

ORLEANS PARISH SHERIFF'S OFFICE



INVESTIGATIVE AUDIT  
ISSUED MARCH 30, 2016

**LOUISIANA LEGISLATIVE AUDITOR  
1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
BATON ROUGE, LOUISIANA 70804-9397**

**LEGISLATIVE AUDITOR**  
DARYL G. PURPERA, CPA, CFE

**DIRECTOR OF INVESTIGATIVE AUDIT**  
ROGER W. HARRIS, J.D., CCEP

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report is available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor.

This document is produced by the Louisiana Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. Two copies of this public document were produced at an approximate cost of \$3.70. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's website at [www.la.la.gov](http://www.la.la.gov). When contacting the office, you may refer to Agency ID No. 3101 or Report ID No. 50130015 for additional information.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Elizabeth Coxe, Chief Administrative Officer, at 225-339-3800.



LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

March 30, 2016

**THE HONORABLE MARLIN N. GUSMAN, SHERIFF**  
**ORLEANS PARISH**  
New Orleans, Louisiana

We have audited certain transactions of the Orleans Parish Sheriff's Office. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the validity of allegations we received.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the United States Attorney for the Eastern District of Louisiana, District Attorney for the Orleans Judicial District of Louisiana, and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/aa

OPSO 2016



# TABLE OF CONTENTS

---

	Page
Executive Summary .....	2
Background and Methodology.....	4
Findings and Recommendations:	
Ineligible Employees Received State Supplemental Pay .....	5
Deputy Sheriff Operated Private Security Business in Possible Violation of State Law .....	8
Sheriff Deputies Worked Off-duty Details during OPSO Working Hours .....	11
OPSO Failed to Properly Apply Public Bid Law for House of Detention Renovations.....	12
Recommendations .....	14
Exhibits .....	15
Legal Provisions.....	22
Management’s Response .....	Appendix A
Treasury’s Response .....	Appendix B



## EXECUTIVE SUMMARY

---

### **Ineligible Employees Received State Supplemental Pay**

From January 2011 to September 2014, the Orleans Parish Sheriff's Office (OPSO) received Deputy Sheriff's Supplemental Pay (supplemental pay) payments totaling \$1,026,083 from the state of Louisiana for what appears to be ineligible employees (e.g., these employees performed purely clerical or non-enforcement duties). By requesting, receiving, and distributing state funds to employees who performed clerical or non-enforcement duties, OPSO management may have violated the Louisiana Constitution and state law.

### **Deputy Sheriff Operated Private Security Business in Possible Violation of State Law**

From March 2009 to March 2015, Colonel Lucien Roy Austin owned and operated a personal security business in possible violation of Louisiana Revised Statute (La. R.S.) 14:140(A)(3), which prohibits deputy sheriffs from holding an ownership interest in any partnership, company, or corporation where the venture is to perform any services of a law enforcement nature. Although Col. Austin's OPSO job duties included organizing off-duty details performed by OPSO personnel, it appears that Col. Austin organized off-duty details during his regular work hours for his personal business, a Slidell-based Louisiana for-profit corporation named Austin Sales and Service, Inc. In addition, records indicate that Col. Austin billed customers for OPSO deputies and other individuals for services that do not appear to have been performed. Records also indicate that several of the checks payable to these individuals appear to have been endorsed and negotiated by Austin Sales and Service, Inc. management, including Col. Austin. By owning a corporation for which he provided services of a law enforcement nature during his regular OPSO work hours, Col. Austin may have violated OPSO policies and state law. Further, by charging customers for services not performed and by negotiating company checks payable to others, Col. Austin may have violated state and federal laws.

### **Sheriff Deputies Worked Off-duty Details during OPSO Working Hours**

From October 1, 2010 to November 4, 2014, OPSO paid 16 deputies \$4,698 for the same hours during which these deputies appear to have performed off-duty security services. By performing off-duty security services during their regularly-scheduled work hours, these deputies may have violated OPSO policies and procedures for off-duty details and state law.

### **OPSO Failed to Properly Apply Public Bid Law for House of Detention Renovations**

From March 31, 2012 to March 14, 2013, OPSO made payments totaling \$231,820 to Gulf State, LLC for renovations performed on shower stalls at the House of Detention jail facility. Although this was a public works project as defined by state law, OPSO failed to publicly advertise the project in accordance with the Public Bid Law. In addition, OPSO used an unlicensed contractor, allowed work to be performed without a written contract and appears to have paid for materials that did not conform to the bid specifications. By failing to properly

apply the Public Bid Law, allowing an unlicensed contractor to perform services without a written contract, and paying for materials that did not conform to the bid specifications, OPSO management may have violated the Louisiana Constitution and state law.



## BACKGROUND AND METHODOLOGY

---

The Orleans Parish Sheriff's Office (OPSO) was created by Article VII, Section 89 of the 1921 Louisiana Constitution. On July 28, 1989, Act 20 of the 1989 Louisiana Legislature's Extraordinary Session created the Orleans Parish Law Enforcement District to provide financing for OPSO through the levying and collection of tax millages.

On May 30, 2010, the offices of the Orleans Civil Sheriff and the Orleans Criminal Sheriff were combined into one office in accordance with Louisiana Revised Statute (La. R.S.) 13:5581, which provided that there shall be one sheriff for the parish of Orleans, who shall be elected by the qualified electors of the parish of Orleans for a term of four years. La. R.S. 13:5581 further provides, in part, that the sheriff shall have and shall exercise all of the powers, duties, and functions of the civil sheriff of the parish of Orleans and the criminal sheriff of Orleans.

OPSO is responsible for the operation of the parish detention system, as well as the processing of all individuals arrested within the city of New Orleans. The Sheriff serves as the Executive Officer for the Orleans Criminal and Civil District Courts and exercises duties required by the parish court system, such as providing bailiffs, executing court orders, and serving subpoenas.

The Louisiana Legislative Auditor received information indicating that multiple OPSO deputies who receive Deputy Sheriff Supplemental Pay (supplemental pay) from the state of Louisiana were ineligible to receive supplemental pay. Our audit sought to determine the propriety of supplemental payments to OPSO deputies. The procedures performed during this audit included:

- (1) interviewing OPSO employees;
- (2) interviewing other persons, as appropriate;
- (3) examining selected OPSO documents and records;
- (4) gathering and examining external parties' documents and records; and
- (5) reviewing applicable federal and state laws and regulations.



