at the Fair due to its broad scope in including all State Fair tickets, not just those for the Grandstand. Roberson offered the most critical assessment of the proposal, testifying that she told other agency officials at the time, "We need a three-year plan; we can't do this in a year," adding: "It was a horrible plan, a horrible project, horrible RFP. It was all done in a rush, and it was being shoved down the State Fair's throat."

Haggerty assumed primary responsibility for developing the RFP for the electronic ticketing system, writing an initial draft in November 2011. By his own admission, Haggerty used guidance and specific information provided by Veritix in preparing the RFP, and, as he testified, received no assistance from any other vendor. Indeed, an examination of the RFP shows that Haggerty incorporated language virtually identical to that suggested by Veritix. He also solicited input from Roberson, McCormick, Moore, Agriculture and Markets Director of the Division of Information Technology Services Wendy Scheening, as well as O'Hara and Fair Assistant Director Troy Waffner. Upon Haggerty's approval, Agriculture and Markets issued the RFP for the electronic ticketing system for the State Fair on December 21, 2011.

However, an irregularity occurred at the point of final approval and issuance of the RFP. Agriculture and Markets' procurement process requires the signoff of six officials before an RFP is issued. However, the RFP for the electronic ticketing system was issued with only the signoff of Haggerty and McCormick.

Agriculture and Markets Should Have Prohibited Veritix Bid on Ticketing System

In response to the RFP for the electronic ticketing system for the Fair, six firms, including Veritix, submitted proposals.[17] As noted, Veritix had played a material role in the development of the RFP, providing information to Haggerty regarding components that should

[17] The other bidders were Etix, TicketLeap, Ticketmaster, Ticketsage, and OmniTicket Network.

be included in such a system. Given this substantive involvement, it appears that Agriculture and Markets should have prohibited Veritix from participating in the procurement. Pursuant to New York State Finance Law, state agencies must conduct procurements in an open, competitive, and fair manner that is insulated against improper influence. As to "technology procurements," State Finance Law Section 163-a specifically states that a vendor that "prepares and furnishes specifications" to a state agency "shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor."[18]

In his testimony to the Inspector General, Haggerty stated that in his opinion there was no basis to prohibit Veritix from bidding. Haggerty indicated that in his view the State Finance Law prohibition did not apply because the electronic ticketing system entailed a "service" procurement, not a "technology" procurement. Haggerty's argument is unavailing, as Section 160 of the State Finance Law states that "technology means either a good or a service or a combination thereof that results in a technical method of achieving a practical purpose or in

[18] New York State Finance Law section 163-a. Vendor preparation of specifications for technology procurements; prohibitions, mandates: "If a vendor prepares and furnishes specifications for state agency technology procurement proposal, to be used in a competitive acquisition, such vendor shall not be permitted to bid on such procurement, either as a prime vendor or as a subcontractor. Contracts for evaluation of offers for products or services shall not be awarded to a vendor that would then evaluate its own offers for products or services. Such restrictions shall not apply where: 1. The vendor is the sole source or single source of the product or service; 2. More than one vendor has been involved in preparing the specifications for a procurement proposal; 3. A vendor has furnished at government request specifications or information regarding a product or service they provide, but such vendor has not been directly requested to write specifications for such product or service or an agency technology procurement proposal; or 4. The state agency together with the office of information technology services determines that the restriction is not in the best interest of the state. Such office shall notify each member of the advisory council established in article one of the state technology law of any such waiver of these restrictions.

improvements in productivity." An electronic ticketing system for the State Fair plainly falls within that definition.

Moreover, Haggerty ignored a warning from McCormick regarding contact with a potential bidder. On September 15, 2011, Haggerty e-mailed McCormick and Roberson asking a procedural question about the electronic ticketing procurement: "Can we go out with an RFP prior to expiration of the [Ticketmaster] contract?" The e-mail exchange that followed, on the same day, is revealing:

> McCormick to Haggerty and Roberson: "Hi Bob – Sure . . . in fact it should be done to ease the transition. – Mike" [sic]
>
> Haggerty to McCormick and Roberson: "Nothing in the contract guaranteeing a renewal or nothing prohibiting us from interaction with other vendors during contract?"
>
> McCormick to Haggerty and Roberson: "Hi Bob – No . . . there was only one 5 year renewal and no other prohibitions or restrictions . . . one caution, interaction with other vendors who may succeed [Ticketmaster] should be limited so a prospective vendor isn't disqualified from an ticketing procurement. – Mike" [sic]
>
> Haggerty to McCormick and Roberson: "Point well taken. Since Ticketmaster will still be under contract when the RFP goes out, we should make sure Fair personnel are aware of restrictions."

While Haggerty might have deemed McCormick's "caution" "well taken," he did not heed it. As described above, Haggerty had been in communication with Veritix's lobbyist only three days earlier, and had met with Veritix representatives within the previous month. Yet, despite these contacts, Veritix was not prohibited from bidding.

The responsibility for improperly permitting a Veritix bid does not rest with Haggerty alone. As noted, other Agriculture and Markets officials understood that Haggerty strongly advocated for instituting an electronic ticketing system for the Fair, and it was known that Haggerty had met with a ticketing vendor. Roberson testified there was speculation that Haggerty improperly had been provided information from an outside source in drafting the RFP, and McCormick told the Inspector General that he doubted whether Haggerty had written the initial draft. Given that the envisioned electronic ticketing system represented a substantial new program for Agriculture and Markets, heightened scrutiny of the entire procurement by Counsel's Office was warranted. However, it is clear that such scrutiny did not occur.

