

**STATE OF NEW JERSEY
OFFICE OF THE STATE COMPTROLLER**

**ANNUAL REPORT
Fiscal Year 2017**



**IMPROVING THE EFFICIENCY, TRANSPARENCY
AND FISCAL ACCOUNTABILITY OF NEW JERSEY
GOVERNMENT**

**Philip James Degnan
STATE COMPTROLLER**

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***Dear Governor Christie, Members of the
State Legislature and Residents of New Jersey:***

Fiscal Year (FY) 2017 was a time of significant achievement in the Office of the State Comptroller (OSC). We responded to reported Medicaid recipient fraud in Ocean County through a dual track effort of enforcement and compliance. The enforcement program, a multi-agency effort involving our Office, the FBI and Ocean County Prosecutor's Office, resulted in more than two dozen arrests for alleged Medicaid and benefits fraud. Thereafter, in September 2017, our Office implemented a first-of-its-kind voluntary disclosure program that allowed those who improperly received Medicaid benefits to self-report and come into compliance through full repayment of all impermissibly obtained funds and an additional civil penalty. Our intent is to hold accountable those who abused the Medicaid program while ensuring the return of improperly received funds to the program. These efforts further our statutory obligation to ensure that Medicaid funds are used appropriately and efficiently.

OSC continued to serve its important role in the procurement process in New Jersey. During the course of FY 2017, OSC's procurement attorneys reviewed 618 different government contracts with a cumulative value of approximately \$9.4 billion to ensure that government entities are getting the best value for taxpayers. The reviews included an estimated \$2 billion contract for leasing and privately operating the Bergen County Medical Center for a 19-year period. Our Office also reviewed an estimated \$41 million leasing and operating agreement for the Morris View Healthcare facility in Morris County. Transportation-related contracts reviewed included the \$200 million replacement of the Route 7 WittPenn Bridge in Bergen County; the \$192 million "Direct Connection" project at I-295/I-76/Route 42 in Camden County; and the \$88 million contract for the rehabilitation and seismic retrofit of various bridges on the New Jersey Turnpike in Hudson County.

The Investigations Division focused on the inner workings of the State's Low-Income Home Energy Assistance Program (LIHEAP) and its report found areas in need of significant overhaul. The Division also issued the fourth in its ongoing series of reviews into the New Jersey State Police.

Our Audit Division achieved a significant milestone in FY 2017, as it passed its peer review by the National State Auditors Association for the period June 1, 2015 to May 31, 2017. This top-to-bottom review of the Audit Division found that the Division met applicable professional standards and that our system of quality control is effective. I want to commend our Audit Division staff for their work in preparing for this peer review and for their continuing commitment to performing audits that meet the highest professional standards.

What follows in this annual report is a more detailed discussion of these matters and other work performed in this Office during FY 2017. I am tremendously proud of the efforts of OSC's staff and all of us here at OSC remain dedicated to our important role in New Jersey, safeguarding taxpayer funds and bringing increased fiscal responsibility to all layers of state government.

Philip James Degnan
State Comptroller

OVERVIEW

Since its creation in January 2008, the Office of the State Comptroller (OSC) has served as an advocate for taxpayers and a leader in bringing about government reform. OSC reports have focused on bringing greater efficiency, transparency, and analysis to the operation of all levels of government in New Jersey.

OSC consists of four divisions – Audit, Investigations, Medicaid Fraud, and Procurement. Each of the four divisions made significant contributions to OSC’s accomplishments this past fiscal year.

Our Audit Division set forth recommendations to improve operations at a municipal utilities authority and conducted a follow-up audit concerning improper benefits paid to incarcerated individuals.

Our Investigations Division found that the Low-Income Home Energy Assistance Program paid out improper benefits and is susceptible to fraud because the program lacks necessary controls. As a result of the division’s work, six benefit recipients were referred for potential criminal prosecution.