## FINDINGS AND RECOMMENDATIONS

---

### Ineligible Employees Received State Supplemental Pay

**From January 2011 to September 2014, the Orleans Parish Sheriff's Office (OPSO) received Deputy Sheriff's Supplemental Pay (supplemental pay) payments totaling \$1,026,083 from the state of Louisiana for what appears to be ineligible employees (e.g., these employees performed purely clerical or non-enforcement duties). By requesting, receiving, and distributing state funds to employees who performed clerical or non-enforcement duties, OPSO management may have violated the Louisiana Constitution<sup>1</sup> and state law.<sup>2,3</sup>**

Louisiana Revised Statute (La. R.S.) 40:1667.7 provides, in part, that every commissioned deputy sheriff employed on a full-time basis with one year of service shall be paid extra compensation by the state in the amount of five hundred dollars per month. La. R.S. 40:1667.7 further provides that, "...any deputy sheriff hired...primarily to perform purely clerical or non-enforcement duties,...whether or not a duly commissioned deputy sheriff or Peace Officer Standards and Training Council (P.O.S.T.)-certified, shall not be deemed to be a commissioned deputy sheriff entitled to additional compensation out of state funds." To receive supplemental pay funds, each Louisiana sheriff is required to submit a monthly request to the Louisiana State Treasury (Treasury). Each request must provide a list of the deputies for which supplemental pay funds are requested and a certification that each deputy is employed on a full-time basis and meets all requirements for eligibility. The Treasury reviews all monthly requests and distributes the funds directly to each sheriff's office, who then pays these funds to the appropriate deputies.

The Louisiana Deputy Sheriff's Supplemental Pay Board of Review (Board) oversees the supplemental pay program. The Board is composed of three appointed members and is authorized to establish the criteria used to determine a deputy's eligibility to receive supplemental pay. Questions regarding eligibility can be submitted to the Board in writing. Upon receiving a written request, the Board will meet and determine the deputy's eligibility to receive supplemental pay. Prior to beginning our audit of the supplemental pay, we spoke to all three Board members who each indicated that the main factor in determining a deputy's eligibility was whether 50% or more of the deputy's duties consisted of law enforcement duties. The Board members described law enforcement duties, specifically regarding OPSO, as supervising prison inmates. Board members stated that an OPSO deputy had to spend at least 50% of their time on duties directly related to interacting with and supervising prison inmates in order to be eligible for state supplemental pay.

### Ineligible Employees Received State Supplemental Pay

From January 2011 to September 2014, OPSO requested and received payments totaling \$13,574,580 from the Treasury for state supplemental pay. We reviewed a list of all OPSO employees who received state supplemental pay during this time period and selected multiple OPSO employees for review based on departments and/or job titles that did not appear to involve

inmate supervision. We then reviewed the job descriptions for these positions and interviewed these employees, their co-workers, or their supervisors to determine the duties that comprised each position. Based on the criteria provided by members of the Board, job descriptions, and interviews of OPSO employees, we identified 56 employees who, based on their job duties during this time period, do not appear to have been eligible to receive supplemental pay. From January 2011 to September 2014, OPSO made payments totaling \$1,026,083 to these 56 employees. The OPSO employees who do not appear to have been eligible to receive supplemental pay include clerks, mailroom employees, facility management personnel, kitchen personnel, and other administrative personnel.

According to the majority of these employees or their supervisors, their job duties did not primarily consist of enforcement duties. Several of these employees further stated that they were currently, or had previously been placed on rotation once a week to work a single eight-hour shift in an OPSO jail facility. When asked why they worked this rotation, multiple employees stated that they were required to work in a jail facility once a week in order to be eligible to receive supplemental pay. For example, Juliet Langham, the former OPSO controller who oversaw the financial operations of OPSO and certified a majority of the supplemental pay requests submitted to the Treasury, received supplemental pay and was listed on a schedule to rotate through a jail facility once a week. Although records indicate that Ms. Langham did work in a jail facility for eight hours during the work week, she did not spend at least 50% of her time on duties directly related to interacting with or supervising prison inmates. In addition, multiple employees stated that OPSO administration informed them that if they received their P.O.S.T. Certification, they would automatically receive a \$500 a month raise after completing one full year of employment with OPSO. These employees further stated that they received this automatic raise because they had become eligible for supplemental pay.

Since July 1, 2009, the Board has required sheriff's offices to submit their monthly requests for supplemental pay funds on a form that requires each sheriff to certify the number of eligible, full-time commissioned deputy sheriffs in their employ and the number of years of service of each such deputy. Each agency is also required to submit a "change in job duties" form whenever a deputy who receives supplemental pay has a change in job duties. The "change in job duties" form requires the agency to list the percent of time a deputy spends on each direct enforcement duty. During our review of OPSO's procedures for requesting and certifying supplemental pay funds from the Treasury, we found that OPSO regularly used an out-of-date supplemental pay application form that does not require the office to record the percent of time spent on each direct enforcement duty. However, in the instances where the updated form was used, OPSO failed to record the percent of time spent on each direct enforcement duty. In addition, the "change in job duties" form, which notifies the Treasury to review a deputy's new duties in order to determine if they are still eligible to receive supplemental pay, was never submitted to the Treasury by OPSO from July 2009 to September 2014.

Leslie Stieb, the OPSO employee responsible for completing and submitting supplemental pay applications to the Treasury, stated that when she fills out supplemental pay applications for newly-eligible OPSO employees, she usually lists the same job duties ("care, custody, and control of inmates") for all employees (see Exhibits 1 and 2). As a result, the Treasury could not determine an OPSO deputy's position or the amount of time the deputy spent on enforcement duties. Ms. Stieb also stated that she has never submitted a "change in job

duties” form to the Treasury since she was assigned the supplemental pay request duties in 2009. She further stated that she does not receive notifications of changes in OPSO employee job duties, even though they may affect a deputy’s eligibility to receive supplemental pay.

Because of OPSO’s failure to complete and submit the required supplemental pay forms, the Treasury was unable to properly evaluate the eligibility of all OPSO deputies for which supplemental funds were requested. As a result, OPSO requested, received, and paid supplemental pay funds totaling \$1,026,083 to 56 deputies who do not appear to have been eligible to receive these funds. By requesting, receiving, and paying state supplemental pay funds to employees who do not appear to have been eligible to receive state supplemental pay, OPSO management may have violated the Louisiana Constitution<sup>1</sup> and state law.<sup>2,3</sup>

In his response to this report, Sheriff Marlin Gusman claims that a deputy with mixed administrative and (law) enforcement duties is eligible to receive supplemental pay because the Sheriff “has interpreted the relevant date” (the date a deputy becomes eligibility to receive supplemental pay) “to mean either the date of hire or, if the deputy was initially hired for purely clerical purposes, the date of transfer to law enforcement duties.” However, in Attorney General (AG) *Opinion 92-647*, the AG opined that “as to deputies hired after March 31, 1986, their entitlement to state supplemental pay depends on the duties they are currently assigned to perform. Thus, commissioned deputy sheriffs, hired after March 31, 1986, whose current employment (duties) primarily involves the performance of purely clerical or non-enforcement duties are not eligible to receive state supplemental pay, regardless of the fact that they were hired to or were assigned to perform enforcement duties when hired.” Sheriff Gusman further states that “the law does not require the Sheriff to use any expanded forms,” such as the “change in job duties” form. However, AG *Opinion 99-90* states that the Board is authorized to set forth policy interpreting statutes by the language of La. R.S. 40:1667.6 [previously La. R.S. 33:2218.7]. Moreover, the General Appropriation Act has authorized the Board to “establish criteria for eligibility for deputy sheriffs becoming eligible after the date of this Act” every year since 1992. For example, that language may be found on page 166, at lines 26-28, of Act 16 of the 2015 Regular Session of the Louisiana Legislature.

