H. CARL McCALL
STATE COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 23, 2002

Mr. Kenneth J. Ringler, Jr.
Commissioner
NYS Office of General Services
Corning Tower, Empire State Plaza
Albany, NY 12242

Re: Sysco Food Services, Inc., Contract PC54751
Report 2001-R-1

Dear Mr. Ringler:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law, we have audited Sysco Food Services, Inc.'s (Sysco) compliance with Contract PC54751, as well as the Office of General Service's (OGS) administration of this contract. Our audit covered the 26-month period May 1, 1999 through June 30, 2001.

A. Background

OGS provides essential support services for the operations of State Government. In an attempt to promote more cost effective government, OGS has entered into approximately 2,000 centralized service or commodity contracts on behalf of State Agencies. One such "prime vendor" contract was awarded to Sysco Food Services - Albany, a division of the Sysco Corporation, to provide some 1,200 food, household and sundry items to more than 170 selected State Facilities (e.g., Department of Corrections, Office of Mental Health, etc.), as well as eligible non-State facilities. Contract PC54751 originally covered the period May 1, 1999 through April 30, 2002, and was extended through October 31, 2003. The annual value of this contract approximates $61 million.

Pursuant to the contract, Sysco is required to secure the best possible " Net New York State Delivered Price" for all goods covered by the contract that are selected by, and provided to, user agencies. The Net New York State Delivered Price is defined as the price Sysco pays to its suppliers, plus freight charges for delivery of goods to Sysco's warehousing facilities, less allowable manufacturer discounts and allowances, plus a percentage "margin on sale" (upcharge). Prices for each product may fluctuate every 7 or 30 days – based on market conditions – depending on the type of product (e.g., perishables, canned goods, etc.) in question. Sysco's upcharges are as follows: 6 percent for dairy, meat, seafood, poultry and produce items; 6.50 percent for healthcare, canned and

dry goods and dispenser beverages; and 6.75 percent for supplies and equipment, frozen goods, paper goods, disposables and chemical and janitorial products. These various upcharges are based on a formula outlined in the contract's invitation for bid. Sysco is also required to provide OGS and user agencies with periodically updated price guidelines to aid them in preparing their purchase orders to Sysco.

B. Audit Scope, Objectives and Methodology

We audited selected aspects of Sysco's compliance with the requirements of Contract PC54751, as well as OGS's administration of this contract for the period May 1, 1999 through June 30, 2001. The objectives of our financial-related audit were to assess contractor compliance with contract terms, quantify and assess the rationale for the discounts and allowances that Sysco is not passing along to the State, and to determine whether OGS is adequately monitoring Sysco's obligations pursuant to the contract. To achieve these objectives, we reviewed the contract and attachments, interviewed relevant OGS and Sysco officials, reviewed selected Sysco invoices and supplier contracts, as well as OGS contract-related files, and selected contract-related payments.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations of Sysco and OGS that are included in our audit scope. Further, these standards require that we understand the internal control structure, and compliance with those laws, rules and regulations, that are relevant to those operations. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records, and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

C. Internal Control and Compliance Summary

Our consideration of OGS's and Sysco's internal control structures over contract operations found improvements are needed in selected aspects of OGS's administration of the contract, and certain contract provisions, to ensure that the State is receiving the best prices. These matters are discussed in the subsequent sections of this report.

D. Results of Audit

Based on our testing, it appears that Sysco has been passing along the discounts and allowances specifically negotiated in its contract with the State. However, we note that Sysco receives certain other manufacturer discounts and allowances, such as fees for merchandising services and performance-based discounts, that are not passed on to the State. Some of these discounts are specifically excluded by contract terms, and others were not addressed in negotiating the contract. We also found that OGS has been inconsistent in applying adequate contract oversight. As a result, the State does not always get the best Net New York State Delivered Price from this contract.

