



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 27, 2010

Mr. C. Peter Magrath
Interim President
SUNY at Binghamton
PO Box 6000
Binghamton, NY 13902

Re: Report 2010-0391

Dear Interim President Magrath:

Our Office examined payments made by the State University of New York at Binghamton (University) to Otis Elevator (Otis) for services provided from July 1, 2009 through December 31, 2009.¹ The objective of our examination was to determine if the University received elevator services in accordance with the terms and conditions of Contract C080213.

A. Results of Examination

We found the University's Assistant Director of Operations allowed Otis to substitute the preventive maintenance schedule required by the contract with a preventive maintenance schedule determined by Otis without the knowledge or consent of the University's fiscal management staff. The Assistant Director allowed the substitution without determining if the changes in the preventive maintenance schedule were a fair substitution of services. The substitution also substantially reduced the amount of preventive maintenance services Otis performed, without a corresponding reduction in the cost for those services, and without re-bidding or amending the contract. In addition, Otis refused to provide the University with the substituted schedule, claiming the information is proprietary. As a result, University officials cannot determine (i) if the preventive maintenance services Otis is providing is comparable to the preventive maintenance services required by the contract, (ii) if they are paying a reasonable price for preventive maintenance, or (iii) if they are receiving sufficient preventive maintenance to keep the elevators in optimal working condition.

We shared a draft report with University officials, who provided us with a response. (See Appendix A.) They agreed with our recommendations. University officials stated a system was

¹We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

developed to ensure services are performed as dictated by the contract. In addition, the Physical Facilities Operation staff will make periodic inspections to ensure the work is completed. University officials have also requested Otis calculate the overpayments that resulted from them not complying with service terms of the contract. They will use that information to recover overpayments from Otis.

B. Background and Methodology

The University entered into contract C080213 with Otis in September 2006. C080213 is a five year contract valued at \$1.1 million for preventive maintenance and repairs on all campus elevators. The contract terms specify a fixed monthly rate per elevator for preventive maintenance, repairs to miscellaneous damage, and 24 hour emergency call back service for critical elevators. The contract also includes a preventive maintenance schedule, which specifies the services Otis is required to perform on each elevator and the frequency at which those services are to be performed. The University paid Otis \$117,379 in fixed rates from July through December 2009.

To accomplish our objective, we examined vouchers and supporting documentation, analyzed the terms and conditions of the Otis contract and other pertinent documents, and interviewed appropriate officials from the University. We also identified some matters we consider to be of lesser significance that we communicated to the University separately and did not include in this report.

C. Details of Findings

Immediately after the contract was awarded, the University's Assistant Director of Operations allowed Otis to substitute the preventive maintenance schedule required by the contract with a schedule determined by Otis. Otis uses an automated maintenance management system to schedule preventive maintenance services based on such factors as usage, type of elevator, manufacturer and age of the elevator. The Assistant Director of Operations allowed Otis to perform preventive maintenance as determined by their system rather than the schedule in the contract.

The Assistant Director of Operations approved this schedule substitution without knowing (i) if the preventive maintenance services Otis proposed to provide are comparable to the preventive maintenance services required by the contract, (ii) if the University would be paying a reasonable price for preventive maintenance, or (iii) if the University would receive sufficient preventive

maintenance to keep the elevators in optimal working condition. The University is also unable to determine the impact of the substitution on the safety of the people who will use the elevators.

This substitution substantially reduced the amount of preventive maintenance services Otis performed, without a corresponding reduction in the cost for those services. According to the contract, Otis was to provide 2,390 instances of weekly preventive maintenance services to the 94 elevators covered by the contract during the examination period. We found Otis only performed 430 instances of preventive maintenance services of any kind (i.e. weekly, monthly, quarterly, etc.) during that same period. We also found 83 elevators did not receive any preventive maintenance services for at least one month and 50 of the 83 elevators did not receive any preventive maintenance services for 3 months or more.

This schedule substitution was done without the knowledge or consent of the University's fiscal management staff and without amending or re-bidding the contract. According to Procurement and Disbursement Bulletin G-197, if there is a substantial change in the scope of services, the agency must submit an amendment to OSC before the change can be made. By not complying with Bulletin G-197, the University circumvented the objectives of the State Finance Law and SUNY Purchasing and Contracting Policies of promoting open and fair competition.

At our request, University officials asked Otis to provide the preventive maintenance schedule they follow. Otis officials stated that the maintenance management system is proprietary so the frequencies of the preventive maintenance cannot be shared. As a result, there is no crosswalk that University officials can use to equate the preventive maintenance services required by the contract with the preventive maintenance services Otis plans on performing.