Our Medicaid Fraud Division’s efforts led to the recovery of more than \$58.6 million of taxpayer dollars for FY 2017. Its anti-fraud efforts also resulted in the exclusion of more ineligible providers from the Medicaid program than last fiscal year.

Our Procurement Division again reviewed more than 600 public contracts this past fiscal year, 150 of which were valued at \$10 million or more. The division also reviewed \$363 million in contracts related to Superstorm Sandy recovery and rebuilding efforts.

The sections of this report that follow briefly explain the role of each division while setting forth highlights of OSC accomplishments from the past fiscal year of July 1, 2016 to June 30, 2017.

AUDIT DIVISION

OSC's Audit Division conducts audits and reviews the performance of New Jersey state government, public institutions of higher education, independent state authorities, local governments, and school districts.

The Audit Division is led by Director Yvonne Tierney who brings more than 30 years of experience as an auditor and investigator to the position. The Audit Division staff includes members who possess certifications or professional designations such as Certified Public Accountant, Certified Internal Auditor, and Certified Fraud Examiner.

Examples of Audit Division work in FY 2017 are set forth below. OSC audit reports can be viewed in their entirety on our website.

Audit

Plainfield Municipal Utilities Authority – Controls Over Selected Fiscal and Operating Practices

OSC auditors examined the controls over selected fiscal and operating practices of the Plainfield Municipal Utilities Authority (PMUA), identifying various internal control weaknesses related to PMUA's procurement practices, operational cost allocations, and personnel management.

With regard to procurement practices, OSC found that PMUA failed to adhere to the Local Public Contracts Law (LPCL) and its own Purchasing Manual, in making certain purchases. Specifically, PMUA made a number of purchases either before quotations had been received or without evidence that the minimum number of quotations had been obtained. PMUA also did not properly aggregate its purchases for the same

commodity and obtain quotations as required by LPCL.

OSC also identified areas for improvement in PMUA's allocation of administrative or indirect costs for its sewer and solid waste departments. PMUA had equally allocated these costs to the departments without considering each department's actual use of administrative services. This practice of equal allocation, without consideration of actual usage, can distort the stated costs of operational services and may lead to inaccurate user rates.

OSC recommended several actions to be taken to address the weaknesses noted in our audit. A follow-up review to assess PMUA's implementation of those recommendations will be conducted in the near future.

Follow-Up Reviews

OSC obtains corrective action plans from the public entities it audits to ensure that audit recommendations are properly implemented in an appropriate timeframe. OSC subsequently conducts onsite follow-up reviews to determine compliance with those corrective actions.

Improper Benefit Payments to Incarcerated Individuals

OSC's initial audit identified more than \$23 million in benefit payments from federal and state programs to individuals who were incarcerated, and therefore not legally entitled to such payments. The audit included six recommendations directed to the state departments of Treasury, Labor and Workforce Development and Human Services to address this situation.

In its follow-up review, OSC found that five of its recommendations had been implemented resulting in a cost savings of \$19.2 million. Additionally, \$2.5 million in improperly issued

Medicaid and pension payments were recovered.

Policies and Procedures

Our efforts at OSC have included putting in place policies and procedures that guide our audit, investigative and related processes. The following are descriptions of some of the policies and procedures we have put into effect, which we have continued to refine over the past year.

Audit Manual

For professional audit organizations such as ours, it is essential that clearly defined policies be promulgated to provide audit guidance and to ensure the quality and consistency of the audit work performed. To that end, OSC developed an Audit Manual to serve as the authoritative compilation of the professional auditing practices, policies, standards and requirements for OSC staff. Our Audit Manual is a constantly evolving document that is revised as standards are amended and other changes in the auditing profession occur.

Audit Process Brochure

Open communication concerning the audit process lets the auditee know up front what to expect. With that in mind, OSC developed a brochure outlining the critical components of the audit process, from initiation to completion. This brochure is provided to the auditee prior to the start of an audit and also is posted on our website.

