

LEGISLATIVE AUDIT COMMISSION



Performance Audit Of The State's Leasing Decision

May 2018

622 Stratton Office Building
Springfield, Illinois 62706
217/782-7097

**Performance Audit
Of The
State's Leasing Decision**

May 2018

RECOMMENDATIONS - 10

**Accepted and Partially Implemented - 5
Implemented - 5**

On June 28, 2017, the Illinois General Assembly adopted House Joint Resolution Number 63 which directed the Auditor General to conduct a performance audit of the State's decision to enter into a five-year \$2.4 million lease for property at 2410 South Grand Ave. East in Springfield, Illinois. Specifically, the resolution asked that the audit determine:

1. The justification for the space request by the Department of Human Services (DHS);
2. Whether the Department of Central Management Services (CMS) or other appropriate State agencies considered renovating the existing space and, if so, what projections were made for the cost of renovating the existing space;
3. Whether CMS considered the availability of other State-owned or leased space;
4. Whether CMS conducted an analysis of the cost-benefit of purchasing instead of leasing the property at 2410 South Grand Ave. East, Springfield, Illinois;
5. Whether DHS or any other appropriate State agency has conducted a cost-benefit analysis comparing the costs of digitizing records as compared to maintaining records in hard copy form;
6. The role of the Procurement Policy Board ("Board") in reviewing the lease;
7. Identification of the persons involved in the procurement, and their respective roles and responsibilities;
8. The process, time frame, and coordination followed by CMS in examining the lease requirements and advertising the procurement opportunity, including any steps taken to ensure adequate competition;
9. Whether any confidential information was shared by the CMS leasing agent;
10. The decision of CMS to proceed with the warehouse lease after receiving only one bid; and
11. Whether relationships between the seller of the property ("Barney's"), the buyer of the property, and the chairman of the Procurement Policy Board played a role in the warehouse lease.

Three different agencies are specifically named in the audit resolution: the Department of Central Management Services, the Department of Human Services, and the Procurement Policy Board. In addition, auditors also met with officials from the Department of Innovation and Technology, the Chief Procurement Office for General Services, and the Executive Ethics Commission.

Performance Audit of The State's Leasing Decision

Central Management Services

The CMS Bureau of Property Management operates, maintains, and manages more than 600 State-owned and leased facilities. The facilities management program provides services including leasing, maintenance, and property management. The Bureau of Property Management also is responsible for surplus real estate no longer needed by agencies.

Officials within the Bureau of Property Management are primarily involved with lease procurements, overseeing the leasing process from start to finish. Bureau of Property Management officials work with other agencies as well as the offerors with the goal of providing office and facilities space at the lowest cost to taxpayers.

Department of Human Services

The DHS Operations' Division of Business Services was responsible for initiating the space request for the DHS warehouse. The files that were stored at Dwight Correctional Center were mainly from the DHS Division of Family and Community Services. The leasing procedures at CMS include the using agency's involvement as follows:

- Submitting the space request;
- Reviewing and approving the agency programmed requirements which outline in detail the space required and the building requirements;
- Approving the geographic boundaries; and
- Participating in site suitability visits with the CMS Leasing Representative.

Procurement Policy Board

The Procurement Policy Board (Board) has the authority and responsibility to review, comment upon, and recommend, consistent with the Procurement Code, rules and practices governing, among other things, real property and capital improvement leases procured by the State. The Board is comprised of five members, one each appointed by the legislative leaders and one by the Governor. The appointee of the Governor serves as the Chair of the Board.

The Illinois Procurement Code requires the Procurement Policy Board to review any proposed lease of real property of 10,000 or more square feet or any proposed lease of real property with annual rent payments of \$100,000 or more. The Board is to be given 30 days to perform its review of leases. If the Board does not object in writing within 30 days, then the proposed lease becomes effective according to the terms of the lease.

Performance Audit of The State's Leasing Decision

Chief Procurement Office for General Services

The Procurement Code established four Chief Procurement Officers including the Chief Procurement Officer (CPO) for General Services. The CPO for General Services has procurement authority over real estate leases procured at CMS. State Purchasing Officers exercise the Chief Procurement Officer's procurement authority at the agency level and review all procurements. At the direction of the Chief Procurement Officer, a State Purchasing Officer shall have the authority to approve or reject contracts for a purchasing agency.

Executive Ethics Commission

The Executive Ethics Commission (EEC) appoints the Chief Procurement Officers and is also responsible for appointing procurement compliance monitors to oversee and review the procurement processes.

Department of Innovation and Technology

The Department of Innovation and Technology (DoIT) was established by Executive Order 01-16 issued on January 25, 2016. The Executive Order directed that the CMS Bureau of Communications and Computer Services (BCCS) be consolidated into DoIT as of July 1, 2016. In September 2015, BCCS submitted a space request for an IT (Information Technology) and Telecommunications Support Center to be located in Springfield. The space selected for award for this BCCS request was subsequently changed to the DHS warehouse.

Background

Dwight Correctional Center (Dwight) was closed effective March 26, 2013. In October 2013, the Illinois Department of Corrections submitted a request to the Department of Central Management Services (CMS) to surplus the Dwight property. At that time, it was decided to use the prison site for Department of Human Services (DHS) file storage. DHS began moving file cabinets and boxes to Dwight in January 2014.

In September 2015, DHS submitted a space request to CMS for a new **file warehouse** in Central Illinois. The solicitation was issued and four bids were received by the due date of December 15, 2015. On April 20, 2016, an offer was selected from MGM Jefferson Corporation for property at 719 W. Jefferson St. in Springfield, Illinois.

In September 2015, the CMS Bureau of Communications and Computer Services (BCCS), which is now DoIT, submitted a space request for an **IT and Telecommunications Support Center** to be located in Springfield. The solicitation was issued twice with no bids received. The solicitation was issued a third time with two bids received by the due date of

Performance Audit of The State's Leasing Decision

February 24, 2016. On April 20, 2016, an offer was selected from Climate Controlled Holdings, LLC for property at 2410 South Grand Ave. East in Springfield, Illinois.

On July 8, 2016, CMS decided to switch the lease facilities, awarding the DHS file warehouse to Climate Controlled Holdings and awarding the IT and Telecommunications Support Center to MGM Jefferson Corporation. It appeared that the decision to switch the leases was done with the intent of finding the best fit for the agencies as well as protecting both prospective landlords from loss of time, effort, and monies already expended.

Report Conclusions

The decision to enter into the lease actually involved two different leases – one for a file storage warehouse and one for an IT (Information Technology) and Telecommunications Support Center. After the winning vendors were selected but prior to the final award, the Department of Central Management Services (CMS) switched the purposes of the leases and the using agencies. However, CMS violated a provision of the Illinois Procurement Code by awarding leases to vendors who were not qualified respondents for the leases awarded. For example, the vendor awarded the warehouse lease was not a qualified respondent under the Procurement Code as it had submitted a response for the IT and Telecommunications Support Center and not the warehouse lease. This was no fault of the vendors as the decision to switch leases was made by CMS. In addition:

- Offers were evaluated and awards selected based on the requirements set forth in the solicitation document. These requirements were then changed.
- CMS and the Chief Procurement Office for General Services have characterized the switch of the leases as substituting using agencies. However, the switch was not a simple substituting of using agencies. Not only were the agencies changed, the purposes of the leases were changed, the structural layouts were changed, the tenant space requirements were changed, and the prices offered were changed.
- Other responders did not get the opportunity to change their bids to meet the new lease requirements violating the principle of fair and equal treatment.
- By not rebidding, CMS may have excluded potential bidders who were not afforded the opportunity to bid on the new space requirements.
- The State Purchasing Officer responsible for reviewing the leases could not provide adequate documentation of review.

