STATE OF OHIO

OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

AGENCY: OHIO DEPARTMENT OF TRANSPORTATION
FILE ID NO.: 2017-CA00006
DATE OF REPORT: MARCH 12, 2019

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The State Watchdog

"Safeguarding integrity in state government"

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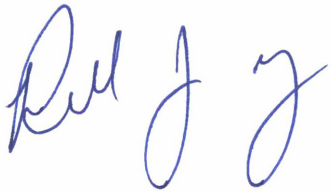

Randall J. Meyer
Ohio Inspector General

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER:	2017-CA00006
AGENCY:	Ohio Department of Transportation
SUBJECT NAME:	Demitra Burkhart, ODOT contractor, owner AIN Systems Shawn Shelstad, former Applications Developer, ODOT
BASIS FOR INVESTIGATION:	Inspector General Initiative
ALLEGATIONS:	Misuse or Abuse of State Property or Equipment; Failure to Comply with State or Departmental Rules, Procedures or Policies
INITIATED:	February 22, 2017
DATE OF REPORT:	March 12, 2019

INITIAL ALLEGATION AND COMPLAINT SUMMARY

During the course of an investigation conducted by the Office of the Ohio Inspector General, investigators suspected that Demitra Burkhart, an IT consultant hired by the Ohio Department of Transportation, was using state resources to conduct her private consulting business, AIN Systems. AIN Systems was an EDGE[1]-certified company that provided IT consulting services to the State of Ohio via a subcontract with Knowledge Services, the State's managed service provider for IT staff augmentation.

Investigators found that Burkhart previously worked as an IT contractor at the Ohio Department of Mental Health (ODMH) and the Ohio Department of Administrative Services (ODAS). While at ODMH, Burkhart worked closely with Shawn Shelstad, former applications development manager at ODMH. Shelstad transferred from ODMH to ODOT on September 6, 2015. Burkhart was hired at Shelstad's request as a consultant at ODOT around October 1, 2015. While working as a consultant at ODOT under the IT staff augmentation, Burkhart was also selected by Shelstad to receive an additional contract as an ELLIS[2] project manager. This was a separate consulting contract for $195,000 using Data Systems Integration Group's (DSIG) state term schedule contract.

BACKGROUND

The Ohio Department of Transportation (ODOT) is responsible for maintaining the state's systems of highways, as well as overseeing the state's rail, aviation and public transportation systems. The department has 12 districts along with a central office located in Columbus, Ohio. The director is appointed by the governor and confirmed by the Ohio Senate. The majority of ODOT's funding comes from federal sources, state taxes on motor fuels, and bond revenue.[3]

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[1] Encouraging Diversity, Growth and Equity (EDGE) program is designed to assist socially and economically disadvantaged businesses in obtaining state government contracts for construction, architecture and engineering; professional services; goods and services; and information technology services.

[2] ELLIS is a web-based application designed to link ODOT's new approaches to project delivery, planning, system forecasting and financial management. ELLIS manages the identification and implementation of ODOT's Capital Improvement Program.

[3] Source: Biennial budget documents.

ODOT Division of Information Technology

The ODOT Division of Information Technology builds, coordinates, and maintains all IT-related business needs in accordance with the ODOT business plan and initiatives. There are four departments within the ODOT Division of Information Technology:

- The Office of Software Production is responsible for building and maintaining enterprise software applications for the department, recommending and implementing software development standards and best practices.
- The Infrastructure Management Office is responsible for the creation and support of the network, telecommunications, desktops, and servers that make up the ODOT environment.
- The Project Management Group works with other Division of Information Technology offices and ODOT districts and divisions to successfully deliver ODOT information technology projects within stated estimates and expectations.
- The Resource Management Office is responsible for the procurement of IT services, hardware, and software for ODOT and managing software licensing agreements and renewals.[4]