Risk/Priority Evaluation

OSC's enabling legislation requires us to "establish objective criteria for undertaking performance and other reviews authorized by this act." Accordingly, OSC developed a risk/priority evaluation matrix that considers a number of risk factors, including, among

others, the entity's past performance, size of budget, the frequency, scope and quality of prior audits, and other credible information which suggests the necessity of a review. OSC staff conducts research along these parameters and assesses risk associated with each applicable factor as an aid in determining audit priority.

Quality Control and Peer Review

Government auditing standards require audit organizations to establish an internal quality control system and to participate in an external quality control "peer review" program. The internal quality control system provides the organization with ongoing assurance that its policies, procedures, and standards are adequate and are being followed. The external peer review, to be conducted once every three years, is a professional benchmark that provides independent verification that the internal quality control system is in place and operating effectively and that the organization is conducting its work in accordance with appropriate standards.

In June 2017, OSC's Audit Division successfully passed its third peer review conducted by the National State Auditors Association (NSAA). NSAA reviewers from California, New York and Tennessee spent a week reviewing prior OSC audits. Audit organizations can receive a rating of "pass," "pass with deficiencies," or "fail." OSC received a peer review rating of "pass."

OSC received "pass" ratings in its prior peer reviews conducted in June 2011 and June 2014. As in those reviews, the external review team concluded that OSC's system for quality control had been "suitably designed" and complied with government auditing standards.

Audit Coordination

OSC's enabling legislation requires the State Comptroller to establish a system of coordination with other state entities responsible for conducting audits, investigations and similar reviews. This system serves to avoid duplication and fragmentation of efforts while optimizing the use of resources, promoting effective working relationships and avoiding the unnecessary expenditure of public funds. We continue to work closely with both state and federal audit and law enforcement officials in this regard.

Training

Audits conducted by OSC's Audit Division comply with Generally Accepted Government Auditing Standards (GAGAS). Auditors performing work under GAGAS are required to maintain their professional competence through Continuing Professional Education (CPE). Specifically, every two years each auditor must complete at least 80 hours of CPE, 24 of which must directly relate to government auditing, the government environment, or the specific or unique environment in which the audited entity operates. OSC is recognized by the National Association of State Boards of Accountancy as a CPE sponsor. This year our staff again received formal training on topics such as governmental accounting, audit sampling and documentation, and internal controls. All staff members in the Audit Division satisfied the biennial requirement of obtaining 80 CPEs over the reporting period.

INVESTIGATIONS DIVISION

OSC's Investigations Division works to detect and uncover fraud, waste, and misconduct involving the management of public funds and the performance of government officers, employees, and programs.

Noelle Maloney is the Director of the Investigations Division. Director Maloney previously served as Deputy Inspector General of the U.S. Securities and Exchange Commission, where she oversaw investigations and audits of the agency's operations and programs. The division consists of a staff of investigators and attorneys, including former federal and state law enforcement professionals from agencies such as the Federal Bureau of Investigation, the United States Postal Inspection Service, and the New Jersey State Police.

OSC's investigators field and review all tips, referrals, and allegations provided to the office. Those tips come from both the general public and from government employees, and are received through OSC's toll-free Tipline, via email or through the mail. The Tipline also is used as the official statewide Tipline for any public tips regarding the waste or abuse of Superstorm Sandy funds.

In FY 2017, the Investigations Division fielded 207 complaints, 46 of which were referred to the Sandy Fraud Task Force. The division referred an additional seven matters to criminal investigators, at either the state Division of Criminal Justice or the respective county prosecutor's offices.

The Investigations Division also produced the following public reports in FY 2017:

Investigative Report: Administration of New Jersey's Low Income Home Energy Assistance Program

The Low Income Home Energy Assistance Program (LIHEAP) is a federally funded and state administered social welfare grant that provides assistance to low-income New Jersey residents to help meet their home energy needs. New Jersey's LIHEAP grant is administered through the state Department of Community Affairs (DCA) which, in turn, relies upon local community and nonprofit agencies throughout the state to obtain, review, and process LIHEAP applications. New Jersey is a top recipient of LIHEAP funding and receives, on average, \$125 million per year.

