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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 6, 2006

Mr. John R. Ryan
Chancellor
State University of New York
State University Plaza
Albany, New York 12246

Re: Audit of SUNY Campus
Contracting Practices
Report 2005-S-37

Dear Chancellor Ryan:

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 the contracting practices of selected State operated campuses. Our audit covered the period of April 1, 2003 through March 31, 2005.

A. Background

The State University of New York (SUNY) provides higher education to more than 200,000 students at its 34 State operated campuses. Each campus contracts with individuals and companies for a wide range of goods and services. SUNY's basic procurement objective is to secure the most appropriate materials, supplies, equipment, services, and construction at the lowest available price, consistent with quality requirements and delivery needs as will best promote the interests of SUNY.

Campuses are required to comply with the SUNY Purchasing and Contracting Policy, which sets forth comprehensive guidelines for purchasing goods and services. The procurement requirements vary based on the dollar amount of the contract. The SUNY Purchasing and Contracting Policy also requires campuses to ensure that certified minority and women owned business enterprises (MWBs) have an opportunity to participate in the contract award process. SUNY System Administration (SUNY Administration) officials have established campus-wide goals for the utilization of MWBEs. Actual MWBE utilization depends on vendor availability and campus advertisement and solicitations geared to make businesses aware of contract opportunities.

The Office of the State Comptroller's Contracts Unit (OSC) and the State Attorney General's Office (AG) review and approve certain contracts negotiated by SUNY campuses, while a designated campus official reviews and approves all campus contracts. Threshold contracts (T-contracts) do not require the approval of OSC or the AG. These T-contracts are utilized based on the individual campus' approved threshold amount, typically \$50,000, \$75,000, or \$150,000. During the period April 1, 2003 through March 31, 2005, SUNY's State operated campuses initiated 859 regular contracts for various goods and services totaling about \$860 million and 588 T-contracts totaling about \$29.5 million during this same period. Expenditures charged against these contracts totaled about \$383 million and \$20.5 million, respectively, during this same period.

B. Audit Scope, Objectives and Methodology

We audited the contracting practices of selected SUNY campuses for the period April 1, 2003 through March 31, 2005. Our objectives were to determine if the campuses complied with the SUNY Purchasing and Contracting Policy for the procurement of goods and services and if they received contractual goods and services in accordance with contract terms and prior to contract approval. To accomplish our objectives, we reviewed the SUNY Purchasing and Contracting Policy, interviewed SUNY Administration and campus officials, and reviewed a sample of contract awards at eight SUNY campuses. Those campuses included: the University Centers at Albany and Buffalo; the University Colleges at Cobleskill, Maritime, Old Westbury, Plattsburgh, and Purchase; and the Health Science Center at Syracuse.

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 SUNY operations included in our audit scope. Further, these standards require that we understand SUNY's internal control structure and compliance with those laws, rules, and regulations that are relevant to the operations included in our audit scope. An audit includes examining, on 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 and conclusions.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. Furthermore, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

We found that both SUNY Administration and campus personnel are very knowledgeable about the procurement process and that campuses generally adhere to the SUNY Purchasing and Contracting Policy during the awarding of contracts. However, our review of a sample of approved contracts at various campuses found instances where contractual services were initiated prior to

approval. This control weakness accounted for most of the exceptions we identified in our review of campus contracts. In addition, we found that many of the advertisements prepared by the campuses for the bidding and award of prospective contracts did not encourage MWBE participation. For the 90 contracts that we reviewed, we identified 34 that did not solicit MWBE participation in their Contract Reporter ads. SUNY campuses need to strengthen controls to ensure timely contract approvals are in place prior to the receipt of services. Additional reinforcement and guidance by SUNY Administration would help to improve compliance with required approvals and MWBE requirements.

SUNY Purchasing and Contracting Policy outlines the procedures necessary to enter into valid, binding contracts on behalf of SUNY. In addition, the guidelines state that it is SUNY policy to take affirmative action to ensure that New York State certified MWBEs are given the opportunity to demonstrate their ability to provide commodities and services at competitive prices. SUNY sets campus-wide goals for the utilization of minority-owned business enterprises (MBEs) and women-owned business enterprises (WBEs). For our audit scope period, the campus-wide goal was set at three percent for MBEs and two percent for WBEs.

Typically, the procurement process begins after campus personnel place an advertisement in the Contract Reporter. Depending on the dollar amount of the prospective contract, campuses may have to solicit bids/proposals from a number of vendors.

