

***State of New York
Office of the State Comptroller
Division of Management Audit
and State Financial Services***

**DORMITORY AUTHORITY OF THE
STATE OF NEW YORK**

**CONTRACTING FOR
CONSTRUCTION-RELATED
SERVICES**

REPORT 98-S-23



H. Carl McCall

Comptroller



State of New York Office of the State Comptroller

Division of Management Audit and State Financial Services

Report 98-S-23

Ms. Gail Gordon
Chair
Dormitory Authority of the State of New York
515 Broadway
Albany, NY 12207

Dear Ms. Gordon:

The following is our report addressing contracting for construction-related services by the Dormitory Authority of the State of New York.

We performed this audit 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. Major contributors to this report are listed in Appendix A.

*Office of the State Comptroller
Division of Management Audit
and State Financial Services*

December 28, 1999

Executive Summary

Dormitory Authority of the State of New York Contracting for Construction-Related Services

Background

The Dormitory Authority of the State of New York (Authority) finances, designs and/or manages construction projects for certain State agencies, local governments and not-for-profit organizations, including the State University of New York, the City University of New York, the State Department of Health, the State Education Department, the State Office of Mental Health, and the State Office of Mental Retardation and Developmental Disabilities. In fulfilling these responsibilities, the Authority contracts with construction firms, architects, engineers and construction managers. Between January 1, 1994 and June 30, 1998, the Authority awarded a total of 1,741 such contracts with an original cost of \$977 million. We selected for audit 66 of these contracts with an original cost of \$74.2 million (50 of these contracts were randomly selected and 16 were judgmentally selected). Our audit addressed the following question:

- Did the Authority establish and comply with reasonable policies and procedures for contracting construction-related services in accordance with State laws, rules and regulations?

Audit Observations and Conclusions

The Authority has established reasonable policy and procedures for contracting for construction-related services in accordance with State laws, rules and regulations. However, we found that the Authority needs to significantly improve the availability of adequate documentation supporting its compliance with these requirements. Such documentation provides assurances and accountability for the proper award of contracts. In addition, we found that the Authority executed several change orders to amend existing contracts for additional services even though the services were not related to the scope of the existing contracts. Awarding work in this manner increases the risk that cost of the work may be higher than necessary and increases the risk that the Authority's procurement practices may be perceived as being less open and competitive than they should be.

The results of our audit shows that documentation for 28 of 38 contracts in our sample of construction firms evidences the required use of advertising as part of the competitive process for the original award of the contracts; files for 10 of the 38 contracts do not contain such evidence. Of the 10 contracts with documentation problems, one lacked any evidence of advertising, eight lacked either evidence of publication in the New York State Contract Reporter or a newspaper of general circulation, and one lacked required evidence of publication in a minority newspaper. In addition, for many of the 38 contracts, the Authority's required evaluation

of contractors' qualification and experience was not adequately documented as required by Authority policy and procedures. (See pp. 4-5)

Our testing of the award of 28 sampled contracts with architects, engineers or construction managers also showed many instances where there was a lack of documentation supporting compliance with required Authority procedures for advertising and/or contractor evaluation. For example, we identified a lack of documentation to support required advertisement of a contract in the New York State Contract Reporter for six contracts. We also noted a lack of required Authority executive management approval for awarding two replacement contracts totaling \$9.5 million without competitive proposals. In March 1998, the Authority internally reported that contract files were often incomplete and the information in the files was not consistent from project to project. As a result, the Authority created a Policies and Procedures Unit to develop comprehensive policy and procedure documentation for all Authority processes. Steps taken in Spring 1999 are expected to improve documentation. (See pp. 5-9)