OSC investigators found, among other things, that some LIHEAP applicants received benefits as a direct result of falsifying applications, including the use of non-existent or fraudulent Social Security Numbers (SSN) and/or fraudulent income information.

To qualify for LIHEAP benefits, an applicant must meet certain established criteria concerning household income as well as have a valid SSN. As part of this investigation, OSC investigators conducted SSN, income verification, and death record reviews. This review yielded discrepancies including invalid SSNs, mismatches between an applicant's name and SSN or date of birth, and SSNs belonging to deceased individuals. For instance, an SSN provided by one applicant was associated with a person reported as deceased, as well as being associated with 25 other individuals with various names, dates of birth, and addresses.

Of the files reviewed, OSC also discovered more than a dozen cases in which LIHEAP applicants had under-reported their income by at least \$10,000, the lower incomes making them eligible for LIHEAP benefits. In another instance, DCA had issued LIHEAP benefits for an applicant eight months after she had passed away and while her house was for sale.

As a result of its investigative findings, OSC made referrals to the state Division of Criminal Justice. Those referrals included three public employees, one of whom failed to disclose that she had earned more than \$90,000 per year, far exceeding LIHEAP income eligibility guidelines. Additionally, OSC referred to DCA the cases of 34 benefit recipients for a determination of whether LIHEAP benefits were properly awarded.

OSC also made recommendations to DCA to improve its administration of LIHEAP benefits, including that DCA should utilize existing state databases to conduct income verification reviews.

Fourth Periodic Report on Law Enforcement Professional Standards, Review of the Training Bureau at the New Jersey State Police

OSC's review of the New Jersey State Police (NJSP) found that the NJSP is continuing to comply with professional standards designed to prevent discrimination. While no significant problems or violations were noted, OSC did identify areas where improvements could be made with regard to staffing of the Training Bureau and the recording of firearms qualifications.

Under state law, OSC is required to periodically review the performance of the NJSP with regard to its continuing efforts to prevent racial and other forms of discrimination in their policies, practices and procedures and the state Office of Law Enforcement Professional Standards'

(OLEPS) oversight of those efforts. This is the fourth in the series of OSC reviews of NJSP and OLEPS practices.

OSC's review found that staffing levels at NJSP's Training Bureau should be analyzed to ensure that these levels are adequate to maintain the quality and thoroughness of NJSP's training efforts going forward.

The review also found, in general, that semi-annual qualifications on state-issued and backup firearms were occurring. OSC found, however, that limitations in the NJSP firearms database contributed to instances where records for tactical weapons and off-duty/backup weapons qualifications were incomplete or erroneous.

Additionally, OSC found that the Trooper Coach Program, which provides training and assistance to probationary troopers, is generally working appropriately despite a one-time modification of the requirement that Trooper Coaches have three years of experience prior to being accepted into the Trooper Coach Program.

OSC's report made eight recommendations to NJSP and OLEPS. The recommendations included upgrading the NJSP firearms inventory and training databases and annually assessing the permanent staffing level of the NJSP Training Bureau. OSC will continue to monitor NJSP operations as required by the Law Enforcement Professional Standards Act.

Guidance and Referrals

The Investigations Division also made 84 external referrals to other state, county and federal agencies in FY 2017, among them the state Office of the Attorney General, the state Department of Education, the state Department of Transportation, the state Department of Labor and Workforce Development, and the state Department of Treasury.

Some of the referrals made by the division to criminal authorities in prior years led to action in FY 2017. For instance, as a result of an OSC referral to the state Division of Criminal Justice, the former head track and field coach for Essex County Community College ultimately pleaded guilty to a charge of second-degree theft of \$150,000 in college funds. This individual was sentenced to three years in state prison, permanently barred from public employment and ordered to pay restitution.