Disagreements Over Evaluation of the Veritix Proposal

As with the Empire Room procurement, and inconsistent with agency procurement procedures, Haggerty selected the evaluators, choosing O'Hara, Waffner, and himself to evaluate most of the technical component of the submissions. Evaluation of one portion of the technical component - "system requirements" - was assigned to Scheening and two other employees of the Information Technology Services Division. The fee component of the bids was forwarded to Fiscal Management for review.

The "system requirements" section of the proposal contained 10 separate components, and the scoring sheet included 10 questions relating to these various technical aspects of the proposed ticketing system, to be answered "yes or "no." This section was worth a maximum of

20 points, and the instructions on the scoring sheet at the end of the 10 questions stated, "If any of the above were 'No', give the proposal to Lucy Roberson, Director, Fiscal Management."[19]

When Scheening and her team evaluated the "system requirements," it became apparent that a lack of clarity existed regarding the scoring sheet instructions and the RFP minimum requirements. Specifically, Veritix did not include a "schematic drawing" of the proposed system infrastructure, which was one of the 10 requirements of this portion of the submission. Accordingly, all three evaluators appropriately checked the "No" space after this question. However, while Scheening's two subordinates proceeded to score the rest of the submission (each scored it 18, apparently awarding 2 points for each of the 9 other questions which had been answered properly), Scheening herself awarded no score, and per the scoring sheet's instructions, brought the matter to the attention of Roberson and Ruth Moore, Agriculture and Markets' General Counsel. This problem was unique to the Veritix proposal, as all of the other five proposals included the required schematic drawing.

In their testimony to the Inspector General, both Roberson and Moore stated that they considered the schematic drawing requirement a minimum qualification of the RFP, and that its absence therefore disqualified the Veritix proposal from further consideration. In fact, the schematic drawing, while required by the RFP, was not specifically listed in the RFP as a "minimum qualification." However, the "system requirements" score sheet stated that if the schematic drawing or other required element were missing, the evaluator was instructed to "give

[19] By contrast, as discussed earlier in this report, the corresponding scoring sheet for the technical evaluation of Empire Room procurement contained a different instruction. In completing that sheet, evaluators determined whether the submission included six specific components requested in the RFP, circling "YES" or "NO". The sheet's instruction stated: "If you circled "NO" above, please explain below and continue with your technical evaluation."

the proposal to Lucy Roberson, Director, Fiscal Management." This language reasonably could be interpreted to mean that the proposal should be removed from further consideration at that point.

Roberson and Moore also noted that the Veritix proposal did not include a performance security bond, despite the RFP's requirement that the "selected provider shall provide a surety bond in the amount of $10,000,000 in the name of the Department for the Term of the contract." This language could be interpreted to mean that the surety bond would be required after the award, as a vendor would not have been "selected" before that point. However, Veritix's proposal not only failed to signal a willingness to discuss the bond at a later date, it unequivocally indicated the opposite, stating, "Veritix will NOT provide a surety bond in the amount of $10,000,000." [Emphasis in original]

Consequently, as a result of Roberson's and Moore's concerns, when the submissions were forwarded to the technical evaluation team of Haggerty, O'Hara, and Waffner, the Veritix proposal was not among them.

Haggerty Cancels Procurement After Learning Veritix Proposal Disqualified

According to the testimony of several Agriculture and Markets officials, Haggerty reacted angrily when he realized that the Veritix bid had been excluded. Steve McGrattan, an Agriculture and Markets Economic Development Specialist who assisted in coordinating the technical evaluations, testified that upon receiving the five proposals, Haggerty asked, "Where is Veritix?" According to McGrattan, when he explained why Fiscal Management and Counsel's

Office had judged the Veritix submission non-responsive, Haggerty “became angry at the fact that it was not being reviewed” and said, “I want this proposal reviewed.” McGrattan stated that when he suggested that the evaluation of the five bids proceed, Haggerty “was adamant about having the Veritix proposal scored . . . . [I]t did seem odd that he would be so adamant on one proposal.” Waffner also testified that Haggerty was agitated about the Veritix proposal having been deemed ineligible and “seemed fairly adamant that we’d be grading them all or grading none.”

Haggerty testified that he did not consider the lack of a schematic drawing in the Veritix submission a sufficient basis for disqualifying the bid. He also stated that the surety bond issue could be addressed in contract negotiations following the selection of a vendor, and, therefore, its absence from the bid was not a disqualifying defect, despite Veritix’s explicit representation that it would not even consider providing a bond. However, rather than continue with the evaluation process without Veritix as a possible vendor, Haggerty canceled the procurement process altogether. Haggerty testified that he had concluded that evaluation instrument (scoring sheet) was flawed and therefore the procurement needed to be conducted anew. Agriculture and Markets advised bidders by e-mail on February 23, 2012, that procurement had been canceled, without explanation. In his testimony, Haggerty denied that he favored Veritix, stating that in his view it was the strongest bidder.

In their testimony to the Inspector General, however, both O’Hara and Waffner said they believed Haggerty’s actions were motivated by what they saw as his preference for Veritix. According to Waffner:

> Dan and I talked about the fact that Bob had a preferred company in Veritix . . . I think it was obvious Bob wanted Veritix to get the business . . . You know, and this was the funny part about Bob, he was clever enough most of the time, obviously, not to send us an e-mail saying 'score Veritix the highest.' But, you know, certainly, I wish I could remember the verbiage. He certainly told Dan and I both that there is this company (he) was working with which he made clear was Veritix.