- For contract awards up to \$30,000, a campus may purchase commodities or services directly from a responsible vendor of its choice but should take the steps necessary to ensure that prices are reasonable. Campus personnel should maintain documentation to support both the selection of the vendor and the reasonableness of the price.
- For contract awards from \$30,000 to \$75,000, a campus must solicit a minimum of three informal quotations or proposals from responsible vendors offering such commodities or services.
- For contract awards over \$75,000, a campus must solicit a minimum of five formal sealed bids or proposals from responsible vendors offering such commodities or services.

All prospective proposals must be evaluated by campus personnel to ensure that they meet the stated contract criteria, and all contracts must be approved by a designated campus official before they become binding. Additional approvals by OSC and the AG are dependent on each campus' designation as either a "certified" or "non-certified" threshold campus. The designations were established in a Memorandum of Understanding between OSC and SUNY and are based on each campus President's certification of compliance with provisions of the Internal Control Act. Certified threshold campuses require OSC and AG approval for contracts over \$150,000, while non-certified campuses will require OSC and AG approvals for contracts in excess of \$50,000, or in excess of \$75,000 for hospital contracts and purchase orders. OSC issued a general bulletin to all agencies in February 2002 stating that a contractor providing goods or services prior to OSC approval (with the exception of T-contracts) assumes a risk of non-payment or reduced payment if the approval of the contract is subsequently withheld. Therefore, it is the agency's responsibility to properly plan its procurements, which should allow sufficient time for OSC review and approval of such contracts before the provision of goods and services.

To determine the extent to which SUNY campuses adhere to contract procurement requirements, we identified all campus contracts approved by OSC during the period April 1, 2003 through March 31, 2005. We subsequently identified a cross-section of SUNY campuses statewide for their testing including the University Centers at Albany and Buffalo, the University Colleges at Cobleskill, Maritime, Old Westbury, Plattsburgh, and Purchase, and the Health Science Center at Syracuse (Syracuse). Additionally, for these eight campuses, we identified all T-contracts for the same period. From the total population of contracts at each campus, we reviewed 7 to 15 contracts. We selected a random sample of contracts at some campuses and all contracts at other campuses, for a total of 90 contracts. We reviewed 15 contracts at Buffalo, Plattsburgh, and Syracuse, 13 contracts at Albany, 10 contracts at Maritime, 8 contracts at Purchase, and 7 contracts at Cobleskill and at Old Westbury.

Using the SUNY Purchasing and Contracting Policy as our compliance criteria, we reviewed each sampled contract procurement file for evidence of the following documentation: planned procurement evidenced in the Contract Reporter, MWBE notice, vendor selection and reasonableness of price, appropriate number of bids/proposals solicited, and appropriate approvals granted prior to receipt of goods and services. Additionally, we performed physical observations and reviewed supporting documentation to verify the receipt of goods and services, and we reviewed payments to verify that they were made subsequent to the receipt of such goods and services.

For the 90 contracts that we reviewed, we identified 17 instances of non-compliance related to 14 of these contracts. The majority (12) of these instances related to contracts which had work initiated prior to appropriate approval(s). We believe this could have been avoided by adequate campus planning for procurement needs. The following are examples of work initiated prior to approval:

- At Syracuse, a vendor provided temporary pediatric medical services for almost one and a half years at a cost of approximately \$757,000 before the contract was approved by OSC. The contract began on April 1, 2003 and was approved on August 26, 2004.
- At Syracuse, a contractor provided electrical design work for a new generator amounting to just over \$78,000 for one month prior to OSC approval.
- At Syracuse, a contractor provided temporary medical personnel (cardiac sonographer) at a cost of almost \$22,000 for a month and a half before the campus approved the contract.
- At the University of Buffalo, a contractor provided photography services at a cost of about \$21,000 promoting the school's medical programs; however, the campus did not approve the contract until two months later.
- At Syracuse, a contractor provided surgical academic clinical services for students at a cost of almost \$10,000 for three months prior to contract approval by the campus.

For each of these previous examples, we met with appropriate SUNY Administration and campus officials, who provided us with pertinent details as to why they believed the services were needed prior to contract approval. They generally indicated that these instances involved extenuating circumstances and/or critical needs that required immediate implementation. While we acknowledge there may have been an immediate need for these services, they do not appear to be unforeseen emergencies and therefore could have been planned for to ensure sufficient lead time was provided in obtaining the required contract approvals prior to the delivery of goods and services.