Other referrals were made in-house to OSC's Audit, Procurement and Medicaid Fraud Divisions and are expected to result in future audits and investigations. The Investigations Division serves as a key resource for OSC's other divisions by helping to conduct witness interviews, and by using a variety of investigative tools to identify potential subjects for audits. Conversely, the Investigations Division also conducts inquiries based on incoming referrals from other state agencies. Our joint efforts with these other agencies continue to build a synergy that has led to increasingly robust investigative efforts across state government.

Government Waste and Mismanagement Hotline

**1-855-OSC-TIPS
672-8477**



MEDICAID FRAUD DIVISION

OSC's Medicaid Fraud Division (MFD) serves as the State's independent watchdog for New Jersey's Medicaid, FamilyCare, and Charity Care programs and works to ensure that the state's Medicaid dollars are being spent effectively and efficiently.

Josh Lichtblau joined the OSC as Director of the MFD in July 2015 after more than two decades serving the interests of New Jersey citizens as a Deputy Attorney General, Assistant Attorney General and as Director of a major state regulatory agency.

As part of its oversight role, MFD audits and investigates health care providers, managed care organizations (MCOs), and Medicaid recipients to identify and recover improperly expended Medicaid funds and to ensure that only those who qualify are enrolled in Medicaid. In performing these functions, MFD considers the quality of care provided to Medicaid recipients and pursues civil and administrative enforcement actions against those who engage in fraud, waste, or abuse within the Medicaid program. MFD also excludes or terminates ineligible health care providers from the Medicaid program where necessary and conducts educational programs for Medicaid providers and contractors. Moreover, MFD oversees a contractor that identifies and collects payments from insurance carriers when Medicaid has paid for goods or services and there was third-party coverage that could have paid for such claims.

In FY 2017, MFD recovered \$58.6 million in improperly paid Medicaid funds. Those funds were returned to both the state and federal budgets. MFD also excluded 406 ineligible providers from participating in the Medicaid program this past fiscal year.

The division received 2,555 complaints, tips, or

other submissions (collectively "complaints") from a variety of outlets, including the MFD Hotline, OSC website, referrals from other state and federal agencies, and correspondence from the public. All of the complaints received by OSC resulted in action. Pursuant to its internal processes, members of OSC's Medicaid Fraud Division reviewed the substance of the complaints to determine whether additional steps were warranted. As a result of that review, OSC opened cases on approximately 215 complaints and referred the majority of the remaining complaints to other more appropriate entities for handling, including the state Department of Human Services, Division of Medical Assistance and Health Services (DMAHS), professional licensing boards, county welfare agencies, and certain state vendors responsible for providing services related to the Medicaid Program.

The division also received and reviewed a total of 317 high-risk provider applications and denied 7 of these. In addition, the division referred 5 cases to the Medicaid Fraud Control Unit (MFCU) within the state Office of the Attorney General and an additional 28 matters to other law enforcement bodies, including county prosecutors' offices and the Internal Revenue Service.

As part of its educational outreach program, MFD presented provider training for high-risk providers, including durable medical equipment providers, home health care providers, and adult medical day care providers. These educational outreach efforts were staged in coordination with the MFCU, the state Department of Human Services' Division of Medical Assistance and Health Services, and the MCOs that participate in the New Jersey Medicaid market to help attendees identify and protect against fraud, waste, and abuse within the Medicaid program. Speakers emphasized the

importance of properly documenting claims and explained what preventative measures these providers should implement to proactively prevent Medicaid fraud waste and abuse.

