



## **Performance Audit**

# **Certain Operational Aspects of the Blind Industries and Services of Maryland**

Report dated February 1, 2016

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## Department of Legislative Services Office of Legislative Audits

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### Audit Request

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- The Joint Audit Committee directed the Office of Legislative Audits (OLA) to conduct an audit of certain operational aspects of the Blind Industries and Services of Maryland (BISM).
- The audit objectives included an evaluation of BISM's
  - employment and training policies and practices,
  - State vendor preference, and
  - executive compensation.



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### BISM - Background

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- BISM was established in 1908 as Maryland Workshop for the Blind by the General Assembly to provide vocational rehabilitation, employment, and other resources to blind adults of Maryland.
- BISM is a nonprofit organization that conducts manufacturing and retail operations and provides employment for blind persons in Maryland and other states, and provides rehabilitation and training programs primarily to blind adults of Maryland.
- BISM's mission is to "provide stable career opportunities, innovative rehabilitation programs, quality products and services, and to develop resources for training and education."



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### BISM - Business Operations

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- BISM 's revenue is primarily derived from product sales, which totaled \$84 million during FY 2015.
  - \$47.1 million textile sales to the federal government
  - \$20.4 million retail sales at federal installations
  - \$10.5 million sales to State agencies
  - \$6.0 million sales to private entities
- To help support rehabilitation and training services costing \$1.58 million during FY 2015, BISM also received funding from the State consisting of:
  - \$581,000 in grants, and
  - \$295,000 in fee-for-service payments.
- As of June 30, 2015, BISM employed 578 associates (216 blind and 362 sighted) working at locations within and outside of Maryland.



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### BISM – Rehabilitation and Training

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- The Rehabilitation Division provides rehabilitation and life skills training throughout Maryland to the blind and visually-impaired that leads to self-reliance and independence.
- As of June 30, 2015, the Division had a staff of 27 persons.
- During FY 2015, BISM provided a total of 71,462 hours of education and training to 768 persons.
- Most BISM clients are referred by the Maryland State Department of Education – Division of Rehabilitation Services.



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### BISM – State Procurement Preferences

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- BISM has two procurement preferences established by State law.
  - A State or State aided or State controlled entity shall buy supplies and services available from BISM, unless they are available from the Maryland Correctional Enterprises.
  - To the extent practicable, for State contracts that include housekeeping or janitorial services, the prime contractor and its subcontractors must procure janitorial products from BISM, when available.
- Current State law further requires that the prices to be charged under the preferences shall be set by a committee consisting of five State officials, and should reflect fair market prices, which by regulation is defined as the current average market prices.



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### Advice of Counsel

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We sought formal advice from counsel to the General Assembly regarding the applicability and intent of certain laws, including those governing BISM and its operations. The advice concluded:

- BISM has broad authority under the law to further its mission of providing training and employment opportunities for the blind.

Previous legal opinions had concluded that BISM was a quasi-governmental entity that could operate like a private entity, and could purchase and own investments and properties regardless of where located and could legally operate businesses outside of Maryland and employ and train blind persons who were not Maryland residents.



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### Advice of Counsel (continued)

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- In order for BISM to receive the State procurement preference, the products must be manufactured or assembled using 75 percent blind direct labor. The requirement does not apply to janitorial products sold to State contractors performing housekeeping or janitorial services.

BISM disagrees that it must meet the blind direct labor threshold requirement based on a 1995 Baltimore City Circuit Court ruling. The court ruled BISM was a State agency and therefore exempt. Absent other court action or legislation to clarify the matter, no further action to resolve the legal disagreement is likely (See Finding 2.3).

- The existing laws pertaining to BISM business practices, such as the types of work that would qualify for the direct labor hours requirement, are open to interpretation (See Finding 2.3).





## Employment and Training Strategies

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### ➤ Objective 1

To determine whether BISM has established employment and training strategies that promote work, career and training opportunities, and services for blind and visually-impaired persons in Maryland.

#### Findings:

- BISM had established organizational goals in 2013 to be accomplished by 2020 but only recently set strategies and had not developed action plans or measures to assess its efforts. Action plans are essential if BISM hopes to achieve its 2020 goals, including almost tripling sales and increasing employment by 67 percent (Finding 1.1).
  - BISM conducts outreach programs to inform Maryland residents throughout the State of its rehabilitation and training programs and services. OLA contacted several State and local officials and found that the needs of blind persons requesting services appear to be met (Finding 1.2).
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## Employment and Training Strategies (cont'd)

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- Since FY 2000, BISM has assumed more financial responsibility for funding its rehabilitation and training programs. FY 2015 State grant funds were used for the benefit of blind Maryland residents (**Finding 1.3**).
- Many former BISM students completing its Comprehensive Orientation, Rehabilitation, and Empowerment (CORE) program have reported successful post-training outcomes, such as obtaining employment, enrolling in college, or being able to live independently. However, BISM had not established mechanisms to evaluate the success of some of its rehabilitation and training programs (**Finding 1.4**).

