

Audit Report

State Board of Elections

April 2017



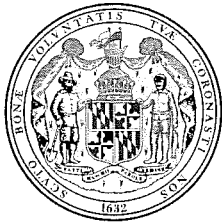
OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Warren G. Deschenaux
Executive Director

Thomas J. Barnickel III, CPA
Legislative Auditor

April 24, 2017

Senator Craig J. Zucker, Co-Chair, Joint Audit Committee
Delegate C. William Frick, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the State Board of Elections (SBE) for the period beginning August 23, 2012 and ending October 22, 2015. SBE is responsible for managing and supervising elections and voter registrations in the State. SBE directs, supports, monitors, and evaluates the activities of each of the 24 local boards.

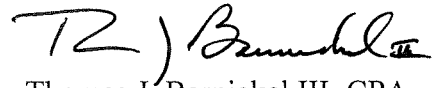
Our audit disclosed SBE did not establish certain controls to maintain the integrity of the Statewide voter registration records and to protect certain voter data. For example, user access to the voter registration system was not effectively controlled; consequently, numerous system users had unnecessary access to the voter registration database, which was removed after our inquiries. We also noted that SBE did not ensure that personally identifiable information from the database was either properly safeguarded when transmitted to a third party contractor or removed from its own records. In this regard, the full social security numbers from over 590,000 voters were retained by SBE in the database even though only the last four digits are needed.

Regarding the voting process, we noted that SBE did not adequately authenticate certain voters who requested absentee ballots for primary and general elections. We also noted that a certain critical voting system was not backed-up offsite when in use during elections and was not addressed in SBE's Disaster Recovery Plan.

Our audit also disclosed internal control and recordkeeping deficiencies related to the procurement of contracts and the monitoring of certain payments. For example, for two contracts tested, awarded as single sources and valued at \$18.8 million, SBE could not support the awards were in the State's best interest. We also identified overpayments under a staffing services contract.

SBE's response to this audit is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this audit by SBE.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "TJ Barnickel III". The signature is written in a cursive style with a large initial "TJ" and a stylized "Barnickel III".

Thomas J. Barnickel III, CPA
Legislative Auditor

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Background Information

Agency Responsibilities

The Election Law Article, Section 2-101 of the Annotated Code of Maryland, established the State Board of Elections (SBE) under the direction of a five-member Board appointed by the Governor, with the advice and consent of the Senate. In addition, in accordance with Section 2-201 of the aforementioned Article, the Governor has appointed local election boards within each of the State's 24 subdivisions. Each local board is charged with overseeing the conduct of all elections within its respective jurisdiction.

SBE is responsible for managing and supervising elections and voter registrations in the State. SBE directs, supports, monitors, and evaluates the activities of each local board. In addition, SBE administers sections of the Election Law Article that govern the receipt and expenditure of funds for election campaigns, and administers the Public Financing Act, which provides for public financing of the campaigns of eligible gubernatorial candidates who elect to use such funds. SBE also serves as a depository for election and registration records, campaign financial reports, and other election information. According to the State's records, during fiscal year 2016 SBE had 41.8 authorized positions and operating expenditures totaling approximately \$21.0 million.

Information System Network

To support State of Maryland voter registration and elections activities (including online voter registration), SBE maintains a local area network for its headquarters operation, which includes servers that support election management, campaign finance reporting, and email communications. The SBE headquarters network is connected to the Internet and SBE uses networkMaryland for its wide area network connections to the 24 local boards of elections, 5 warehouses, and 2 offsite data centers where the centralized voter registration application resides.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the nine findings contained in our preceding audit report on SBE dated March 24, 2014. We determined that SBE satisfactorily addressed these findings.

Findings and Recommendations

Statewide Voter Registration

Background

State and federal law require the State Board of Elections (SBE) to establish, maintain, and administer a Statewide voter registration database. The Statewide voter registration system (MDVOTERS) contains the State's official voter registration database and is separate from the Statewide electronic voting system. Employees from each of the State's 24 local boards of election (LBE) are primarily responsible for processing (adding, deleting, changing) voter registration data on MDVOTERS, but SBE maintains MDVOTERS and assumes a monitoring responsibility for ensuring that the LBEs are properly processing voter data.

In addition, SBE, in concert with approximately 20 other states and the District of Columbia, takes part in an initiative to help ensure the accuracy of voter registrations (such as identifying voters registered in multiple states). Under a multi-state compact, SBE provides certain information on MDVOTERS to the nonprofit Electronic Registration Information Center (ERIC), which includes the name, date of birth, driver's license number, and last four digits of the social security number for each registered voter in Maryland. ERIC compares voter data from various sources and provides the states' election officials with reports of potential ineligible voters. ERIC makes use of a third-party vendor to store and process the collected voter data.