Our audit also showed that 73 of the 311 change orders made to the contracts for construction firms in our sample were not related to the scope of the original contracts. The 73 change orders cost \$4.2 million and all involved construction projects for the City University of New York (CUNY). For example, 48 change orders costing \$3.7 million were added to the original \$703,582 contract for CUNY's Sports and Recreation Facility and Day Care Building. Some of these change orders did not even involve construction work for the building. A \$9.9 million contract for heating, ventilation and air conditioning services at CUNY's Brooklyn College was amended with 17 change orders costing \$479,193 that related to work at other campuses and locations at Brooklyn College that were not specified in the original contract. Also, our testing of amendments to personal service contracts showed similar results. We recommend that the Authority require that any additional work authorized by a change order or personal service contract amendment must be related to the original contract. Authority officials told us that in March 1999, they conducted two full-day meetings with all Authority Project Managers to discuss expected improvement in this area and the implementation of updated procedures. (See pp. 10-13)

Comments of Authority Officials

Authority Officials generally agree with our recommendations and indicate that steps have been or will be completed to implement them.

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Major Contributors to This Report

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Introduction

Background

The Dormitory Authority (Authority) of the State of New York is a public benefit corporation established by Chapter 524 of the Laws of 1944. The Authority operates as a construction project manager and offers its clients a wide variety of construction-related services, such as project financing, design, inspection, and contract administration. It is managed by an Executive Director who reports to an eleven-member Board of Directors.

The Authority serves not-for-profit and public entities, including the State University of New York, the City University of New York, the State Department of Health, the State Education Department, the State Office of Mental Health, the State Office of Mental Retardation and Developmental Disabilities, and local governments. Its client roster has expanded since September 1, 1995, when it assumed the powers, duties, and functions of the Medical Care Facilities Finance Agency and the Facilities Development Corporation.

The Authority awards contracts to construction firms and personal service consultants such as architects, engineers and construction managers. The architectural and engineering services are used in the design and construction of facilities for the Authority's clients. The construction management services are used on certain Authority projects and include site inspections as well as the overall coordination of construction contracts on a project. The Authority sells tax-exempt bonds and notes to finance its clients' projects. According to the Authority's records, between January 1, 1994 and June 30, 1998, the Authority awarded a total of 1,741 contracts for financed projects as shown in the following chart.

Type of Contract	Number	Percent	Original Cost	Percent
Construction	1,193	69%	\$813 million	83%
Architectural, Engineering or Construction Management Services	548	31%	\$164 million	17%
Total	1,741	100%	\$977 million	100%

These contracts include contracts originally awarded by the former Medical Care Facilities Finance Agency and the former Facilities Development Corporation. As of June 30, 1998, the Authority had also awarded five contracts for projects that had yet to be financed. (Together these five contracts cost about \$20 million.) Such projects are funded by the Authority until the tax-exempt bonds and notes are sold, at which time the Authority is reimbursed for its temporary funding.

Most of the contractors are selected by the Authority's Contracts and Cost Control Unit and 54 Project Managers. The Project Managers are assigned to three regional offices: New York City (28), Albany (22) and Buffalo (4).

Audit Scope, Objective and Methodology

We audited the Authority's contract awards to construction firms, architects, engineers and construction managers for the period January 1, 1994 through January 7, 1999. The objective of our performance audit was to determine whether the Authority established and complied with reasonable policies and procedures for contracting for construction-related services in accordance with State laws, rules and regulations. To accomplish our objective, we interviewed Authority officials and reviewed Authority policies and procedures. We also reviewed Authority records relating to 66 sampled contracts.

The sample of 66 contracts included a random selection, 50 of the 1,741 contracts for projects financed between January 1, 1994 and June 30, 1998. From the 1,741 contracts we also judgmentally selected eleven contracts for City University of New York (CUNY) projects. In addition, we selected all five contracts for projects that had yet to be financed as of June 30, 1998. We selected the additional CUNY contracts because CUNY is one of the Authority's most active clients. The 66 contracts selected for review originally cost a total of \$74.2 million. The 50 randomly selected contracts originally cost \$38.5 million, while the eleven additional CUNY contracts originally cost \$15.5 million. The five remaining contracts originally cost \$20.2 million.

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 Authority operations which are included in our audit scope. Further, these standards require that we understand the Authority's internal control structure and compliance with those laws, rules and regulations that are relevant to 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 our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources

are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on "an exception basis." This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

**Response of
Authority Officials
to Audit**

A draft copy of this report was provided to Authority officials for their review and comment. Their comments have been considered in the preparation of this report and are included as Appendix B.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chair of the Dormitory Authority of the State of New York 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.

