



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 26, 2011

Dr. Matthew Goldstein  
Chancellor  
The City University of New York  
535 East 80<sup>th</sup> Street – 7<sup>th</sup> Floor  
New York, NY 10075

Re: 2010-0397

Dear Chancellor Goldstein:

Our Office examined<sup>1</sup> payments made by Baruch College (College) to ThyssenKrupp Elevator Company, Inc. (ThyssenKrupp) for elevator and escalator maintenance services provided by ThyssenKrupp under contract N907001 for the period November 1, 2009 through April 30, 2010. The objectives of our examination were to determine whether (i) The College paid ThyssenKrupp the correct price for only those services required by and received under the contract and (ii) ThyssenKrupp paid its technicians at least the prevailing wage.

**A. Results of Examination**

We were unable to determine whether the College paid ThyssenKrupp the correct price for only those services required by and received under the contract because the College does not have an effective monitoring system. The records used to document ThyssenKrupp's performance of maintenance were not reliable. Also, in the limited cases where the records were clear, they indicated ThyssenKrupp did not perform all the preventive maintenance but it was paid, nonetheless, as if the work had been performed. While we found the fixed monthly fees ThyssenKrupp charged the College were consistent with the contract terms, ThyssenKrupp did not earn a portion of those fees in light of maintenance it did not perform. In addition, we question whether the College should have paid the full monthly maintenance fees for escalators that were not in service for significant periods of time over the life of the contract.

In regard to the second objective of our examination, we found ThyssenKrupp's records indicate it paid the technicians the appropriate hourly wage rate. However, the records indicate the

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<sup>1</sup>We 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.

technicians were paid supplemental benefits (to cover the cost of such items as health insurance, dental insurance, and long-term disability insurance) at \$1.62 less per hour than required by the contract.

We shared a draft copy of this report with College officials and considered their comments (Attachment A) in preparing this report. College officials agreed with our findings and recommendations. In addition, officials reported they have recovered more than \$69,000 to date for maintenance ThyssenKrupp did not perform.

## **B. Background and Methodology**

The College had a \$1.4 million contract with ThyssenKrupp for the period August 1, 2008 through July 31, 2011. Under the contract, ThyssenKrupp was required to examine and inspect all elevators and escalators. In addition, it was required to adjust and lubricate the equipment when necessary and perform preventive maintenance tasks at specified intervals. During the period November 1, 2009 through April 30, 2010, The College paid ThyssenKrupp fixed monthly fees totaling \$228,000 to perform these maintenance services on 4 hydraulic elevators, 29 traction elevators and 10 escalators. Hydraulic and traction elevators have equipment in common (e.g., emergency telephones) and equipment unique to the type of elevator (e.g., only traction elevators have brakes).

The Director of Plant Operations and Facilities Management (Director) was responsible for ensuring ThyssenKrupp performed all required maintenance and that payments to ThyssenKrupp were appropriate for services performed. The Director developed and generated Work Order Requests (Work Orders) to prompt ThyssenKrupp to complete the contractually required preventive maintenance for elevators. After completing preventive maintenance, ThyssenKrupp technicians were required to sign and return Work Orders to the Director. In addition, the technicians were required to document elevator and escalator maintenance on Maintenance Tasks and Records charts (Charts) that are maintained in elevator machine rooms across the campus.

To accomplish our objectives, we reviewed the contract, related payments and other relevant College and ThyssenKrupp records and interviewed officials from the College and ThyssenKrupp.

## **C. Details of Findings**

Over the course of the examination, the Director discussed his monitoring process with us five times. Each time the Director described the monitoring process differently with respect to

relevant documents (i.e., Work Orders versus Charts). As such, we reviewed both the Work Orders and the Charts in order to evaluate ThyssenKrupp's performance under the contract.

We found Work Orders and Charts are not reliable for providing the College assurance that ThyssenKrupp performed all the required elevator and escalator maintenance or that the payments to ThyssenKrupp were appropriate. Further, in the limited cases where the documents included clear, measurable requirements, the documentation indicates ThyssenKrupp did not perform the required preventive maintenance.