According to SBE records, there were 3,763,838 active registered voters in MDVOTERS as of December 2015, and 260,179 new voters were added to the database and 264,787 were removed during calendar year 2015.

Finding 1

SBE did not ensure the accuracy of the data recorded in MDVOTERS or whether related user access to the system was appropriate.

Analysis

SBE did not have a comprehensive oversight process in place to ensure the accuracy of the data recorded in MDVOTERS and the appropriateness of related user access to the system. While SBE was responsible for the accuracy of MDVOTERS and the granting of related user access, it relied on the LBEs to conduct monthly investigations of certain potential irregularities in MDVOTERS data and to review the continued appropriateness of certain user access.

- SBE did not ensure LBEs followed up on reports of possible ineligible voters received from ERIC. SBE receives reports of possible ineligible voters every other month from ERIC (such as voters who were registered in another state or recorded as deceased on the federal Death Master File) which are distributed to the LBEs. For example, a January 2016 ERIC report included 5,871 voters registered in Maryland who may be deceased.

Although the LBEs routinely reported the results of their investigations to SBE, SBE did not verify that LBEs properly investigated the individuals on the reports and took appropriate corrective action. Our review of a limited number of voters from the January 2016 report confirmed that the LBE in question took appropriate corrective action regarding the tested voters.

- Effective controls were not established over the assignment of user access; consequently, numerous users had unnecessary access to MDVOTERS. Access to MDVOTERS is controlled via a two-step login process, whereby, a user must first login to a private virtualized environment (PVE), which then passes the users to MDVOTERS and enables them to use a second unique login id to actually access MDVOTERS. As of March 2016, there were 448 users with PVE access, while as of January 2016 there were 1,039 user names in MDVOTERS.

SBE did not conduct any review of the propriety of user access granted to MDVOTERS nor verify that LBEs, which were delegated this responsibility, had actually reviewed user access assigned to its personnel. Furthermore, the list of PVE user login ids that was forwarded to the LBEs each month for review was incomplete because it did not include all users with PVE access. As a result, numerous users had potentially unnecessary user access to MDVOTERS and the PVE. For example, our review of user access records found the following.

- 22 users had PVE access although these users did not require such access to perform their job duties (including 15 LBE employees, 4 SBE employees, and 3 contractor employees).
- 14 LBE users with PVE access were excluded from the SBE-maintained list based on our comparison of access capabilities obtained from MDVOTERS versus users on the SBE-prepared list.
- 619 usernames in MDVOTERS had no login activity in the last 6 months.

- 24 users had administrative rights in MDVOTERS (such as adding and removing users), but had not recently functioned in an administrator capacity. As of January 28, 2016, none of these 24 users had used these rights for at least one year or had ever used those rights.

In response to our audit inquiries, SBE removed the PVE access for the aforementioned 22 employees, the MDVOTERS access for 446 of the aforementioned 619 usernames, and the administrative rights for 22 of aforementioned 24 usernames. SBE management advised us that the access for the remaining users was still necessary.

The State of Maryland's *Information Security Policy* requires agencies to monitor their information system controls to ensure that the controls are operating as intended. The *Policy* also requires proper account management practices, such as obtaining authorization from appropriate officials to issue user accounts to intended individuals and disabling user accounts when no longer needed, which is immediately upon user exit from employment or 60 days for inactive accounts.

Recommendation 1

We recommend that SBE

- ensure, at least on a test basis, that LBEs investigate registered voters on the ERIC reports and take appropriate corrective action; and**
- in conjunction with the LBEs, establish a periodic process to monitor and review PVE and MDVOTERS access for appropriateness, removing any access not needed for an individual's job duties.**

Finding 2

SBE did not ensure that personally identifiable information from the MDVOTERS database provided to an external third party was properly safeguarded.

Analysis

SBE did not ensure that personally identifiable information (PII) from the MDVOTERS database shared with ERIC was properly safeguarded. ERIC uses a third-party contractor to store and process the data, which includes the name, date of birth, driver's license number, and last four digits of the social security number for each registered voter in Maryland.¹ State law defines any record containing an individual's name combined with a driver's license number as PII.

¹ As noted in Finding 3, for certain registered voters SBE has recorded the full social security number in MDVOTERS.

Our review disclosed that SBE did not require independent reviews be performed of ERIC or its contractor to ensure the Maryland voter data provided to these parties were secure. Although ERIC claims that data are subject to a “data anonymization” process that converts information into an indecipherable string of characters, SBE does not have assurances as to the adequacy of this process and the security over the MDVOTERS data hosted by the parties.