Operating under the authority of the Medicaid Program Integrity and Protection Act, MFD provides oversight concerning the following programs:

- New Jersey's Medicaid program provides health insurance to qualifying parents and caretakers and their dependent children, along with pregnant women and individuals who are aged, blind or disabled. For example, the program pays for hospital services, doctor visits, prescriptions, nursing home care, and other health care needs.
- New Jersey FamilyCare is a Medicaid-type program for uninsured children whose family income is too high to qualify for traditional Medicaid but not high enough for the family to afford private health insurance. Combined, the Medicaid and New Jersey FamilyCare programs serve more than 1.7 million New Jersey residents.
- The New Jersey Hospital Care Payment Assistance Program, commonly known as Charity Care, provides free or reduced-charge services to patients who require care at New Jersey hospitals.

MFD's oversight focuses on Medicaid health care providers, MCOs and Medicaid recipients, while coordinating oversight efforts among all state agencies that administer Medicaid program services.

MFD consists of three units: Fiscal Integrity, Investigations and Recovery/Regulatory.

Fiscal Integrity Unit

The Fiscal Integrity Unit focuses on data mining, regulatory and compliance audits, and liability of third parties for expenses improperly paid by the Medicaid program.

Data Mining

MFD's data mining group is involved in the initial stages of the process leading to the recovery of improperly paid Medicaid dollars. The unit employs a variety of analytical techniques to detect anomalous or abnormal claims submitted by providers. Its findings often lead to MFD audits and investigations. In order to identify patterns of anomalous Medicaid reimbursements, MFD's data miners review Medicaid fraud reports and investigations from other states and work with a range of additional resources to acquire pertinent data. The data mining group also monitors the Surveillance and Utilization Review System, a federally mandated exception reporting system, for indications of waste, fraud and abuse and to detect duplicate, inconsistent or excessive claim payments.

In total, MFD's data mining group referred 61 cases of anomalous claims behavior to MFD's audit and investigations units in FY 2017.

Audit

MFD conducts audits to ensure that Medicaid providers comply with program requirements, to identify improper billings submitted by Medicaid providers and to deter fraud, waste, and abuse in the Medicaid program.

MFD's audit group, working with other MFD personnel, also reviews, oversees, and coordinates audit work performed by other entities that have contracted with the state to audit specific types of providers. For example, the Affordable Care Act requires each state's Medicaid system to contract with a Recovery Audit Contractor to identify and recoup

overpayments to Medicaid providers. MFD oversees the state's contract with this external auditor, coordinates the audits and reviews audit findings. In total, during FY 2017, MFD oversaw the recovery of more than \$6.8 million in overpayments that were identified by New Jersey's Recovery Audit Contractor.

Third Party Liability

Under federal law, if a Medicaid recipient has other insurance coverage, Medicaid, as the payor of last resort, is responsible for paying the medical benefits only in cases where the other coverage has been exhausted or does not cover the service at issue. Thus, a significant amount of the state's Medicaid recoveries are the result of the efforts of MFD and its contracted vendor to obtain payments from third-party insurers responsible for services that were inappropriately paid with Medicaid funds. MFD's Third Party Liability group, working with an outside vendor, seeks to determine whether Medicaid recipients have other insurance and recovers money from private insurers or providers in cases where Medicaid has paid claims for which the private insurer was responsible. In addition, the Third Party Liability group also manages a daily hotline for the public and providers to call and update third-party commercial insurance information for Medicaid recipients and ensure that Medicaid recipients receive their benefits when improperly denied.

Investigations Unit

MFD's Investigations Unit is charged with investigating inappropriate conduct on the part of Medicaid, FamilyCare, and Charity Care providers and recipients. In FY 2017, the Investigations Unit opened 579 cases and made referrals to other agencies such as the MFCU, state licensing boards, county prosecutors' offices, and various county boards and social services entities. MFD investigators receive allegations of fraud and waste from many

sources, including MFD's Hotline and website as well as from other state and federal agencies. In total, MFD received 2,436 telephone Hotline tips in FY 2017.