### **Elevator Maintenance**

According to the contract, traction and hydraulic elevators were to receive preventive maintenance at specific intervals: weekly, monthly (hydraulic only), bi-monthly (traction only), quarterly, semi-annually, and annually. We compared the items on the Work Orders and Charts to the contractual preventive maintenance requirements by elevator type and frequency as appropriate to the limited examination scope period. We found that the College cannot rely on Work Orders and Charts to monitor ThyssenKrupp's compliance with elevator maintenance contract requirements for the following reasons:

- The Work Orders and Charts did not include all contractually required preventive maintenance tasks. They included none to all of the contractual preventive maintenance requirements depending on frequency and elevator type.
- The information ThyssenKrupp documented on Work Orders is not reliable. ThyssenKrupp technicians signed Work Orders indicating they performed specific preventive maintenance tasks on hydraulic elevators, even though the equipment upon which the maintenance was performed is unique to traction elevators. This discrepancy occurred 50 out of 104 times during our scope period.
- The College's records were incomplete for the scope period. The College lacked three weekly Work Orders for the elevators in one building and all Work Orders for one month for all elevators. Also, the College did not have Charts for two months for all elevators.

We also found that within the limited cases where the Work Orders and Charts included all the contractual requirements for an elevator type and frequency, the records indicate ThyssenKrupp did not complete the required preventive maintenance but it was paid, nonetheless, as if the work had been performed. For example, there were two weekly maintenance tasks specific to hydraulic elevators with descriptions consistent in both the contract and in the Charts: (1) clean and inspect hoistway and (2) clean and inspect pit. We examined the Charts for the four

hydraulic elevators at the College and found the Charts indicate ThyssenKrupp completed both tasks only 1 of the 16 times required during the period January 1, 2010 through April 30, 2010.

### **Escalator Maintenance**

According to the contract, escalators were required to receive preventive maintenance monthly, quarterly and annually. The Director told us he reviewed Charts to monitor preventive maintenance. We compared the items on the Charts to the contractual preventive maintenance requirements appropriate to the limited examination scope period. We found that the College cannot rely on Charts to monitor ThyssenKrupp's compliance with contract requirements for the following reasons:

- The Charts did not include all contractually required preventive maintenance. They clearly identify only 86 percent of the monthly contract requirements and 50 percent of the of quarterly contract requirements.
- The College did not have complete records during the scope period. We examined the Charts for the period November 1, 2009 through April 30, 2010 and found there was documentation for only 5 of the 10 escalators.

We also found that within the limited cases where the Charts included all the contractual requirements, the records indicate ThyssenKrupp did not complete the required preventive maintenance. For example, one task consistently defined in both the contract and the Charts was "clean escalator pit." We examined the Charts for the five escalators for which the College had Charts and found the ThyssenKrupp technicians documented they completed this preventive maintenance task only 11 of the 30 times required during the period November 1, 2009 through April 30, 2010.

### **Maintenance on Escalators Not in Service**

The Director and the Assistant Vice-President of Campus Operations (AVP) told us that certain escalators were not in service during the full contract period. The AVP told us the New York City Department of Buildings began shutting down some of the College's escalators about one year into the contract and that the College's other escalators are frequently out of service. Even though these escalators were not in service for significant periods of time, the College continued to pay ThyssenKrupp for preventive maintenance. While there is no language in the contract regarding maintenance services on escalators that are not in service, we question if the College should have paid the full maintenance fee for these escalators.

In response to our the findings and recommendations in our draft report regarding elevator and escalator maintenance, College officials reported they presently use only Work Orders to document the certification of completed work and the Work Orders are now unique to each type of equipment (traction elevator, hydraulic elevator and escalator) for each required frequency of preventive maintenance as stipulated in the contract.