Waffner noted that Haggerty never mentioned anything similar about any other firm, and he recalled that during the pre-bid meeting Haggerty greeted the Veritix representative by name, but did not appear to know the other vendors in attendance. O'Hara similarly testified, "It appeared in some discussions that that was the direction I think [Haggerty] was hoping this thing was going to go."

Further, Waffner testified that he thought he and O'Hara were selected by Haggerty to serve as evaluators because Haggerty had made clear to them his preference for Veritix. Immediately after Haggerty had decided to terminate the procurement, Waffner recalled saying to O'Hara, "How crazy is this? It could be clear to a blind [and] deaf person sitting in the room at that point that Bob has a company he is favoring."

On March 2, 2011, Agriculture and Markets issued a new RFP for an electronic ticketing system for the Fair which was significantly less extensive in scope and complexity. Whereas the first RFP envisioned a system encompassing both Fair general admissions and Grandstand events, the revised RFP was for a Grandstand system only. A total of 11 vendors, including Veritix, submitted proposals. Haggerty remained integrally involved in the process, still serving on the technical evaluation team, whose other members, O'Hara and Waffner, were again selected by Haggerty. Following a complete evaluation, the firm Etix was selected as the electronic ticketing system provider. Notably, Haggerty gave Veritix his highest score, although the Veritix proposal was ranked among the lowest of the 11 submissions by the evaluation team as a whole.

Simply put, Haggerty, having met and communicated with Veritix representatives, should not have continued to have any direct involvement in the procurement. In addition, pursuant to the State Finance Law, Veritix's involvement with Haggerty prior to the RFP should have prohibited it from bidding. Instead, Haggerty took the lead in developing the RFP for the electronic ticketing system, and Veritix was allowed to submit a proposal. Haggerty assigned himself to the team which would evaluate the technical components of the competing bids, and then canceled the procurement when his preferred vendor, Veritix, was disqualified by the team evaluating the system requirements. This conduct may have violated state law and was inconsistent with the agency procedures he contemporaneously championed to the Inspector General. Together with the Empire Room RFP improprieties, these actions represented continued systemic failures in the practices and oversight of procurement.[20]

DEFICIENCIES IN INVENTORY PRACTICES AND SECURITY AT THE STATE FAIR

In its August 2010 report, the Inspector General identified significant weaknesses in the State Fair's inventory and property control practices. The Inspector General found that Fair's materials and assets, including vehicles, routinely went unaccounted for due to poor oversight, lack of an inventory system, and inadequate documentation. In the report, the Inspector General stated:

[20] Agriculture and Markets terminated Haggerty's employment on June 10, 2012.

> The Fair does not have a written inventory control policy and that assets and property are neither tracked nor managed by the Fair. The Fair does not inventory such commonplace items such as desks, chairs and other office furniture. Equipment and tools are likewise not tracked in any inventory log. Fair staffers, however, use Agriculture and Markets' computers, which in contrast to Fair equipment, are inventoried by Agriculture and Markets.

This statement, and the Inspector General's recommendation that the Fair implement formal inventory control procedures to ensure the proper accounting of state property, should have been impetuous enough for Fair management to take immediate and necessary action. Instead, while Agriculture and Markets assured the Inspector General that an "Inventory Work Plan" was under development and that an inventory tracking system and a consolidated warehousing structure were being implemented, the Inspector General's instant investigation determined that as of the end of 2011, no inventory system or policy regarding the control of Fair property had been implemented. As Fair Director since 2007, Daniel O'Hara bore responsibility to address the deficiencies identified in the Inspector General's 2010 report. However, the Inspector General found no evidence that O'Hara acted to correct these problems.

Further, the Inspector General found that the Fairgrounds lack proper security measures. Surveillance cameras monitoring the expansive site are in disrepair, resulting in a total lack of monitoring of critical locations. In addition, Fair security staff cannot appropriately ascertain the presence of guests and employees on the property.

Specifically, the Inspector General identified two Fair employees who maintained sleeping quarters on the ground, one of whom also stored a vast quantity of personal belongings in a Fairgrounds horse barn. The employee's supervisor and Fairgrounds security staff were aware of these conditions, but never reported them or made any attempt to correct an obviously unacceptable situation. Notably, the Inspector General also faulted the Fair in 2010 for allowing an employee to store personal belonging on the property.

The Fair Lacks Adequate Control over its Physical Inventory

The Inspector General determined that despite assurances by Agriculture and Markets officials in August 2010 that necessary reforms to the Fair's inventory management practices were underway, little or no improvement occurred until late 2011. As a result of this slow response, the Fair continued to operate with inadequate inventory controls. Only after allegations of theft surfaced in late 2011 did the Fair take action. Starting in November 2011 and continuing to the present, the Fair has undertaken implementation of a more comprehensive inventory management system, with completion anticipated by 2013. In conjunction with development of the new system, the Fair has made other improvements, including the inventory of vehicles, centralization of materials and supplies into a consolidated warehouse and requisition system, and the new policies for appropriate disposal of large quantities of unneeded material, either by surplusing or selling as scrap. While these developments are commendable and in accordance with Agriculture and Markets' earlier representations to the Inspector General, it again must be noted that these necessary steps were begun nearly a year and a half after assurances were made that such actions would occur. By the agency's own calculations, close to three years will have passed before a comprehensive inventory strategy is implemented.

Alleged Thefts of Scrap Material at the Fair Underscore Flaws in Inventory Controls

Fair Maintenance Supervisor Fails to Report Suspected Thefts of Scrap Items

In late August or early September 2011, Fair Maintenance Supervisor Michael Ryan became suspicious that one of his subordinates, an electrician, was stealing scrap wire from the Fairgrounds. Ryan had observed that a large amount of scrap wire was missing after the completion of a rewiring project in the Bell Aisle section of the Fairgrounds. Ryan also had seen this electrician drive his personal pickup truck onto the Fairgrounds during the 2011 Fair, in violation of policy, and park it by the maintenance office near where the missing scrap wire had been stored. "I thought he was taking stuff," Ryan told the Inspector General.