To ensure the integrity of Medicaid's enrollment process, the Investigations Unit also conducts background checks of high-risk providers applying to participate in the program. In FY 2017, the Investigations Unit received 317 such applications from pharmacies, medical equipment providers, adult medical day care centers, physicians, and others. The unit denied 7 of those applications based on a number of concerns. The unit also conducts unannounced pre-enrollment and post-enrollment site visits of Medicaid providers. During the site visits, MFD investigators verify that the applying entity actually exists at the address listed, that it complies with state and federal requirements, and that the information supplied on the provider application is accurate.

In FY 2017, the work of the Investigations Unit resulted in the recovery of \$11.7 million in misspent Medicaid funds.

Recovery/Regulatory Unit

The Recoveries and Exclusions Unit (R&E) recovers overpayments that are identified by MFD's auditors and investigators and determines when to exclude a Medicaid provider from the Medicaid program. In cases of fraud, R&E may also assess additional penalties against a provider.

Once MFD identifies overpayments to be recovered, R&E sends out appropriate notices, recovers the money from providers and recipients on behalf of the state, and works with federal authorities to ensure that the federal government receives its share of any recovery. In instances where R&E cannot resolve an overpayment through a settlement, MFD will take administrative action against the provider or recipient.

Providers can be excluded from participating in the Medicaid program for numerous reasons including criminal convictions or exclusions by another state or the federal government. Adverse action taken by MFD against these individuals are part of an ongoing OSC effort to ensure that only those medical providers who maintain the highest integrity may participate in the Medicaid program.

In FY 2017, MFD excluded 406 providers – including physicians, pharmacists, dentists, social workers, and home care nurses’ aides – for failing to meet the standards for integrity in the Medicaid program. This is a significant increase over the 109 providers excluded in FY 2016.

MFD’s Regulatory Officers are licensed attorneys who handle MFD-initiated fraud and abuse cases through the administrative law process, from settlement negotiations through Office of Administrative Law Fair Hearings as State Agency Representatives. The Regulatory Officers provide regulatory guidance to the other units of the division which include but is not limited to legal research as well as case reviews for statutory and regulatory support. MFD’s Regulatory Officers also work with other state departments to propose new Medicaid program regulations designed to improve program integrity and strengthen Medicaid rules.



PROCUREMENT DIVISION

OSC's Procurement Division, staffed by attorneys specializing in public contract law, fulfills the office's statutory mandate to review public agency procurements exceeding \$2 million from more than 1,900 public entities. In FY 2017, the Procurement Division received notice of 618 contracts, including 150 contracts that were valued at more than \$10 million and pre-screened pursuant to OSC's statutory authority.

Barbara Geary is the Director of the Procurement Division. She has more than 20 years of contracting experience in both the public and private sectors. She became Director in June 2015 after joining the OSC as an attorney in 2011.

In addition to reviewing contracts, the attorneys of the Procurement Division work with OSC's audit teams and provide guidance concerning the many legal issues that arise during the course of an audit. Division attorneys also assist in investigations and other projects.

Contract Reviews

As prescribed by statute, the Procurement Division pre-screens the legality of the proposed vendor selection process for all government contracts exceeding \$10 million and has post-award oversight responsibilities for contracts exceeding \$2 million. OSC's procurement reviews cover contracts awarded by municipalities, school districts, state colleges, and state authorities and departments, as well as other public boards and commissions with contracting authority. Regulations promulgated by OSC assist public entities in determining whether OSC review is required for a particular contract and provide guidance as to how OSC reviews are conducted.

Procurements subject to OSC review cover a wide range of contracts, including land sales, leases, and purchases of goods or services.

For contracts exceeding \$10 million, the Procurement Division works closely with government entities as they formulate specifications, intervening when necessary to achieve procurements that comply with all applicable laws, regulations and rules. Errors are corrected before the contract advertisement takes place.