Also, as of September 12, 2011, College officials reported they recovered more than \$69,000 from ThyssenKrupp for maintenance not performed on escalators and one elevator. Officials are also examining records back to the beginning of the contract to determine if an additional amount is owed and recoverable. Officials further reported that where the contractor fails to expedite and complete required certification documents, or the College discovers deficiencies in inspections, the College will adjust the contractor's invoices. Officials also reported they will incorporate language addressing penalties for non-compliance with requirements in future contracts.

### **Monitoring**

The College has a separate, independent contractor that (i) periodically inspects the elevators and escalators, (ii) identifies and reports on conditions that warrant corrective action, and (iii) provides an opinion on the elevators' and escalators' condition and safety. While an independent contractor may provide reasonable assurance from time to time that the College's elevators and escalators have been maintained appropriately to ensure safety, College officials need ongoing assurance that its elevators and escalators are safe for its riders. Implementing an effective monitoring system to ensure ThyssenKrupp performs all the maintenance services the College contracted for to keep its equipment safe for its riders will provide College officials with this assurance.

In response to a draft copy of this report, College officials reported that in addition to relying on municipal inspections, they are planning to increase the frequency of the independent contractor's periodic inspections from annual to quarterly. In addition, officials reported the College is seeking redress of maintenance deficiencies, which if not corrected, will result in withheld payment and a possible notice of default issued against the contractor.

### **Prevailing Wage**

The contract required ThyssenKrupp to pay its employees at least the Department of Labor prevailing wage and supplemental rates. We reviewed ThyssenKrupp's certified payroll records and found they indicate ThyssenKrupp paid its technicians the appropriate hourly wage rates. However, the records indicate the technicians were paid supplemental benefits (to cover the cost

of such items as health insurance, dental insurance, and long-term disability insurance) at \$1.62 less per hour than required by the contract.

In response to the draft copy of this report, College officials reported they will notify ThyssenKrupp that in accordance with the contract, they are to pay 10 less for supplemental benefits than required by the Department of Labor.

### **Recommendations**

- 1) *Design and implement a system to effectively monitor future contracts, including a process to review and, as necessary, adjust invoices for preventive maintenance that was not performed.*
- 2) *Develop contract language outlining expectations for maintenance and payments for escalators and/or elevators which are out of service.*
- 3) *Determine and recover the amount paid over the life of the contract for maintenance ThyssenKrupp did not perform.*
- 4) *Ensure ThyssenKrupp pays technicians the supplemental benefits required for all hours worked under the contract.*

We thank the management and staff of Baruch College for the courtesies and cooperation extended to our auditors. Since your response to the draft report is in agreement with this report, there is no need for a further response unless you feel otherwise.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

Attachment A

cc: Mitchell Wallerstein  
Gabriel Eszterhas  
Gordon Taylor  
Mary Finnen



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230 West 41<sup>st</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10036  
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September 12, 2011

Mr. Bernard J. McHugh  
Director of State Expenditures  
Office of the State Comptroller  
110 State Street  
Albany, NY 12236

Re: Response to 2010-0397 DRAFT

Dear Mr. McHugh:

Please find attached Baruch College's response to the above-captioned draft report on your office's examination of payments made by Baruch to ThyssenKrupp Elevator Company, Inc. for elevator and escalator maintenance services under contract N907001.

We appreciate the opportunity presented by the examination to make improvements in the process of documenting and managing vendor performance under the contract. It bears mentioning that the college stands behind its record of elevator and escalator safety, and, in fact, we are cognizant that there is nothing in the draft report that suggests that the examination disclosed any unsafe conditions with college's elevators or escalators. Nevertheless, the college agrees with the auditors' recommendations and is committed to taking all necessary responsive action.

If you have questions or need additional information, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gordon Taylor', written over a white background.