We identified five other instances of non-compliance with the SUNY Purchasing and Contracting Policy. In two instances at Syracuse, there was no evidence of Contract Reporter ads; one contract for about \$75,000 involved the hiring of a cardiac sonographer and the other was a teaching contract for about \$39,000 for academic clinical services at a satellite facility. In another instance at Syracuse, we found no evidence of the appropriate number of bids related to the attainment of personnel services for a teaching contract for \$39,000.

In addition, during our campus visits, we asked campus officials what their MWBE goals were for the year and whether they monitored goal achievement. Although campus officials generally knew what their established goals were for the year, most did not take responsibility for monitoring those goals, as they stated their belief that it is the responsibility of SUNY Administration personnel. Although SUNY Administration produces monthly and year-to-date reports of MWBE activity that are distributed to the campuses electronically, a report provided by SUNY Administration officials states that individual campuses have the primary responsibility for monitoring MWBE utilization. For the 90 contracts that we reviewed, we identified 34 that did not solicit MWBE participation in their Contract Reporter ads. As a result, MWBE vendors may not be aware of certain opportunities to provide goods and services to SUNY campuses. Additionally, MWBE language in the Contract Reporter ads was inconsistent; some ads mentioned MWBE percentage goals and others encouraged bids/proposals from MWBEs. We believe SUNY Administration should provide additional guidance to campuses to help promote consistency.

Recommendations

To SUNY Administration:

1. *Formally remind campus contracting administrators that appropriate approvals should be obtained for contracts before goods and services are delivered. Advise campuses to ensure that there is sufficient lead time to obtain the required contract approvals prior to the delivery of goods and services.*

(SUNY officials agreed with the recommendation and will reiterate the SUNY's policy on this matter with the campuses.)

2. *Provide additional guidance to SUNY campuses on MWBE requirements, monitoring of such requirements, and SUNY MWBE goals. Require all campuses to encourage MWBE bids/proposals in all applicable Contract Reporter ad solicitations.*

(SUNY officials agreed that the attainment of established MWBE goals is important and noted that additional efforts can be made to increase MWBE utilization. However, officials will not require additional advertising language in the Contract Reporter because it is not required by the Department of Economic Development.)

To SUNY Campuses:

3. *Ensure proper planning of prospective contracts so that appropriate approvals can be in place prior to contractual provision of goods and services.*

(SUNY officials agreed that proper planning is essential, but noted that not all circumstances can be anticipated.)

4. *Ensure full compliance with the Purchasing and Contracting Policy, particularly with respect to advertising in the State Contract Reporter and obtaining and retaining documentation of bids/proposals.*

(SUNY officials agreed with the recommendation and will continue to emphasize to the campuses that exceptions to the policy should be avoided.)

We provided draft copies of this report to SUNY officials for their review and formal comment. Their comments were considered in preparing this report and are included in Appendix A. Our rejoinders to SUNY's comments are presented in Appendix B, State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chancellor of SUNY 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 in this report, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Brian Mason, Arthur Smith, Andrew Fischler, Alicia Bialy, Kelly Evers, Sarah Purcell, and Paul Bachman.

We wish to thank the management and staff of SUNY for the courtesies and cooperation extended to our auditors during the audit.

Very truly yours,

Steven E. Sossei
Audit Director

cc: Mr. Robert Barnes, Division of the Budget
Mr. Kevin O'Donoghue, University Auditor

**State University of New York
Campus Contracting Practices
2005-S-37**

Recommendations – To SUNY Administration

1. Formally remind campus contracting administrators that appropriate approvals should be obtained for contracts before goods and services are delivered. Advise campuses to ensure that there is sufficient lead time to obtain the required contract approvals prior to the delivery of goods and services.

We concur with the recommendation and will reiterate the University's policy on such, as well as share the final audit report with the campuses as an additional reminder.

2. Provide additional guidance to SUNY campuses on MWBE requirements, monitoring of such requirements, and SUNY MWBE goals. Require all campuses to encourage MWBE bids/proposals in all applicable Contract Reporter ad solicitations.

