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STATE COMPTROLLER



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STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

August 27, 1999

Mr. Charles A. Gargano  
Commissioner  
Department of Economic Development  
30 South Pearl Street  
Albany, NY 12245

Re: Report 99-F-17

Dear Mr. Gargano:

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 reviewed the actions taken by officials of the New York State Department of Economic Development (Department), as of June 24, 1999, to implement the recommendations contained in our audit report, *Administration of the Omnibus Procurement Act* (Report 95-S-79). Our report, which was issued on December 24, 1996, examined the question of whether the Department had effectively coordinated and monitored State agency and public authority compliance with the Omnibus Procurement Act, and assessed the extent to which the Department, agencies, and authorities had complied with its provisions.

**Background**

The Omnibus Procurement Act (Act), which became effective in 1993, is intended to help New York State businesses compete more effectively for the contracts awarded by New York State agencies and public authorities. The Act describes certain procedures that must be followed when such contracts are awarded, and charges the Department with monitoring compliance with the Act. For example, the Act requires agencies to notify the Department at least 15 days in advance of their intent to award contracts worth \$1 million or more to out-of-State contractors (15-day notice), and to prepare and submit an annual report to the Department listing their contracts with both in-State and out-of-State business enterprises. Concurrently, the Act seeks to eliminate the contract preference laws of other states that create hardships for New York State businesses when they attempt to compete for contracts.

## **Summary Conclusions**

Our prior audit found that, contrary to the provisions of the Act, State agencies and public authorities often did not provide advance notice to the Department when they awarded large contracts to out-of-State firms, and often did not submit an annual report to the Department listing their in-State and out-of-State contracts. We also identified weaknesses in the procedures used by the Department to end preferential government contracting practices by other states. We made several recommendations aimed at improving compliance with the Act. In our follow-up review, we found that Department officials have made improvements in each of these areas.

## **Summary of Status of Prior Audit Recommendations**

Of the six prior audit recommendations, Department officials have implemented four recommendations, and partially implemented two recommendations.

## **Follow-up Observations**

### **Recommendation 1**

*Establish systems and controls to ensure that agencies file all required notices and reports.*

Status - Partially Implemented

Agency Action - Department officials send periodic communications to agencies, reminding them of their obligation to file annual reports and 15-day notices of contract awards they plan to make to out-of-State contractors. Department officials maintain a log listing the agencies required to submit annual reports. When a report is received, a notation is made on the log. Department officials periodically follow up with agencies that have not filed their annual reports. The officials also keep a record of the 15-day notices they receive and categorize them by agency; however, they have not established controls to help ensure that agencies report all out-of-State awards. Department officials believe it is virtually impossible for them to obtain prior knowledge of which contracts would require a 15-day notice before they are approved. In addition, they said staff from the Office of the State Comptroller (OSC) informed them that the State Accounting System can not produce the information they require in a useful and timely format.

Auditors' Comments - We agree that regular preparation of State Accounting System reports for all agencies could be time-consuming. However, OSC could effectively prepare relevant periodic reports of selected agencies. Therefore, we recommend that Department officials identify the agencies that do not regularly comply with the 15-day notice requirement and work with OSC to prepare a specialized report for them.

**Recommendation 2**

*Review these notices and reports to determine if the Act's objectives are being achieved.*

Status - Partially Implemented

Agency Action - Department officials provided us with documentation to evidence their review and analyses of the annual reports that are received. However, they did not provide us with similar documentation for 15-day notices.

**Recommendation 3**

*Maintain an active list of jurisdictions which exercise purchasing preferences and take steps to negotiate an end to such practices.*

Status - Implemented

Agency Action - The Department maintains an active list of jurisdictions that exercise preferential purchasing and contract award practices. In addition, officials have taken steps to negotiate an end to such practices with three of the five states listed at the time of our audit. To date, their efforts have been successful with one of the three states; it has been removed from the list.

**Recommendation 4**

*Enhance communications with agencies to ensure that they understand and are in compliance with the Act's provisions.*

Status - Implemented

Agency Action - Department officials send periodic communications to agencies reminding them of their responsibilities pursuant to the Act. They have also incorporated Act-related agenda items into their periodic meetings with the State Procurement Council, which consists of agency purchasing representatives.

**Recommendation 5**

*The Commissioner should encourage agencies to meet with Department representatives to obtain a better understanding of Act requirements.*

Status - Implemented

Agency Action - Department officials state that they are in contact with agency representatives.

They cite the quarterly State Procurement Council meetings as support for this assertion and have provided us with meeting agendas and attendee listings as evidence of these meetings.

**Recommendation 6**

*The Commissioner should encourage agencies to develop procedures and controls to ensure that:*

- a. All notices and reports required by the Act are prepared according to Act specifications and are submitted to the Department by the mandated due dates;*
- b. Contracts are not awarded to vendors that do not qualify under the Act; and*
- c. All successful contractors comply with provisions described by all clauses that must appear in the bid packages, according to the Act.*

Status - Implemented

Agency Action - Before our follow-up review was complete, Department officials issued a memorandum to agency heads, encouraging them to implement those controls and procedures that would enable them to comply with the Act.

Major contributors to this report were Frank Patone and Sheila Jones.

We would appreciate your response to this report within 30 days, indicating any additional actions planned or taken. We also thank the management and staff of the Department of Economic Development for the courtesies and cooperation extended to our staff during this review.

Very truly yours,

Frank J. Houston  
Audit Director

cc: Charles Conaway