The Sheriff also provided the names of four deputies in his response and explained why he believes each deputy is eligible to receive supplemental pay. However, during the course of our audit, we conducted interviews with these deputies or their supervisors and found that three of these deputies had a change in position or job duties at some point between January 2011 and September 2014 that greatly reduced the time these deputies spent providing enforcement duties. Further, the fourth deputy told us that even though he occasionally interacts with inmates, his primary job duties are administrative and not related to directly supervising or monitoring inmates. Finally, it should be noted that when calculating the total amount of ineligible supplemental payments requested and received by OPSO, auditors only included the periods of time when a deputy was not primarily providing enforcement duties.

### **Deputy Sheriff Operated Private Security Business in Possible Violation of State Law**

**From March 2009 to March 2015, Colonel Lucien Roy Austin owned and operated a personal security business in possible violation of La. R.S. 14:140(A)(3), which prohibits deputy sheriffs from holding an ownership interest in any partnership, company, or corporation where the venture is to perform any services of a law enforcement nature. Although Col. Austin's OPSO job duties included organizing off-duty details performed by OPSO personnel, it appears that Col. Austin organized off-duty details during his regular work hours for his personal business, a Slidell-based Louisiana for-profit corporation named Austin Sales and Service, Inc. In addition, records indicate that Col. Austin billed customers for OPSO deputies and other individuals for services that do not appear to have been performed. Records also indicate that several of the checks payable to these individuals appear to have been endorsed and negotiated by Austin Sales and Service, Inc. management, including Col. Austin. By owning a corporation for which he provided services of a law enforcement nature during his regular OPSO work hours, Col. Austin may have violated OPSO policies and state law.<sup>4,5,6,7</sup> Further, by charging customers for services not performed and by negotiating company checks payable to others, Col. Austin may have violated state<sup>8,9,10,11</sup> and federal laws.<sup>12,13,14</sup>**

State law allows for sheriff's deputies to perform private security work for a firm where such work does not conflict with their regularly-assigned hours as deputy sheriffs. As such, Section 301.16 of the *OPSO Employee Manual* establishes the policies and procedures under which OPSO personnel may work off-duty security details while wearing their uniforms and utilizing OPSO equipment. These policies and procedures require prior authorization from an appropriate supervisor, limit the number of off-duty hours that can be worked during a seven-day week, prohibit employees from taking leave from OPSO to work off-duty security details, and require each deputy to have a fee of \$1 per detail hour worked deducted from their paycheck to reimburse OPSO for equipment used while performing off-duty security details. Pay earned by deputies working off-duty details is handled independently from the OPSO office.

#### Austin Sales and Service, Inc.

Colonel Lucien Roy Austin was hired by OPSO in November 1991 and was the Director of the Intake and Processing Center (IPC) from November 2011 to April 2015. In addition, part of Col. Austin's OPSO job duties included coordinating off-duty security details performed by OPSO personnel. However, records indicate that while he performed these duties on behalf of OPSO, Col. Austin used Austin Sales and Service, Inc. to organize private security details for his personal benefit. According to banking records, Col. Austin began providing security services under the business name Austin Sales and Service, Inc. in March 2009. Col. Austin registered Austin Sales and Service, Inc. with the Louisiana Secretary of State on November 13, 2009. From March 2009 through March 2015, Austin Sales and Service, Inc. was paid \$2,090,434 to coordinate and provide off-duty security details using OPSO deputies and other individuals.

Col. Austin is the registered agent and only officer of Austin Sales and Service, Inc. listed on the business report filed with the Louisiana Secretary of State. However, we found that Chief Deputy Gerald Ursin, Jr.; Orleans Parish Prison Chief Gary Bordelon; and Col. Austin's

assistant, Deputy Rynika Stewart, assisted Austin Sales and Service, Inc. with arranging and coordinating private security details. In addition, according to OPSO and Austin Sales and Service, Inc. records, Col. Austin, Chief Deputy Ursin, Chief Bordelon, and Deputy Stewart used OPSO computers and other equipment during their regular work hours to arrange, coordinate, and invoice off-duty details while working their regular OPSO schedules. For example, email correspondence shows that Chief Deputy Ursin appears to have assisted Austin Sales and Service, Inc. with handling invoices and coordinating details for the New Orleans Jazz and Heritage Festival (Jazz Fest), Super Bowl XLVII in 2013, and the 2014 NBA All-Star Game (see Exhibits 3-6).

As part of our audit, we examined OPSO computers and OPSO email accounts used by Col. Austin, Chief Bordelon, and Deputy Stewart. These examinations found that many of the Austin Sales and Service, Inc. invoices for security details were created using OPSO computers, printed on OPSO letterhead, and sent to customers of Austin Sales and Service, Inc. using OPSO email accounts. Although these invoices requested that payment be made to Austin Sales and Service, Inc., the invoices thanked the customers on behalf of Sheriff Marlin Gusman for using the Orleans Parish Sheriff's Office for their security needs (see Exhibits 6 and 7). Deputy Stewart, who was responsible for scheduling details and preparing invoices on behalf of Austin Sales and Service, Inc., stated that she believed that handling these off duty details was part of her regular job duties.

Although state law allows deputies to perform private security work while not on official duty, state law prohibits a deputy sheriff from holding an ownership interest in any partnership, company, or corporation where the venture is to perform any services of a law enforcement nature. Further, in order to provide private security services, La. R.S. 37:3270 *et seq.* requires private security companies and individuals who perform private security services to be licensed by the Louisiana State Board of Private Security Examiners (Security Board). Although active law enforcement officers are exempt from the licensing requirements in their jurisdictions, security companies are required to have at least one agent/officer licensed by the Security Board. According to Security Board Administrative Supervisor Jane Ryland, neither Austin Sales and Service, Inc. nor Col. Austin was licensed to provide security services during this time period. Due to his ownership and operation of an unlicensed security company that primarily provides services of a law enforcement nature, Col. Austin may have violated state law.<sup>4,6,7</sup>

#### Austin Sales and Service, Inc. Billed Customers for Services Not Provided

During our audit, we obtained Austin Sales and Service, Inc.'s off-duty detail schedules, invoices and other documentation from the OPSO e-mail server, Col. Austin's office and OPSO computers used by Col. Austin, Chief Bordelon, and Deputy Stewart. These schedules appear to have been used to track the hours worked by OPSO deputies and other individuals on security details and to determine the amounts billed to customers of Austin Sales and Service, Inc. We compared the schedules of 29 off-duty security details to the amounts billed to customers by Austin Sales and Service, Inc. and to Austin Sales and Service, Inc. payroll records. These records indicate that, from March 2010 to December 2014, Austin Sales and Service, Inc. billed customers at least \$78,173 for services that were not provided or that were provided by individuals who were not P.O.S.T. certified or licensed by the Security Board to provide security



services. The table below summarizes the amounts billed by Austin Sales and Service, Inc. for the 29 off-duty security details reviewed as part of this audit.