The American Institute of Certified Public Accountants has issued guidance concerning examinations of service organization controls. Based on this guidance, customers, such as SBE, may obtain from service organizations an independent auditor’s report referred to as a Service Organization Controls (SOC) 2 type 2 report. Such a report contains the service organization’s description of its system and the results of the auditor’s examination of the suitability of the system design and operating effectiveness of the controls for a specified period. A SOC 2 type 2 report could include an evaluation of security, availability of data, processing integrity, confidentiality of data, and privacy of data over the hosted environment.

We did note that the third-party contractor had obtained a SOC 1 type 2 examination, for the period from October 1, 2014 to March 31, 2015, with the related report dated June 19, 2015, although SBE had not obtained a copy of this report to assess the adequacy and comprehensiveness of the review. Nevertheless, a SOC 1 report is a report that would not usually provide the necessary assurances as a SOC 2 report.

Recommendation 2

We recommend that SBE

- a. require periodic SOC 2 Type 2 reviews for ERIC and service organization contractors that host PII via a service level agreement; and**
- b. perform timely reviews of the SOC 2 reports, determine if they adequately address necessary controls and, for any weaknesses noted, ensure that necessary corrective action is taken.**

Finding 3

SBE unnecessarily retained personally identifiable information within the MDVOTERS database.

Analysis

SBE unnecessarily retained personally identifiable information (PII) within its MDVOTERS database. Specifically, as of August 8, 2016, the MDVOTERS database contained names and the full nine-digit social security numbers (SSN)

for 592,236 (or 14 percent) of the more than 4,100,000 voters (active and inactive) in this database, even though the full SSN is neither necessary nor required for voter registration purposes. This sensitive PII is commonly sought by criminals for use in identify theft.

There are several methods for Maryland citizens to register to vote, including the use of a hard copy voter registration form, which requires that voters provide a Maryland driver's license number or Maryland Motor Vehicle Administration issued ID number, or the last four digits of their SSN. SBE uses this information to validate the identity of the potential voter. Upon validation, this information is entered into the MDVOTERS system and is saved to the MDVOTERS database.

We were advised by SBE personnel that some registrants using the hard copy registration form voluntarily listed their full SSN despite not being required to do so. Further, for hard copy registrations with the full SSNs recorded, SBE instructed the local boards of elections' staff to enter all nine SSN digits into the MDVOTERS system (which will accept the nine digits in the SSN field).

If PII breaches occur, organizations can incur excessive unplanned costs and damaged reputations. Accordingly, the National Institute of Standards and Technology recommends that organizations should collect and retain PII only where such information is essential to meet an authorized business purpose.

Recommendation 3

We recommend that SBE

- a. amend the MDVOTERS system's SSN field to limit the field input length to four characters; and**
- b. remove all full SSNs currently recorded in the MDVOTERS database, and just retain the four digits as needed.**

Absentee Ballots

Finding 4

SBE did not adequately authenticate certain voters who requested absentee ballots.

Analysis

SBE did not adequately authenticate certain voters who requested absentee ballots during primary and general elections. Depending on the process used, certain voters were only required to authenticate themselves by providing information (first and last name, date of birth, and address) that is publicly available.

Accordingly, for these voters, SBE lacked assurance that the person requesting the absentee ballot, and completing and submitting the absentee ballot, is the registered voter that they purported to be.

Consequently, the risk exists that an individual or group could submit fraudulent absentee ballots in an attempt to influence the results of a specific election, or, could cause legitimate voters to vote by a provisional ballot on election day (which may be invalidated because the records show that an absentee ballot had already been cast by that voter).

Recommendation 4

We recommend that SBE strengthen the authentication process for voters requesting absentee ballots by requiring additional non-public information such as the last four digits of the voter’s social security number and validating this information.

Backup of Critical Files and Disaster Recovery

Finding 5

A critical voting system was not backed up offsite and was not properly addressed in the SBE Disaster Recovery Plan.

Analysis

The Electronic Pollbook Interchange and Conversion (EPIC) system was not backed up offsite when in use during voting periods and was not properly addressed in the SBE Disaster Recovery Plan (DRP). The EPIC system is used to identify citizens who have voted in a particular election (including early voting) and is also used for the same-day voter registration process during early voting.

We determined that although the EPIC database was backed up to a server that resided at the same location as the server hosting the production EPIC database, it was not backed up offsite. Therefore, if a disaster occurred at the facility housing both the production and backup databases, during the period from the beginning of early voting to election day, it would not be readily possible to completely recreate the database.

We also noted that the SBE DRP did not specifically identify how the communication link between the facility hosting the EPIC production server and the early voting sites could be readily re-created in the event of a disaster at the hosting facility. Given the importance of the EPIC system during early voting the

detailed enumeration of the procedures necessary to create this communication link is critical.