1. Manufacturer Discounts and Rebates

As a practice, various manufacturer discounts and allowances are offered to food industry wholesalers and retailers. The Sysco contract stipulates the specific discounts and allowances that are to be passed on to the State as follows:

1. Discounts based on total order value (a 0.25 percent reduction for orders valued between $10,000 and $19,999.99 and a 0.50 percent reduction for orders of $20,000 or more);

2. Discounts for orders delivered directly by a manufacturer to user agencies (4 percent for orders valued between $10,000 and $19,999.99, and by 2.50 percent if valued at $20,000 or more);

3. Allowances received by Sysco attributable to NYS volume where it is clearly noted on the supplier's invoice or part of a separate agreement between the State and the supplier; and

4. Certain performance-based (e.g., volume) allowances that are normally passed on to Sysco customers.

We found that the State does not receive any of the performance-based allowances noted in category four above. To understand why the State does not receive these allowances, we asked Sysco officials to describe the types of allowances that it normally passes on to its customers. Sysco officials explained that there is no strict definition for discounts that are "normally" passed on to Sysco customers. They told us they negotiate these allowances separately with each individual customer, and that OGS did not negotiate Category 4 discounts. Thus, "normally" has no real meaning in this context.

We also noted that Sysco receives certain other allowances referred to as "Merchandising Services Fees" from product manufacturers for marketing services it provides on their behalf (e.g., food shows, product demonstrations). These Merchandising Services Fees are classified as "earned income" on Sysco's financial records. Sysco is entitled to retain the entire amount of such compensation because it performs a service for these manufacturers. However, we found that Sysco also classifies Category 4 allowances as Merchandising Services Fees and, as such, specifically excludes them from those allowances that, if negotiated, would be passed on to the State.

We question Sysco's categorization of such allowances as Merchandising Services Fees since no specific services are provided to its vendors. For a sample of five contract products, we determined that Sysco was paid a total of $45,000 in Category 4 Merchandising Services Fees during the audit period. Considering the total number of products purchased from Sysco each year, and their corresponding dollar value, the total amount of Category 4 allowances received by Sysco could easily total hundreds of thousands of dollars.

Since the ambiguity in the contract wording about allowances that are "normally" passed on to Sysco customers was not resolved at the time the contract was negotiated, and since the contract gives Sysco the right to exclude a whole class of allowances from among those that are

passed on to the State, the State is not always receiving the best possible Net New York State Delivered Price from this contract. Before awarding any future primary vendor food service contract, or before renewing its contract with the current vendor, OGS officials should work with Sysco to explore the potential for additional discounts and allowances the State should receive. In doing so, OGS should specifically identify those performance-based allowances the State would normally receive, and address questions related to Merchandising Services Fees, as follows:

- Is Sysco truly performing a service for the product manufacturer in each of the Merchandising Services Fee transaction categories described above? Alternately, are these discounts and allowances actually based on volume or other non-service issues, making them appropriate for passing on to the State?

- To what extent would the State benefit financially from sharing in these discounts and allowances?

In response to our draft report, OGS and Sysco reiterated their position that Sysco has complied with all terms of the current contract regarding contract allowances, discounts and rebates. Since "performance-based" allowances are not specifically required to be passed on to the State, they believe our criticisms in this area are not relevant. They reiterated that performance-based allowances need to be specifically negotiated with the customer and that no such allowances were negotiated with the State. Sysco pointed out that some Merchandising Services Fees (earned income) are actually compensation paid to Sysco for delivering, storing and marketing a supplier's products. In addition, they state that performance-based allowances we refer to are derived from "growth programs", which are dependent upon Sysco performing various merchandising services that lead to increased sales of the product.

As stated in this report, we agree that Sysco has complied with the existing contract language regarding allowances, discounts and rebates. The issue of Merchandising Services Fees is, as we also state, one that needs to be considered by OGS before awarding future "prime vendor" food contracts. We note that OGS has, in fact, agreed to consider the information in our report as it develops the terms and conditions for a replacement contract.

2. <u>Monitoring of Contract Pricing</u>

As noted above, Sysco is responsible for providing the best possible Net New York State Delivered Price for products procured on behalf of user agencies. To help ensure Sysco is providing the best possible prices, OGS should regularly and systematically monitor Sysco's performance in this area. However, we found that OGS does not regularly do price comparisons to verify that Sysco's prices are, in fact, the best possible prices. It also does not review either the frequency or the adequacy of Sysco's effort to obtain pricing that is best for the State; and the contract does not identify a methodology for Sysco to follow to accomplish this objective. Instead, OGS has been relying upon Sysco to abide by this requirement, but it has no evidence that Sysco does these comparisons. As a result, OGS has no assurance that Sysco's prices are consistently the best possible prices.