<b>Services Billed but Not Provided by Austin Sales and Service Inc.</b>			
<b>Detail</b>	<b>Invoiced Amounts</b>	<b>Overbilled Amounts</b>	<b>%</b>
AAU Junior Olympics	\$102,112	\$6,095	6.0%
Bacchus	85,066	7,249	8.5
Crescent City Classic	36,000	4,364	12.1
Endymion	125,531	15,805	12.6
Greater New Orleans Sports Foundation Super Bowl	25,725	3,716	14.4
Hogs for the Cause	28,011	1,887	6.7
Rock & Roll Marathon	57,575	4,200	7.3
Turkey Day Race	9,505	1,326	13.9
Verizon Super Bowl Boulevard	47,800	884	1.8
Voodoo Fest	277,275	38,386	13.8
<b>Totals*</b>	<b>\$794,601</b>	<b>\$83,911</b>	<b>10.6%</b>
*Overbilled amounts are comprised of (1) customers billed for services that were not provided and (2) Austin Sales and Service, Inc. payments with questionable endorsements.			

We attempted to speak with Col. Austin regarding these billings; however, he declined our request for an interview and referred all questions to his attorney. By billing for services that were either not provided or were provided by individuals who had no legal authority to provide security services, Col. Austin may have violated state law.<sup>7,8</sup>

#### Austin Sales and Service, Inc. Questionable Check Endorsements

Our review of Austin Sales and Service, Inc.'s bank records revealed 18 checks related to the 29 overbilled off-duty security details totaling \$5,737 that were payable to 12 individuals but appeared to have been endorsed by the payees and either Col. Austin or Chief Bordelon and then cashed or deposited into bank accounts owned by Col. Austin and/or Chief Bordelon. Multiple individuals to whom these checks were made payable confirmed that the endorsement signatures on the back of the checks were not their signatures. These individuals also confirmed that they did not receive, return, or donate any of the checks or proceeds of the checks to Austin Sales and Service, Inc. We attempted to speak with Col. Austin regarding these checks; however, Col. Austin declined our request for an interview and referred all questions to his attorney. Based on the statements of the individuals who claim they did not endorse the Austin Sales and Service, Inc. checks made payable to them, it appears that Col. Austin and Chief Bordelon may have negotiated checks from Austin Sales and Service, Inc. that were payable to others.

By charging Austin Sales and Service, Inc. customers for services that were not performed and by negotiating company checks payable to others, Col. Austin and Chief Bordelon may have violated state<sup>8,9,10,11</sup> and federal laws.<sup>12,13,14</sup> On March 25, 2016, Col. Austin was charged in a federal bill of information with one felony count of conspiracy to commit wire fraud.



### **Sheriff Deputies Worked Off-duty Details during OPSO Working Hours**

**From October 1, 2010 to November 4, 2014, OPSO paid 16 deputies \$4,698 for the same hours during which these deputies appear to have performed off-duty security services. By performing off-duty security services during their regularly-scheduled work hours, these deputies may have violated OPSO policies and procedures for off-duty details and state law.<sup>5,6</sup>**

As previously stated, state law allows for sheriff's deputies to perform private security work when the work does not conflict with their regularly-assigned hours as deputy sheriffs. As such, Section 301.16 of the *OPSO Employee Manual* establishes the policies and procedures under which OPSO personnel may work off-duty security details while wearing their uniforms and utilizing OPSO equipment. These policies and procedures require prior authorization from an appropriate supervisor, limit the number of off-duty hours that can be worked during a seven-day week, prohibit employees from taking leave from OPSO to work off-duty security details, and require each deputy to have a fee of \$1 per detail hour worked deducted from their paycheck to reimburse OPSO for equipment used while performing off-duty security details.

During our audit, we compared Austin Sales and Service, Inc. records to Col. Austin's OPSO time sheets and discovered instances in which Col. Austin appeared to have performed security services during his regular work hours and without taking leave. In addition, we obtained time sheets from the Orleans Parish Clerk of Court - Criminal District (Clerk) for OPSO deputies who provided off-duty security services for the Clerk during elections. We compared these time sheets to the deputies' OPSO time sheets and found 156 instances in which 16 OPSO deputies (including Col. Austin) appear to have worked off-duty security details during their regularly-scheduled work hours. From October 1, 2010 to November 4, 2014, OPSO paid these deputies a total of \$4,698 for 203 hours during which the deputies appear to have been working security details.<sup>A</sup>

The amount of time which these deputies were shown to be working off-duty details during their regularly-scheduled work hours ranged from 10 minutes to 12 hours per day. For example, Col. Austin appears to have worked off-duty security details during 94.5 regular work hours without taking leave. At his regular OPSO hourly rate of \$32.83, Col. Austin appears to have been paid \$3,103 by OPSO for the same hours during which he was providing off-duty security services. By performing off-duty security services during their regularly-scheduled work hours, these OPSO deputies may have violated OPSO policies and procedures for off-duty details and state law.<sup>5,6</sup>

---

<sup>A</sup> It should be noted that OPSO policies do not allow deputies to take leave from OPSO to work off-duty security details; however, even though we found multiple instances where deputies took leave to work off-duty details, for the purposes of this audit we did not compile the amount of leave taken by deputies to work off-duty security details.

### OPSO Failed to Properly Apply Public Bid Law for House of Detention Renovations

From March 31, 2012 to March 14, 2013, OPSO made payments totaling \$231,820 to Gulf State, LLC for renovations performed on shower stalls at the House of Detention (HOD) jail facility. Although this was a public works project as defined by state law, OPSO failed to publicly advertise the project in accordance with the Public Bid Law. In addition, OPSO used an unlicensed contractor, allowed work to be performed without a written contract, and appears to have paid for materials that did not conform to the bid specifications. By failing to properly apply the Public Bid Law, allowing an unlicensed contractor to perform services without a written contract, and paying for materials that did not conform to the bid specifications, OPSO management may have violated the Louisiana Constitution<sup>1</sup> and state law.<sup>2,15,16,17</sup>

According to the Public Bid Law (La. R.S. 38:2212), public works projects exceeding \$150,000 shall be advertised and let by contract to the lowest responsible bidder who bid according to the contract, plans, and specifications, as advertised. In addition, La. R.S. 38:2212 (V) specifically prohibits division or separation of any public works project into smaller projects that would have the effect of avoiding the requirements of the Public Bid Law. The Public Bid Law also requires a written contract and the contractor to provide a surety bond in a sum not less than 50% of the contract price. Finally, La. R.S. 37:2163 requires the use of state-licensed contractors and subcontractors for public works projects exceeding \$50,000.

OPSO records indicate that from March 31, 2012 to March 14, 2013, Gulf State, LLC was paid a total of \$231,820 to waterproof the inmate showers at the HOD. According to OPSO records, employees, and vendors, this work was performed from March 2012 to April 2012. Documentation supporting the bid process indicates that, in October 2010, OPSO advertised a request for proposals to waterproof all shower stalls in the HOD. The scope of work required the vendor to strip and clean all showers down to the concrete and apply waterproofing solution. In addition, all vendors were required to give a complete price of the full job and provide separate pricing for the cost of the waterproofing materials, cost per shower, emergency call outs, and approximate time to respond. The proposals received by OPSO in October 2010 are summarized in the table below.

