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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 16, 2010

Mr. Max E. Chmura
Acting Commissioner
Office for People with Developmental Disabilities
44 Holland Avenue
Albany, NY 12229-0001

Re: Report 2010-F-13

Dear Mr. Chmura:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Office for People with Developmental Disabilities (OPWDD) to implement the recommendations contained in our audit report, *Preservation Fund Procurement Practices at Springbrook NY, Inc.* (Report 2007-S-51).

Background, Scope and Objective

The Office for People with Development Disabilities (OPWDD) provides a wide range of services to individuals with developmental disabilities. It has 13 developmental disabilities services offices throughout the State, including the Broome Developmental Disabilities Services Office (Broome Office) and the Central New York Developmental Disabilities Services Office (Central New York Office). These offices are responsible for overseeing Preservation Fund projects in their respective areas.

The State provides Preservation Funds to assist agencies with the maintenance and preservation of structures where services are made available to people with developmental disabilities. These funds can be used to address a variety of residential home needs including: health and safety concerns like code deficiencies, fire detection and prevention systems, and other life threatening deficiencies; structural deficiencies like deteriorated foundations, roofs, heating systems, electrical systems, plumbing and floor replacement; and quality of life renovations like residents' accessibility to bathrooms and kitchens. Projects cost a minimum of \$1,000 and a maximum of \$30,000 prior to April 1, 2009 and a maximum of \$15,000 after March 31, 2009. For the State's 2009-10 fiscal year, Preservation Fund projects also needed to qualify as an emergency situation and critical to the health and safety of residents served by OPWDD.

Springbrook NY, Inc. (Springbrook) is a not-for-profit entity that serves 550 people with development disabilities and employs 700 people. Springbrook received Preservation Funds during

our initial audit period for projects at some of its 18 community homes within the Broome Office's service area and for one home in the Central New York Office's service area.

Our initial audit report, which was issued on January 14, 2008, examined whether Springbrook followed required bidding practices when it spent Preservation Funds provided by OPWDD. We found that Springbrook did not follow appropriate bidding practices and that some of the bids found in its files were not made by the vendors, but rather appeared to be created by Springbrook's former facilities manager or a subordinate employee at the request of the former facilities manager. We also found that Springbrook's management did not review, in any detail, Preservation Fund bid documents, delegating this responsibility to its former facilities manager, whose office was the source of the fictitious bid documents. The former facilities manager was terminated just prior to our initial audit for a matter unrelated to the bidding of contracts and replaced by a new Director of Buildings and Grounds. As a result of our prior audit, our Investigations Unit referred certain matters to the Broome County District Attorney's office for appropriate action. To date the District Attorney has not brought any charges stemming from this referral. The objective of our follow-up was to assess the extent of implementation as of April 28, 2010, of the ten recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that OPWDD and Springbrook officials have acted to correct the problems we identified. All ten of our prior audit recommendations have been implemented.

Follow-Up Observations

Recommendation 1

To OPWDD:

Distribute the procurement policy to all pertinent Office and Springbrook staff and take steps necessary to ensure the policy is fully understood.

Status - Implemented

Agency Action - OPWDD distributed its new procurement policy to Broome and Central New York Office staff who are responsible for Preservation Fund procurement activities, and to the Executive Director of Springbrook. The Preservation Fund staff at the Broome and Central New York Offices also developed and provided training to the local Not for Profits focused on sound procurement procedures and to correct the deficiencies noted in our initial report. The Central New York Office also hired a person with a strong fiscal background to improve its monitoring of Preservation Fund procurements and its ability to provide technical assistance to service providers.

Recommendation 2

To OPWDD:

Require Springbrook to develop and utilize an expanded vendor listing to promote true competition when awarding contracts.

Status - Implemented

Agency Action - Springbrook now has expanded its vendor listing to 62 potential contractors, compared with 28 that were previously selected from, and shared this listing with both the Broome and Central New York Offices. The Broome Office has actively monitored Springbrook's Preservation Fund projects to confirm that this list was being used properly to promote true competition. Springbrook has not initiated any Central New York Office Preservation Fund projects since our initial audit.

Recommendation 3

To OPWDD:

Ensure that Springbrook complies with the State's and its own procurement regulations and correct any noted deficiencies.

Status - Implemented

Agency Action - OPWDD, through the Broome Office has been more actively monitoring Springbrook's Preservation Fund projects to confirm that they are being carried out in accordance with State and OPWDD procurement guidelines, and has worked with Springbrook to help assure that noted deficiencies are corrected. The Broome Office has also developed more detailed procurement guidelines designed to prevent deficiencies from occurring.

Recommendation 4

To OPWDD:

Require Springbrook and its Board of Directors to develop and implement adequate internal controls regarding the selection of vendors for Preservation Fund projects. Periodically review the controls to make sure they are in place and operating properly.