Despite his suspicions, Ryan did not report the matter to his superior, Fair Assistant Director Troy Waffner, or take any other action. Waffner stated that he only learned of the electrician's alleged thefts when, on September 30, 2011, a temporary employee informed him that "[the electrician] is stealing wire, and not small quantities." According to Waffner, the temporary employee told him that the electrician had loaded spools of wire into his personal vehicle. Later, Waffner stated, a second employee also informed him that the electrician was stealing wire from the Fairgrounds.

Upon hearing these allegations, Waffner undertook a review of work orders, completed projects, and the wire inventory. Waffner stated that in examining work completed by the electrician in various areas of the Fairgrounds, he noted discrepancies between the amount of wire signed out by the electrician and the amount actually used to complete the projects. Having found evidence that the electrician stole state property, Waffner contacted the New York State

Police, which then obtained records of scrap sales at Roth Steel of Syracuse, where it was believed the electrician had sold scrap materials. However, Waffner, despite having notified the State Police, did not report the matter to Agriculture and Markets officials for nearly a month, and, in contradiction to Executive Law Article 4-A, did not report this potential criminal wrongdoing to the Inspector General. Upon Waffner's delinquent notification, Agriculture and Markets properly reported the alleged thefts to the Inspector General, and an investigation was commenced.

As part of this investigation, the Inspector General, in conjunction with the State Police, conducted a sworn interview of the electrician. In the interview, the electrician acknowledged that he occasionally sold scrap metal to Roth Steel in Syracuse, but denied stealing any property from the Fairgrounds, claiming that the scrap he sold he had acquired "around." He stated that he was planning to end his employment at the Fair, and within days after the interview he resigned his position and moved out of state.

The Inspector General also obtained, pursuant to subpoena, additional records from Roth Steel. These records indicated that Roth Steel had purchased copper wire from the electrician in 59 separate transactions with a total value of approximately $11,000. The Inspector General compared the electrician's time and attendance records to the time of scrap sales as documented on the receipts from Roth Steel. This comparison revealed seven occasions when the electrician sold scrap during times he reported on his time cards to be working at the Fair. Two of the occasions fell during the 11-day period of the 2011 Fair when Ryan had noticed missing scrap wire and co-workers had seen the electrician loading his truck with scrap.

The Inspector General notes that its investigation of the alleged thefts was potentially hampered by Fair staff's delay in reporting the matter to Agriculture and Markets officials in Albany and by Ryan's and Waffner's failure to notify the Inspector General. Had prompt notification occurred, computerized records from Fair video surveillance equipment might have yielded relevant information.

Deficiencies in Inventory System Left Fair Vulnerable to Theft

As described above, an electrician at the Fair was able to requisition wire and other materials from the Fair inventory. The Fair utilized a database which includes purchase orders, work orders, and requisitions to document the need for wire and other supplies, as well as a record of inventory sign-outs. However the system did not account for material, including copper wire, that is signed out but goes unused in a project. Therefore, the Fair could not accurately track if the quantity of material requisitioned for a project was actually used during the course of the work. State Fair Director Daniel O'Hara informed the Inspector General that when he learned of the allegations, he began to review work orders and material requisitions. O'Hara stated that Ryan should have performed this task, but failed to do so.

In addition to the inability to track inventory, the Inspector General determined that, at the time of the alleged thefts, the Fair did not secure scrap material. Scrap items were placed in multiple areas of the Fairgrounds that were accessible by all Fair employees as well as the public.

Since the matter was reported in November 2011, Agriculture and Markets advised the Inspector General that development and implementation of a comprehensive inventory system is in progress. As implementation proceeds, inventory counts are occurring in various work areas (plumbing, vehicle maintenance, building maintenance, etc.), and surplus and/or obsolete items are being identified and disposed of. Agency officials stated that the final goal of the multi-phased plan is a comprehensive perpetual inventory management system to account for all physical inventory on hand, received and placed in service. In early 2012, the Fair also hired a property manager to oversee maintenance, inventory control, and other property functions. The Fair had lacked a property manager since 2009.

Fair staff also advised the Inspector General of new procedures for the secure storage and disposing of scrap materials. The scrap is maintained in a single designated area, with scrap wire stored in barrels within a secure area. A Fair general mechanic has been given responsibility for the sale of scrap material to a scrap yard near the Fairgrounds. Receipts and cash obtained by the general mechanic are provided to Fair accounts receivable staff for recording as miscellaneous revenue. According to Fair staff, the electrician suspected of stealing scrap had never been directed to bring scrap to the nearby scrap yard or any other particular scrap yard.

While the Fair's recent efforts to control inventory are commendable, it must be noted that these steps were taken well over a year after the issuance of the Inspector General's report which recommended the implementation of an inventory system. The alleged thefts of scrap items highlight the weaknesses the Fair has only begun to correct in its management of property and inventory. The Inspector General referred the matter to the Onondaga County District Attorney's Office for prosecution.

Lack of Fairground Security

Unfortunately, misuse of the Fairgrounds by state employees is not limited to the issues described above. In July 2012, the Inspector General learned that two longtime employees, William Cooper and Kathleen Yockell, maintained, without authorization, separate sleeping quarters on the Fairgrounds so that they could on occasion and at their own discretion spend the night on the site. In addition, Yockell utilized an area at a Fair horse barn to store a large amount of personal property, including exotic pet birds.