Other key findings of the audit include the following:

- The information provided by CMS to the Procurement Policy Board for the Department of Human Services (DHS) warehouse lease was misleading and incomplete which hampered the Board's ability to review the lease. A draft version of the information sent to the Board contained additional language explaining the switching of leases but it was removed in the final version sent to the Board.
- The amount of space requested in the DHS space request was insufficient to meet its file storage needs. DHS also could not provide documentation demonstrating any cost savings resulting from consolidating files.

Performance Audit of The State's Leasing Decision

- CMS did not conduct an analysis of the cost-benefit of purchasing instead of leasing the property at 2410 South Grand Ave. East.
- DHS has not conducted a comprehensive cost-benefit analysis of digitizing records.

This audit report contains ten recommendations: five recommendations directed to CMS; two recommendations directed to the CPO; one recommendation directed to both CMS and the CPO; one recommendation directed to DHS; and one recommendation directed to the Procurement Policy Board. The agencies generally agreed with the recommendations with the exception of the CPO who initially disagreed with Recommendation Number One, but then implemented the recommendation according to updated responses.

Recommendations

1. **The Department of Central Management Services and the Chief Procurement Office for General Services should put procedures in place to ensure that leases are awarded only to qualified respondents who submitted bids meeting the original lease specifications.**

Finding: CMS violated a provision of the Illinois Procurement Code by awarding leases to vendors who were not qualified respondents for the leases awarded. By Switching leases, CMS violated the principle of fair and equal treatment as other responders were not offered the opportunity to change their bids. And potential offerors were not able to submit bids based on the new requirements. The Illinois Procurement Code Article 40 pertains specifically to real property and capital improvement leases. One section deals with the responses received from offering vendors:

*Response. The request for information response shall consist of written information sufficient to show that the respondent can meet minimum criteria set forth in the request. State purchasing officers may enter into discussions with respondents for the purpose of clarifying State needs and the information supplied by the respondents. On the basis of the information supplied and discussions, if any, a State purchasing officer shall make a written determination identifying the responses that meet the minimum criteria set forth in the request for information. **Negotiations shall be entered into with all qualified respondents for the purpose of securing a lease that is in the best interest of the State.** A written report of the negotiations shall be retained in the lease files and shall include the reasons for the final selection... (30 ILCS 500/40-20(d)) [Emphasis Added]*

The DHS warehouse lease received four responses, all of which were deemed responsive. Site visits were conducted at all four locations and best and final offers were solicited. The best and lowest offer, submitted by MGM Jefferson Corporation, was selected for award. Up to this point, CMS had followed the provisions of the Procurement Code.

**Performance Audit of
The State’s Leasing Decision**

CMS then made the decision to switch leases, awarding the DHS warehouse to Climate Controlled Holdings. The vendor awarded the lease was not a qualified respondent under the Procurement Code as it had not submitted a response for the warehouse lease.

Conversely, MGM Jefferson Corporation was awarded the BCCS IT and Telecommunications Support Center but was not a qualified respondent as it had submitted a response for the warehouse lease. This was no fault of the vendors as the decision to switch leases was made by CMS.

The solicitation document, called the Request for Information, for each lease contained language on the selection of the winning vendor. Offers were evaluated and awards selected based on the requirements set forth in the Request for Information. These requirements were then changed.

When CMS decided to switch the leases, it was not simply switching one warehouse for another warehouse. Exhibit 2-5 compares the tenant space requirements included in each of the lease procurements and illustrates how different the space requirements were. The DHS warehouse RFI specified 1 office and 3 workstations compared to 17 offices and 138 workstations in the BCCS RFI. Warehouse space accounted for 96% of the space in the DHS warehouse RFI compared to only 34% of the space in the BCCS RFI. The space requirements were significantly different.

Exhibit 2-5 COMPARISON OF TENANT SPACE REQUIREMENTS		
Description	DHS Warehouse RFI #6628	BCCS IT and Telecommunications Support Center RFI #6627
Personnel space – offices	150 sq. ft. <i>(1 office)</i>	2,550 sq. ft. <i>(17 offices)</i>
Personnel space – workstations	192 sq. ft. <i>(3 workstations)</i>	8,832 sq. ft. <i>(138 workstations)</i>
Personnel space – open space	200 sq. ft.	8,700 sq. ft.
Common office space (restrooms, break rooms, conference rooms, etc.)	458 sq. ft.	4,218 sq. ft.
Other storage space (supply rooms, PC repair room)	-	4,700 sq. ft.
Warehouse space	25,000 sq. ft.	15,000 sq. ft.
Total	26,000 sq. ft.	44,000 sq. ft.
Source: OAG analysis of tenant space requirements in the RFI.		

When CMS decided to switch the leases, officials did not give other responders the opportunity to change their bids to meet the new lease requirements. The Illinois Procurement Code, in a section that applies to competitive sealed proposals, comments on

Performance Audit of The State's Leasing Decision

discussions with responsible offerors and revising offers. Similar discussions are allowed in lease procurements.

By not rebidding the DHS warehouse lease or the BCCS IT and Telecommunications Support Center lease, CMS may have excluded potential bidders who were not afforded the opportunity to bid on the new space requirements.

- The initial DHS Warehouse RFI requested space totaling 26,000 square feet. The final lease agreement was for 60,158 square feet.
- The initial BCCS RFI requested space totaling 44,000 square feet. The final lease agreement was for 24,210 square feet.

The Chief Procurement Office (CPO) for General Services has procurement authority over real estate leases procured at CMS. State Purchasing Officers are appointed by Chief Procurement Officers and have the authority to approve or reject contracts of the purchasing agency. The General Services Standard Procurement Rules state: "*The SPO [State Purchasing Officer] will act primarily to review, authorize and approve State agency procurement activities and, to that end, exercises procurement authority with the assistance of the State agency procurement staff.*" (44 Ill. Adm. Code 1.1005(e))

Auditors requested documentation of the State Purchasing Officer's review of the two leases. The only documentation provided were emails from the State Purchasing Officer to CMS stating "done" in reference to the publication of notices to the Illinois Procurement Bulletin. No other documentation of the State Purchasing Officer's review and approval of the leases was provided.

CMS and the Chief Procurement Office for General Services have characterized the switch of the leases as substituting using agencies. The CMS Lease Administrator said that technically, CMS is the agency leasing the property and it is not obligated to identify a user agency although it still does.

The State Purchasing Officer responsible for reviewing the lease said the standard lease language allows for a change in using agency:

Lessee may substitute using agencies in the Premises upon thirty (30) days' written notice to the Lessor. (Section 4.02 of the standard lease)

However, the above section would only apply once the lease was executed. The switching of the leases occurred prior to signing the leases. Secondly, and more importantly, **the switch was not a simple substituting of using agencies. Not only were the agencies changed, the purposes of the leases were changed, the structural layouts were changed, the tenant space requirements were changed, and the prices offered were changed.**

Exhibit 2-7 shows the differences in the prices offered by both Climate Controlled Holdings and MGM Jefferson Corporation in the original offers compared to the prices in the final leases. The prices increased for one and decreased for the other. The exhibit also shows the difference in total space. The DHS warehouse went from 24,210 square feet to 60,158

**Performance Audit of
The State's Leasing Decision**

square feet whereas the BCCS IT and Telecommunications Support Center went from 44,000 square feet to 24,210 square feet.