We agree that the attainment of University established goals is important and accordingly, the utilization of MWBE vendors is spelled out in University policy and in our contracting exhibits. We also concur that additional efforts can be made with respect to increasing these utilizations; however, we will not require additional advertising language be included in the Contract Reporter as this is not required by the State Department of Economic Development. The University currently has processes in place to monitor and provide feedback to campuses regarding their MWBE utilization, and no additional oversight is planned at this time.

* Comment 1

Recommendations – To SUNY Campuses*

3. Ensure proper planning of prospective contracts so that appropriate approvals can be in place prior to contractual provision of goods and services.

We agree that proper planning is essential but also note that not all circumstances will be anticipated.

4. Ensure full compliance with the Purchasing and Contracting Policy, particularly with respect to advertising in the State Contract Reporter and obtaining and retaining documentation of bids/proposals.

We agree with the recommendation and will continue to emphasize avoiding exceptions.

* See State Comptroller's Comments, p. 11

***Specific Campus Comments**

Maritime College

We disagree that there was no evidence of bid solicitation for a \$50,000 contract at Maritime for rubbish removal. Multiple bids/proposals were solicited for this contract. The OSC auditors were shown a copy of the advertisement soliciting bidders that was placed in the New York State Contract Reporter.

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Comment
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Upstate Medical University

The most frequent finding related to the initiation of work prior to final approval of contracts. There are five very important points to be made regarding this:

- Most importantly, within the last year, Upstate added two new professionals, one in the Contracting Office (increasing staff size), and one in Design and Construction (new position). We have already experienced improvements in the overall speed of processing, as a result of employing greater resources in these areas.
- As noted in the individual responses below, the majority and essence of the contracting process was in place. That is, the bidding, and appropriate evaluation thereof, was completed before services were rendered.
- Our own internal control process tends to lengthen the contracting process. But, the added controls are essential in ensuring that contracts are in accordance with legal, compliance and State Guidelines; as well as meeting financial expectations. These broader levels of control are extremely important in a Hospital environment.
- Finally, in light of the auditor’s findings, we are performing an operational review of the contracting process, to determine if we can insure compliance with the rules and regulations that govern state procurement.
- All the contracts were, ultimately, approved by OSC.

Even with greater staffing and an improved process, however, Upstate Medical University believes that, in a medical environment, extenuating circumstances can require immediate action, requiring the initiation of a contract prior to its final approval (but not before seeking competition). The Comptroller rightly states that planning will minimize these instances. We do, however, respectfully disagree that several of the items cited “do not appear to be unforeseen emergencies.”

Specifically, the electrical design work for the new generator was an emergency because one of two backup generators supplying the hospital unpredictably failed. In the event of a power failure, both generators are required to work in tandem to adequately supply the Hospital’s needs. A power failure with only one active generator as backup, would have severely compromised Hospital operations and patient care. In order to insure no compromise would occur, Upstate rented a second generator at a very high expense. It was therefore essential to get the replacement generator purchased and installed for both fiscal and patient care purposes.

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Comment
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Likewise, replacing the personnel shortage in the cardiology department had to be accomplished within a very short time line due to patient care issues. That time line was further compressed by the need to hire “traveler” temp employees, who would no longer be available if not hired immediately.

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Comment
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In consideration of circumstances such as those above, we appeal to the Comptroller for assistance by broadening the definition of Emergency Declarations; to specifically include items which will impact health care or will have a significant fiscal impact, whether capital in nature or not (Current Emergency Declarations only address dire capital emergencies).

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Comment
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Regarding Findings Referenced in the Report:

Of the six findings related to Upstate, two were Upstate’s oversight that were subsequently corrected, one regarded long-term relationship sole source contracting for a critical medical facility, and three related to timing in critical circumstances.

* See State Comptroller's Comments, p. 11

State Comptroller's Comments

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1. SUNY officials agree that attainment of MWBE participation goals is important and that additional efforts can be made to increase MWBE utilization. However, officials will not require campuses to place additional language in the Contract Reporter because it is not required by the State Department of Economic Development. Officials also indicated that SUNY has processes to monitor and provide feedback on campuses MWBE utilization. We maintain that soliciting MWBE participation in the Contract Reporter would be beneficial though not required.
2. We have amended our report.
3. Although the explanation provided by officials is plausible, officials did not provide us with any formal analysis or other documentation to support their contention either during or subsequent to our audit fieldwork.
4. We acknowledge SUNY officials' suggestion to broaden the definition of Emergency Declarations. We will pass on these concerns to the State Comptroller's Bureau of Contracts for their consideration.