William Cooper

Cooper, an audio-visual technician, has been employed at the Fair since 1997. In January 2012, Ryan and Fair auditor John Sauro, having examined the Fair's Coliseum building as part of the new inventory procedures, informed Fair management that Cooper maintained a kitchenette and sleeping quarters adjacent to his work space in the building.

This was not a new discovery for Ryan, who informed the Inspector General that Fair employees "always knew" that Cooper maintained a kitchenette on the upper floor of the Coliseum. In fact, Ryan testified that on more than one occasion over the previous five years, he had instructed Cooper to remove his property, including pots, pans, dishes, stove, oven, and refrigerators from the space he was using as a kitchenette without authorization. Ryan stated that he first became aware at the conclusion of the State Fair in September 2010 that Cooper maintained a separate hidden sleeping area on a level below the kitchenette. According to Ryan, Cooper explained that he slept there during the State Fair because he worked too late at night to travel home. Ryan claims he told Cooper he could not sleep there, and that he repeated that order to Cooper a year later during the 2011 State Fair. However, Cooper continued to utilize the kitchenette and sleeping quarters until January 2012, when Ryan and Sauro finally reported the matter to Fair management, including Fair Director O'Hara and Assistant Director Waffner.

Sauro informed the Inspector General that when examining the space in January 2012, he and Ryan observed that the kitchenette area contained a stove, refrigerator, and other items; the sleeping quarters, on a lower level accessed through a door in the kitchenette, contained a couch, an air mattress, a refrigerator containing wine and beer, and an inoperable television. The door to the sleeping area was lockable from inside and outside.

During an interview with the Inspector General, Cooper confirmed that he used the kitchenette and sleeping quarters. Cooper stated that well over a decade earlier, Fair maintenance staff installed the kitchenette at his request. Cooper readily admitted that property found in the kitchenette, including several cases of beer and wine, belonged to him. Regarding the alcohol, Cooper stated, "During the Fair time at the end of the night, there is nothing to do when you get done and you like to have a sip before you go to bed, and that's it. Otherwise it never gets touched."

Cooper insisted that he only slept in the space during the Fair, when, he claimed, his work duties require him to be on call around the clock during the 11-day event. O'Hara contradicted this assertion, stating Cooper is not on-call 24 hours a day during the Fair and is expected to go home after his shift. Nonetheless, Fair security personnel informed the Inspector General that they were aware Cooper slept at the Fair, and that on occasion during the Fair's run had contacted him at night for assistance with technical problems.

Upon being advised of the matter by Ryan and Sauro in January 2012, O'Hara viewed the space with Cooper present. At O'Hara's direction, Cooper removed his personal items and the room was padlocked. At the time, O'Hara also directed Ryan and Waffner to initiate disciplinary action against Cooper. Despite this order, no discipline occurred because, as Waffner testified, it "fell through the cracks." O'Hara took no action to ascertain or ensure whether his directive had been obeyed.

Kathleen Yockell

Kathleen Yockell, who has been employed at the Fair for many years,[21] currently serves as a Building Services Assistant responsible for, among other duties, maintenance of the racing stables and infield track. Her job responsibilities do not require her to remain overnight at the Fair, and she too is supervised by Ryan.

The Inspector General determined that Yockell kept a vast quantity of personal property and various possessions in a Fair stable and occasionally slept overnight in the racing stables office. In an interview with the Inspector General, Yockell acknowledged that over the past

[21] Agriculture and Markets advised the Inspector General that it was unable to locate records definitively establishing when Yockell began employment at the Fair. Yockell, who is 65, said she first worked on the Fairgrounds at age 14.

several years her personal housing situation became difficult, and that in the autumn of 2011 she moved many of her personal belongings into Racing Stables Barn 19 on the Fairgrounds. For many years, until April 2011, Yockell had rented a stall in the same barn to board a horse of her own. When interviewed, Yockell also acknowledged that she slept in the racing stable office on multiple occasions.

The Inspector General examined Barn 19 and found that all six horse stalls in the barn, as well as the passage way, contained a large quantity of Yockell's possessions, including chairs, couches, bedding, tools, and innumerable other materials, as well as exotic birds and several cats. In the office where Yockell admitted she sometimes stayed overnight, investigators observed a recliner and television.

While Yockell told the Inspector General that no other Fair employees were aware of her unauthorized use of these spaces, the Inspector General found otherwise. In fact, Yockell's use of the racing stables to store personal items was known to numerous Fair employees, including security personnel, who maintain an office approximately 100 feet from the stables, and by maintenance staff.

Security employees assigned to the overnight shift advised the Inspector General that they had observed the condition of Barn 19 while conducting mandatory building checks. One security employee described the location as "pretty stuffed" and "a garage sale gone wild." Other longtime Fair employees also indicated that they all had observed Yockell's personal vehicle parked overnight near the racing stables area. One security guard also confirmed that he observed Yockell sleeping in a racing stables office. These security staff indicated that they did not consider Yockell's conduct a problem and, therefore, did not report it to their supervisor, Fair Security Director Russell Jones.

Most importantly, Yockell's misuse of Fairgrounds facilities was known to her supervisor, Michael Ryan. Ryan informed the Inspector General that for several years he was aware that Yockell kept personal possessions in Barn 19. Further, Ryan reported that in January 2012, as part of the recently instituted inventory assessment, he observed Yockell's possessions in the stables.

