



December 20, 2023

James V. McDonald M.D., M.P.H.
Commissioner
New York State Department of Health
Corning Tower
Empire State Plaza,
Albany, New York 12237

Re: NYSIG 0569-012-2020

Dear Commissioner McDonald:

On February 20, 2020, the Offices of the New York State Inspector General received allegations of bidding irregularities in the procurement of services funded by a New York State Department of Health (DOH) grant to hospital conglomerate One Brooklyn Health System (OBH). The project sought to combine the medical records information technology (IT) of the three hospitals in the conglomerate and was funded by a DOH grant from the \$1.4 billion Vital Brooklyn Initiative (Vital Brooklyn). The complaints alleged that an OBH contractor improperly steered a bid award to a subcontractor with which it shared staff.

By way of background, OBH was established in 2016 to operate a network of three financially distressed hospital systems serving central Brooklyn: Interfaith Medical Center, Brookdale Hospital Medical Center, and Kingsbrook Jewish Medical Center. In January 2018, OBH was awarded \$664 million in community-based healthcare funding from Vital Brooklyn, a community development program supporting underserved neighborhoods in central Brooklyn. This funding included approximately \$70 million for electronic medical records upgrades and other IT implementation across the three hospitals, which was the focus of the investigation conducted by the Inspector General along with other law enforcement partners.

As part of the IT implementation, OBH hired a healthcare IT advisory firm (the Advisory Firm). The Advisory Firm's responsibilities included the creation of a request for proposals (RFP) to combine the electronic medical records of the three hospitals, the review of proposals responding to the RFP, and the award of a subcontract for that IT work involving medical records software. The RFP was issued on January 3, 2020, and more than 30 firms submitted proposals. The Inspector General found that one proposal came from a subcontractor (the Subcontractor) which, at the time of the award, had two members of its staff also employed by or had a contractual relationship with the Advisory Firm. Despite this conflict, the Advisory Firm awarded the Subcontractor the subcontract in or about February 2020.

The Inspector General found that DOH lacked sufficient conflict of interest policies to prohibit grantees and contractors/subcontractors utilized by grantees from engaging in such

conduct, or processes to ensure that grantees had their own adequate conflict of interest policies. DOH's conflict of interest policy at the time only required executives within grantee organizations such as OBH to sign a conflict of interest statement reflecting entities in which they had a financial interest. The policy did not require contractors and subcontractors working for grantees to sign such statements or otherwise avoid conflicts of interest. As such, the Advisory Firm was able to award a subcontract to an entity with which it shared key employees and/or contract staff without running afoul of grant restrictions. And although DOH conducted a limited vendor responsibility review of contractors and subcontractors, DOH did not review whether contractor staff overlapped with subcontractor staff. DOH staff interviewed by the Inspector General testified that they assumed that OBH maintained some sort of procurement conflict of interest process, but they did not inquire.

The Inspector General also found that DOH lacked a clear bid protest process that would have allowed losing bidders to easily contest the award of a contract or a conflicted award process, and/or DOH did not ensure that grantees had such policies and processes in place and abided by them. Moreover, the RFP created for OBH by the Advisory Firm contained no provision for losing bidders to protest any impropriety in the bidding process. The complainants, who were losing subcontract bidders, had reason to believe that the Subcontractor had a conflict of interest with the Advisory Firm, but they found they had no formal means to protest the award to DOH or another disinterested party.

Given these findings, the Inspector General recommends that DOH develop and publish conflict of interest policies that would apply to grant-funded procurement at any level (i.e., contractors, subcontractors, sub-subcontractors, etc.) and/or have procedures to ensure that grantees have such policies and abide by them. These policies should be published within any grant issuance documents and should, in turn, be required to be published within contracts, subcontracts, and beyond. DOH should also require the publication of bid protest procedures in any RFP stemming from the award of DOH grants.

For reference, I note that federal agencies post the following relevant procurement guidance:

- <https://bphc.hrsa.gov/sites/default/files/bphc/funding/faq-procurment-fed-grants.pdf>
- https://www.ojp.gov/tfsc/procurement_guide_508_1

Please advise me of any action taken by DOH in response to these recommendations within 45 days of the date of this letter. If you require further information, please contact Deputy Inspector General Michele Bayer at [REDACTED].

Sincerely,



Lucy Lang
Inspector General

cc: Kathy Marks, Esq.
General Counsel