Soliciting and Evaluating Prospective Contractors

According to Section 103 of the General Municipal Law, except in the case of public emergency, construction contracts involving an expenditure of more than \$7,000 must be published in the New York State Contract Reporter and in a newspaper of general circulation, and must be awarded to the lowest responsible bidder. Section 1695 of the Public Authorities Law relates to construction projects at CUNY and requires that contracts be advertised in minority publications that have general circulation. According to Article 9 of the Public Authorities Law, the Authority must adopt by resolution comprehensive guidelines which detail operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement services. In addition, according to Executive Order 170.1, an evaluation may be made of a prospective contractor's skill, judgment, integrity, financial resources, performance, experience, conduct, labor practices, and compliance with laws and regulations.

The Authority has developed Guidelines containing policy and procedures for its staff to follow during the solicitation and evaluation of prospective contractors. The Guidelines are consistent with the previously discussed criteria. However, as discussed in the following paragraphs, documentation of compliance with required steps was not always available in the records provided to us for our 38 sampled contracts with construction firms and for our 28 sampled contracts with architects, engineers and construction managers. The absence of documentation in support of the completion of required steps diminishes public accountability and management's level of assurance that procurement is competitive and results in contract awards to qualified contractors. As discussed in the following sections, we conclude that significant improvements are needed in the Authority's practices for documenting proper public notice and proper contractor evaluation for contracts with construction firms and for contracts with architects, engineers and construction managers.

Construction Firms

Our 38 sampled contracts with construction firms had an original cost of \$37.4 million. For 28 of these contracts, we found that advertising requirements to give potential bidders notification of the contract were adequately documented in Authority records. However, for the remaining 10 contracts, the requirements for advertising were not adequately evidenced in supporting documentation. The advertising documentation exceptions that we found for the remaining 10 contracts are listed below.

- For one of the contracts, a \$230,000 construction project at CUNY's Hunter College, there was no documentation

to support publication in the New York State Contract Reporter or a newspaper of general circulation. However, there were five bidders for this project.

- For five of the contracts, there was no documentation to support publication in a newspaper of general circulation, but there was documentation to support publication in the New York State Contract Reporter.
- For three of the contracts, there was no documentation to support publication in the New York State Contract Reporter, but there was documentation to support publication in a newspaper of general circulation.
- For one CUNY contract, there was no documentation to support required advertising in a minority publication of general circulation.

We also found that for many of the 38 contracts in our sample, one or more of the Authority's required steps to evaluate contractors' qualifications and experience were not adequately documented. For example, Authority officials could not document that:

- contractors' prior performance had been reviewed for 24 of the contracts;
- contractors' reliability had been fully evaluated for 22 of the contracts; and
- the Uniform Contracting Questionnaire, which was developed by the Council of Contracting Agencies, was completed for six of the contractors.

Architects, Engineers and Construction Managers

The Authority requires that personal service contracts involving an expenditure of \$5,000 or more must be published in the New York State Contract Reporter. The Authority issues a Request for Proposal (RFP) to obtain services from an architect, engineer or construction manager. According to the Authority's Procurement Contract Guidelines, the Project Manager is required to evaluate all the proposals received in response to an RFP. The proposals are to be evaluated on the basis of the prospective contractor's technical qualifications, financial stability, past performance for the Authority, manpower schedules, proposed start and completion dates, possible conflicts of interest, insurance coverage, and contract price or fee structure. As part of the evaluation process, if a firm is submitting

a proposal to the Authority for the first time, a representative of the firm must be interviewed by the Project Manager so that the Project Manager can learn more about the firm's personnel and past activities. If a firm has previously worked for the Authority, the firm's previous performance should have been formally evaluated by the Authority, and this formal evaluation must be reviewed by the Project Manager.