Exhibit 2-7 PRICE COMPARISON BETWEEN INITIAL OFFER AND FINAL LEASE		
<i>Prices were substantially changed from the initial offer to the final lease after CMS changed the purposes of the leases and the space requirements.</i>		
	Lease #6627	
	Initial Offer BCCS IT and Telecommunications Support Center (44,000 sq. ft.)	Final Lease DHS Warehouse (60,158 sq. ft.)
Climate Controlled Holdings		
Year 1	\$18.45/sq. ft.	\$7.95/sq. ft.
Year 2	\$18.45/sq. ft.	\$7.95/sq. ft.
Year 3	\$19.00/sq. ft.	\$8.11/sq. ft.
Year 4	\$19.00/sq. ft.	\$8.11/sq. ft.
Year 5	\$19.00/sq. ft.	\$8.27/sq. ft.
Total 5-year payments	\$4,131,600.00	\$2,429,781.62
	Lease #6628	
	Initial Offer DHS Warehouse (24,210 sq. ft.)	Final Lease BCCS IT and Telecommunications Support Center (24,210 sq. ft.)
MGM Jefferson Corporation		
Year 1	\$7.35/sq. ft.	\$14.40/sq. ft. ^{1,2}
Year 2	\$7.50/sq. ft.	\$17.16/sq. ft. ¹
Year 3	\$7.65/sq. ft.	\$17.37/sq. ft. ¹
Year 4	\$7.80/sq. ft.	\$17.58/sq. ft. ¹
Year 5	\$7.96/sq. ft.	\$17.80/sq. ft. ¹
Total 5-year payments	\$926,274.60	\$2,041,145.10
¹ Price includes \$6.73 per square foot to amortize temporary improvements totaling \$702,570 made by the lessor to meet the new space requirements. ² Includes a three month rent abatement effectively lowering the base rent from \$10.23 to \$7.67. Source: OAG analysis of initial offers and final leases.		

CMS Response: The Department shares the concern that leases only be awarded to qualified respondents, and is working to evaluate its procedures to balance the flexibility afforded by the procurement code with the goal of providing equal and maximum opportunity for all bidders.

As noted, agency needs can evolve during the lengthy procurement process, as they did here with the formation of a new agency and the expanding space needs of another. In this

Performance Audit of The State's Leasing Decision

instance, CMS considered several factors - the history of the procurements, the state of the real estate market, the impact of the budget impasse - in determining that the adjustment to the agency qualifications was within its authority and in the best interest of the state.

CMS recognizes the change in construction plans was more pronounced than other procurements, but would also note that this procurement did not preclude responsive bidders and each lease was awarded to a qualified bidder of each respective RFI. It's also important to note that not one protest was received.

CMS acknowledges its current procurement documents do not adequately convey the flexible nature of leasing procurement and so, in addition to a commitment to reviewing its procedures, CMS is also currently overhauling its leasing documentation to address this issue.

CMS Updated Response: Partially Implemented. Initial corrective action completed; secondary corrective action outlined but not yet under way. CMS worked with the CPO's office to update procurement documents (RFI) and process. CMS did not issue any RFIs until these updates were complete. CMS will now review and update the lease documents themselves. CMS has recently developed draft Standard Operating Procedures (SOPs) for this process to be used by the leasing staff and conducted mandatory training for all leasing staff and facility managers on April 17, 2019; additionally, recurring mandatory training on the SOPs is scheduled to take place in the fourth quarter of FY19 once the SOP is final.

CPO-GS Response: The Chief Procurement Office for General Services disagrees with the finding that the leasing procurements that are the subject of the audit were conducted in violation of the Illinois Procurement Code.

All leases of real property are procured in accordance with Article 40 of the Code. The Code recognizes that the procurement of leased space cannot be accomplished using an Invitation for Bid or a Request for Proposal. Invitation for Bid provides no flexibility for the State to accept a solution that does not meet exact specifications. Request for Proposal allows for negotiation but not deviation from the goods or services described in the solicitation. A Request for Information allows flexibility. Article 40 requires the RFI to include *the proposed uses of the property and a general description of the configuration desired*. The word specification does not appear in the Article at all.

A State Purchasing Officer is required to review and approve or reject procurement activity at four distinct points in a procurement. The agency conducting the procurement must present their work to the SPO for review at these points:

- Step 1: review and approval or denial of the procurement method
- Step 2: review of solicitation document and approval or denial for publication
- Step 3: review and application of determination of award
- Step 4: review and approval or denial of contract execution

Performance Audit of The State's Leasing Decision

Auditor's Comment: *As noted in the audit report, the State Purchasing Officer responsible for reviewing the leases could not provide documentation of review other than emails to CMS stating "done" in reference to the publication of notices to the Illinois Procurement Bulletin.*

CPO-GS Response (Continued): The role of the SPO begins at Step 1, where the SPO is required to determine if the agency's desired procurement approach is appropriate. The SPO does not become involved in the agency's determination of need.

At Step 2 the SPO reviews the RFI and approves posting the RFI to the IPB if the RFI contains the Code-mandated requirements. The SPO ensures that the IPB posting reflects the solicitation documents and that the IPB posting requirements, such as the mandatory minimum 14-day posting period, are met.

The Code requires the RFI to include:

- (1) the type of property to be leased;
- (2) the proposed uses of the property;
- (3) the duration of the lease;
- (4) the preferred location of the property; and
- (5) a general description of the configuration desired.

The RFI for L6627 called for (1) 44,000 square feet of office/climate controlled warehouse, for (2) the proposed occupancy of CMS BCCS, for (3) five years with a five-year renewal option, (4) located within certain boundaries in the City of Springfield and with (5) the general description included in the document entitled *Agency Programmed Requirements*, which is an attachment to the IPB posting. The State also sought an expansion option of up to 100% of the rentable square footage of the building.

The RFI for L6628 called for (1) 26,000 square feet of climate controlled warehouse space for (2) the proposed occupancy of the Department of Human Services (3) for five years with a five-year renewal option (4) located within the geographic boundaries of eight Central Illinois counties with (5) the general description as described in the preceding paragraph and this RFI also sought the expansion option.

Step 3 requires SPO review of the offers submitted and the determination that the award recommendation go to the *lowest response by price*. Both procurements were awarded to the offeror that met this criterion. The Auditor General agrees and states so on page 26 of the report. The CPO-GS recognizes that the SPO should have recorded award determination language for the file as is required by Code.

Auditor's Comment: *While the lowest response by price was initially selected, as shown in Exhibit 2-7, after the purposes of the leases were changed, prices were substantially changed for both leases compared to the initial offer. Officials did not give other responders the opportunity to change their bids to meet the new lease requirements. So it is unknown if the lowest priced offer was ultimately selected.*

Performance Audit of The State's Leasing Decision

CPO-GS Response (Continued): At Step 4 the SPO reviews and approves or denies execution of the final lease document. The SPO checks to make sure the lease reflects the offer that was awarded.

L6627 is for 44,000 square feet plus 16,158 of the exercised expansion option. The occupancy of the building has changed from CMS BCCS to DHS.

The term of the lease is five years with a five-year renewal option. The building is within the geographic boundaries listed in the RFI. Only the proposed occupancy has changed.

L6628 is for 24,210 square feet. The occupancy of the building has changed from DHS to CMS. The term of the lease is five years with a five-year renewal option. The building is within the geographic boundaries listed in the RFI. Only the proposed occupancy has changed.

Auditor's Comment: *Not only was the proposed occupancy changed, the purposes of the leases were changed, the structural layouts were changed, the tenant space requirements were changed, and the prices offered were changed. Exhibit 2-5 shows the significant differences in the tenant space requirements.*

CPO-GS Response (Continued): Neither the Code nor the Rules define proposed so the plain meaning is applicable in statutory interpretation. Merriam-Webster defines the word propose as *to set before the mind (as for discussion, imitation, or action) or to set forth for acceptance or rejection.* The deliberate use of the word "proposed" in 40-20 (b)(2) suggests that the uses set forth in the procurement are not definite and may be subject to change.