AIN Systems

AIN Systems (AIN) is a sole proprietorship owned by Demitra Burkhart. Burkhart originally filed a trade name registration for AIN with the Ohio Secretary of State on February 25, 2005, which expired on February 25, 2010. On May 1, 2012, Burkhart filed a new trade name registration for AIN with the Ohio Secretary of State. The listed business purpose was "IT Services." On November 12, 2013, AIN was approved as an EDGE-certified company by the State of Ohio. However, the Office of the Ohio Inspector General conducted an investigation involving AIN and determined that an MBE-certified company worked exclusively with AIN. AIN, specifically Demitra Burkhart, had control of the day-to day operations of the MBE-certified company and AIN was using the MBE-certified company as a pass-thru vendor to gain state MBE set-aside dollars. As a result of the Office of the Ohio Inspector General Report of Investigation 2015-CA00049, the Ohio Department of Administrative Services moved to debar

[4] Source: www.odot.ohio.gov

AIN Systems and Demitra Burkhart from doing business with the State of Ohio. Burkhart originally requested a hearing on the debarment but later rescinded her request for a hearing. On December 3, 2018, ODAS issued adjudication orders debarring AIN Systems and Demitra Burkhart from consideration for contract awards for a period of five years. ODAS also issued a notice of intent to revoke AIN Systems' EDGE certification. AIN Systems initially requested a hearing on the revocation, but later withdrew that request after receiving the adjudication orders.

Data Systems Integration Group, Inc.

Data Systems Integration Group, Inc. (DSIG) was incorporated in the State of Ohio on December 6, 2006. DSIG was founded by Chandrashekar Chalumalla and Maddy Narahari. DSIG is an MBE-certified[5] company that provides IT staffing to clients in both government and public sectors. DSIG currently does business with the State of Ohio through the IT staff augmentation contract and state term schedule contract.

Applicable Policies and Laws

Ohio Department of Administrative Services (ODAS) Directive GS-D-12 states, in part:

> DAS through the Office of Procurement Services (OPS) has established requirements term contracts for a variety of supplies, services and information technology needs … When making a purchase from a State Term Schedule (STS) contract, agencies are required to obtain a minimum of three quotes from various STS suppliers offering similar or like items …

Ohio Department of Administrative Services Directive HR-D-13 states, in part:

> … careful consideration should be taken to determine whether the respective job responsibilities are that of a state civil service employee as defined in Revised Code section 124.01, or that of an independent contractor. This careful examination of the job responsibilities is necessary in order to prevent potential conflict with current state employees as well as subsequent determinations that the independent contractor is acting as an employee.

[5] The state of Ohio's MBE program is designed to assist minority-owned businesses in obtaining state government contracts through a set aside procurement program for goods and services.

> Black's Law dictionary defines an independent contractor as, "One who is hired to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it …
>
> Personnel of the appointing authority usually do not control or supervise the manner of an independent contractor's work …
>
> The work to be performed by an independent contractor is seen as temporary as opposed to permanent …
>
> The existence of a continuing relationship between the worker and the employer may indicate an employer-employee relationship. A continuing relationship may exist when work is frequently performed, or when the contract is long term or regularly renewed … If the employer directs how the work must be performed (e.g., the sequence of tasks, regular reports, the manner in which something is to be accomplished), the worker is likely an employee beyond the guidelines or request for deliverables set forth in the personal services contract …

ODAS IT-04 policy states, in part:

> … Any personal use of IT resources that disrupts or interferes with government business, incurs an undue cost to the state, could potentially embarrass or harm the state, or has the appearance of impropriety is strictly prohibited. Personal use that is strictly prohibited includes, but is not limited to, the following:
>
> … 2.2.3 Operating a Business: Operating a business, directly or indirectly, for personal gain is strictly prohibited.

When logging onto their ODOT computers, users are required to acknowledge the following:

> NOTICE: All ODOT owned computer systems, related equipment, software and network services are to be used in accordance with all state and federal laws and OIT and ODOT policies, directives and distributions. Access to this system may be logged. System activity may be logged and monitored to determine compliance with State of Ohio policy.