After the proposals have been evaluated, the Project Manager is expected to place the most favorable proposals on a short list for further evaluation. The Project Manager is then required to hold a joint meeting at the project site with representatives from all the firms on the short list to ensure that the firms understand the requirements of the job. When the Project Manager selects one of the firms, the Project Manager is required to send a memo to the Contracts and Cost Control Unit justifying the selection. This memo must be comprehensive and specific, and must clearly indicate why the firm was selected. The Project Manager is also required to document all aspects of the evaluation process, including the reasons firms were or were not placed on the short list.

According to the Authority's Guidelines, this competitive process need not be used for emergencies, for critical contracts when there is only one source, or for the completion of work that has been suspended because the contractor defaulted or was terminated by the Authority. Approval for exemption from the competitive process, including the advertising requirement, must be obtained from the Executive Director.

Our 28 sampled contracts with architects, engineers or construction managers had an original cost of \$36.8 million. We found that many of the 28 contracts lacked documentation of compliance with required Authority steps for advertising contracts and for evaluating contractors. If the evaluation of contractor proposals is not adequately documented, Authority managers have less assurance that the proposals were evaluated in accordance with requirements. If the proposals are not evaluated in accordance with requirements, managers have less assurance that the Authority's contracts have been awarded to the best qualified firms at the best available price. Following are examples of some of the required actions that were not adequately documented:

- In an \$841,400 contract for construction management services at CUNY's Queens College and York College, Authority officials could not document that they advertised the contract in the New York State Contract Reporter or sought proposals from more than one firm. The contract was awarded to the firm that submitted the only proposal. At the time the contract was

awarded, the firm was already providing other services at Queens College. We note that Authority officials also were unable to document that this other contract for services at Queens College had been published in the New York State Contract Reporter. In five other contracts, Authority officials could not document that the request for proposals was published in the New York State Contract Reporter.

- Two contracts for construction management services at the CUNY Graduate School and University Center, totaling \$5.9 million and \$3.6 million, respectively, were awarded to complete work that had been suspended when the original contractor was terminated by the Authority. Authority officials did not seek competitive proposals for either contract; instead, they selected the two replacement contractors from the original two short lists. While Authority officials are not required to use a competitive process for such completion contracts, they are required to obtain the Executive Director's approval when a competitive process is not used. However, this approval was not documented for one of the contracts and was obtained for the other contract after the replacement contractor had already begun working on site.
- For two of the contracts, documentation was not available indicating that a memo had been sent by the Project Manager to the Contracts and Cost Control Unit justifying the contractor's selection. In addition, we also found that, while some memos in our sample were very specific and contained a thorough evaluation of the proposals, other memos were very brief and did not contain evaluations of the proposals. These variations may have occurred because the Authority does not have guidelines that specify the elements required in the Project Manager's justification memo. We believe that such guidelines would promote greater accountability and consistency for the justification process.
- For 15 of the contracts, the basis for placing proposals on the short list was not documented, and for 14 of the contracts, there was no documentation that the Project Manager had met with all the firms on the short list.

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- For 19 of the contracts, the Project Manager's evaluation of the technical components of the proposals (such as personnel qualifications, manpower schedules and project cost) was not adequately documented. In these instances, the evaluation was either absent, incomplete or very limited.
 - For 12 of the contracts, there was no documentation that interviews had been conducted with firms submitting their first proposals to the Authority, and for 21 of the contracts, there was no documentation that the evaluation of the firm's previous work for the Authority had been reviewed by the Project Manager.

Documentation was particularly poor for the CUNY contracts in our sample. We note that similar weaknesses were identified in an evaluation conducted by the Authority's staff in March 1998. According to the internal report resulting from this evaluation, contract files were often incomplete and the information in the files was not consistent from project to project. The report also noted that the memo from the Project Manager justifying the selected contractor was usually either absent, incomplete or very limited. The report further noted that, in one instance, the contract award process may not have been competitive, because the contractor had completed 30 percent of the design work before the contract was awarded.

In recognition of these improvement opportunities, in March 1998, the Authority created a Policies and Procedures Unit to develop comprehensive policy and procedure documentation for all Authority processes. Authority officials told us that Project Management policies and procedures were updated in Spring 1999, with the expectation of improvements in documentation and a more consistent adherence to policy across the Authority's programs.