Gordon Taylor

Attachment

cc: Chancellor Matthew Goldstein  
Executive Vice Chancellor and COO Allan H. Dobrin  
Senior Vice Chancellor Marc V. Shaw  
Associate Vice Chancellor Matthew J. Sapienza  
President Mitchel B. Wallerstein  
Vice President Gabriel Eszterhas  
Assistant Vice President Mary Finnen

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OFFICE OF THE VICE PRESIDENT  
FOR ADMINISTRATION AND FINANCE

September 12, 2011

Bernard J. McHugh  
Director of State Expenditures  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

Re: Response to 2010-0397 DRAFT

Dear Mr. McHugh:

The results of this audit will influence the specifications currently being developed for the next set of maintenance contracts issued by the College, one set of requirements for newly installed (replacement) escalators under warranty, and a separately issued contract for elevator maintenance.

The implementation in August 2008, of our existing maintenance contract resulted in significantly reduced downtime for elevators throughout the campus. While the audit found that documentation of the services provided may not have been adequate to ensure that all contractually required work was completed, the increased availability of elevators and the reduced number of callbacks are operational indicators of an effective maintenance program.

Baruch College agrees with the audit recommendations, and the College Response to each recommendation is discussed below.

**Recommendation 1:** *Design and implement a system to effectively monitor future contracts, including a process to review and, as necessary, adjust invoices for preventive maintenance that was not performed.*

**College Response:** The College's work order system is now the sole documentary tool for certification of completed work. On September 1, 2011, the College began using work orders unique to each type of equipment (traction elevator, hydraulic elevator and escalator) for each required frequency of preventive maintenance check (weekly, monthly, bimonthly, quarterly, semi-annual, annual) as stipulated in the contract. The work orders were designed to reflect the specific requirements of the current maintenance contract, and they will be appropriately modified to reflect the specific requirements of future contracts.

Beyond documentary certification that the work is being done in accordance with the contract, the College also needs to ensure that the work is adequately performed. Without anyone on College's staff who has elevator maintenance "expertise", the College has relied on municipal inspections (among the strictest in the nation) and the use of a separate independent contractor who periodically inspects the elevators and escalators and identifies and reports on conditions that warrant corrective action. Using the latest of these reports, the College is seeking redress of maintenance deficiencies, which if not corrected will result in withheld payments and a

possible notice of default issued against the contractor. The College is planning on increasing the frequency of the independent contractor's periodic inspections (from annual to quarterly) to monitor the work completed under the contract. Baruch College believes that this combined with municipal inspections, will be sufficient to meet the standard of "ongoing assurance."

Failure by the contractor to expedite and complete required certification documents, or the discovery of deficiencies by College inspections, will lead to invoice adjustments, as recommended. Language discussing penalties for non-compliance with requirements, including the option of adjusting invoices, will be incorporated into future contracts.

**Recommendation 2:** *Develop contract language outlining expectations for maintenance and payments for escalators and/or elevators which are out of service.*

**College Response:** The College will develop language outlining expectations for maintenance and payments for elevators and/or escalators which are not in service for its next set of maintenance contracts.

**Recommendation 3:** *Determine and recover the amount paid over the life of the contract for maintenance that ThyssenKrupp did not perform.*

**College Response:** The College has recovered in excess \$69,000 for the lack of maintenance performed on escalators and one elevator. The College will review records back to the beginning of the contract to determine if an additional amount is owed and recoverable.

**Recommendation 4:** *Ensure ThyssenKrupp pays technicians the supplemental benefits required for all hours worked under the contract.*

**College Response:** The College has contacted ThyssenKrupp about this issue; they indicated and it appears that ThyssenKrupp paid supplemental benefits in accordance with their collective bargaining agreement with Local One, rather than in agreement with their contract with Baruch. The College will notify ThyssenKrupp that in accordance with the Baruch contract, they are to pay no less for supplemental benefits than required by the Department of Labor. The College will make a good faith attempt to ensure that ThyssenKrupp pays the supplemental benefits required for all hours worked under the contract.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gabriel Eszterhas', with a long horizontal line extending to the right.

Gabriel Eszterhas

cc: Chancellor Goldstein  
President Wallerstein  
Gordon Taylor  
Mary Finnen