<b>Proposals Received by OPSO for the House of Detention Shower Renovations in 2010</b>					
<b>Bidder</b>	<b>Date Submitted</b>	<b>Time Submitted</b>	<b>Submission Method</b>	<b>Bid Dated</b>	<b>Bid Amount</b>
Gulf State, LLC	Unknown	Unknown	Unknown	10/26/2010	\$10,837
T.L. Wallace Construction, Inc.	10/27/2010	7:36:18 AM	Central Bidding Website	10/27/2010	\$11,400
LaPara & Associates, Inc.	Unknown	Unknown	Unknown	5/13/2010	\$12,200

The waterproofing of the inmate showers was to be performed on five floors, each floor having four shower stalls; however, each of the proposals received by OPSO in October 2010 only provided prices on a per-stall basis. None of the proposals provided a complete price for the full job, and only one proposal provided the cost for the waterproofing materials. Although no work was performed on the project until March 2012 (approximately 17 months later), OPSO could not provide a written description of the work performed, a contract, evidence that Gulf State, LLC provided a surety bond, nor evidence that additional quotes or bids were obtained. Documentation supporting the payments to Gulf State, LLC included a copy of LaPara's May 13, 2010 proposal, and Gulf State, LLC's invoices with the word "Bid" handwritten on each invoice. Gulf State LLC's invoices indicate that work was performed on 18 shower stalls at \$10,837 per unit. In addition, there is no evidence to indicate that either Gulf State, LLC, or any of its agents or officers, are licensed through the Louisiana State Licensing Board for Contractors.

#### Gulf State Provided Non-Conforming Materials

During the course of our audit, we discovered that the epoxy coating used by Gulf State, LLC did not meet the requirements of the October 2010 request for proposals. According to the request for proposals, the vendor was required to cover the HOD shower stalls with a 3/16" (0.1875) coating of waterproofing solution composed of "*a Cementitious Polymer Admix overlay which provides outstanding compressive, flexural, tensile and bonding strength. This product waterproofs and is acid resistant, salt resistant, mold resistant, non-flammable and non-toxic, and is a one-step process. The product should be ANSI-61 approved for use in conjunction with potable water.*" We spoke to Kendal Marquar, Gulf State, LLC officer, who stated that the waterproofing materials for this project were purchased at a local Sherwin Williams store. Auditors obtained the receipts for these purchases which indicate that Gulf State, LLC provided an epoxy waterproofing solution that was not acceptable for use in conjunction with potable water, as required by the October 2010 request for proposals.

According to Mr. Marquar, the HOD renovations were not put out to bid in 2012. Mr. Marquar stated that John Sens, former OPSO purchasing director, called him and said that federal inspectors were coming to inspect the HOD and that OPSO needed to renovate the showers. Mr. Marquar stated that Mr. Sens instructed him not to use the materials specified in the 2010 bid specifications, rather they were to use a different sealer and begin renovations on the showers immediately. Mr. Marquar also stated that he never saw a contract between Gulf State, LLC and OPSO.

By failing to properly apply the public bid law, allowing an unlicensed contractor to perform services without a written contract, and paying for materials that did not conform to the bid specifications, OPSO management may have violated the Louisiana Constitution<sup>1</sup> and state law.<sup>2,15,16,17</sup>

In his response, Sheriff Gusman claims that because Gulf State, LLC was formed on March 1, 2012, "it is likely that the bid was made under the name of a predecessor entity since Gulf State, LLC did not exist in 2010 when the bid was made." However, as seen in Exhibit 8, the 2010 proposal was submitted to OPSO by Gulf State, LLC and not a predecessor entity.

### Recommendations

We recommend that the Sheriff's office:

- (1) seek legal advice regarding the appropriate actions to be taken regarding supplemental pay obtained by OPSO employees;
- (2) implement detailed policies and procedures to ensure that only eligible employees, as defined by state law, receive supplemental pay;
- (3) use the appropriate forms to request supplemental pay funds and update written policies and procedures to ensure that each employee's eligibility for state supplemental pay is re-evaluated when a change in position or job duties occurs;
- (4) implement additional written policies and procedures to ensure that employees do not work off-duty security details during regular working hours;
- (5) implement written policies and procedures regarding funds withheld from employee paychecks for having worked off-duty security details;
- (6) require employees to sign an annual certification in which they disclose ownership in any businesses that perform law enforcement services;
- (7) maintain an electronic database containing information such as the dates, times and locations of all off-duty details worked by OPSO deputies;
- (8) ensure that all laws (La. R.S. 38:2211, *et seq.*) pertaining to contracts and public bids are followed;
- (9) ensure that vendors and professional service providers have valid, written contracts prior to providing services;
- (10) ensure that contracts and related documentation are maintained in an organized manner and in a central location;
- (11) ensure that all payments are made in accordance with the terms and conditions of the contract;
- (12) ensure services meet all contractual requirements prior to payment;
- (13) require proper review of invoices to ensure each payment has a legitimate public purpose as required by the Louisiana Constitution; and
- (14) require detailed invoices and documentation of the business purpose for all expenditures.

## EXHIBITS

---



**Exhibit 1 – Pre-2009 Supplemental Pay Application Form**

**BOARD OF REVIEW  
DEPUTY SHERIFF'S SUPPLEMENTAL PAY  
DSSP Employment Information Form**

Orleans

Board Members  
State treasurer  
Commissioner of Administration  
Louisiana Sheriff's Association

RE: Deputy's Name: \_\_\_\_\_  
Deputy's SSN: \_\_\_\_\_

Deputies must be commissioned and paid a salary of not less than \$350 per month.

(1) Beginning employment date with your office as a full-time commissioned deputy sheriff office, give the beginning date for current employment \_\_\_\_\_.

(2) Deputy's montly salary: \$2,351.44

New hires after March 31, 1986, must perform **full-time direct law enforcement** duties.

(3) Describe present duties as a full-time deputy sheriff: Care, Custody and Control of inmates.

---



---

**Exhibit 2 – 2009 Supplemental Pay Application Form**

36

**BOARD OF REVIEW  
DEPUTY SHERIFFS' SUPPLEMENTAL PAY  
DSSP Employment Information Form**

Board Members  
State Treasurer  
Commissioner of Administration  
Louisiana Sheriffs' Association

RE: Deputy's Name: \_\_\_\_\_  
Deputy's Title: Deputy  
Deputy's SSN: \_\_\_\_\_

Deputies must be commissioned and paid a salary of not less than \$350 per month.

(1) Beginning employment date with your office as a full-time commissioned deputy sheriff whose salary is paid from the sheriff's general fund \_\_\_\_\_ 2010. If rehired with your office, give the beginning date for current employment \_\_\_\_\_.

(2) Deputy's monthly salary: \$ 2249.52.

New hires after March 31, 1986, must perform **full-time direct law enforcement** duties.