Ryan testified that he directed Yockell to remove her property from the stables area in January 2012. Ryan also stated that he directed Yockell to clean out a Fair pickup truck in which she had also inappropriately stored personal items. After issuing this order, Ryan, by his own admission, "never paid any attention" to the problem. Clearly, Ryan's conduct as a supervisor in this matter was grossly deficient, permitting this conduct for years and then failing to follow up on his own order, which would have revealed that Yockell's property had not been removed and provided a basis for disciplinary action against her.

Further, Ryan failed to report the matter to his superior, Fair Assistant Director Troy Waffner. According to Waffner, he only learned of the situation in July 2012 when he personally observed Yockell's possessions in the stables area. Waffner then reported his observations to the Agriculture and Markets internal auditor in Albany, who in turn brought it to the attention of the agency's Division of Human Resources Management. Neither Ryan, nor Waffner reported the problem to Fair Director O'Hara.

Subsequently, Yockell was directed to remove her personal property from the Fair areas by August 3, 2012. The Inspector General confirmed that Yockell removed her property as ordered.

The Fair Has Failed to Develop or Implement an Adequate Security Plan

During the course of this investigation, the Inspector General reviewed security procedures and operations for the Fairgrounds. As noted, the Inspector General first raised concerns about Fair security and property control in its August 2010 report. Based on the Fair's history of security concerns, and the theft allegation and employee misuse of Fair space discussed above, the Inspector General conducted a review of the Fair's current surveillance system. This review found that the Fair lacks adequate surveillance camera coverage, rendering it unable to adequately monitor the purpose and presence of visitors/employees on the Fairgrounds. Further, the Inspector General found that the Fair's Director of Security does not have key access to all buildings, and that the recently hired Property Manager had yet to visit every building on the Fairgrounds in his first four months of employment.

<u>Inadequate Surveillance Camera Coverage</u>

The Inspector General toured the Fairgrounds with Fair Security Director Jones and reviewed the location and operational capability of the surveillance camera infrastructure. At the time of the tour, nearly half of the Fair's approximately 30 cameras were determined to be fully or partially inoperable.

The Inspector General also learned that Fair security staff do not have access to all Fairground security camera video feeds. Security personnel located in a security office only have access to a limited number of cameras. Security personnel are also unable to easily access surveillance camera video recordings. This data is maintained by Cooper, identified in this report as an individual whose actions posed a security risk to the Fairgrounds. Perhaps most importantly, the Inspector General determined that there is no surveillance camera coverage of high security risk areas of the Fairgrounds. Locations where vehicles, construction material, scrap metal and gasoline/diesel are stored are blind spots in the surveillance camera system.

The Fair finally – and belatedly – completed a Corrective Action Plan for Security of the Fairgrounds in 2011. This Action Plan, part of an annual internal control risk assessment, identified the Fair's need to review the surveillance camera infrastructure. Under the direction of Security Director Jones, who was hired in August 2011, the Fair developed a proposal for the installation of numerous additional security cameras. Jones and other Fair officials met with security administrators from Syracuse area institutions that utilize wide-ranging security camera systems.

Inadequate Gate Security

The Fairgrounds consists of approximately 375 acres, including numerous buildings and facilities. The site is enclosed by chain link fencing interspersed with numerous entrance gates.

During non-Fair times, Gate 2 serves as the public entrance to the Fairgrounds. This gate is staffed with security personnel who monitor surveillance cameras and interact with visitors, vendors, and any other individual who stops at the security location at Gate 2. Entrants at Gate 2 are not required to stop at the Gate.

During the overnight shift, security staff is to stop all vehicles entering the grounds and log the vehicles license plate and reason for entering the facility. Every vehicle's subsequent exit is also logged. All vehicle movement through Gate 2 is captured by two surveillance cameras at the location. During interviews of overnight security staff, the Inspector General learned that, while a vehicle entrance and exit log exists, security staff does not log all vehicles entering and exiting, undermining a significant security interest.

Fair officials noted that at times the Gate 2 entrance becomes backed up with vehicles stopped in the travel lane of an adjacent high-speed roadway. In addition, an active rail crossing, which is not equipped with a traffic control device, is located just yards from Gate 2, exacerbating safety concerns of stopped vehicles lingering at the Gate.

Fair Assistant Director Waffner stated he would like to relocate the main entrance to the Fairgrounds to another area. He stated, "I think you do run into a little bit of a problem unless you totally redesign the main entrance of the Fairground. Because we can't, we're hesitant to back traffic up on State Fair Blvd." Fair officials informed the Inspector General that other entrance gates on the Fairgrounds are opened on occasion to allow access to the public attending special events and to workers assigned to construction projects. These gates are to be secured when access is no longer required. In conducting its security assessment of the Fairgrounds, the Inspector General found a gate unsecured after normal business hours. The Inspector General also found that a portion of the Fairgrounds maintenance yard was unsecured, with a gate to a fenced-in area unlocked and open. In addition to several vehicles, the fenced area contained box-beam guiderail, an item the Inspector General has identified as frequently stolen from state facilities. The Inspector General notified Agriculture and Markets of the unsecured guiderail and was assured that the matter would be addressed. Agriculture and Markets subsequently advised that the situation was rectified.

Nonetheless, these findings underscore serious ongoing security deficiencies and lapses at the Fair. While Agriculture and Markets and Fair management, including O'Hara, Waffner, and Ryan, have been on notice of security concerns since the release of the Inspector General's 2010 report, management has failed to address and remedy these deficiencies in any meaningful way.

