

Digital Gadgets sues Hochul administration over COVID test contracts

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Digital Gadgets, a firm scrutinized for its owners' involvement in Gov. Kathy Hochul's campaign at the same time the company secured \$637 million in contracts to deliver COVID-19 tests, is now suing the administration arguing it didn't follow rules for competitive bidding for subsequent test orders.

In a [lawsuit](#) filed in Albany County Supreme Court, Digital Gadgets alleges the state Department of Health violated state law when it advertised a request for bids to procure COVID-19 test kits, but later invoked an executive order when the firm protested the denial of its bid.

"Digital Gadgets brought this lawsuit to ensure the state complies with the rules they established along with the bid process. The DOH is blocking Digital

Gadgets' ability to demonstrate that the winning bidders do not meet the specifications issued by the department," Digital Gadgets' spokesperson, John Gallagher, said.

Between December 2021 and March 2022, Digital Gadgets had been contracted by the state to deliver around 52 million COVID-19 test kits as part of efforts to combat the omicron wave of the virus. New York Division of Homeland Security and Emergency Services Commissioner Jackie Bray executed those purchase orders under Executive Order 11, a directive allowing the state to circumvent normal procurement procedures amid the COVID-19 emergency. Those contracts cost the state nearly \$637 million.

The Albany Times Union [reported](#) in July that around the same time the state was negotiating those contracts, Hochul received \$300,000 in contributions to her reelection campaign from Digital Gadgets' owner Charlie Tebele and his family. Hochul has [denied](#) knowing the Tebele family and said she wasn't aware of the specifics of the purchase orders with Digital Gadgets.

Throughout April, May and June, the lawsuit alleges, state officials including Bray were negotiating another purchase order with Digital Gadgets. In the middle of those talks, Charlie Tebele and his wife contributed another roughly \$40,000 to the governor's campaign.

On July 12, the Department of Health then issued an invitation for bids (IFB) "virtually identical" to the parameters being negotiated between Digital Gadgets and the state the month prior, the firm's lawsuit alleges. The IFB was posted a week before the Times Union published its first story on Digital Gadgets.

Digital Gadgets and 119 [other firms](#) ultimately then submitted bids under the IFB over the summer. At the same time, [details](#) into the Tebele family's [associations](#) with the Hochul campaign continued coming to light.

After it had been denied the contract in August, Digital Gadgets requested a debrief from Department of Health officials explaining why the company was not awarded the bid. Such debrief was allowed based on the original IFB documents. Digital Gadgets' attorney at the time wrote in a [subsequent letter](#) included in court filings that the Department of Health official involved indicated any protests to the bid award should be filed with the state comptroller, as is normal procedure.

“During the debrief with DOH on August 31, 2022, I asked Ms. Keefe, point blank, to confirm that this meant that protests were to be filed directly with OSC rather than any internal bid protest officer at DOH. She looked me in the eye and told me yes, bid protests must be made to [the state comptroller],” Benjamin Neidl, Digital Gadgets’ attorney at the time wrote.

Upon protesting the bid to Director of Contracts at the Comptroller’s office, Digital Gadgets [was told](#) that the contract had actually been awarded pursuant to Executive Order 11, thus rendering moot the procedures prescribed in the IFB.

After [several letters](#) between Digital Gadgets, the comptroller’s office and an official with the Department of Health, the latter indicated that the original IFB wasn’t being used for consideration of the bids.

“The Department published that procurement out of an abundance of caution, to obtain pricing and related information from responsible and responsive bidders in order to be good stewards of taxpayer dollars,” DOH’s procurement manager Eryn Keefe [wrote](#) in an letter to Digital Gadgets’ attorney.

When asked for comment, the comptroller’s office referred WSKG to the Department of Health.

“DOH cannot comment due to pending litigation,” Department of Health spokesperson Jeffrey Hammond wrote in response to questions from WSKG.

Upon reviewing Digital Gadgets’ legal complaint Bill Hammond, Senior Fellow for Health Policy at the Empire Center, said the situation is complicated, but it’s possible to see political motivations impacting the state's decisions around the IFB.

"It seems like the state was acting a little squirrely here," Hammond said. "First, they were negotiating under the emergency order. Then, they issued what appeared to be a competitive bidding document. Then, they're back to saying 'no, we're buying under the emergency order.'"

The lawsuit is currently pending in Albany County Supreme Court.