In response to our draft report, OGS officials stated that they regularly perform price comparisons of Sysco products by benchmarking them against other wholesale food contracts maintained by the State – as well as against various price indices. They note further that the

Department of Corrections – the Contract's major purchaser – has used the Contract to reduce its inventory costs and achieve savings in food purchases. We note that during the audit period, OGS staff performed some price comparisons and addressed price discrepancies with Sysco as a result thereof. However, these reviews were not performed on a regular basis. For example, no such price comparisons were done between June 2000 and May 2001.

Further, we found that OGS had not been performing required reviews of Sysco billings. Pursuant to a memorandum of understanding, initiated during the last contract period between OGS and the State Comptroller's Bureau of Contracts, OGS committed to performing monthly reviews of selected Sysco billings to assess pricing practices, and to conducting annual on-site audits of Sysco's product costs. During the first several months of the current contract, OGS staff were periodically performing steps to verify Sysco's compliance with the agreed upon discounts and allowances that were to be passed along to the State. On several occasions, OGS staff identified billing discrepancies and worked with Sysco to correct the discrepancies. However, we determined that OGS did not conduct any such monthly reviews from March 2000 through June 2001.

When discussing this issue with OGS officials, they informed us that they were forced to suspend these reviews during the noted time period due to both a lack of experienced audit personnel and their decision to focus on higher priority issues. Subsequent to our fieldwork completion, OGS officials resumed their contract monitoring responsibilities.

In response to our draft report, OGS officials pointed out that their temporary suspension of audits was based on a risk-based assessment, and that no abuses were found for the prior audits.

3. Sysco Billing

We performed several tests to assess the integrity of Sysco's billing system. As such, we compared a sample of Sysco's invoices to the corresponding price guidelines submitted by Sysco to OGS and user agencies. We found that the prices on Sysco's price guidelines matched those on Sysco's copies of vendor invoices for the sampled items.

We also reviewed the working papers prepared by Sysco's external auditor (in support of its opinion on Sysco's July 1, 2000 financial statements as they related to Sysco – Albany's billing procedures) for added assurance as to the integrity of Sysco's billing system. However, since Sysco's auditor did not confirm the authenticity of vendor invoices, nor did it perform an in-depth review of the pricing terms of the State contract, we could not gain any added assurance of Sysco billing practices as a result of our review thereof.

Lastly, we attempted to perform vendor confirmations for products billed to the State during the audit period, to determine whether the cost used by Sysco in calculating the Net New York State delivered price was valid. We judgementally selected 18 high volume products purchased from 15 different vendors during the period May 1, 1999 through June 30, 2001. Of the 18 product inquiries mailed to 15 vendors, only 10 vendors responded. For the 18 products, 10 vendors confirmed the pricing for 11 items. No responses were received for the remaining 7 items.

Considering the number of nonresponses, we do not have adequate assurance to conclude definitively that all Sysco pricing was accurate.

Recommendations

1. *Before awarding any future "prime vendor" food contracts:*

   a. *Assess the appropriateness of the allowances Sysco receives and classifies as Merchandising Services Fees.*

   b. *For those allowances inappropriately classified as such (e.g., Category 4), ensure that they are appropriately classified as allowances that are passed on to the State.*

2. *Establish agreed upon procedures with Sysco and user agencies to document their efforts to secure the best possible prices for contracted items.*

3. *Monitor Sysco's pricing practices and conduct periodic on-site audits to ensure that Sysco's product costs are in compliance with contract terms.*

We provided a draft copy of this report to OGS and Sysco officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A. While OGS and Sysco did not agree with all of our conclusions, OGS did agree with and, is implementing, our recommendations.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of General Services shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented the reasons therefor.

Major contributors to this report were Frank Patone, Aaron Fruchter, John Lang, Carole Le Mieux and Anthony Carlo.

We wish to thank the management and staff of the Office of General Services and Sysco for the courtesies and cooperation extended to our auditors.