FINDINGS AND RECOMMENDATIONS

The Inspector General's investigation found serious deficiencies and errors in two major procurements conducted by the Department of Agriculture and Markets in 2011 and 2012, reflecting a troubling degree of carelessness in this critically important agency function. In these procurements, both concerning operations of the State Fair, Agriculture and Markets officials failed to follow established procedures and, in one procurement, an agency executive acted in a manner which appears to have violated the State Finance Law. The improper and questionable conduct revealed in this investigation is inexcusable given that two other investigations conducted by the Inspector General within the preceding 27 months also documented fundamental flaws in Agriculture and Markets procurements.

The Empire Room Procurement

In the procurement to select a vendor to operate a catering and restaurant business in the Empire Room at the State Fair, Agriculture and Markets issued a flawed RFP. The RFP lacked substantive minimum qualifications and included, due to the negligence of officials drafting and reviewing the RFP prior to its issuance, an unintended and onerous wine sales fee the vendor would be required to remit to the state. Despite the RFP's wide dissemination, only a single vendor responded.

Serious irregularities occurred in the evaluation of the single bid, received from Charlie's at the Fair. No review of the admittedly inadequate minimum qualifications was documented, nor was a required score sheet of the bid's fee component completed, resulting in substantive gaps in the procurement record. Even though the bid did not include a proposed layout of the Empire Room, as requested in the RFP, First Deputy Commissioner Robert Haggerty and Fair Director Daniel O'Hara inexplicably assigned the absent layout the maximum score in their formal evaluations. In addition, evaluators failed to hold required pre- and post-evaluation meetings, which might have resulted in officials identifying and addressing the flaws in the process.

O'Hara also failed to disclose his past association with the owners of Charlie's at the Fair and failed to recuse himself from the evaluation and contract negotiations as a result of this association. Given that he was on notice of procurement issues at the Fair as a result of a prior investigation by the Inspector General, O'Hara's conduct was irresponsible.

Following the evaluation, Agriculture and Markets finalized a contract with Charlie's at the Fair which included provisions substantially and improperly deviating from terms of the RFP, all benefiting the selected vendor. Specifically, in the contract, Agriculture and Markets waived the per-bottle wine sales fee and agreed to give the vendor use of Fair-owned equipment and an additional large room in the building housing the Empire Room, provisions not included in the RFP. These changes, none of which could be known or available to other potential bidders, created an unfair procurement. Agriculture and Markets officials, including Haggerty, Supervising Attorney Michael McCormick, and General Counsel Ruth Moore, should have recognized these problems and ordered a new procurement. Instead, they proceeded with a fundamentally flawed procurement.

After the Office of the State Comptroller questioned these contract provisions, McCormick provided inaccurate and misleading information in attempting to explain them. When asked by the Inspector General about his defense of Haggerty's and O'Hara's unsupportable scoring of a non-existent layout, McCormick acknowledged that his response to OSC was a "surmise" on his part. McCormick's candid admission reveals that his underlying motive was to obtain approval for a contract resulting from a significantly flawed RFP process.

The Electronic Ticketing System Procurement

Serious errors also occurred in Agriculture and Markets' procurement of an electronic ticketing system for the Fair. The Inspector General determined that Haggerty met and later communicated with representatives of Veritix, an electronic ticketing vendor. Haggerty should have recused himself from the process at that point, but failed to do so. Instead, he continued to directly participate in the process, assuming the lead role in developing the RFP for the procurement and utilizing information provided by Veritix.

In apparent violation of the State Finance Law, and despite a warning to Haggerty by an agency counsel, Veritix was permitted to bid on the electronic ticketing system contract. Given that the ticketing system represented a new program for Agriculture and Markets, heightened scrutiny of the procurement by Counsel's Office was warranted, but did not occur.

During the evaluation of the six proposals submitted in response to the RFP, Director of Fiscal Management Lucy Roberson and General Counsel Ruth Moore disqualified the Veritix bid for lack of what they deemed required components, including a schematic drawing and a surety bond, although neither was specifically listed as a minimum qualification in the RFP. Haggerty argued that the absence of these components in the Veritix proposal was not a basis for disqualification. At a minimum, this disagreement reflects that the RFP for the electronic ticketing system, similar to the Empire Room RFP, was flawed. Rather than proceeding with the evaluation without Veritix, Haggerty canceled the procurement. Despite his denial, Haggerty's actions reflected that he preferred Veritix and attempted to manipulate the procurement process in favor of Veritix. Haggerty's preference was clear to the subordinates he selected as evaluators of the bid.

The Inspector General also found that Haggerty was directly and integrally involved in multiple aspects of both the Empire Room and electronic ticketing system procurements, including the development of RFPs and the evaluation of proposals. Haggerty's conduct in this regard is problematic and is inconsistent with Agriculture and Markets' procurement procedures which describe no role for executive staff in the development of the RFP or the evaluation of proposals. In his own statement in a previous investigation by the Inspector General, Haggerty stated that such involvement by an agency executive was improper and would be no longer be a practice at Agriculture and Markets. Haggerty then proceeded to directly violate the prohibition he had described to the Inspector General as agency policy.

Haggerty's conduct in the electronic ticketing system procurement may violate New York State Public Officers Law section 74(f), the "code of ethics," which states, "[a]n officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person."

Deficiencies in State Fair Management and Operations

The Inspector General found that Agriculture and Markets failed to address deficiencies in the State Fair's property inventory practices, despite recommendations by the Inspector

General to do so in an August 2010 report. Not until late 2011 did Agriculture and Market begin to implement substantive improvements to Fair inventory practices. An inadequate inventory and property control system created vulnerabilities for abuse, as reflected in the suspected theft of scrap copper wire by a Fair employee.