By logging in, users acknowledge that they have no expectation of personal privacy unless explicitly stated. Illegal or unauthorized attempts to access this system and information stored or processed by it could lead to criminal penalties and civil liability. In the event or suspicion that malicious code has been received, the employee, contractor, temporary personnel or other agent of the State shall report the activity immediately to the Division of Information Technology.

ODOT ITC – Guideline 2 states, in part:

1. The internet, electronic mail and online services are intended to be used primarily for business purposes. Uses that interfere with normal business activities, involve solicitation, are associated with any for-profit business activities or could potentially embarrass the state are strictly forbidden.
2. ODOT employees shall not use the internet, electronic mail or online services for operating a business for personal gain, sending chain letters or soliciting money for religious and political causes.

"Things to Know While Working on Contract at ODOT" states, in part:

General Rules …

All projects, tasks, assignments and/or documentation performed shall be considered to be works made for hire under the contract and are the property of the State of Ohio. These works are not to be distributed to, reproduced for, or otherwise shared with any other entity unless written authorization from ODOT is received.

Using Technology …

If a consultant is issued an ODOT computer, laptop or desktop, this computer is property of ODOT and the State of Ohio. Only work assigned by ODOT is to be done using this computer. Personal documents are not to be developed or stored on ODOT computers … If a consultant is assigned an ODOT email account, the consultant is to use this account for all ODOT business. The ODOT email account is not to be used for anything but official ODOT business. Personal emails are not to be sent from ODOT email.

> Work Hours …
> Consultants are expected to work during ODOT's regular business hours between 6:30AM and 5:30PM, Monday through Friday, unless approved by the Division of Technology's management …
> Consultants are not authorized to work off site without prior approval from the ODOT management they report to …

INVESTIGATIVE SUMMARY

In February, 2017, investigators learned that Burkhart was working at ODOT as a business analyst through the Knowledge Services (KS) contract for IT staff augmentation, and also had a contract as a project manager for ODOT through a state term schedule contract with DSIG. Burkhart operated an IT consulting company that had a subcontract with KS to provide IT contractors through the IT staff augmentation program. On February 2, 2017, the Office of the Ohio Inspector General obtained an image of the State of Ohio laptop assigned to Burkhart.

Office of the Ohio Inspector General Report of Investigation 2015-CA00049 determined that AIN Systems (Burkhart), in order to gain the benefits provided exclusively to vendors who are certified as MBE, used Unity Resource Solutions as a pass-thru vendor to gain MBE set-aside dollars. After the release of the report, ODOT terminated Burkhart's contracts and escorted her out of her ODOT workplace on October 13, 2017. On October 26, 2017, the Office of the Ohio Inspector General obtained an updated image of the State of Ohio laptop assigned to Burkhart.

Shawn Shelstad

On September 6, 2015, Shawn Shelstad, former application development administrator at ODOT, transferred from the Ohio Department of Mental Health to ODOT. While working at ODMH, Shelstad hired Demitra Burkhart as a contract employee through the IT staff augmentation contract. On September 21, 2015, Shelstad sent an email to former ODOT CIO Bill Taylor requesting a business analyst through Computer Aid, Inc. (CAI).[6] Shelstad stated that the goal of the position would be to audit ODOT's current processes with the Service Desk

[6] Computer Aid, Inc. (CAI) held the contract for the State of Ohio IT staff augmentation prior to Knowledge Services. CAI's contract expired December 31, 2015.

and Resource Management; specifically, billing and IT staff augmentation. Taylor responded by directing Shelstad to work with Jayne Barker,[7] former ODOT Project Management Office manager, who oversaw the business analysts. Shelstad made a direct request for Burkhart to fill the position he was requesting. On September 22, 2015, Barker sent an email to Shelstad stating she would begin the onboarding process for Burkhart and "target her to begin on October 1st." Burkhart began her position as a business analyst at ODOT on October 8, 2015.