Very truly yours,

William P. Challice
Audit Director

cc: Gail E. Allen (Sysco)
Deirdre A. Taylor, DOB

KENNETH J. RINGLER, JR.
COMMISSIONER

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

ROBERT J. FLEURY
FIRST DEPUTY COMMISSIONER

September 5, 2002

Mr. William Chalice
Audit Director
Office of the State Comptroller
123 William Street, 21st Floor
New York, NY 10038-3804

Dear Mr. Chalice:

In response to your letter dated July 29, 2002, and in accordance with Section 170 of the Executive Law, Commissioner Ringler has asked me to respond directly with comments regarding the State Comptroller's Draft Audit Report 2001-R-01, a Division of Management Audit report on NYS Contract PC-54751 between the Office of General Services and Sysco Food Services, Inc.

The audit results were generally positive. The stated objectives of the audit were to assess contractor compliance with contract terms and to quantify and assess the rationale for the discounts and allowances that Sysco is not passing along to the State. The audit report states: "Based on our testing, it appears that Sysco has been passing along the discounts and allowances specifically negotiated in its contract with the State."

The audit team found users of this contract are pleased with the pricing and service provided by SYSCO during its review. Agencies enjoy a fill rate of 99% and the Department of Correctional Services, the largest user of this contract, reports that it has been able to keep food costs at $2.24 a day per person over the last six years.

The report questioned discounts and allowances that are not part of the contract. While we will take into consideration all of OSC's findings when developing the terms and conditions for the replacement contract, we do not view inclusion in the audit of criticism for not complying with terms that are not part of the current award as relevant. The terms and conditions of the solicitation, and subsequently the award, did not require the discounts referred to in the audit as "certain performance-based... allowances" be passed on to the State. If the contract had required this category of allowances, we would certainly agree with pursuing them. The report acknowledges SYSCO's pricing is

in compliance with the terms of the contract. Attached is a copy of SYSCO's response to your draft report addressing pricing under the contract, which also addresses this issue.

The report's statement that OGS does not regularly do price comparison is not true. The OGS Procurement Services Group benchmarks SYSCO's prices against other wholesale food contracts maintained by the State, as well as against various price indices such as the Producer Price Index, for over 40 high volume products. Information on our benchmarking efforts was shared with the audit team and included a number of high volume products such as processed eggs, orange juice and tuna. These efforts show that SYSCO's pricing is generally competitive. Competitiveness was also affirmed in your prior audit, #96-S-77, the summary of which stated: "We also determined that, for the most part, the prices charged by SYSCO are competitive. We further note that the Department of Correctional Services, which makes the most purchases under the contract, has used the contract to reduce its inventory costs and achieve savings in food purchases."

The report's description of the temporary suspension of audits of SYSCO's pricing would be more accurate if it noted the suspension was based on a risk-based assessment similar to what OSC uses when it audits. No abuses were found for the many prior audits. The period in question was audited by OGS when we resumed our audits and by OSC during their audit, and no price discrepancies were found. OGS Procurement Services' results were provided to the audit team during the course of this audit.

Our responses to the specific recommendations are below:

Recommendation 1. – OGS will consider the information provided in the report as we work with OSC's Contract Unit, client agencies and the vendor community to develop a solicitation and contract to replace and, hopefully, to improve this successful contract. We will also continue our efforts to ensure that pricing for the future contract complies with contract terms, as we have for the current contract.

Recommendation 2. – We will continue our benchmarking efforts and will work with our customer agencies and Sysco on a program to review Sysco's efforts to seek the best possible prices for contracted items.

Recommendation 3. – As the audit team is aware, Procurement Services resumed the auditing of contract pricing in July 2001. OGS will continue the audits on an ongoing basis.

Thank you for the opportunity to respond to the audit. We welcome outside review of our programs because our goal is to continue to improve the products we offer to our customers.

Sincerely,

Robert J. Fleury

cc: Commissioner Ringler
Deputy Commissioner McCormack
Franklin Hecht

SYSCO

August 26, 2002

Mr. William P. Challice
Audit Director
Office of the State Comptroller
State of New York
110 State Street
Albany, New York 12236

Re: DRAFT audit report (July 29, 2002) to New York State Office of General Services concerning review of compliance with and management of prime vendor food service Contract No. PC 54751 with SYSCO-Albany

Dear Mr. Challice:

SYSCO Food Services-Albany ("SYSCO-Albany") would like to take this opportunity to respond to one aspect of the subject draft audit report.. This response is to particular statements in the draft audit report, and is not intended in any way to replace or supersede our previous responses to you the preliminary audit findings and revised preliminary audit findings of the Office of the State Comptroller ("OSC"), which we submitted to the Office of General Services ("OGS") in August 2001 and January 2002, respectively.