Recommendation 5

We recommend that SBE

- a. backup the EPIC database on a daily basis to an offsite location, during periods when it is in use; and**
- b. update its DRP to include the detailed procedures necessary to quickly recreate the communication link between the EPIC production server and the early voting sites in the event of a disaster at the location hosting the EPIC production server.**

Procurement Process

Finding 6

Controls were not in place over the receipt and opening of certain bids, and SBE could not support that two single source contract awards were in the State's best interest. Additionally, SBE did not publish certain contract awards in *eMaryland Marketplace*.

Analysis

SBE did not have adequate safeguards in place to secure competitive bids that were electronically received and document that two employees were present for bid openings. Also, SBE could not support its determinations that, for the two procurements we tested, the use of a single source procurement method was in the State's best interest. SBE did not publish certain contract awards in *eMaryland Marketplace (eMM)* as required.

Our test of eight contracts procured during our audit period, which were collectively valued at \$75.3 million, disclosed the following conditions:

- SBE did not properly secure electronically received bids. Specifically, for four procurements tested totaling \$40.4 million, the bids were received via emails sent to the procurement officer without any password protection to ensure bids were not prematurely accessed. Consequently, there is a risk that confidential competitive information could be accessed and disclosed without detection to other prospective bidders prior to the bid due date.
- SBE did not document that two employees were present for the bid opening for the six competitively procured contracts tested totaling \$73.3 million (the other two procurements tested were not competitively bid).

- SBE could not support its determination that the prices of two contracts, valued at \$18.8 million and awarded as single sources were fair and reasonable and, therefore, in the State’s best interest. SBE prepared the required written determinations justifying the single source award of each contract, purportedly based, in part, on analyses of new versus old labor rates from the preceding contract. However, SBE could not provide us with formal documentation of either analysis. We reviewed the labor rates for one of these contracts totaling \$12.2 million, but were unable to readily draw any conclusion as to the favorability of the new rates, since the rates combined several cost elements beyond direct labor, making it difficult to compare to the old contract.
- SBE did not publish the awards for four procurements totaling \$34.9 million on *eMM* as required by State procurement regulations.

State procurement regulations require bids to be secured and opened in the presence of at least two State employees. The regulations further require that when only one bid is received, an award may only be made to the bidder if the procurement officer determines that the price submitted is fair and reasonable. Finally, the regulations require contract awards greater than \$25,000 be published on *eMM* within 30 days of the contract award.

Recommendation 6

We recommend that SBE

- ensure electronically received bids are properly secured,**
- document the opening of competitive bid proposals in the presence of at least two State employees,**
- ensure the justifications for written determinations of single source contract awards are supported, and**
- publish contract awards on *eMM*.**

Contract Monitoring

Finding 7

SBE did not have a comprehensive process in place to ensure that certain billed work was in accordance with approved contract terms or was adequately documented.

Analysis

SBE did not have a comprehensive process in place to ensure that certain vendor payments were in accordance with approved contract terms or adequately supported to document the services billed.

- SBE paid its existing data center hosting vendor a fee for additional hosting services, using the terms of the existing contract, without entering into a contract modification or obtaining DoIT approval for the modification. The original contract was procured under a DoIT Master contract. Under such contracts, DoIT requires a change order form, justification for the change, scope of work, and cost break down to be submitted to DoIT for approval for contract modifications. SBE paid the vendor \$47,380 (\$11,845 per month) for the additional hosting services from October 2015 through January 2016, representing approximately 10 percent of total billings for that period. This hosting services contract was for approximately \$6.6 million for the period from January 1, 2015 to December 31, 2016.
- SBE did not adequately monitor payments made for labor costs related to a staffing services contract for workers needed to carry out election activities, resulting in overpayments of \$52,600. Specifically, although SBE central office personnel reviewed timesheets for individuals billed on the contract, they did not require an election judge or other SBE employee on site with the vendor's employees to verify the propriety of the hours charged. SBE advised us that it had an applicable approval process in place, but the process was not documented.

Our test of four invoices totaling \$119,000 disclosed that SBE paid an incorrect rate for one labor category, with SBE paying \$41.50 per hour versus the contract rate of \$28.50 per hour. We estimated that for the 2014 primary and general elections, SBE paid \$78,000 for the labor supplied under this category, which included \$25,000 in overpayments due to the use of the incorrect rate. We expanded our review of vendor billings for those elections and found that SBE had paid for 1,661 hours of overtime totaling \$82,870, even though the contract prohibited any overtime charges. Payment of these hours at overtime rates resulted in approximately \$27,600 in excess payments

versus if the payments had been made at the regular contractual rates. This staffing services contract including all modifications totaled approximately \$5.8 million for the period from March 20, 2014 to December 31, 2016.