The review of contracts valued at more than \$10 million begins with judging the appropriateness of the vendor selection process proposed by the contracting unit. The reviewing attorney assesses, for example, whether the procurement requires sealed bids or whether other contracting procedures are appropriate. The reviewer further determines whether the government unit has followed all other statutes, rules and regulations applicable to the procurement. Additional questions asked include: Has the governing body, department or authority approved the procurement? Are the specifications designed to ensure a competitive process? Is the method of advertisement appropriate?

For contracts exceeding \$10 million, the contracting unit must submit notification to OSC 30 days before advertisement or otherwise entering into a contract. On occasion, contracting units request flexibility in that time period. Accordingly, OSC has set forth a procedure through which government entities can seek a waiver of the 30-day time period. OSC works closely with contracting units needing such a waiver to ensure that contract solicitations can be made in a timely manner.

Contracts exceeding \$2 million, including \$10 million contracts previously submitted for pre-approval, are examined post-award. The focus post-award remains on compliance with laws and regulations. In addition, a determination is made as to whether the award followed the guidelines set forth in the solicitation. For example: Did the lowest bidder get the award in a sealed bid determination that appropriately considered alternates? Did the governing body approve and certify funding for the contract? Are the records submitted sufficient to justify the governing body's action? Is there any evidence of collusion or bid rigging?

To ensure that OSC's contract reviews result in a better contracting process in both the short and long terms, the Procurement Division consults directly with contracting units during and following reviews. Depending upon the nature of the review and any deficiency noted, the Procurement Division might hold an exit interview, prepare a written determination or simply provide oral guidance to the contracting unit. In cases involving serious deficiencies, OSC may refer contracts for audit review or further civil or administrative action, such as actions to recover monies expended. Criminal activity is referred to appropriate law enforcement authorities.

Among the most frequent errors OSC encountered were the misstatement of the Business Registration Certificate requirement as set forth in *N.J.S.A. 52:32-44*, vague or confusing evaluation criteria and inadequate descriptions of services in the scope of work.

The Procurement Division also has added oversight responsibilities with regard to contracts connected to Superstorm Sandy. Under Executive Order (EO) 125, the division is required to review any and all state procurements that involve the expenditure of federal reconstruction resources connected to Sandy recovery. The division then posts Sandy-related contracts on OSC's Sandy Transparency website. As a result, in FY 2017, the

Procurement Division reviewed a variety of purchasing practices that otherwise would have been below OSC's statutory monetary threshold for review.

The division reviews proposed procurements subject to EO 125 on an immediate basis, providing guidance and feedback to agencies to ensure compliance with public contracting laws without sacrificing expediency in the state's recovery process. In FY 2017, the division reviewed 76 contracts and purchase orders pursuant to EO 125 in furtherance of our state's rebuilding and recovery effort.

In all, the Procurement Division received notice of 618 contracts for review in FY 2017. Of those contracts, 150 of them were valued at more than \$10 million and were pre-screened pursuant to OSC's regular statutory authority. OSC attorneys took corrective action in 75 (50 percent) of those pre-screened contracts to ensure the legality of the procurement process. Some notable contracts reviewed include: the \$2 billion contract for a new operator of the Bergen County Medical Center; the \$192 million contract for the state Department of Transportation's "Direct Connection" project to create safer and more efficient access to I-295 from I-76 and Route 42; and the \$74 million contract for the new Rutgers University Athletic Performance Center.

The Procurement Division also reviewed 278 contracts valued between \$2 million and \$10 million. In these contracts, the Procurement Division found a 49 percent error rate. In each case, the division gave guidance to the contracting entity to ensure that the errors are not repeated.

Educational Outreach

In FY 2017, the division continued its extensive outreach to government contracting units across the state to review their procurement processes and specific compliance issues identified by OSC. OSC's Procurement Director also participated on various government-related panels discussing OSC's statutory authority to review public procurements.

Our redesigned Sandy Transparency website, <http://nj.gov/comptroller/sandytransparency/>, provides the public with a place to view the allotment and expenditure of federal Sandy funds, to research information about Sandy programs and to examine detailed documents from Sandy-related contracts.