(3) Describe present duties as a full-time deputy sheriff (**Show % of time for each duty**):  
Care, custody, and control of inmates

---



---





**Exhibit 5 – Jazz Fest Email**

---

**From:** Ursin, Jerry  
**Sent:** Tuesday, May 06, 2014 12:52 PM  
**To:** jerry@nojazzfest.com  
**Subject:** FW: JazzFest Night Compound  
**Attachments:** SKMBT\_75414043011170.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Chief Jerry Ursin  
Chief Deputy  
Orleans Parish Sheriff's Office  
2800 Gravier Street  
New Orleans, La. 70119

Office: (504) 827-8504  
Fax: (504) 826-6747  
E-mail: [ursinj@ops0.us](mailto:ursinj@ops0.us)



---

**From:** Stewart, Rynika  
**Sent:** Wednesday, April 30, 2014 12:23 PM  
**To:** [opsadmin@nojazzfest.com](mailto:opsadmin@nojazzfest.com)  
**Cc:** Austin, Roy; Ursin, Jerry  
**Subject:** JazzFest Night Compound

Any questions please contact me at (504)827-6752 or (504)270-5049

*This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the Orleans Parish Sheriff's Office. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.*

**Exhibit 6 – Invoice from Attachment in Exhibit 5 – Jazz Fest Email**



Office of the Sheriff  
Parish of Orleans ~ State of Louisiana

**Marlin N. Gusman**  
Sheriff

April 30, 2014

**INVOICE NO. 04302014**

**To:** Suzy Arnold  
Fair Operations Administrator

**From:** Colonel Roy Austin

Suzy,

Please find attached invoice for New Orleans Jazz & Heritage Festival night compound security, beginning Monday April 07 thru Sunday April 20, 2014. I would like to thank you and your staff from Marlin Gusman, and Colonel Roy Austin, for using the Orleans Parish Sheriff's Office for your security needs. Please make check payable to **Austin Sales & Service TIN # [REDACTED]** for the amount of **\$5,410.00**. If you have any questions please feel free to contact me at (504)234-5180 or (504)827-8536.

Thanks

A handwritten signature in blue ink, appearing to read 'Roy Austin', is written over the printed name.

Colonel Roy Austin

**Exhibit 7 – 2014 Austin Sales and Service, Inc. Voodoo Fest Invoice**

Office of the Sheriff  
Parish of Orleans ~ State of Louisiana

Marlin N. Gusman  
Sheriff

November 7, 2014

Dianne Spina  
Live Nation

RE: 2014 Voodoo Arts and Music Experience

Dear Ms. Spina,

Attached is the invoice for the 2014 VooDoo Arts and Music Experience. The last tab is a summary of each day's total; the other tabs are details for each day. Please note that there is a sheet identified as "NOPD." These are positions that were filled in previous years by Commander Henry Dean of the New Orleans Police Department, but the Orleans Parish Sheriff's Office filled them this year.

Also, please note on the Friedrichs Patrol that we were asked to provide *four additional days* of coverage at a cost of \$1500. This was not included in last year's invoice. We were also requested by Don Kelly to provide event day coverage for the Cigar Store, a specialty bar within the venue. Mr. Kelly said that Live Nation would cover this cost, \$945. Both of these totals are included in the amount below, as well as an administrative fee of \$1,178.

The total amount due for the 2014 event is **\$99,341**. Please make the check payable to Austin Sales & Services; Federal Tax ID # [REDACTED].

Do not hesitate to call me if you have any questions or concerns. I would like to thank you for using the Orleans Parish Sheriff's Office for your security needs for this event.

Sincerely,

Colonel Roy Austin  
Orleans Parish Sheriff's Office  
(504)827-6753 (office)  
(504) 234-5180 (cell)  
[austinr@opso.us](mailto:austinr@opso.us)

819 South Broad Street, New Orleans, LA 70119 ~ [www.opso.org](http://www.opso.org)

**Exhibit 8 – Gulf State, LLC 2010 Proposal**

**Gulf State, LLC**

**1511 Arabella Street  
New Orleans, LA 70115**

October 26, 2010

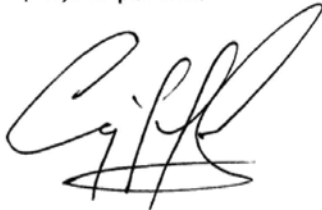
To: John Sens  
Purchasing Agent  
Orleans Parish Sheriff's office

I respectfully submit my bid for RFP 5212571 Inmate Showerproofing

Our bid includes:

- Remove all paint and debris from shower units
- Dry properly for installation of Epoxy
- Apply 2 coats white color, to seal shower units

Price: \$10,837 per unit



## LEGAL PROVISIONS

---

<sup>1</sup> **Louisiana Constitution Article VII, Section 14(A)** provides, in part, that “Prohibited Uses. Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.”

<sup>2</sup> **Louisiana Revised Statute (La. R.S.) 42:1461(A)** states that, “Officials, whether elected or appointed and whether compensated or not, and employees of any “public entity,” which, for purposes of this section shall mean and include any department, division, office, board, agency, commission, or other organizational unit of any of the three branches of state government or of any parish, municipality, school board or district, court of limited jurisdiction, or any other political subdivision or district, or the office of any sheriff, district attorney, coroner, or clerk of court, by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.”

<sup>3</sup> **La. R.S. 40:1667.7(A)** states, “In order to promote the public peace and safety in the parishes of the state, by providing better enforcement of law and particularly the enforcement of state laws by deputy sheriffs, every commissioned deputy sheriff employed on a full-time basis shall be paid by the state extra compensation out of monies appropriated therefor from the fund established by R.S. 40:1667.2. For the purposes of this Section any deputy sheriff hired after March 31, 1986, primarily to perform purely clerical or nonenforcement duties, including but not limited to typists, office machine operators, switchboard operators, filing clerks, steno clerks, stenographers, animal shelter personnel, school crossing guards, secretaries, cooks, mechanics, and maintenance personnel, whether or not a duly commissioned deputy sheriff or post-certified, shall not be deemed to be a commissioned deputy sheriff entitled to additional compensation out of state funds.”

<sup>4</sup> **La. R.S. 14:140(A)(3)** states, “Public contract fraud is committed when, any sheriff charged with the duties of enforcing the laws of this state or any political subdivision thereof shall enter into a contract, either written or oral, individually or as a member or stockholder of any partnership, company, or corporation, with any such person whereby such sheriff of partnership, company, or corporation, of which he is a member or stockholder is to perform any services of a law enforcement nature; provided, however, a deputy sheriff may, as an employee only, perform services of a law enforcement nature for any person, partnership, company, or corporation, but only if the deputy sheriff fulfills his employee performance requirements while not on official duty.”

<sup>5</sup> **La. R.S. 14:138(A)** states, in part, that “Public payroll fraud is committed when: (1) Any person shall knowingly receive any payment or compensation, or knowingly permit his name to be carried on any employment list or payroll for any payment or compensation from the state, for services not actually rendered by himself, or for services grossly inadequate for the payment or compensation received or to be received according to such employment list or payroll.”

<sup>6</sup> **La. R.S. 14:134 (A)** states, “Malfeasance in office is committed when any public officer or public employee shall: (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; (2) intentionally perform any such duty in an unlawful manner; or (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him or to perform any such duty in an unlawful manner.”