Recommendation 7

We recommend that SBE

- a. execute contract modifications, as required, establishing all terms and conditions including services to be provided and related costs;**
- b. submit contract modifications for approval, as required;**
- c. establish procedures to ensure and document that services are rendered prior to payment;**
- d. ensure payments to the vendor are in accordance with all contract terms and conditions; and**
- e. pursue recovery of the aforementioned \$52,600 in inappropriate payments.**

Fiscal Year-End Accounting

Finding 8

At the 2015 fiscal year-end, SBE had an unexplained deficit fund balance and had recorded certain unsupported revenues to eliminate deficits.

Analysis

At June 30, 2015, SBE had an unexplained combined deficit fund balance of \$3.4 million (a special fund deficit of \$7.5 million and non-budgeted fund surplus of \$4.1 million) and recorded unsupported federal and special fund revenues of \$746,000 and \$569,000, respectively, to eliminate deficits.

- SBE had not investigated and it could not adequately explain the cause(s) for the fiscal year-end fund balances. Although the failure to properly account for the recovery of funds for certain SBE expenditures from local jurisdictions and/or local boards of elections² could be an underlying cause, SBE's accounts receivable records we reviewed did not indicate a current collection problem that would have contributed to a deficit situation. It is possible that SBE could have posted those expenditures and related reimbursements incorrectly, but this would not explain the existence of a year-end combined deficit balance in special funds and non-budgeted funds.

² Quarterly, SBE bills the 23 counties and Baltimore City for a share of SBE operating costs and the new Statewide voting system. In addition, SBE processes the employee payroll for 20 LBE, which is recovered from the LBEs (or their respective local government).

In August 2015, as part of the year-end closing process, the Comptroller of Maryland – General Accounting Division’s (GAD) transferred the balance in the non-budgeted funds to the special fund account to eliminate a portion of the deficit special fund balance at year-end. This resulted in a special fund deficit of \$3.4 million on the State’s accounting records that was addressed by recording certain supported revenue (such as quarterly billings amounts due from the local boards and jurisdictions), as well as certain unsupported revenue amounts noted below.

- GAD, in consultation with SBE, recorded federal and special fund revenue totaling approximately \$746,000 and \$569,000, respectively, without regard to the ultimate collectability of those revenues. These revenues were recorded to offset a federal fund deficit balance and the remaining special fund deficit balance after the non-budget fund balance transfer and recordation of supported revenues noted above.

In addition, in our January 25, 2017 report on the Statewide Review of Budget Closeout Transactions for Fiscal Year 2016, we commented that SBE recorded federal fund revenue totaling \$523,000 to offset a deficit balance in a related federal fund source. However, all of these revenues may not be received from the federal government. To the extent that revenues are not available, general fund appropriations (or deficiency appropriations) may be needed to eliminate any resulting deficits.

GAD’s year-end budget closeout instructions require that proper detailed documentation be maintained by State agencies to support their accounting transactions and for audit.

Recommendation 8

We recommend that SBE

- a. ensure that all applicable financial transactions are properly recorded and supported; and**
- b. investigate the cause(s) of the aforementioned June 30, 2016 fiscal year-end deficit fund balance, take appropriate corrective action, and make any necessary adjustments in the accounting records.**

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the State Board of Elections (SBE) for the period beginning August 23, 2012 and ending October 22, 2015. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine SBE's financial transactions, records and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. The areas addressed by the audit included procurements and disbursements, voter registration system and local election board oversight, accounts receivable, cash receipts, equipment, and payroll. We also determined the status of the findings contained in our preceding audit report.

Our audit did not include an evaluation of internal controls for federal financial assistance programs and an assessment of SBE's compliance with federal laws and regulations pertaining to those programs because the State of Maryland engages an independent accounting firm to annually audit such programs administered by State agencies, including SBE.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of SBE's operations, and tests of transactions. Generally, transactions were selected for testing based on auditor judgment, which primarily considers risk. Unless otherwise specifically indicated, neither statistical nor non-statistical audit sampling was used to select the transactions tested. Therefore, the results of the tests cannot be used to project those results to the entire population from which the test items were selected.

We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data), as well as from the contractor administering the State's Corporate Purchasing Card Program (credit

card activity). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these sources were sufficiently reliable for the purposes the data were used during this audit. We also extracted data from SBE's MDVOTERS for the purpose of testing user access. We performed various tests of the relevant data and determined that the data were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

SBE's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

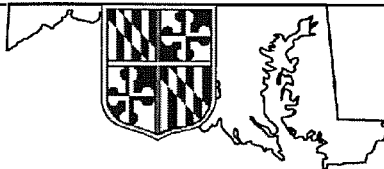
Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect SBE's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also include findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to SBE that did not warrant inclusion in this report.

SBE's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise SBE regarding the results of our review of its response.