Investigators conducted an interview with Shelstad on July 10, 2018. Shelstad stated that Burkhart worked for him as a business analyst at ODMH. Shelstad admitted that he created the business analyst position at ODOT for Burkhart. Shelstad stated he brought Burkhart to ODOT to "document processes," particularly for staff augmentation and invoicing, which was previously handled by an ODOT employee who retired. Investigators asked Shelstad why he filled the position vacated by the employee who retired with a contractor, rather than a fulltime ODOT employee. Shelstad explained that agencies had "headcounts," meaning they could only have a specific number of fulltime employees, and that the headcount number for the ODOT Division of Information Technology (IT) was 62 employees. Shelstad said that another ODOT department needed a developer position filled, and ODOT removed one open fulltime employee position from Shelstad's department. Shelstad stated that while his department had 62 fulltime employees, ODOT IT used approximately 70 contractors, most of which had been working in the department for several years.

Data Systems Integration Group, Inc. (DSIG) Contract with Burkhart

On July 18, 2016, Shelstad submitted a Release and Permit[8] request for a project manager for the ELLIS improvement project. Shelstad claimed in his request that "the Division of Information Technology wants to extend a contract for a project manager for FY17 … ." The request specified the vendor would be Data Systems Integration Group, a certified MBE, for 1,560 hours at $125.00 per hour for a total of $195,000. In the "request details" section, under "vendor selection justification" of the Release and Permit request, Shelstad stated, "MBE vendor is being

[7] Jayne Barker retired effective December 22, 2016.

[8] Release and Permit is a waiver that authorizes the agency to seek Controlling Board approval. A release and permit is required when an agency anticipates that it will exceed its direct purchase authority threshold and/or cumulative annual threshold.

sought at this time by the vendor." The Release and Permit request was reviewed by Pamela Storts, former ODAS acquisition analyst[9] and approved by Eric Glenn, ODAS deputy chief procurement officer, on July 26, 2016.

During the interview with Shelstad on July 10, 2018, investigators asked Shelstad why he stated in the Release and Permit request that it was an extension of a contract. Shelstad stated he was not sure why he wrote that because Burkhart had never worked on the ELLIS project, so it was not an extension contract for her. Shelstad said he did not obtain three quotes because it was a state term schedule contract and not required.

A review of Burkhart's ODOT email account found Burkhart signed a "work order" with DSIG on August 5, 2016. The work order stated that the start date was "on or after August 8, 2016" through June 30, 2017. The job description stated, "Senior consultant to provide support for the ELLIS project in FY2017." The work order stated the rate of pay would be $112.50 per hour. Based on the $125.00 hourly rate the state was paying DSIG, and the $112.50 hourly rate DSIG was paying Burkhart, DSIG would profit $19,500 for doing no work related to the contract and for simply being a certified MBE pass-thru vendor.

Pamela Storts' Interview

On May 1, 2017, investigators conducted an interview with former ODAS Acquisition Analyst Pamela Storts. Storts confirmed that she reviewed the Release and Permit request submitted by Shelstad. Storts stated that her understanding based on the language in the request was that this was an extension of a current contract. Storts said she has to rely on what the agencies tell her, otherwise she would not be able to complete all the Release and Permit requests assigned to her. Storts explained that she did not request documentation indicating three quotes were obtained because the request stated it was an extension of a contract. Storts stated that Shelstad may have reached out to additional vendors for quotes and just not submitted them in the request.

Burkhart's State Email Account

A review of Burkhart's state email account found:

[9] Pamela Storts retired effective November 1, 2017.

- Numerous emails where she forwarded IT contractor resumes from her state email account to her personal email account;
- Numerous emails where she communicated with IT contactors that worked for her company, AIN Systems, both personally and professionally;
- Numerous emails where she forwarded ODOT work from her state email account to her personal email account.

During his interview conducted on July 10, 2018, Shawn Shelstad stated he could not recall whether Burkhart reviewed resumes of other consultants for open positions, but noted she was not involved in the hiring of consultants. Shelstad acknowledged that having a contractor who owns her own IT staffing company participate in the review of and hiring of IT staff augmentation contractors might appear as a conflict of interest. Shelstad explained that while Burkhart may have reviewed resumes and selected candidates for interviews, she did not participate in the interviews or the final hiring. Shelstad stated it would be a problem if Burkhart, who owns and operates an IT staffing company, was taking resumes of other consultants from other job postings and forwarding those to her personal email.