Status - Implemented

Agency Action - Broome Office officials met with Springbrook's administration and the President of its Board of Directors to outline Preservation Fund procurement expectations. The Broome Office required Springbrook officials to summarize their vendor selection control procedures for Broome's review and approval. The Broome Office has reviewed the controls

put in place by Springbrook, and worked with Springbrook officials to address any noted concerns.

Recommendation 5

To OPWDD:

Require the Broome and Central New York Offices to more closely review all bids from Springbrook and periodically review the awarding of Preservation Funds.

Status - Implemented

Agency Action - The Broome and Central New York Offices now more closely review all bids from Springbrook. The Offices have divided their review of Preservation Fund awards into three phases (application and award, bidding and reimbursement of project expenses) to ensure program objectives are achieved, and both Offices now focus on procurement compliance issues during each phase. The Broome Office has carefully reviewed Springbrook's bid documents associated with its Preservation Fund projects since our initial audit. While some issues of concern were raised, the Broome Office has worked with Springbrook to see that these were corrected, and the projects were able to go forward. Springbrook has not initiated any Central New York Office Preservation Fund projects since our initial audit.

Recommendation 6

To Springbrook:

Distribute the procurement policy to all pertinent staff and conduct training to ensure the policy is fully understood.

Status - Implemented

Agency Action - Utilizing the Broome Office Preservation procurement policy as a model, Springbrook officials developed parallel procedures and distributed this revised procurement policy to their procurement staff. Springbrook staff took advantage of procurement training provided by the Broome and Central New York Offices.

Recommendation 7

To Springbrook:

Assess the integrity of all vendors identified as having conducted unscrupulous procurement activities and determine the appropriateness of commencing or continuing any contract arrangements with them.

Status - Implemented

Agency Action - Springbrook management determined that their former Director of Facilities was directly responsible for the fictitious bids and questionable bidding practices identified in our initial audit. Coincidentally, this director was terminated just prior to our initial audit for a matter unrelated to the bidding of contracts and replaced by a new Director of Buildings and Grounds. Springbrook's review of all vendors identified as being unscrupulous in our prior audit resulted in two vendors being barred from bidding on future contracts, one of which was a vendor from whose fax machines a number of fictitious bid documents had been sent. The other vendor now employs Springbrook's former Director of Facilities.

Recommendation 8

To Springbrook:

Award contracts only after soliciting proposals from legitimate prospective vendors.

Status - Implemented

Agency Action - We determined that Springbrook's new control procedures, coupled with the Broome and Central New York Offices' new monitoring procedures should assure that contracts are awarded only after Springbrook solicits proposals from legitimate prospective vendors. These new controls require that bid and award procedures are adequately separated, that bids are solicited in a competitive manner and bid and award decisions are reviewed by Springbrook senior management. No longer can one individual at Springbrook control the outcome of the bidding process, which was the cause of the prior unscrupulous procurement activities. Broome County's detailed reviews of the contracts awarded by Springbrook since our last audit have not taken issue with the legitimacy of the prospective vendors solicited.

Recommendation 9

To Springbrook:

Strengthen the internal control structure regarding the selection of vendors to prevent and/or detect future occurrences, and take corrective action as appropriate.

Status - Implemented

Agency Action - Springbrook has strengthened its control structure by having the new Director of Buildings and Grounds report directly to the Executive Director, instead of the Chief Financial Officer (CFO), as was previously the case. Springbrook's CFO now reviews all mailings of invitations to bid to see that an appropriate number of qualified vendors are solicited. He also observes all bid openings to make sure vendors are selected properly. Each of these actions serves to create a more open and competitive vendor selection process. In addition, Springbrook's Executive Director also now visits all project work sites after the work has been completed to determine if the work was performed in accordance with the contract.

Recommendation 10

To Springbrook:

Determine any necessary actions that should be taken with respect to the Chief Financial Officer based on lack of oversight of the bidding activities of the former facilities manager.

Status - Implemented

Agency Action - Springbrook disciplined its former CFO, placing a disciplinary letter and action plan in his personnel file. The former CFO resigned shortly thereafter. Springbrook officials indicated that they also reviewed all aspects of their Business Office functions relating to the oversight of bidding activities and made improvements as needed.

Major contributors to this report were Brian Lotz and John Lang.

We thank the management and staff of the Office for People with Developmental Disabilities and Springbrook for the courtesies and cooperation extended to our auditor during this process.

Very truly yours,

Michael Solomon
Audit Manager

cc: Mr. Thomas Lukacs, Division of the Budget
Mr. Vince Sleasman, OPWDD
Ms. Mary E. Peck, OPWDD
Ms. Patricia E. Kennedy, Executive Director of Springbrook NY, Inc.