At page 3 of the draft audit report, OSC states that

> **The [SYSCO-Albany] contract stipulates the specific discounts and allowances that are to be passed on to the State as follows:**
>
> * * * *
>
> **4. Certain performance-based (e.g., volume) allowances that are normally passed on to [SYSCO-Albany] customers.**

OSC then goes on to discuss these so-called "Category 4" allowances" at some length:

> **We found that the State does not receive any of the performance-based allowances noted in category four above. To understand why the State does not receive these allowances, we asked [SYSCO-Albany] officials to describe the types of allowances that it normally passes on to its customers. [SYSCO-Albany] officials explained that there is no strict**

definition for discounts that are "normally" passed on to [SYSCO-Albany] customers. They told us they negotiate these allowances separately with each individual customer, and that OGS did not negotiate Category 4 discounts. Thus, "normally" has no real meaning in this context.

We also noted that [SYSCO-Albany] receives certain other allowances classified as "Merchandising Services Fees" from product manufacturers for marketing services it provides on their behalf (e.g., food shows, product demonstrations). [SYSCO-Albany] is entitled to retain the entire amount of such compensation because it performs a service for these manufacturers. However, we found that [SYSCO-Albany] also classifies Category 4 allowances as Merchandising Services fees and, as such, specifically excludes them from those allowances that, if negotiated, would be passed on to the State.

We question [SYSCO-Albany's] categorization of such allowances as Merchandizing [sic] Services Fees since no specific services are provided to its vendors. For a sample of five contract products, we determined that [SYSCO-Albany] was paid a total of $45,000 in Category 4 Merchandizing [sic] Services Fees during the audit period. Considering the total number of products purchased from [SYSCO-Albany] each year, and their corresponding dollar value, the total amount of Category 4 allowances received by [SYSCO-Albany] could easily total hundreds of thousands of dollars.

Since the ambiguity in the contract wording about allowances that are "normally" passed on to [SYSCO-Albany] customers was not resolved at the time the contract was negotiated, and since the contract gives [SYSCO-Albany] the right to exclude a whole class of allowances from among those that are passed on to the State, the State is not always receiving the best possible Net New York State Delivered Price from this contract. Before awarding any future primary vendor food service contract, or before renewing its contract with the current vendor [SYSCO-Albany], OGS officials should work with [SYSCO-Albany] to explore the potential for additional discounts and allowances the State should receive. In doing so, OGS should specifically identify those performance-based allowances the State would normally receive, and address questions related to Merchandising Services fees, as follows:

- **Is [SYSCO-Albany] truly performing a service for the product manufacturer in each of the Manufacturing Services Fee transaction categories described above? Alternately, are these discounts and allowances actually based on volume or other non-service issues, making them appropriate for passing on to the State?**

- **To what extent would the State benefit financially from sharing in these discounts and allowances?**

SYSCO-Albany's response

A significant point to be made at the outset is that OSC's description of these so-called "Category 4" allowances is incorrect. The description set forth by OGS, and concurred in by SYSCO-Albany, is as follows:

> Merchandising Services
>
> The rebates stated in your merchandising services paragraph are those paid to SYSCO[-Albany] by suppliers for merchandising services performed. The State shall be entitled to these types of rebates only when normally passed on to all customers.

(See letter from James P. Mastromarchi, Purchasing Officer II, to Hal Gold, SYSCO-Albany, dated Feb. 19, 1999) (emphasis added).

OSC's basic contention in the draft audit report – as in the two sets of preliminary audit findings – is intended to imply that SYSCO-Albany *should be* passing on such "Merchandising Services Fees" to the State in every instance. This is simply contrary to the terms of the contract, and contrary to the express notice that SYSCO-Albany gave to OGS when the parties where clarifying the contract language that "earned income . . . does not reduce Net NYS Delivered Price and is not passed through to customers."

As we have previously noted, there are no such performance-based programs – discounts or rebates – that are "normally" passed on to SYSCO-Albany's commercial customers in general

or to the State in particular, aside from any such programs that may be included in direct agreements between the State and manufacturers. Furthermore, as we have already noted, applicable allowances do not include amounts received by SYSCO-Albany as earned income. (See "Clarification for Purchase Request 9337-T, Commodity Group 02450," submitted by SYSCO-Albany to the Office of General Services in November 1998, at page 4 (enclosure to original response to Preliminary Audit Report).)