The CPO-GS sought the advice of the General Counsel for the Executive Ethics Commission and our procurement attorney, who both opined that neither of these procurements was conducted in an illegal manner. It is also important to note also that no vendors believed they were harmed. There was no protest of either award.

Auditor's Comment: *Auditors were not provided any documentation that opined on the legality of the procurement. It is unclear if the advice sought by the CPO occurred at the time of the procurement or after the leases were already in place.*

CPO-GS Updated Response: Implemented. To address the Auditor General's recommendation, CPO-GS put the following procedures into place to ensure that leases are awarded only to qualified respondents who submitted responses meeting the original lease requirements/minimum criteria.

The CPO-GS halted all CMS leasing procurement activity after release of the OAG's report until the CPO-GS completed a comprehensive evaluation of all leasing procurement practices and implemented improvements. On June 4, 2018, the CPO-GS issued CPO Notice 2018.08 which immediately implemented new leasing procedures, use of BidBuy, additional documentation, and new standardized forms. The CPO-GS staff trained CMS staff on the new policies and procedures.

Performance Audit of The State's Leasing Decision

BidBuy serves as the Procurement Bulletin and as the procurement file. The SPO reviews and approves procurement information and requests in BidBuy. The system permits an authorized State user to view a procurement transaction in real-time up to and including award. At any time, users may access file attachments, approvals, vendor questions and answers, agency internal documents, and vendor responses. Any event that may cast doubt upon the integrity of the procurement is readily apparent, both during the procurement and after the fact. The BidBuy record is the official procurement file.

The CPO-GS in conjunction with CMS revised the Request for Information (RFI) template to more clearly delineate the mandatory minimum criteria for the space from preferred configurations. These minimums include both requirements stated in law (30 ILCS 500/40-20 (b)) and CMS' mandatory requirements that cause disqualification if a response fails to meet them. The SPO will disqualify respondents not meeting mandatory minimums. If no respondent meets a mandatory minimum, the State reserves the right to waive that minimum, or may re-solicit with adjusted requirements, all subject to SPO approval.

The Agency Program Requirements (APR) document has been renamed "Tenant Space Configuration" to reflect that the desired space configuration of the proposed Using Agency is not a mandatory minimum requirement, but instead defines the initial standards to fulfill the Using Agency's needs. It was never CMS's practice to request disqualification of a response for not meeting the APR. This practice is evidence that CMS never considered the APR definitive or treated it as a mandatory requirement, even though language in the RFI suggested it should have been.

The SPO assigned to CMS Leasing is now headquartered within the leasing office, promoting open and frequent communication. The SPO and CMS staff are guided by a written leasing process for RFIs.

In retrospect, and with the benefit of knowledge disclosed by professional investigations after the fact, the CPO-GS agrees that the leasing procurement could have been conducted in a more competitive and transparent manner.

CMS misled the SPO that awarded the procurements throughout the procurement. CMS should have consulted him when they first contemplated switching the agencies. The SPO's first review of these procurements occurred when CMS asked that he publish the initial selections on April 18, 2016. He had no conversations or communication with CMS about either procurement until September 2016 when CMS asked him to publish the award for lease 6627 to Climate Controlled Holdings. In the intervening period, several significant events occurred unbeknownst to the SPO: CMS learned that neither DHS nor DoIT were satisfied with the properties selected for their occupancy, CMS decided to switch the occupying agencies, and CMS leasing agent Chip Smith disclosed one vendor's pricing to another. The SPO's knowledge of any of these events during the time that the procurement was active, instead of two years after the fact, would have resulted in a different outcome.

Performance Audit of The State's Leasing Decision

The white papers on which SPO relied for final pricing and explained CMS' rationale for both awards were incomplete and altered by CMS before they were presented to the SPO. CMS omitted mention of the change in occupying agencies.

The SPO was aware that both leasing procurements were initiated the prior year and that one had been solicited unsuccessfully twice before. Negotiations were lengthy. Considering the information the SPO had at the time of award, the SPO believed the change in occupying agencies was not substantive enough to warrant cancellation and re-solicitation and that it was so insignificant that the SPO did not escalate the issue to either his supervisor or the CPO-GS.

Upon learning that a CMS leasing representative shared confidential information with different respondents to the leasing solicitations, the CPO-GS determined that she needed to act to void or ratify leases 6627 and 6628. On March 13, 2019, the CPO-GS ratified the contracts as being in the best interest of the State as CMS estimates the costs to now relocate the agencies to be at least \$500,000-\$600,000.

- 2. The Department of Human Services should develop a policy that requires the Department to conduct a thorough review of its space needs prior to submitting a space request to CMS to ensure that the amount of space requested is adequate.**

Finding: DHS submitted a space request in September 2015 requesting new space for file storage in Central Illinois. The plan was to move all of the files stored at Dwight Correctional Center as well as other files located at various Family Community Resource Centers (FCRC's). The space request was approved by CMS on September 15, 2015.

The CMS space request form contains a specific section for the requesting agency to provide justification for the space request. The space request noted:

Due to the horrible conditions of the present storage area at the Dwight Correctional Facility, we are requesting to find new space that will allow us to consolidate the files we have in Dwight and the other files still located at our FCRC's. DHS spends a great deal of resources housing file cabinets in local offices.

The space request asked the agency to identify any cost savings or cost avoidance associated with the request and to provide an economic justification:

DHS will be able to save even more money by reducing the footprint of the local offices – space that is more expensive – in lieu of sending their filing cabinets to less expensive, warehouse type space. DHS will incur one-time costs associated with moving the cabinets to the new location and the installation of phone/data lines. This lease will end up saving a great deal

Performance Audit of The State's Leasing Decision

of money as the warehouse space will be considerably less expensive than housing the files in the local offices.

Auditors asked DHS if there was any analysis showing the cost savings that resulted from moving file cabinets from the local offices. DHS officials noted that square footage at local offices cost more than square footage in a warehouse space. However, DHS could not provide documentation to show an analysis had been conducted to demonstrate any cost savings.

The amount of space requested in the DHS space request was insufficient to accommodate the files being stored at Dwight. That is without even considering any additional files that would be moved from other locations. The total space requested was 26,292 square feet (which included 742 square feet for personnel space, 550 square feet of common office space, and 25,000 square feet for warehouse storage).

Prior to submitting the space request, CMS provided DHS the approximate square footage DHS was occupying at Dwight which totaled 41,905 square feet. A DHS official asked if they should request 20,000 square feet in the space request. A CMS official replied that 25,000 square feet would be closer to what was needed. Auditors asked both DHS and CMS why only 25,000 square feet was requested when over 41,000 square feet was being used:

- A DHS official said the thought was that Dwight had a lot of wasted space because of how the rooms were broken up so they relied on CMS' opinion.
- A CMS official said it was due to DHS digitizing files and the plan to go more vertical with the file storage to take up less square footage.

As the agency submitting the space request, DHS is ultimately responsible for submitting an accurate request that fully accommodates its needs. The signature page of the space request states the following: *"This agency has thoroughly reviewed our operational and programmatic needs and they are accurately set forth in this document including projected changes to the Agency's space need at this location."* Had DHS initially requested more space, enough to accommodate the files at Dwight plus additional files from other locations, many of the complications that arose later in the procurement might have been avoided.