STATE BOARD OF ELECTIONS
P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

David J. McManus, Jr., Chairman
Patrick J. Hogan, Vice Chairman
Michael R. Cogan
Kelley A. Howells
Gloria Lawiah



Linda H. Lamone
Administrator

Nikki Charlson
Deputy Administrator

April 19, 2017

Via Electronic Mail and DGS Courier

Thomas J. Barnickel III, CPA
Legislative Auditor
Department of Legislative Services
301 West Preston Street, Room 1202
Baltimore MD 21201

Dear Mr. Barnickel:

Thank you for the opportunity to respond to the Legislative Auditor's audit report for the period from August 22, 2012, through October 22, 2015.

The audit has been very informative, and we are pleased to report that we have addressed all of the audit's recommendations. Enclosed is the full response to the audit report, including specific steps taken for each recommendation.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Linda H. Lamone".

Linda H. Lamone
State Administrator

Enclosure

Response to Legislative Audit Report
Submitted by
Linda H. Lamone, State Administrator
Maryland State Board of Elections (SBE)
April 19, 2017

Statewide Voter Registration – Background (pg. 6)

Finding 1 – SBE did not ensure the accuracy of the data recorded in MDVOTERS or whether related user access to the system was appropriate. (pgs. 6-8)

Agency Response: Starting with ERIC’s January 2017 file, SBE audits local boards of elections’ processing of reports from the Electronic Registration Information Center (ERIC). This review process ensures that the local boards of elections are properly processing ERIC reports.

SBE complies with the State of Maryland’s Information Security Policy and prevents access to the private virtualized environment (PVE) on which MDVOTERS resides for users who do not access the PVE for 60 days. The automated process of inactivating the user’s access to the PVE prevents the user from accessing any data in MDVOTERS. Only SBE can re-activate a user’s access to an inactivated PVE account.

In addition to complying with the State’s Information Security Policy, SBE periodically reviews who has access to the PVE and MDVOTERS. Monthly, the local boards of elections review a system-generated list of individuals with access to the PVE and provide SBE with any updates. SBE provides the vendor hosting the PVE with the necessary access changes. SBE performs a quarterly review of MDVOTERS accounts that have been disabled.

Response to Recommendation 1

SBE has implemented these recommendations.

- a. Since January 2017, SBE has ensured – through testing – that the local boards of elections properly investigated registered voters on ERIC reports and performed the appropriate correction action.
- b. SBE has developed and implemented a process to review periodically access to the PVE and MDVOTERS for appropriateness and removing any access not needed for an individual’s job duties.

Finding 2 – SBE did not ensure that personally identifiable information from the MDVOTERS database provided to an external third party was properly safeguarded. (pgs. 8-9)

Agency Response: As explained in the audit report, ERIC is a multi-state consortium, and Maryland is one of 21 participating states. ERIC has a board of directors, and the board of directors has a Privacy and Technology Advisory Board to review security protections and provide advice to the board of directors.

There are various standards – Service Organization Controls (SOC), National Institute of Standards and Technology (NIST), and International Standards Organization (ISO) – on which

an audit can be based. While OLA recommends a SOC audit, ERIC's advisory board recommended and ERIC's board of directors approved a security management plan based on ISO standards. The advisory board is currently considering the appropriate audit standard for ERIC and will make a recommendation to ERIC's board of directors.

Response to Recommendation 2

- a. Since SBE, as an individual ERIC member, does not have the authority to dictate security policy of ERIC, an independent organization with a board of directors, SBE is not able to require periodic SOC 2 Type 2 reviews for ERIC and service organization contractors.
- b. SBE will perform timely reviews of all security reports obtained by ERIC and ensure that the necessary corrective action is taken.

Finding 3 – SBE unnecessarily retained personally identifiable information within the MDVOTERS database. (pgs. 9-10)

Agency Response: Based on language in the second paragraph of this finding, one might conclude that a Maryland driver's license number, a State ID card issued by the Maryland Motor Vehicle Administration, or the last four digits of an applicant's Social Security number (SSN) is only required if an applicant uses the paper version of the voter registration application. This information is required for all new applications, not just paper applications. Since the online voter registration system prevents a user from entering a full nine-digit SSN, the only way SBE or a local board of elections will receive a full nine-digit SSN is on a paper application.

Although SBE had full SSNs for about 6% of Maryland's registered voters, SBE uses best practices to secure the data maintained in MDVOTERS. Access to the system is restricted to State and local election offices and requires two step log in process. The system is constantly monitored by a web hosting company using industry standard tools and analytics.

Response to Recommendation 3

SBE has implemented these recommendations.

- a. As of January 2017, users cannot enter full nine-digit SSNs in MDVOTERS.
- b. As of January 2017, all full nine-digit SSNs have been removed from MDVOTERS. If a record has an SSN, it is only the last four digits of the SSN.