(In response to our audit report, Authority officials point out that updates to contractor and consultant selection procedures are now in the process of being finalized. These updated procedures specify the items to be included in the Requests for Agreements and Awards, and include quality control checklists to ensure that the contract files will contain sufficient documentation to support the Authority's full compliance with policy and procedures. Authority officials also state that the instances of noncompliance with procurement procedures identified in the report are of a minor, trivial nature and none address whether the Authority procures in an open manner at competitive costs. The officials further note that while one document may have been

missing from a file, there were other documents in that file that would support the use of an open, competitive process. The officials suggest that conclusions to the contrary should not be drawn from one missing document.)

Auditors' Comments: We used the Authority's criteria for properly documenting its procurement process in order to demonstrate compliance with related laws and guidelines. None of these procedures were characterized as less or more significant than others. Furthermore, we believe that each procedure was designed to contribute to an open, competitive procurement process. Thus, it is important that each item of necessary documentation is on file.

Recommendations

1. Fully document compliance with all requirements when awarding contracts to construction firms, architects, engineers and construction managers.
2. Develop specific guidelines for the memo from the Project Manager justifying the selected contractor.

(Authority officials generally agree with recommendations number 1 and number 2. They indicate that steps have been or will be taken to implement them.)

Controlling Contract Amendments

When a contract is amended to authorize the performance of additional work, the additional work should be related to the scope of the original contract. If the work is not related to the scope of the original contract, it should be performed through a new contract that is competitively awarded. The Office of the State Comptroller and the New York State Thruway Authority support this criteria for proposed change orders to amend contracts with construction firms. Similarly, the Office of the State Comptroller supports this criteria for evaluating proposed amendments to personal service contracts.

The Authority's procedures state that contract amendments should be processed in a manner that avoids all appearances of impropriety. However, we found that amendments to 12 of the 66 contracts in our sample authorized work that was not related to the original scope of the contracts. All 12 contracts related to CUNY construction projects, and the cost of the additional work was about \$4.9 million. Since this additional work was not competitively awarded, there is increased risk that the cost of the work may have been higher than necessary and that there is increased risk that the Authority's procurement practices may be perceived as being less open and competitive than they should be. We conclude that this additional work should have been accomplished through separate contracts that were competitively awarded.

Authority officials told us that they sometimes use change orders and contract amendments for urgent or emergency work outside of the scope of the original contract because they already have a contract in place that can be used to accommodate the need. While we understand the need to complete such work in a timely manner, the Authority still must comply with requirements for public bidding and competitive contract awards. Moreover, according to these requirements, in certain circumstances (such as emergencies and in the termination of a contractor), a competitive process need not be used, as long as the circumstances are documented and the appropriate approvals are obtained. If these procedures applied to the exceptions we identified, the Authority should have followed them. We also conclude that the Authority's procedures may be more effective by specifically requiring that change orders and contract amendments are not to be processed when the work is unrelated to the scope of the original contract.

Authority officials told us that, in March 1999, they conducted two full-day meetings with all Authority Project Managers to discuss the performance of unrelated work, documentation and procedures. They expect

improvements in this area as a result of heightened awareness of staff and the implementation of updated procedures. The following sections detail our findings concerning change orders and contract amendments.

(In response to our audit report, Authority officials state that they use a number of cost control practices in their administration of contracts and change orders, such as unit pricing and alternates, price quotations and the review of each individual change order by the Cost Control staff. Further, they assert that change order work is not inherently more costly and note that technological advances and market fluctuations often make it possible for the Authority to obtain better products at lower prices at later stages in the project.)

Auditors' Comments: For the reasons already explained in our report, we reiterate the concern that work unrelated to the scope of the original contract should, unless there are special situations, be accomplished through separate contracts that are competitively awarded.

Change Orders

Our 38 sampled contracts with construction firms (as well as a construction component in one of the 28 personal service contracts in our sample) included a total of 311 change orders that increased the cost of the contracts by a total of \$10.9 million. We found that 73 of the change orders, costing \$4.2 million, were not related to the scope of the original contracts. These 73 change orders involved a total of six contracts, and 65 of the change orders (costing \$4.1 million) related to just two of the contracts. All six contracts related to construction projects at CUNY.