DHS Updated Response: Partially Implemented. The IDHS Office of Business Services (OBS) has drafted an administrative directive for agency review which describes the information IDHS must include in space requests as well as the Office of Business Services' (OBS's) role in reviewing requests before submission to the Central Management Services (CMS) and confirming specifications when requests are filled by CMS.

Performance Audit of The State's Leasing Decision

- 3. The Department of Central Management Services should update its Capital Development Board Certification Form or its Lease Document Checklist to ensure that an analysis of the cost-benefits of purchasing or constructing new space is performed and documented.**

Finding: CMS did not consider renovating space at Dwight Correctional Center. No cost projections were made to consider the costs of renovating versus leasing new space.

In October 2013, the Department of Corrections requested to transfer the Dwight Correctional Center property to CMS as surplus property. Until such time as ownership of the property was formally transferred, CMS entered into an interagency agreement with the Department of Corrections effective July 1, 2014. The agreement specified that CMS shall assume the fiscal responsibility for all costs associated with the operation of Dwight.

CMS did not consider Dwight as functional enough to do an analysis on renovation. A timeline of the process that CMS provided noted the following:

The Dwight location had deteriorated to the point that it was no longer functional. Files were being damaged by moisture and temperature extremes, and employees were exposed to mold and other potential health risks. Due to the age of the buildings and the surplus property status of the site, it made no sense to expend capital dollars for roof repairs, mold remediation, or other work.

CMS did consider the availability of other State-owned and leased space before the decision to proceed with the DHS warehouse space request and concluded that no space was available. A check of State-owned and leased space is required by State statute, administrative rules, and CMS policy:

The check for available space occurs early in the process and is documented in the Vacant Space Due Diligence Memo. The DHS space request was dated September 11, 2015. The Vacant Space Due Diligence Memo was dated just a few days later on September 15, 2015.

The search criteria used for the DHS warehouse lease was “*All existing warehouse, storage, or “other” space of at least 26,000 square feet located in the following counties: Champaign, Ford, Livingston, Logan, Macon, McLean, Peoria and Sangamon.*” Exhibit 3-3 shows the space that was reviewed that met the search criteria. CMS determined that there was no available space at either of the two leased facilities. CMS also concluded that no State-owned facility met the search criteria.

**Performance Audit of
The State’s Leasing Decision**

Exhibit 3-3 STATE-OWNED OR LEASED PROPERTY REVIEWED September 2015				
Search Criteria: <i>All existing warehouse, storage, or “other” space of at least 26,000 square feet located in the following counties: Champaign, Ford, Livingston, Logan, Macon, McLean, Peoria and Sangamon.</i>				
Property	Location	Using Agencies	Current Use	Square Footage
Lease #2766	5000-5020 Industrial Dr. Springfield	Human Services Children and Family Services	Office, warehouse, mail room, print shop	138,335
Lease #6023	1 Langhorne Bond Dr. Springfield	Transportation State Police	Office and aircraft hangar	436,906
CMS concluded that there was no available space at either leased facility and that no State-owned facility met the search criteria. Source: CMS lease file – Vacant Space Due Diligence Memo.				

Auditors examined the September 2015 CMS Lease Inventory Report and identified two additional properties that would have met the search criteria but were not listed as being reviewed by CMS:

- ***Lease #5821 at 2946 Old Rochester Road, Springfield. This property consisted of 81,300 square feet of warehouse space and was occupied by Healthcare and Family Services, Public Health, and Lottery.***
- ***Lease #4467 at 319 E. Jefferson St., Springfield. This property consisted of 57,000 square feet of storage and office space and was occupied by Human Services.***

CMS did not conduct an analysis of the cost-benefit of purchasing instead of leasing the property at 2410 South Grand Ave. East. The only analysis conducted was a fiscal analysis of bids that CMS performs for every lease.

The consultation between CMS and the Capital Development Board (CDB) is documented by a certification in the lease file. This one page form, called the CDB Certification Form, is signed by both the Capital Development Board and by CMS. By signing, officials attest that they have consulted and that the lease is in the best interests of the State. The form was signed for the warehouse lease on October 31, 2016, after the award announcement but prior to the signing of the lease.

CMS said that purchasing was not considered for the warehouse lease because any purchase of a building which requires improvements with public funds would require an opinion from the Illinois Attorney General. CMS said this would have taken a significant amount of time, which DHS did not have due to the deteriorating conditions at Dwight. However, it should be noted that from the time DHS submitted a space request

Performance Audit of The State's Leasing Decision

(September 2015) to the time it began moving files into the new warehouse (February 2017) was approximately 17 months. CMS did note that the lease contains an option to purchase, if funds become available; however, officials said such a purchase would require legislative appropriation because most agencies do not have funds on hand that are not already appropriated for other purposes.

CMS Response: CMS agrees that an analysis should be done to ensure that the cost vs. benefits of a lease outweigh purchasing or constructing new space. CMS has historically relied on the Capital Development Board to certify as to constructing versus leasing, and intends to work with the CDB to better incorporate and accurately reflect CDB's analysis in CMS's leasing process. In addition, CMS will formalize and document the analysis of leasing versus purchases that historically took place informally, despite the absence of appropriation for real estate purchases. Of note, CMS proposed legislation on February 15, 2018 (SB3143) that will require CMS to annually analyze all leases that contain a purchase option and have completed the third year of the lease and report its findings to the General Assembly. This analysis will recommend whether it is in the State's best interest to exercise the purchase option or to seek to simply renew the lease. This will allow the General Assembly an opportunity to appropriate funding for purchase. In the event the proposed legislation does not pass, CMS plans to incorporate this type of analysis into its Bureau of Property Management (BoPM) procedures. BoPM is engaged in an active procurement for real estate advisory service that would include such analysis.

CMS Updated Response: **Implemented.** *Initial corrective action completed; secondary corrective action completed.* CMS recently successfully initiated legislation enacted to require a cost-benefit analysis of purchase versus leasing options. CMS engaged Jones Lang LaSalle (JLL) to complete the analysis and submitted its first report to the General Assembly on February 15, 2019. CMS can use this analysis to make further decisions regarding purchasing property. CMS has also updated its leasing procedures to address the initial cost-benefit analysis of construction new space with CDB so that useful information is included as part of the checklist.

4. The Procurement Policy Board should consider developing a written conflict of interest policy for Board members to clarify instances where a conflict may exist and establish steps to take when a conflict does exist.

Finding: The Procurement Policy Board (Board) has the authority to review leases and object to leases. Any lease of real property for 10,000 or more square feet or with annual rent payments of \$100,000 or more is sent to the Procurement Policy Board for review. The Board has 30 days to review the proposed lease. If the Board does not object in writing within 30 days, the proposed lease becomes effective.

The DHS warehouse lease was not discussed or voted on at its October 2016 meeting, and since the Board did not object to the lease, it became effective at the end of the Board's 30-day review period. The Board has no conflict of interest policies, but it does

Performance Audit of The State's Leasing Decision

complete annual ethics training and has an unofficial practice of recusal in situations where there are conflicts of interest.

Notice of final award for the DHS warehouse lease was posted to the Illinois Procurement Bulletin on October 4, 2016, and information on the lease was provided to the Board for its review at the October 20, 2016 Board meeting. For each lease, the Board is provided the lease document, a summary of the lease prepared by CMS called the white paper, and a summary of the lease prepared by the Board's staff.

For the October 20, 2016 Board meeting, there were three leases on the agenda and an additional four leases, including the warehouse lease, that were non-agenda items. None of the four non-agenda leases were discussed at the meeting. Since there was no discussion and no objection by the Board, the warehouse lease became effective at the end of the 30-day review period. The Board has since changed its policy and now lists all leases on the agenda.