ODOT Chief Information Officer Charles Ash Interview

On October 11, 2018, investigators conducted an interview with Charles Ash, chief information officer at ODOT. Ash stated that Burkhart would have no reason to email ODOT work to her personal email. Ash noted that ODOT has a policy that work is to be completed at the office, not at home. Ash added that ODOT does not authorize contractors to work from home. Ash said generally only "high-end" employees, the security team, and the network team are permitted to work from home. Ash said he believed the labor division disciplined workers for working from home.

Ash provided investigators with a document titled "Things to Know While Working on Contract at ODOT." Ash stated that ODOT first used this document to advise contractors on July 15, 2014, and from that date forward, the document was to be provided to contractors during their onboarding process. The document states, in part:

> All projects, tasks, assignments and/or documentation performed shall be considered to be works made for hire under the contract and are the property of the State of Ohio. These works are not to be distributed to, reproduced for, or otherwise shared with any other entity unless written authorization from ODOT is received.
>
> If a consultant is issued an ODOT computer, laptop or desktop, this computer is property of ODOT and the State of Ohio. Only work assigned by ODOT is to be done using this computer. Personal documents are not to be developed or stored on ODOT computers …
>
> If a consultant is assigned an ODOT email account, the consultant is to use this account for all ODOT business. The ODOT email account is not to be used for anything but official ODOT business. Personal emails are not to be sent from ODOT email.

On October 24, 2018, investigators contacted Shelstad and asked him if he provided Burkhart with the "Things to Know While Working on Contract at ODOT." Shelstad stated he was not familiar with the document and did not provide it to Burkhart when he hired her as a contractor. Investigators attempted to interview Burkhart, but on June 22, 2017, investigators received a telephone call from an attorney representing Burkhart who stated she was declining to be interviewed.

As a result of the Office of the Ohio Inspector General Report of Investigation 2015-CA00049, the Ohio Department of Administrative Services moved to debar AIN Systems and Demitra Burkhart from doing business with the State of Ohio. Burkhart originally requested a hearing on the debarment but later rescinded her request for a hearing. On December 3, 2018, ODAS issued adjudication orders debarring AIN Systems and Demitra Burkhart from consideration for contract awards for a period of five years. ODAS also issued a notice of intent to revoke AIN Systems' EDGE certification. AIN Systems initially requested a hearing on the revocation, but later withdrew that request after receiving the adjudication orders.

CONCLUSION

The investigation found that Shawn Shelstad transferred from his position as a applications development administrator at ODMH to ODOT on September 6, 2015. Approximately one month later, Shelstad created a business analyst position at ODOT for IT Contractor Demitra Burkhart, who Shelstad previously hired while at ODMH. Shelstad hired Burkhart as a business analyst 3 at an hourly rate of $72.25. Shelstad stated he hired Burkhart to "document processes" for IT staff augmentation and invoicing, duties that were previously handled by an ODOT employee who had retired. Shelstad stated he had to fill the position with a contractor because his division had no open fulltime employee positions. Shelstad explained that agencies had "head counts" or staff limits. When an agency division reached that staff limit, they were not permitted to hire any additional fulltime employees, which Shelstad stated was why ODOT IT employed so many IT contractors.

Approximately nine months later, on July 18, 2016, Burkhart was awarded a no-bid contract with ODOT through Data Systems Integration Group, Inc. (DSIG). Shelstad submitted a Release and Permit request to the Ohio Department of Administrative Services for a project manager position for ELLIS, with DSIG listed as the "MBE certified" vendor. Shelstad stated in the Release and Permit request, "the Division of Information Technology wants to extend a contract for a project manager … ." Additionally, Shelstad stated in the Release and Permit request that an "MBE vendor is being sought at this time by the vendor." During an interview with Shelstad on July 10, 2018, Shelstad admitted that he did not obtain three quotes because he said it was a state term schedule contract and it was not required. Shelstad could not explain why he wrote "extend a contract," because Burkhart had never worked on the ELLIS project and therefore it was not an extension contract.