<sup>7</sup> **La. R.S. 37:3270(A)** states, “The Legislature of Louisiana declares that it is necessary to require the licensure of private security agents and businesses to be in the best interest of the citizens of the state.

**La. R.S. 37:3291(A)** states, in part, “It shall be unlawful for any person to knowingly commit any of the following acts: (1) Provide contract security services without possessing a valid license.”

**La. R.S. 37:3294(B)** states, “In any partnership, corporation, or association whose primary activity consists of providing services regulated by this Chapter, at least one partner or corporate officer shall be licensed as a business under this Chapter.”

<sup>8</sup> **La. R.S. 14:67(A)** states, "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential."

<sup>9</sup> **La. R.S. 14:71.1 (A)(2)** states, in part, that bank fraud is "to obtain any of the monies, funds, credits, securities or other property owned by or under the custody or control of a financial institution by means of false or fraudulent pretenses, practices, transactions, representations, or promises."

<sup>10</sup> **La. R.S. 14:72(A)** states, in part, that "It shall be unlawful to forge, with intent to defraud, any signature to, or any part of, any writing purporting to have legal efficacy."

<sup>11</sup> **La. R.S. 14:72.2(A)** defines monetary instrument abuse, in part, as "Whoever makes, issues, possesses, sells, or otherwise transfers a counterfeit or forged monetary instrument of the United States, a state, or a political subdivision thereof, or of an organization, with intent to deceive another person...."

<sup>12</sup> **U.S.C. 18§1344** defines bank fraud, in part, as "whoever knowingly executes, or attempts to execute, a scheme or artifice to obtain any of the moneys funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises."

<sup>13</sup> **U.S.C. 18§1028A** defines aggravated identity theft, in part, as "whoever, during and in relation to any felony violation enumerated in subsection (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of two years."

<sup>14</sup> **U.S.C. 18§513** states, in part, that "(a) Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a state or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined under this title or imprisoned for not more than ten years, or both. (b) Whoever makes, receives, possesses, sells or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged security with the intent that it be so used shall be punished by a fine under this title or by imprisonment for not more than ten years, or both. (c) For purposes of this section - (1) the term "counterfeited" means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety; (2) the term "forged" means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine documents."

<sup>15</sup> **La. R.S. 38:2212(A)(1)** states, that "All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder who had bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part."

**La. R.S. 38:2212(C)(1)** states, in part, that "Except as provided in Paragraphs (2) and (3) of this Subsection, the term "contract limit" as used herein shall be equal to the sum of one hundred fifty thousand dollars per project...."

<sup>16</sup> **La. R.S. 37:2163(A)(1)** states, in part, that "It is the intention that only contractors who hold an active license be awarded contracts either by bid or through negotiation....Except as otherwise provided herein, if the bid does not contain the contractor's certification and show the contractor's license number on the bid envelope, the bid shall automatically be rejected, shall be returned to the bidder marked "Rejected," and shall not be read aloud."

<sup>17</sup> **La. R.S. 38:2241(A)** states, in part, that "Whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties....For each contract in excess of twenty-five thousand dollars per project, the public entity shall require of the contractor a bond with good, solvent,

and sufficient surety in a sum of not less than fifty percent of the contract price for the payment by the contractor or subcontractor to claimants as defined in R.S. 38:2242....The bond shall be executed by the contractor with surety or sureties approved by the public entity and shall be recorded with the contract in the office of the recorder of mortgages in the parish where the work is to be done not later than thirty days after the work has begun.”





## APPENDIX A

---

### Management's Response



February 26, 2016

Via electronic mail

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Findings and Recommendations  
Orleans Parish Sheriff

Dear Mr. Purpera:

Thank you for the opportunity to comment on your office's proposed Findings and Recommendations after its audit of Sheriff Gusman's office. The Sheriff has asked us to respond on his behalf in the interest of time. Our response follows the categories used in your draft report.

### **Ineligible Employees Received Supplemental Pay**

Initially, the Sheriff referred your draft report to us for a review of your analysis of La.R.S. § 40:1667.7. We agree with your analysis only in part. Specifically, subpart A of 40:1667.7 does indeed provide that supplemental pay is owed to a full time commissioned deputy sheriff, with the exception you noted in your report, to-wit: "any deputy hired . . . primarily to perform purely clerical or nonenforcement duties. . . ." The attorney general has ruled (at Op. Atty. Gen. 96-171) that the "intent of the statute is to provide state supplemental pay for commissioned deputy sheriffs who are engaged in law enforcement activities, and to deny such pay to those who are engaged in purely clerical or nonenforcement duties."

The attorney general was asked in connection with opinion 96-171 what date (hiring or transfer to law enforcement duties) was determinative for deciding whether a deputy was eligible for supplemental pay and the attorney general was unable to render an opinion. He suggested remedial legislation on the issue, which has never been adopted. There is no provision in the law to remove a deputy from supplemental pay status once a deputy has earned the right to supplemental pay. Since the law is unclear and has never been amended, the Sheriff has interpreted the relevant date to mean either the date of hire or, if the deputy was initially hired for purely clerical purposes, the date of transfer to law enforcement duties.

The statute also does not define "purely". We understand that term to mean that a deputy is ineligible for supplemental pay if the deputy's duties are primarily strictly administrative or clerical. If the deputy's duties are mixed administrative and law enforcement duties, the deputy is still eligible for supplemental pay.

Further, your report raises the issue of whether the Sheriff's office filed the correct forms with the Treasury Department, which now requires certain information about deputies which may not have been provided. On this point the law is clear. La.R.S. § 40:1667.7(C) provides that the Sheriff must certify to the state treasurer each month "the number of full-time deputy sheriffs in his employ and the number of years of service of each such officer." The state treasurer does not have the authority to expand the statute to require additional information. Of course, the Sheriff has cooperated with the state treasurer to the extent he can, and he will continue to do so, but the law does not require the Sheriff to use any expanded forms.

Your report seems to turn the statute on its head to require that the Sheriff show that 50% or more of the deputy's duties are law enforcement duties at any given time. The law actually says that a deputy is eligible unless he was hired "primarily" to perform "purely clerical or nonenforcement duties", The word "primarily" also is not defined in the statute. Webster's Dictionary defines "primarily" as "for the most part; chiefly". Black's Law Dictionary defines "primary" as "first; principal; chief; leading. First in order of time, or development, or intention." Those adjectives apply to the clerical or nonenforcement duties of a deputy, which by definition must be the principal and chief reasons the deputy was hired. There is just no support for your claim that 50% or more of a deputy's time must be spent in law enforcement duties for the deputy to be eligible for state supplemental pay. The word "primarily" does not imply a 51% to 49% split one way or the other; rather, it implies that the principal purpose of the hire was to obtain a purely clerical person.

Your report identifies 56 deputies whom you suggest may be ineligible for supplemental pay. The Sheriff respectfully disagrees and asked us to provide you with some examples and an explanation of why he disagrees.