The white paper summary of the lease, prepared by CMS, was misleading and did not explain the switching of leases. When auditors spoke to the Board members, three members said that, if they had known, they would have handled the lease differently or had different discussions regarding the lease.

The Board does not have any conflict of interest policies for members. There is a conflict of interest section in the Board's handbook for employees, but it does not apply to Board members.

Board members do go through annual ethics training, conducted by the Office of the Executive Inspector General. The training, which is done for appointees to State of Illinois Boards, contains a section that addresses conflicts of interest. The training section says, in part: *"In any instance where you believe you may have or appear to have a conflict of interest with respect to your membership on a state board or commission, it is your responsibility to immediately take steps to appropriately disclose the conflict and take action to remedy it."*

While not directed in policy or statute, there has been an unofficial practice of Board members recusing themselves when having a conflict of interest, which two members have done in the past. Additionally, members must submit Economic Interest forms to the Secretary of State.

While auditors did not conduct an exhaustive search of other boards or survey other boards to determine if they have conflict of interest policies, auditors did note that the State Board of Education has a policy in place. The State Board of Education's policy requires members to disclose instances where a member has or may have a conflict of interest. The policy also includes specific steps to take if it is determined that a conflict of interest exists.

Performance Audit of The State's Leasing Decision

PPB Updated Response: Partially Implemented. The legal department has drafted a conflict of interest policy for approval at the next Board meeting on May 22, 2019.

5. **The Department of Central Management Services should update its leasing procedures to ensure requirements in the Procurement Code and its leasing procedures are followed to ensure adequate competition. Specifically, the Department should:**
- **Update its space request form to include justification for the desired geographic location to ensure the location is not unduly restrictive;**
 - **Add outreach to the Lease Document Checklist to ensure procedures are followed; and**
 - **Update its leasing procedures for publishing notices in newspapers so that it aligns with the requirements in the Illinois Procurement Code.**

Finding: CMS has procedures in place for examining lease requirements and advertising the procurement. However, for one of the leases, other than posting to the Procurement Bulletin, no additional outreach was done to increase awareness of the lease and to ensure adequate competition. In addition, the geographic boundaries may have been unduly restrictive.

CMS' Bureau of Property Management is responsible for all aspects of the leasing process. CMS has established leasing procedures that outline in detail the process for preparing a lease procurement, including examining the leasing requirements and advertising the procurement opportunity.

The time frame for this process for both leases was between one and two months. It took approximately another six months for CMS to select offers for both; lease #6627 did not get any offers until the third Request for Information publication.

Lease requirements are outlined in the Agency Programmed Requirements, which is approved by the using agency before the Request for Information is published. Auditors found one issue with the leasing requirements for the warehouse lease.

The Agency Programmed Requirements for the DHS warehouse required that the property be located in one of eight downstate counties. An email between CMS and DHS officials shows that there were originally six counties selected, with CMS adding an additional two. There was no explanation for why these specific counties were chosen. When asked why these specific eight counties were selected, DHS officials said that CMS wanted a downstate warehouse because there was already a records center in Chicago and it would be less expensive, but did not specify why the warehouse had to be located in only these counties. The Illinois Procurement Code states that "*All specifications shall seek to...encourage competition in satisfying the State's needs and shall not be unduly restrictive*" (30 ILCS 500/20-50). By excluding all other downstate counties without reason, the geographic specifications may have been unduly restrictive.

Performance Audit of The State's Leasing Decision

Auditors tested both leases to see if CMS followed its own leasing procedures. Auditors found that the process was followed, except in one area.

Other than placing a notice in the State newspaper (the Taylorville Breeze-Courier) and posting to the Procurement Bulletin, no additional outreach was done for lease #6628. CMS leasing procedures specify that after the Request for Information is published, *"Leasing Rep drives the boundaries; searches websites; contacts local brokers, Chambers of Commerce, etc, to increase awareness of the RFI and encourage potential proposers to submit offers."* While there is a Lease Document Checklist that is filled out for every lease, it does not include any steps for outreach.

CMS provided the Leasing Representative's letters sent to potential bidders for lease #6627, but no such documents were provided for lease #6628. The letters were sent on October 15, 2015, to five potential bidders. No bids were received and the solicitation was posted again two subsequent times. Despite receiving no bids, CMS did not perform any additional outreach to increase awareness of the lease opportunity for the subsequent postings.

Notice of the two leases was published in the State newspaper, but was not published in newspapers in the communities where CMS was seeking the space. While this meets CMS' own leasing procedures, it does not meet the requirements in the Illinois Procurement Code.

CMS stated that newspapers will not allow CMS to publish ads because of the State not paying its bills timely. CMS provided emails from 2010 and 2013 showing it was refused by several newspapers because of non-payment issues. However, publishing in newspapers in the communities where the agency is seeking space is required by the Procurement Code and is important for any potential bidders that may not be registered on the Illinois Procurement Bulletin.

CMS Response: CMS constantly strives to increase the competition for its procurements. CMS will continue to ensure our leasing procedures meet Procurement Code requirements and that those procedures are implemented with consideration given to generating maximum competition among vendors. This will include:

- Revising the space request to include reason for the desired geographic location;
- CMS has conducted best practice meetings and trainings with our leasing representatives in the past and will schedule another training that will reinforce CMS leasing policies regarding outreach; and
- CMS will examine its options to comply with the Procurement Code's publication requirements if vendors decline to do business with the State, which may include suggesting revisions to the Procurement Code.

CMS Updated Responses: Partially Implemented. Initial corrective action completed; secondary corrective action under way. Due to staff transition in the leasing/transaction division and leasing procurement document updates completed in March 2019, CMS held

Performance Audit of The State's Leasing Decision

a Best Practices training on April 17, 2019. CMS has recently developed a draft Standard Operating Procedures (SOPs) for this process to be used by the leasing staff and conducted mandatory training for all leasing staff and facility managers on April 17, 2019; additionally, recurring training on the SOPs is scheduled to take place in the fourth quarter of FY19. CMS's focus to date has been on updating the RFI documents and no new RFIs were issued while the RFI template was updated. In Fall 2018, CMS reminded all current landlords how to register in the e-procurement system to be notified of any upcoming procurement opportunities. As CMS begins to publish RFIs again, we will continue to publish in the State and local newspapers. We will also document other outreach efforts, including but not limited to communicating with local elected officials and municipal contacts that we have. The CMS contract with JLL includes brokerage services as needed and directed by CMS and can be used to assist with marketing the RFIs for more potential competition.

- 6. The Department of Central Management Services should put procedures in place to ensure that all employees involved in procurements understand confidentiality and to ensure that confidential information is not shared with bidders during the procurement process.**

Finding: CMS officials said that they were unaware of any sharing of confidential information. However, emails indicated that the CMS Leasing Representative did share pricing information between the bidders selected for the awards for lease #6627 and lease #6628. This information was shared after CMS made the decision to switch the leases but prior to the final award and was done to facilitate negotiations on final pricing for the altered leases. The vendors used this information to adjust the amounts of their bids.

The Illinois Procurement Code states:

*...In conducting discussions **there shall be no disclosure of any information derived from proposals submitted by competing offerors.***
(30 ILCS 500/20-15(f)) [Emphasis Added]

An email string from September 14, 2016, shows the Leasing Representative discussing the BCCS lease after the switch. The CMS Leasing Representative stated that he had mentioned the rate on the phone with MGM Jefferson Corporation's real estate agent and was trying to explain what should be included in the base rate.