Recommendations

- 1) *Require Otis to provide preventive maintenance services according to the terms and conditions of contract C080213.*
- 2) *Ensure staff complies with Procurement and Disbursement Bulletin G-197 if the University decides to modify the terms and conditions of contract C080213.*
- 3) *Ensure staff administering the contract is properly trained to monitor vendor performance and contract payments.*
- 4) *Require Otis to provide a comparative analysis of the preventive maintenance services they provided over the life of the contract to the preventive maintenance services which were required by the contract. If the services provided were less than the level of service paid for, recover the overpayments.*

We would appreciate your response to this report by October 27, 2010, indicating any actions planned to address the recommendations in this report. We thank the management and staff of the State University of New York at Binghamton for the courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Appendix A

cc: Mark Hall
Michael Abbott



Office of the Vice President
for Administration

PO Box 6000
Binghamton, New York 13902-6000
607-777-2157, Fax: 607-777-6453

September 8, 2010

Mr. Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
Bureau of State Expenditures
110 State Street
Albany, New York 1226

Subject: Office of the State Comptroller - Draft Audit Report 2010-0391 Otis Elevator, Inc

Dear Bernard:

We have completed our review of the Office of the State Comptroller (OSC) draft report 2010-0391 relating to the examination of contract C080213 with Otis Elevator, Inc for the period July 1, 2009 through December 31, 2009. We have included our formal comments to the four (4) recommendations presented in the report.

RECOMMENDATIONS:

1. Require Otis to provide preventive maintenance services according to the terms and conditions of contract C080213.

Campus Response:

We agree. Physical Facilities met with Otis Elevator representatives regarding compliance with the terms of the contract. A new manual system was developed and has been in place for over one month. There is now a form posted in each elevator that lists the services to be performed as dictated by the contract. The form will be further modified to have the person completing the task initial the box rather than simply checking the box. The forms are collected by an Otis Elevator representative on a monthly basis and given to the Physical Facilities Operation staff. In addition to the form, the Physical Facilities Operations staff will make periodic inspections to ensure the work is completed as recorded.

2. Ensure staff complies with Procurement and Disbursement Bulletin G-197 if the University decides to modify the terms and conditions of contract C080213.

Campus Response:

We agree. Physical Facilities has reinforced the policy regarding modification of the terms of any service agreement. If Physical Facilities or the contractor wishes to modify the agreement, the Director of Physical Facilities Business Affairs will be contacted and included in discussions with the contractor. If modifications to the service agreement are made that do not substantially change the terms of the agreement, the Director will submit an amendment to the contract to OSC for approval. No change in scope will be allowed until the amendment is approved by OSC. If there is substantial change(s) to the scope, the contract will be terminated at the earliest time as identified in the contract and a new contract with the change(s) in scope will be advertised in accordance with NYS Procurement Regulations.

3. Ensure staff administering the contract is properly trained to monitor vendor performance and contract payments.

Campus Response:

We agree. It is the procedure in Physical Facilities Business Affairs to conduct a preliminary review of invoices sent to the Department for payment. As was noted by the OSC auditors, the amounts of several invoices were modified to reflect elevators that were out of service or under warranty. The modified invoice is then forwarded to the appropriate Physical Facilities staff to review and approve payment based on receipts/work tickets/time sheets to document that the work was completed in accordance with the contract.

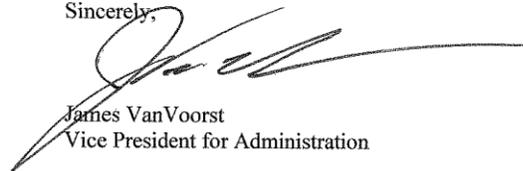
4. Require Otis to provide a comparative analysis of the preventive maintenance services they provided over the life of the contract to the preventive maintenance services which were required by the contract. If the services provided were less than the level of service paid for, recover the overpayments.

Campus Response:

We agree. A letter was sent on September 1, 2010 to Otis Elevator requesting them to calculate the overpayments that resulted from them not complying with the service terms of the contract. Physical Facilities has developed a worksheet which lists fifteen (15) of the most critical elevators and the maintenance that was to occur over a six month period. This worksheet shows the shortfalls in addition to extra work performed. We will use this information to recover the overpayment to Otis Elevator.

Bernard, we always welcome and independent third-party review of our operations. We would be happy to discuss our responses to the issues raised in the draft audit report with you or your staff. Thank you very much for your time and consideration on this audit.

Sincerely,

A handwritten signature in black ink, appearing to read 'James VanVoorst', with a long horizontal flourish extending to the right.

James VanVoorst
Vice President for Administration

Cc: Interim President Magrath
Mr. Mark Hall
Ms. Sally Oakes
Mr. Larry Roma