

**Written Statement of  
Auditor General Eugene A. DePasquale  
Tuesday, November 14, 2017**

**For the House State Government Committee  
The Honorable Daryl Metcalfe, Majority Chairman  
The Honorable Matthew Bradford, Democratic Chairman**

**Regarding Information Technology (IT) Contracts**

Chairman Metcalfe, Chairman Bradford, and members of the House State Government Committee: Thank you for the opportunity to provide a statement regarding state Information Technology (IT) contracts, specifically the IT contract used by the Department of Labor and Industry (L&I) to administer the Unemployment Compensation (UC) Program.

**Background**

In April, my Department released an audit of L&I's Service and Infrastructure Improvement Fund (SIIF). As part of the audit, my team reviewed the computer system running the UC program and the contract associated with it. This review found significant flaws that require nearly an entire system overhaul. L&I essentially wasted over \$160 million in taxpayer funds for a broken system. It will cost an estimated \$60 million more in taxpayer funds to create a new, ideally functioning, system. To add insult to injury, there were no provisions in the IT contract with IBM to allow the state to recoup even a portion of the funds for IBM's failure to provide a fully operational UC computer system.

I should note that Governor Wolf is attempting to use the legal system to recapture a portion of these funds from IBM. While any funds recaptured is better than nothing, the state's contracts must contain provisions that will ensure that it is fully compensated when a company, like IBM, fails in its contractual responsibility.

**Strengthening IT Contracts**

In these days of budgetary woes, it is imperative that all state agencies incorporate better controls and stronger "claw back" mechanisms into all contracts that expend taxpayer funds.

First, I think there must be more specificity in the contract language rather than the vague details regarding the expected deliverables. Overly-general information about expected deliverables can lead to ambiguity and uncertainty about whether or not contractual requirements are being fulfilled.

Second, the commonwealth should require a performance bond or some equivalent mechanism to ensure the company provides the state with a completed project in a timely and effective manner. These performance bonds, which would be required under the current version of HB 1704, would enable the commonwealth to ensure that the project is properly completed and that taxpayers are getting everything for which they paid.

Finally, the commonwealth should ensure there are "claw back" provisions to make the state whole if a company fails to meet the expectations of the contract.

To help accomplish these objectives, the following two steps would be helpful:

- 1) The Department of General Services should take the lead to provide for “claw back” guidelines for all service contracts or should seek amendments to the Commonwealth Procurement Code, if necessary.
- 2) All independent agencies should also take a leadership role by incorporating claw back provisions in all of their service contracts.

### **All State Contracts**

I would be remiss if I did not also note that prior audits by my department, specifically an audit of the Department of Community and Economic Development that was released in 2014, show there are similar concerns with all state contracts. During a review of state job creation programs, my team noted that many contracts lacked “claw back” provisions for a company’s failure to follow contractual requirements. “Claw back” or reimbursement provisions should be standard conditions in all state contracts when public taxpayer dollars are involved.

### **Conclusion**

All in all, when the commonwealth contracts for services using taxpayer funds, it should take every precaution available to ensure that if contract requirements are not met, the state can readily recover contract funding. This same principle should also apply to all state grant agreements.

Chairman Metcalfe, Chairman Bradford, and members of the committee, this is simply a snapshot of our review on various state contracts. Thank you for the opportunity to present a written statement to you today. If you have any questions, please contact me and I would be happy to discuss this issue.

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