### Recommendations

- Develop action plans and performance measures related to its strategic initiatives.
  - Establish a formal process for tracking student/client satisfaction for all of its training and rehabilitation services.
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## Pricing Policies for BISM Products

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### ➤ Objective 2

To determine whether pricing policies and practices provide assurance that Maryland State agencies are paying the fair market value for BISM-produced supplies and services.

### Findings

- The pricing committees established by law to set the fair market prices for BISM supplies (products) and services offered for sale to State agencies under the State procurement preference have not performed a comprehensive review of the prices for all such products and services (Finding 2.1).

Due to the lack of documentation, the extent to which the prices for 415 products sold to the State had been approved is undeterminable.

If a price review had been performed for individual products, the committees relied on BISM pricing information.

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### Pricing Policies for BISM Products (cont'd)

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- Based on Internet price surveys we conducted, we concluded that on an overall basis, BISM prices for 14 products typically purchased by the State during FY 2015 were competitive with the prices of similar competitor products offered for sale (**Finding 2.2**).

For example, our comparison of the average BISM unit prices paid by the State during FY 2015 (after discounts from BISM list prices) to the average Internet prices offered by vendors disclosed that 12 of 14 items were priced lower by BISM, translating to a State savings of \$1.05 million based on FY 2015 quantity purchases.

Such pricing comparisons have limitations. Reliable price comparisons are difficult to perform due to timing, methodology, and unknown factors such as shipping costs, product quality, and potential volume discounts from vendors.



## Pricing Policies for BISM Products (cont'd)

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- Differing legal opinions and a court ruling, call into question the applicability of statutory direct blind labor requirements for certain BISM products sold under the procurement preference (**Finding 2.3**).

Counsel to the General Assembly reaffirmed a 1993 Attorney General's Opinion that only products meeting the blind 75 percent direct labor hour threshold qualify for the State non-janitorial procurement preference. A 1995 Baltimore City Circuit Court ruling concluded the threshold did not apply because, unlike the Opinion which deemed BISM a quasi-public corporation, the court ruled BISM was a State agency within the context of the applicable law.

As a result, BISM does not maintain records that would be needed to demonstrate that direct blind labor hours constituted at least 75 percent of the total manufacturing and assembling hours for each product.

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### Pricing Policies for BISM Products (cont'd)

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#### Recommendations

- The State Pricing and Selection Committee should set the fair market value prices of all BISM products and services for sale to the State, maintain a current list of those products and services, and make timely revisions to the list as necessary. The Committee should also send the list to the Department of General Services (DGS).
- DGS should make the Committee approved list, with prices, available to State agencies.
- BISM should retain documentation of initial product pricing and maintain complete records of items submitted for pricing to the Committee.
- BISM take necessary actions to ensure compliance with provisions in State law concerning direct blind labor requirements.



## Executive Compensation Processes

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### ➤ Objective 3

To determine whether BISM has established reasonable processes and standards for setting executive compensation and appropriate ethics requirements for BISM management and its board.

### Findings

- The annual performance evaluation of the chief executive officer (CEO), which is an important aspect in setting compensation, was not directly linked to specific measurable BISM goals (Finding 3.1).

The CEO performance bonus program was not defined or documented, even though the bonus for FY 2016 was approximately one-half of the CEO's salary and bonus compensation of \$472,500.

Nevertheless, based on a survey of CEO compensation, the BISM CEO's total compensation was comparable to that of the CEOs of three other similarly-sized blind industries organizations.

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## Executive Compensation Processes (cont'd)

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- BISM has not established a formal compensation review policy for its non-CEO executive-level positions to ensure that they are evaluated based on measurable goals and objectives and to demonstrate the reasonableness of those positions' salaries (**Finding 3.2**).

BISM could not demonstrate that these individuals' salaries were reasonable based on market surveys and analyses. However, OLA's comparison of 2013 salaries paid to three BISM non-CEO executives to individuals in similar positions in like entities, suggests the BISM salaries for those employees are comparable.

- BISM had established a comprehensive code of ethics and appropriate financial disclosure requirements that were found to be comparable with a certain published guide for non-profits and the Maryland Public Ethics law. Also, compliance with the policy was monitored (**Finding 3.3**).
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## Executive Compensation Processes (cont'd)

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### Recommendations

- Enhance the CEO annual evaluation process by incorporating attributes pertaining to achieving specific measurable goals.
- Develop a Board approved written performance bonus plan that includes a description of the purpose and methodology for determining the CEO's bonus and retain documentation supporting all compensation determinations.
- Develop a formal Board approved compensation review policy for non-CEO executive staff that includes measurable goals tailored for those positions.
- Ensure compensation for non-CEO executive staff is reasonable based on market surveys and analysis.