Eartha Grant is a commissioned deputy who is assigned to the kitchen. The statute identifies "cooks" as persons having nonenforcement duties who are ineligible for supplemental pay. But you cannot ignore the word "purely". The question is: Is Deputy Grant purely a cook? The answer is no. Deputy Grant oversees a staff of inmates who work in the kitchen, she provides security for the kitchen area and she interacts with the inmate staff to prepare these inmates for gainful employment upon their release. Deputy Grant may or may not personally prepare food on any given day, but she was not primarily hired purely as a cook.

Fred Farve is a commissioned deputy to is assigned to the mechanic shop. You have concluded that his duties are administrative, but the question is: Are Deputy Farve's duties purely administrative? The answer is no. Deputy Farve transports community service inmates to the mechanic shop and supervises the work of the inmates while they learn a useful trade to seek gainful employment upon their release. He also provides security over the mechanic shop while the community service detainees are present. Deputy Farve may or may not personally repair machines on any given day, but he is was not hired primarily purely as a mechanic or other administrator.

Hazel Bowzer is listed as an administrator with the classification of "PREA". This acronym stands for Prison Rape Elimination Act, and Deputy Bowzer is the OPP coordinator for implementation of the Act at OPP. Deputy Bowzer was hired as a deputy sheriff in the House of Detention and upon closure of that facility was transferred to the Investigative Service Bureau. Her duties include interviewing and transporting inmates and, as PREA coordinator, interviewing and providing services and education to inmates in the jail on the tiers. Her duties are in no sense purely administrative.

Sidney Holt was hired as a deputy sheriff guarding inmates in the Community Correctional Center. He later worked in the Investigative Service Bureau interviewing and transporting inmates and in the Intake Processing Center interviewing and providing security for arrestees. He currently serves as the warden of the Intake Processing Center. You classified him as "transition team" which in no sense makes his duties purely administrative. His transition duties were related to the classification and transportation of inmates as the old jail facilities were demolished, the new jail facilities were constructed and the inmates were transferred.

#### **Deputy Sheriff Operated Private Security Business**

Sheriff Gusman is presently working with us to revamp the off-duty detail program which is operated through his office. The Sheriff is not prepared at this time to discuss what changes might be made to the program or when the revamp might be implemented.

The issues involving Col. Austin are the subject of an ongoing internal investigation and it would not be appropriate for the Sheriff to comment at this time.

#### **OPSO Failed to Properly Apply Public Bid Law for House of Detention Renovations**

As your report notes, a shower waterproofing project was put out to bid in 2010 and renovations did not begin until March 2012. However, the low bidder honored the price offered in its bid. A change order in the course of construction, for scope of work and/or materials is not unusual. There has been no problem with the alternate material which was used.

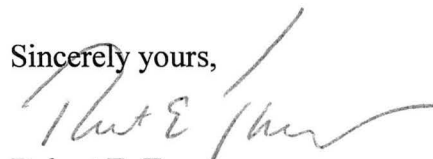
We have been unable to confirm your allegations that Gulf State, LLC was unlicensed at the time of bidding or construction. A review of the Secretary of State's website shows that Gulf State, LLC was formed on 3/1/2012, so it is likely that the bid was made under the name of a predecessor entity since Gulf State, LLC did not exist in 2010 when the bid was made.

All of the Sheriff's records recently were moved to a new facility. In the time allotted to us to respond to your draft Findings we have been unable to locate the bidding and contract records for this project. However, we are actively investigating this matter and we will supplement our response when the bid and contract documents are located.

Page 4

Please feel free to contact me with any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert E. Tarcza", with a long horizontal flourish extending to the right.

Robert E. Tarcza

cc: Marlin N. Gusman, Sheriff  
Roger W. Harris, JD, CCEP  
Brent McDougall, MBA, CIA, CFE, EnCE

March 23, 2016

Via electronic mail

Mr. Daryl G. Purpera, CPA, CFE  
Louisiana Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

Re: Findings and Recommendations  
Orleans Parish Sheriff

Dear Mr. Purpera:

As a follow-up to our letter to you of February 26, 2016 concerning your Findings and Recommendations on certain activities of the Orleans Parish Sheriff, we had advised you that we required further time and would supplement our letter on the issues surrounding the work performed on the showers at the prison by Gulf State, LLC. We have now completed our review of that contract. You raised several questions concerning this contract, which will be addressed below.

First, it is clear that the bid documents required that the successful bidder hold all required State licenses. However, it appears that the bids were not suitably vetted and that Gulf State, LLC was not properly licensed. The Sheriff now requires that a copy of each bidder's license be submitted with the bid package so that this problem will not be repeated.

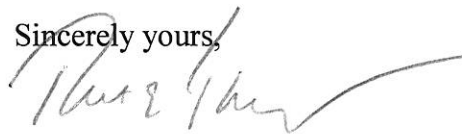
Second, it appears that the bid documents and purchase orders were allowed to stand in lieu of a formal, separate written contract. The purchase orders were compared to the bid document to make sure that they were in compliance with the bid and a check was issued based on this comparison. Putting aside whether the combination of these documents constituted a written contract as a matter of law, this is not the best practice and it has now been eliminated as a way of doing business.

Third, the change in materials was approved as a change order. One could argue that the change order should not have been approved, but change orders happen often in the course of construction contracts and approving them is discretionary.

Page 2

The chief procurement officer at the time the Gulf State, LLC contract was issued is no longer employed by the Orleans Parish Sheriff.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert E. Tarcza", with a long horizontal flourish extending to the right.

Robert E. Tarcza

cc: Marlin N. Gusman, Sheriff  
Roger W. Harris, JD, CCEP  
Brent McDougall, MBA, CIA, CFE, EnCE



## APPENDIX B

---

### Treasury's Response





## TREASURER OF THE STATE OF LOUISIANA

**John Neely Kennedy**  
State Treasurer

P. O. Box 44154  
Baton Rouge, LA 70804  
(225) 342-0010  
[www.latreasury.com](http://www.latreasury.com)

February 18, 2016

Mr. Daryl G. Purpera, CPA, CFE  
Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

RE: Orleans Parish Sheriff's Office Investigative Audit Report

Dear Mr. Purpera:

The Department of Treasury and Deputy Sheriffs' Supplemental Pay Board of Review would like to thank you and your staff for conducting the investigative audit on the Orleans Parish Sheriff's office. Overall, we concur with the findings in the audit report.

Treasury staff relies on the parish Sheriffs' signed certifications of their monthly reports that the information contained therein is true and accurate. The Orleans Parish Sheriff's certification and documents contained all the information needed for consideration of approval for payment to the deputies.

Treasury staff will work with Deputy Sheriffs' Supplemental Pay Program policies and forms and make recommendations to the Board of Review to change the application process and reporting requirements to reduce the possibility of payments to employees who are not entitled to them.

If you have any questions regarding the actions taken to resolve these items, please call me at 225-342-0055.

Sincerely,

A handwritten signature in blue ink that reads "Ron J. Henson".

Ron J. Henson  
First Assistant State Treasurer

RH/lel

Cc: Mr. Gary Bennett, Louisiana Sheriffs' Association  
Ms. Ternisa Hutchinson, Office of Planning and Budget  
Ms. Laura Lapeze, Department of Treasury