Finding 4 – SBE did not adequately authenticate certain voters who requested absentee ballots. (pg. 10-11)

Agency Response: Implementing OLA's recommendation would create a new requirement for absentee voting; that is, a voter must have a Social Security number to vote an absentee ballot. This would remove absentee voting as a voting option for voters who do not have a SSN. Because neither federal law nor State law currently require a Social Security number to register to vote, SBE will seek advice from the Attorney General's office on the legality of this recommendation.

Response to Recommendation 4

SBE will seek advice from the Attorney General's office on the legality of requiring a Social Security number for **all** absentee voters and if it permissible, whether it would require a legislative change.

Finding 5 – A critical voting system was not backed up offsite and was not properly addressed in the SBE Disaster Recovery Plan. (pgs. 11-12)

Agency Response:

In August 2016, SBE made the necessary changes to include the Electronic Pollbook Interchange and Conversion (EPIC) data in the offsite backup. This change ensured that all data needed to check in voters during early voting and on election day for the 2016 General Election was backed up and stored at an offsite location. SBE will continue this backup process.

SBE is currently working with another governmental agency to host a backup server to mirror the EPIC production server. This project will provide a continuous, alternative communications link for EPIC during early voting. This mirror will be in place for the 2018 elections and will be appropriately documented in SBE's Disaster Recovery Plan.

Response to Recommendation 5

- a. When the EPIC database is used, SBE will continue to perform a daily backup of the EPIC database and store the backup at an offsite location during periods when it is in use.
- b. SBE will update its Disaster Recovery Plan to include the detailed procedures necessary to recreate quickly the communication link between the EPIC production server and the early voting centers if there is a disaster at the location hosting the EPIC production server.

Finding 6 – Controls were not in place over the receipt and opening of certain bids, and SBE could not support that two single source contract awards were in the State's best interest. Additionally, SBE did not publish certain contract awards in eMaryland Marketplace. (pgs. 12-13)

Agency Response:

Receiving Electronically Submitted Bids

The four procurements OLA tested and referenced in this finding were procurements where technical and financial proposals were sent via separate emails with the type of proposal ("Technical" or "Financial") in the subject line of the email. Three procurements were conducted under the State's Department of Information Technology's (DoIT) Consulting and Technical Services (CATS+) Task Order Request for Proposals (TORFP) process, and the fourth procurement was a competitively bid, sealed procurement.

When SBE's Procurement Officer receives the proposals submitted by email (two emails per proposal), she stores in her password protected, maryland.gov email account the emails and attachments. After the proposal deadline, she provides to the evaluation committee the

technical proposals and after the technical rankings were finalized, the financial proposals. To document this process, SBE's Procurement Officer requires that each member of the evaluation committee acknowledge in writing that technical rankings were assigned **before** the financial proposals were opened. This was the process followed for all four of the procurements tested by OLA.

For TORFPs, SBE's Procurement Officer reminds all potential offerors of DoIT's instructions to submit financial proposals with password protection. Although this requirement is the responsibility of the Offerors, SBE's Procurement Officer has been and will continue to provide to potential offerors frequent reminders.

Although OLA identified as a risk that confidential bid information could be shared with another prospective bidder before proposals are due, OLA did not find that this occurred. Providing this type of information is illegal and unethical, and SBE's Procurement Officer has **not** and will **not** share confidential bid information with anyone prior to the appropriate time in the procurement process. This means that the evaluation committee is not provided with the financial proposals until after the technical evaluation is complete and other offerors are not provided grand totals of other proposals until after an award decision is made.

Opening Bids Process

Although Regulation 21.05.03.02G of the Code of Maryland Regulations requires that two individuals be present when proposals are open, it does not require that the two individuals document this process. In response to OLA's recommendation, SBE now requires that the two individuals who are present when a proposal is open document their presence by signing a document created by the Procurement Officer.

Determining Whether Single Source Procurement is in Best Interest of the State

Both of the tested contracts – data center hosting and application maintenance – were competitively bid using the CATS+ TORFP process. As required by DoIT, both TORFPs were sent to all master contractors in the appropriate functional areas. The scope of work for these contracts is specialized, but in an effort to increase competition, SBE removed several minimum qualifications that were required in previously issued TORFPs.

Although SBE received only one bid for each contract, multiple master contractors reviewed and considered the TORFPs, as evidenced by the "no bid" forms returned by 14 master contractors for the data center hosting contract and 14 master contractors for the application maintenance contract. Because only pre-approved CATS+ vendors can bid on TORFPs, eMaryland Marketplace and other ways to increase competition cannot be used to solicit bids to increase competition.

After deeming the bids as susceptible for award and in the best interests of the State, SBE prepared for DoIT, the control agency for both procurements, a document explaining why the proposed pricing was in the best interest of the State and a justification for awarding the contracts to the sole bidder. The pricing justification compared the proposed rates against posted labor rates, previous years' rates, and historical pricing and was consistent with the

forthcoming requirements of BPW Advisory 2016-1. The justification for awarding a contract for the sole bidder includes comparing DoIT's CATS+ rates against the proposed rates, SBE's outreach to solicit bids, and the number of "no bid" responses received. DoIT deemed SBE's justification sufficient and approved the contracts.