The Inspector General also found that Fair management and supervisory staff failed to take effective action after learning that Fair employees William Cooper and Kathleen Yockell used Fair facilities as unauthorized sleeping quarters, and that Yockell stored a large amount of her personal property on the Fairgrounds without permission. When Cooper's misconduct was detected, Fair Director Daniel O'Hara instructed Maintenance Supervisor Michael Ryan and Fair Assistant Director Troy Waffner to discipline Cooper. However, no discipline occurred and O'Hara took no action to ensure that his order had been obeyed.

In Yockell's case, Ryan directed that she remove her personal property from the Fairgrounds, but then failed to check if she had complied. Ryan also failed to report Yockell's misconduct to his superiors. As evinced by his inaction with regard to both Cooper and Yockell, Ryan's conduct as a supervisor was grossly inadequate. The Inspector General confirmed that Cooper and Yockell no longer use Fair space for unauthorized purposes.

The Inspector General also found deficiencies in Fair security. The Fair lacks adequate surveillance camera coverage, rendering it unable to adequately monitor the purpose and presence of visitors/employees on the Fairgrounds. Tellingly, a tour of the Fairgrounds by the Inspector General revealed that nearly half of approximately 30 cameras were fully or partially inoperable. In addition, the Fair's Director of Security does not have key access to all buildings. The Inspector General notes that the Fair in 2011 belatedly completed a Corrective Action Plan for Security of the Fairgrounds.

The Inspector General's investigation revealed a significant breakdown by State Fair management. In the wake of the Inspector General's 2010 report, senior management, including Fair Director Daniel O'Hara, were on notice of systemic management and oversight deficiencies and agreed to systemic reforms recommended by the Inspector General, and yet failed to take responsibility to institute such reforms to ensure the safety and security of the Fairgrounds and accountability to the public.

Recommendations of the Inspector General

The Inspector General recommends that Agriculture and Markets take steps to ensure that agency procurements are conducted in accordance with internal standards as well as all relevant provisions of the State Finance Law and Public Officers Law. Agriculture and Markets should thoroughly review the procurement procedures contained in the Contract Management Manual and revise as needed. In this process, Agriculture and Markets should consider soliciting advice on best practices from the Office of General Services, the Office of the State Comptroller, and the State Procurement Council. Agriculture and Markets should ensure that all employees involved in procurements are familiar with the agency procedures, including any future revisions. Periodic audits should be conducted to ensure compliance with procedures. Agriculture and Markets should schedule additional ethics and related training of employees by the Inspector General and Joint Commission of Public Ethics.

The Inspector General also recommends that Agriculture and Markets conduct a thorough review of the management of the State Fair and its oversight within the agency. Implementation of the comprehensive inventory management system at the Fair should be completed without delay. A comprehensive security review of the Fair should be completed to address the deficiencies identified in this report.

Agriculture and Markets should assess the conduct of the officials responsible for agency procurements and Fair management, and take appropriate action. The Inspector General is referring this report to the Joint Commission on Public Ethics for possible violations of the Public Officers Law. The Inspector General is also forwarding the report to the State Fair Advisory Board.

Response of the Department of Agriculture and Markets' Response to the Findings and Recommendations of the Inspector General's Report

By letter of January 24, 2013, Department of Agriculture and Markets Commissioner Darrel J. Aubertine advised the Inspector General of actions taken by the agency in response to the findings and recommendations of this report. These actions include the following:

Agriculture and Markets and the Office of General Services (OGS) have formed a joint work group for the purpose of strengthening Agriculture and Markets procurement practices. Agriculture and Markets representatives include Counsel, Associate Counsel, and high-level staff of the Division of Fiscal Management; OGS designees include the Chief Procurement Officer and Counsel's Office staff. In addition, the Agriculture and Markets First Deputy Commissioner now serves on the State Procurement Council, and Counsel's Office at Agriculture and Markets will solicit procurement advice from OGS. Significantly, OGS has assumed overall responsibility for State Fair procurements.

Agriculture and Markets will immediately conduct a thorough review of procurement procedures contained in the Contract Management Manual. As needed, revisions to the manual will be made within 45 days and reported to the Inspector General. A new Contract Management Team consisting of contract managers and Fiscal Management and Counsel's Office staff has been established.

Internal fiscal procedures followed by the State Fair will be made consistent with those of all other agency divisions. The position of State Fair business manager, vacant since 2009, will be filled. The position of Internal Control Officer will be filled as well. Agriculture and Markets' Internal Auditor will be given expanded duties and will serve as liaison with the State Fair Advisory Board's Audit Committee. The Audit Committee will play a more active role in oversight of the Fair. By March 31, 2013, Agriculture and Markets intends to contract with a qualified independent outside auditor to conduct a financial and operational audit of the State Fair, and will provide bi-monthly updates and findings to the Inspector General.

Agriculture and Markets will seek the assistance of the Inspector General's Office and the Joint Commission on Public Ethics to train employees on procurement, conflicts of interest, and related issues. The training will be completed by March 31, 2013.

A new electronic inventory and work order system has been implemented at the State Fair, and a full inventory of the Fair's maintenance unit has been completed. Fair staff has received extensive training on the system. Improved security and access control is being implemented at the Fair.

As a result of the Inspector General's findings, Fiscal Management Director Lucy Roberson, State Fair Director Daniel O'Hara, State Fair Assistant Director Troy Waffner, and State Fair Maintenance Supervisor Michael Ryan were disciplined, and State Fair employees William Cooper and Kathleen Yockell were counseled. First Deputy Robert Haggerty, General Counsel Ruth Moore, Supervising Attorney Michael McCormick, and O'Hara are no longer employed by Agriculture and Markets.