Nor does SYSCO-Albany gain earned income ("Merchandising Services Fees") "simply for carrying a supplier's products," as OSC has also previously alleged. Some earned income primarily compensates SYSCO-Albany for the costs incurred to include suppliers' products in SYSCO-Albany's extensive electronic catalogs, and for delivering, storing, and marketing the products, as OSC has acknowledged.

It is simply not true to say that "[n]o specific services are provided" to suppliers for any type of earned income. SYSCO-Albany provides a number of logistical, marketing and technological services to its suppliers in exchange for earned income, such as: logging the product into the SYSCO-Albany computer system; coordinating SYSCO-Albany's delivery fleet with the supplier and third-party warehouse services; and actively marketing (selling) the suppliers' products. These services cost SYSCO-Albany money, and the earned income the company receives for performing these services is, in part, compensation for such costs.

The type of earned income that OSC addresses with reference to so-called "Category 4" allowances – what OSC characterizes as "[c]ertain performance-based (e.g., volume) allowances" – is derived from "growth programs" with SYSCO-Albany's suppliers. As previously noted, these growth programs depend on SYSCO-Albany's performing all the merchandising services disclosed in SYSCO-Albany's offer to OGS: national marketing, freight management, consolidated warehousing, quality assurance, and performance-based product marketing. However, the performance of these services must also result in increased sales of the supplier's products as compared to the previous year, or SYSCO-Albany will not earn these

growth program monies. Thus, rather than being separate "performance-based" allowances, as OSC characterizes them, growth programs should more accurately be perceived as merely a method for measuring the effectiveness of the totality of merchandising services provided to SYSCO-Albany's suppliers, based on the volume of their products sold to SYSCO-Albany's customers. Accordingly, this "growth program" earned income is in fact dependent both upon SYSCO-Albany's performing the enumerated activities and upon achieving a level of sales greater than that achieved in the previous year.

SYSCO-Albany has consistently explained to both OGS and OSC why it does not pass earned income on to the State, or, for that matter, to any other customers. Simply put, SYSCO-Albany does not share earned income with the State because its contract with OGS expressly provides that SYSCO-Albany is entitled to retain such income. OGS has been on notice of this since the terms and conditions of the contract with SYSCO-Albany were clarified. It is also true that SYSCO-Albany does not customarily pass through earned income to any of its customers, by contract or otherwise, and, moreover, that it is not a customary or "normal" practice in the U.S. foodservice industry to do so.

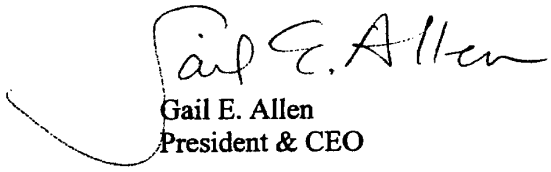
SYSCO-Albany fully disclosed to OGS during the procurement process that earned income, as compensation for merchandising services as well as some profit, is not among the allowances that are normally passed on to the State of New York or to any other customer. Accordingly, the contract does not require that earned income be shared with the State. The only allowances that are passed through to the State on this contract are (a) those that result from direct deals between the State and certain manufacturers ("deviated" allowances), (b) those that are shown on the face of the manufacturer's or supplier's invoice ("off-invoice" allowances) and (c) non-profit allowances. (See "Clarification for Purchase Request 9337-T, Commodity Group 02450," submitted by SYSCO-Albany to the Office of General Services in November 1998 (enclosure to original response to Preliminary Audit Report).)

- Insofar as any type of earned income, including "growth programs," is concerned, there is no ambiguity in the wording of the contract, in the context of the detailed clarifications regarding the contract that led to its final terms and conditions: the State is not entitled to share in SYSCO-Albany's earned income.

SYSCO-Albany requests that this response be included as an appendix to OSC's final audit report, and that OSC transmit to us a copy of such final report.

Sincerely yours,

SYSCO FOOD SERVICES-ALBANY



Gail E. Allen
President & CEO

/lgt

Cc: Mr. Kenneth J. Pringler, Jr., Commissioner (OGS)
Mr. James Mastromarchi