In another email, sent August 24, 2016, the CMS Lease Administrator asked the CMS Leasing Representative if he had spoken to one of the partners from Climate Controlled Holdings regarding rates and improvements. This email implies the sharing of rates from the previous proposals. However, CMS officials said specific rates were not disclosed.

When auditors met with the CMS Leasing Representative and asked about what information might be considered confidential, he seemed unsure.

Performance Audit of The State's Leasing Decision

CMS Response: The Department agrees with the recommendation. CMS has procedures in place to protect confidential information; however, CMS will work to better enforce these policies. The audit references two emails over the course of a 21-month procurement, and a supervisor took swift, corrective action. That said, CMS is committed to doing better.

CMS has conducted best practice meetings and trainings with our leasing representatives in the past and will schedule another training that will reinforce CMS leasing policies, which stress the importance of maintaining confidentiality and ensure that confidential information is not disclosed to bidders during the procurement process.

CMS Updated Response: Partially Implemented. Initial corrective action completed; secondary corrective action under way. CMS held its best practices training on April 17, 2019. This issue was included as part of that training. CMS has recently developed a draft SOPs for this process to be used by leasing staff and conducted mandatory training for all leasing staff and facility managers on April 17, 2019; additionally, recurring mandatory training for leasing staff and facility managers on the SOPs is scheduled to take place in the fourth quarter of FY19 once the SOP is final.

- 7. The Department of Central Management Services should examine its process of creating and submitting information to the Procurement Policy Board and implement any needed changes to its process as a result of its review. The process should ensure that the information provided to the Board is accurate and complete and that the Board has sufficient information to perform an adequate review of real property leases.**

Finding: The switching of leases lacked transparency. The information provided by CMS to the Procurement Policy Board for the DHS warehouse lease was misleading and incomplete which hampered the Board's ability to review the lease. Based on the information provided, the Board would have been unable to tell that the lease originated as an IT and Telecommunications Support Center. A draft version of the white paper prepared by CMS contained additional explanatory language that was removed in the final version sent to the Board. There was no indication of why the explanatory language was removed.

For each lease, CMS provides the Board the lease document, a white paper, and any other relevant documents such as pictures of the location. Exhibit 4-1 compares the language in the September 27 draft version to the language in the September 30 final version that was sent to the Procurement Policy Board. The key language is highlighted in red in the draft version, all of which was deleted from the final version. Without this language, Board members would have no way of knowing that the purposes of the leases were switched.

**Performance Audit of
The State’s Leasing Decision**

Exhibit 4-1 COMPARISON OF LEASE RATIONALIZATION SECTIONS – CMS WHITE PAPER PROVIDED TO THE PROCUREMENT POLICY BOARD Lease #6627	
September 27, 2016 DRAFT Version	September 30, 2016 FINAL Version
<p><u>Current Space:</u></p> <p>DHS is currently utilizing space in the former Dwight Correctional Center (State-owned) for storage of files relocated from FCRC offices around the State. The facility is in poor condition to the point that files are becoming damaged, and DHS has run out of room. The Agency submitted a space request for new, climate-controlled warehouse space to be located in Central Illinois.</p> <p>This RFI #6627 was initially published in October of 2015 for 44,000 square feet to house the new Dept of Innovation and Technology (DoIT). No offers were received. A second solicitation in December 2015 also garnered no offers and a third solicitation was published in January of 2016. Two offers were received, both from the same proposer but for different locations. The lowest-cost offer was selected for negotiation.</p> <p>RFI #6628 was initially advertised (twice) for 26,000 square feet to house the DHS warehouse. Four offers were received and the lowest-cost offer was selected for negotiation. Upon further review of the selected sites for these two RFIs, it was determined that the location selected for DoIT would better suit DHS, and vice-versa.</p> <p>For this DHS lease, we are exercising the full offered expansion space up front for 100% of the building, or 60,158 square feet. DHS is currently utilizing over 37,000 square feet at Dwight, and that is cramped with little space to move around between cabinets. The agency plans to move files from at least five other FCRCs (primarily large offices) in the near future.</p> <p><u>Proposed Lease:</u></p> <p>Proposed is a term of 5 years with an option to renew. Base rent is \$7.95 with a 2% increase every other year throughout both terms. The State will be responsible for utilities, janitorial, snow removal and alarm monitoring, and there is a tax escalation clause with the usual 3% per year cap. Note that the initial offer was for a combination of office and warehouse space for DoIT. When we substituted DHS as the using agency, it changed the space usage to straight warehouse with minimal improvements. Consequently, we were able to negotiate a nearly 57% reduction in base rent from the initial offer. In exchange, we agreed to pick up a couple of additional service costs.</p>	<p><u>Current Space:</u></p> <p>DHS is currently utilizing space in the former Dwight Correctional Center (State-owned) for storage of files relocated from FCRC offices around the State. The facility is in poor condition to the point that files are becoming damaged. DHS has also run out of room. The Agency submitted a space request for new, climate-controlled warehouse space to be located in Central Illinois.</p> <p>This RFI #6627 was initially published in October and December of 2015, for 44,000 square feet. No offers were received. A third solicitation was published in January of 2016. Two offers were received, both from the same proposer but for different locations. The lowest-cost offer was selected for negotiation.</p> <p>We are exercising the full offered expansion space up front for 100% of the building, or 60,158 square feet. DHS is currently utilizing over 37,000 square feet at Dwight, and that is cramped with little space to move around between cabinets. The agency plans to move files from at least five other FCRCs (primarily large offices) in the near future.</p> <p><u>Proposed Lease:</u></p> <p>Proposed is a term of 5 years with an option to renew. Base rent is \$7.95 with a 2% increase every other year throughout both terms. The State will be responsible for utilities, janitorial, snow removal and alarm monitoring, and there is a tax escalation clause with the usual 3% per year cap.</p> <p>There will be 4-5 full time employees here. They will utilize work space, kitchenette and restrooms already existing in the building.</p>
<p>Source: CMS Bureau of Property Management.</p>	

Performance Audit of The State's Leasing Decision

The white paper failed to mention that the lease, which was for a DHS warehouse, originated as an IT and Telecommunications Support Center. The white paper stated the following:

This RFI #6627 was initially published in October and December 2015, for 44,000 square feet. No offers were received. A third solicitation was published in January of 2016. Two offers were received, both from the same proposer but for different locations.

While this statement is true, it omits that RFI #6627 was not soliciting offers for a warehouse but instead was soliciting offers for an IT and Telecommunications Support Center. **This statement is misleading and makes the reader believe that the DHS warehouse was published twice with no offers before finally receiving two offers on its third publication.** The DHS warehouse actually received four offers, none of which ended up receiving the lease for the DHS warehouse.

When auditors spoke with Board members, the auditors asked if they were aware that the lease procurement was originally published for a different agency. None of the Board members were aware of this at the time but several had learned this after the fact. Auditors also asked if this information would have made a difference on whether the lease would have been discussed at the October 2016 Board meeting and whether it would have been approved:

- One member said it would have changed his decision if he had known. He added that from the white paper they were given, he could not tell a switch had been made.
- Two members said there would have been more discussion and it would have raised questions.
- One member said the lack of information makes it difficult to approve or object to items presented.
- One member wasn't sure and didn't want to speculate.

None of the Board members, in their experience with the Board, could recall a situation like this where the leases were switched.

CMS Updated Response: Implemented. The Board is aware of the updating of the RFI documents and the new documents and process have been shared with the Board's Executive Director. CMS continues to discuss refining the process with the Board's Executive Director.