Auditor's Comment: SBE's pricing justifications for both contracts made reference to performing comparisons of the proposed rates to those from other sources; however, at the time of our audit, SBE was unable to provide formal documentation supporting the analysis for either of these contracts.

While OLA does not believe that SBE's justifications were sufficient, SBE and DoIT, by its approval of the contracts, believe otherwise. SBE met all objective requirements for award to a single bidder. While OLA disagrees with DoIT's approval of SBE's award recommendations, SBE did not violate State procurement procedures and justified why these awards were in the best interest of the State.

Publication of Certain Contract Awards

Although during most of the audit period, SBE did not publish contract awards on eMaryland Marketplace, SBE's Procurement Officer notified in writing contractors who submitted proposals of SBE's award decision and offered a debriefing. For RFPs, letters were sent by certified mail and emailed as a secondary method of communication to Offerors with award notification information. For TORFPs, the master contractors were notified by email. Since contractors frequently requested debriefings, it is evident that the contractors received SBE's notification of contract award.

In the fall of 2015, SBE's Procurement Officer learned about the requirement to post on eMaryland Marketplace certain contract awards. Since that meeting and before the auditors identified this deficiency, SBE's Procurement Officer posted on eMaryland Marketplace contract award notices for certain procurements over \$25,000. This includes retroactive posting of award notices issued on or after June 12, 2013.

Response to Recommendation 6

- a. SBE will continue to properly secure all proposals and remind Offerors to password protect their financial proposals when electronic proposals are accepted.
- b. As of February 2016, SBE requires that the two individuals who are present when proposals are open document their presence.
- c. SBE will continue to justify single bid awards in accordance with DoIT guidelines and obtain all necessary control agency approvals before finalizing contract awards.
- d. SBE will continue to publish certain contract awards on eMaryland Marketplace.

Finding 7 – SBE did not have a comprehensive process in place to ensure that certain billed work was in accordance with approved contract terms or was adequately documented. (pgs. 14-15)

Agency Response: For certain contracts, SBE has separated the contract and project management duties. This means that the individual who is the contract manager is **not** an individual who has a project management responsibilities. This separation of duties will reduce the burden of one person performing both duties and ensure that all contract modifications are properly processed and approved.

For the 2016 General Election, SBE used an online timekeeping system to manage and verify billable hours. With this system, SBE could, in real time, know where most of the temporary staffing support were working and for how long. This information was used to verify the propriety of the hours charged. SBE intends to continue to use this or a similar system as the primary method for managing all contract resources in future elections.

Response to Recommendation 7

- a. SBE will execute contract modifications, as required and establish all terms and conditions, including services to be provided and related costs.
- b. SBE will submit to the contract agency contract modifications for approval.
- c. SBE will continue to ensure that services are rendered prior to payment and ensure that documentation establishing that services are rendered are updated and retained.
- d. SBE's contract managers are required to verify that invoices and subsequent payments to vendors are in accordance with the contract. SBE conducts periodic internal audits of contracts and these audits include verifying that the amount paid to the vendor corresponds to the amount in the contract.
- e. SBE is working with the Attorney General's Office to identify how to recover the charges billed at incorrect rates and improperly paid overtime.

Finding 8 – At the 2015 fiscal year-end, SBE had an unexplained deficit fund balance and had recorded certain unsupported revenues to eliminate deficits. (pgs. 15-16)

Agency Response: SBE's federal funds were initially and incorrectly recorded as "accrued revenue." Since no additional federal funds were received or are expected, SBE should have posted a journal entry moving special funds to cover the federal fund deficit. This journal entry would have covered incurred expenditures.

The special fund deficit of \$3.4 million on the State's accounting records was due to the ACH payments received and posted to a single project cost account (PCA). At year end closing, the Comptroller's General Accounting Division (GAD) posts journal entries to move revenue generated from SBE's county billings from the payroll PCA to the Special Fund PCA.

Because SBE cannot change the policy and procedures of Banking Services to post ACH payments to multiple PCAs, SBE must use journal entries to move the revenue to the appropriate PCAs. Starting July 1, 2016, SBE posts a special fund revenue journal entry each month. This will replace the need for GAD to post a revenue journal entry annually without proper reconciliation.

Response to Recommendation 8

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- a. SBE will ensure that all applicable financial transactions are properly recorded and supported.
- b. SBE is reconciling federal and special fund balances to ensure that revenue was received to cover incurred expenditures. This reconciliation process will be complete in fiscal year 2017.

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