During an interview with former ODAS Acquisition Analyst Pam Storts, Storts confirmed that she reviewed Shelstad's Release and Permit request for the ELLIS project contract. Storts stated that based on ODOT's statement "to extend a contract," Storts believed this was an extension or continuance of a previous contract. Storts

explained that the ODAS acquisition analysts have to rely on the agencies' statements being factual because analysts do not have the available time to confirm the accuracy of what is being reported to them.

The investigation determined Shelstad's Release and Permit request was not an extension of a contract; specifically, Burkhart had never worked on the ELLIS project and DSIG had no previous contracts for the ELLIS project. Investigators determined that claiming this was an extension of a contract was a means to advance the procurement through the Release and Permit process.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.

The Release and Permit request for a project manager for the ELLIS improvement project specified that the vendor would be Data Systems Integration Group, a certified MBE, for 1,560 hours at $125.00 per hour for a total of $195,000.

Investigators' review of Burkhart's ODOT email account found Burkhart signed a "work order" with DSIG on August 5, 2016. The work order stated that her rate of pay would be $112.50 per hour. Based on the $125.00 hourly rate the state was paying DSIG, and the $112.50 hourly rate DSIG was paying Burkhart, DSIG would profit $19,500 for doing no work related to the contract and for simply being a certified MBE pass-thru vendor.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.

A review of Burkhart's state email account determined that Burkhart misused her state email account. Investigators found Burkhart had:

- forwarded numerous emails to her personal email account that contained contractors' resumes;

- forwarded numerous emails from her state email account to her personal email account containing ODOT work product;
- numerous email communications were sent and received from her state email account with IT contractors who worked for AIN Systems.

During an interview with Charles Ash conducted on October 11, 2018, Ash explained that Burkhart would have no reason to email ODOT work to her personal email, because ODOT does not authorize contractors to work from home. Ash provided a copy of "Things to Know While Working on Contract at ODOT" that was to be provided to contractors during the onboarding process which states, among other things, that their assigned ODOT email account is only to be used for ODOT business. On October 24, 2018, Shawn Shelstad claimed he was not familiar with "Things to Know While Working on Contract at ODOT" and did not provide it to Burkhart when he hired her as a contractor.

During an interview with Shawn Shelstad conducted on July 10, 2018, Shelstad admitted that having a contractor who owns her own IT staffing company to participate in the review of and hiring of IT staff augmentation contractors may appear as a conflict of interest. Shelstad stated that Burkhart did not participate in the interviews or the final hiring of contractors, but may have reviewed resumes and selected candidates for interviews. Shelstad stated that Burkhart should not have been forwarding resumes of other consultants from other job postings and forwarding those to her personal email account.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe that a wrongful act or omission occurred in this instance.

The Ohio Department of Administrative Services moved to debar AIN Systems and Demitra Burkhart from doing business with the State of Ohio. Burkhart originally requested a hearing on the debarment but has since conceded. ODAS also issued a notice of intent to revoke AIN Systems' EDGE certification. AIN Systems initially requested a hearing on the revocation, but later withdrew that request after receiving the adjudication orders.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Department of Transportation to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Department of Transportation should:

1. Consider additional training on procurement policies and procedures for ODOT employees; specifically, as it relates to Release and Permit requests and the required documentation.
2. Consider additional training for contractors on ODOT and state policy regarding use of state resources.
3. Review HR-D-13 and provide additional training to ensure that ODOT is not replacing state employee positions with IT contractors to perform regular state business and only hiring IT contractors as appropriate per HR-D-13.

The Office of the Ohio Inspector General makes the following recommendations and asks the director of the Ohio Department of Administrative Services to respond within 60 days with a plan detailing how the recommendations will be implemented. The Ohio Department of Administrative Services should:

1. Review and evaluate processes to ensure debarred companies and individuals are not used as subcontractors by any vendors of the state during their debarment period.

REFERRALS

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Department of Transportation

FILE ID #: 2017-CA00006

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
March 12, 2019

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