8. **The Chief Procurement Office for General Services should put procedures in place to ensure all required information is included in postings to the Illinois Procurement Bulletin.**

Performance Audit of The State's Leasing Decision

Finding: For the two leases examined, posting to the Illinois Procurement Bulletin did not contain all of the information required by the Illinois Procurement Code and the General Services Standard Procurement Rules. In addition, for one of the leases, the procurement reference number was changed in the final award notice making it more difficult to track the lease from the initial posting.

The Illinois Procurement Code gives responsibility to the chief procurement officers for publishing procurement notices to the Illinois Procurement Bulletin. The required content of these notices is outlined in both the Illinois Procurement Code and in the General Services Standard Procurement Rules. Once a contract is awarded, the award notice must include all of the initial information as well as additional information such as the name of the successful bidder and the number of unsuccessful bidders.

Auditors tested each of the procurement notices for both leases to determine if the required information was included. Auditor testing determined that only 2 of the 12 notices for leases #6627 and #6628 had all required information. All the other notices were missing some information. Both leases had one notice in which 4 of 14 pieces of information were missing including the number of unsuccessful bidders and the name of each responsive bidder.

The April 20, 2016 initial award notice, when the offer from MGM Jefferson Corporation was selected, showed zero for the number of unsuccessful bidders and "n/a" for the listing of the names of offerors considered but not selected. Auditors also noted that, for the December 22, 2016 notice of final award, the procurement reference number was changed. Changing the procurement reference number would make it more difficult to obtain the final award information if you were tracking the lease using the previous number.

CPO-GS Response: Since these procurements were conducted the CPO-GS has worked diligently, in conjunction with CMS, to implement a modern electronic procurement system (BidBuy) to replace the antiquated Illinois Procurement Bulletin. The IPB has not been supported for more than four years, so the CPO-GS has been forced to work within the confines of a system that cannot be altered or updated. Of the 18 pieces of data listed as missing in exhibit 4-2, fourteen are data items that the system should have populated. Examples are that the *name of the responsible State Purchasing Officer* appears in the award notice but not in the solicitation notice and that the *date submission of offers due* appears in the solicitation notice but not the award notice. These data items are corrected in BidBuy.

Name of each responsive vendor and number of unsuccessful bidders should have been included in the award notice. This practice has since been changed.

CPO-GS Updated Response: **Implemented.** The Commission has received documents from CPO-GS indicating implementation of the recommendation.

**Performance Audit of
The State’s Leasing Decision**

9. The Chief Procurement Office for General Services should put procedures in place to ensure that:

- **A State Purchasing Officer makes a written determination identifying responses that meet the minimum criteria in the request for information as required by the Illinois Procurement Code; and**
- **Comments and approvals of the procurement steps are documented.**

Finding: As part of the audit, auditors identified various requirements in statutes, rules, policies, and procedures and tested the two leases to determine if the requirements were met. For lease #6627, 21 percent (6 of 29) of the requirements tested were not met, and for lease #6628, 31 percent (9 of 29) of the requirements were not met (see Exhibit 4-3). The following sections highlight some of the requirements that were not met. Others were discussed in previous sections of the report.

Exhibit 4-3 LEASE TESTING RESULTS – REQUIREMENTS NOT MET		
Requirement Tested	Lease #6627	Lease #6628
Did the State Purchasing Officer make a written determination identifying responses that met the minimum criteria?	No	No
Was the offeror that was awarded the final lease a qualified respondent under the terms of the Request For Information for the final lease?	No	No
Was the Request For Information published in a newspaper of the community where space was being sought?	No	No
Was a Property Management Business Case completed?	Yes	No
Is there evidence of the Leasing Representative driving boundaries, searching websites, or contacting local brokers and Chambers of Commerce?	Yes	No
Were rejection letters sent to each responsive bidder who was not selected?	N/A	No
Is a final ADA (Americans with Disabilities Act) Checklist in the file?	No	No
Did the State Purchasing Officer document comments and approval of the lease at all four procurement steps?	No	No
Was the award made to an offeror that best met the criteria specified in the Request For Information? ¹	No	No
Total requirements not met:	6 of 29 (21%)	9 of 29 (31%)
Source: OAG testing of the lease files.		

Performance Audit of The State's Leasing Decision

After responses are received from offerors, the Illinois Procurement Code states "...a State purchasing officer shall make a written determination identifying the responses that meet the minimum criteria set forth in the request for information." (30 ILCS 500/40-20(d)) Auditors asked the Chief Procurement Officer (CPO) for General Services for documentation of this step for lease #6627 and lease #6628.

The CPO responded that the State Purchasing Officer provides written determination when he/she publishes the notice that a respondent has been selected. The CPO further stated that, prior to publication of the selected respondent, CMS leasing staff review all responses and provide that information to the State Purchasing Officer in a spreadsheet so a side-by-side comparison can be done.

Neither of these steps meets the requirement in the Illinois Procurement Code. The CMS spreadsheet provided does not indicate any review by the State Purchasing Officer. In addition, it is unclear when the spreadsheet was provided to the State Purchasing Officer.

CPO Notice 2016.02, which is a policy developed by the Chief Procurement Office for General Services, requires State Purchasing Officers to document their comments and approvals of the procurement steps for procurements valued at \$10,000 or greater in a system called Procurement Business Case. However, the CPO stated that Procurement Business Case is not used for lease procurements. For the two leases auditors examined, the only documentation of approvals were emails from the State Purchasing Officer to CMS stating "done" in reference to the publication of notices to the Illinois Procurement Bulletin.

CPO-Response: The CPO-GS agrees with the Auditor General's recommendations. BidBuy prevents a procurement from moving forward without the SPO's actual approval. Procedures have been implemented to capture the SPO's written determination identifying responses that meet the minimum criteria.

CPO-GS Updated Response: **Implemented.** The Commission has received documents from CPO-GS indicating implementation of the recommendation.

10. The Department of Central Management Services should ensure that the following leasing procedures are followed for all leasing procurements:

- **An ADA checklist is completed;**
- **A Property Management Business Case is completed; and**
- **Rejection letters are sent to responsive proposers not selected for award.**

Finding: CMS developed and implemented policies and procedures to help guide the leasing process. Most of the policies tested were followed; however, auditors identified four requirements that were not followed including;

Performance Audit of The State's Leasing Decision

- **A requirement to increase awareness of the procurement.** Very little advertising or outreach was performed for lease #6628 (space for IT and Telecomm support).
- **A final ADA [Americans with Disabilities Act] Checklist is completed and added to the file.** Neither of the leases examined contained this checklist in the file.
- **Property Management Business Case (PMBC) is pre-populated; the facility manager is instructed to complete and return.** The Property Management Business Case analyzes the current space being utilized by the requesting agency including the square footage and the condition of the property. This was completed for lease #6627 but was not completed for lease #6628, which originated as the DHS warehouse.
- **The CMS Leasing Representative sends a "rejection letter" to each responsive proposer who was not selected for award.** For lease #6627, two offers were submitted but they were from the same proposer; therefore a rejection letter was not necessary. For lease #6628, there were three responsive proposers not selected for award. No rejection letters were sent.

CMS Response: CMS has existing policies that dictate when ADA checklists and PMBCs are completed. As part of its current examination of its leasing processes and procedures, CMS will determine which procedures are necessary and revise the process as needed. CMS will educate and/or reinforce these policies and procedures with its staff.

CMS Updated Response: **Implemented.** *Corrective action completed.* CMS continues to reinforce the ADA and Property Management Business Case policies and procedures with staff. We currently conduct WebEx meetings with leasing and facility management staff every 6-8 weeks that touch on a variety of topics including the timeliness of completing these items. This was also addressed fully as well as the need to send rejection letters in the best practices meeting held on April 17, 2019.