One of the two contracts accounting for most of the change orders was for construction at CUNY's Sports and Recreation Facility and Day Care Building. As a result of 62 change orders, the original contract cost of \$703,582 was increased by \$3.8 million to a total of \$4.5 million. We determined that 48 of these change orders, costing about \$3.7 million, were not related to the scope of the original contract, as they related to work on buildings other than the Sports and Recreation Facility and Day Care Building. Some of these change orders did not even involve construction work. For example, one of the change orders authorized the purchase of equipment in order to expedite the progress of the project and another change order was used to hire a surveyor for \$49,325, including \$2,825 for the original contractor's profit and overhead. The profit and overhead costs would not have been incurred if the surveyor had been hired through a separate personal services contract, as would have been appropriate.

(In response to our audit, Authority officials point out that the change orders related to this CUNY project were largely for environmental remediation that became necessary as the project progressed. According to the officials, poor air quality resulting from old pipe and duct insulation in several buildings presented urgent health and safety concerns for students and faculty. The officials further note that the Authority used competitive quotes and unit prices to process the additional work, and avoided contractors' mobilization costs and delay claims, to ensure the prudent use of public funds to promptly abate the hazardous conditions. The officials state that there was no evidence cited in the audit that these change orders resulted in increased costs.)

Auditors' Comments: As noted previously in our report, the Authority has change order procedures which apply in certain circumstances such as emergencies. According to these procedures, a competitive process need not be used, as long as the circumstances are documented and the appropriate approvals are obtained. We did not find that these procedures were followed for any of the 48 change orders.

The other contract accounting for most of the change orders was for heating, ventilation and air conditioning services at a number of specified locations at CUNY's Brooklyn College. As a result of 81 change orders, the original contract cost of \$9.9 million was increased by \$1.5 million to a total of \$11.4 million. We determined that 17 of these change orders, costing \$479,193, were not related to the scope of the original contract, as they related to work at other CUNY colleges and at locations on the Brooklyn College campus not specified by the original contract.

Amendments to Personal Service Contracts

Our 28 sampled contracts with architects, engineers and construction managers included a total of 55 contract amendments that increased the cost of the contracts by a total of \$17.1 million. We found that 16 of the amendments, costing \$779,691, were not related to the scope of the original contracts. These 16 amendments involved a total of six contracts, and 11 of the amendments (costing \$553,027) related to just two of the contracts. All six contracts related to construction projects at CUNY.

One of these contracts was for engineering services as part of the restoration and rehabilitation of the tunnel system at CUNY's City College of New York. As a result of nine contract amendments, the original contract cost of \$203,501 was increased by \$1.1 million to a total of \$1.3 million. We determined that seven of these amendments, costing \$141,748, were not related to the scope of the original contract, as they related to work at other CUNY colleges and at CUNY's Graduate School and University Center.

Another contract was for site investigation and design services at a number of specified locations at CUNY's City College of New York. As a result of four contract amendments, the original contract cost of \$307,327 was increased by \$704,585 to a total of \$1 million. We determined that portions of all four of these amendments totaling \$411,279 were not related to the scope of the original contract, as they related to work at locations not specified in the original contract.

Another contract was for construction management services for a new administrative and academic building at CUNY's Baruch College. As a result of two contract amendments that were not related to the scope of the original contract (the amendments authorized work at the School of Public Affairs), the original contract cost of \$642,042 was increased by \$80,087.

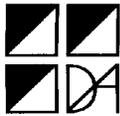
Recommendation

3. Formally require that any additional work authorized by a contract change order or an amendment must relate to the scope of the original contract. Ensure compliance with this requirement.

(Authority officials agree with this recommendation and indicate that they have implemented it as part of their updated change order procedures.)

Major Contributors to This Report

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Dormitory Authority
State of New York

Gail H. Gordon, Chair
Thomas J. Murphy, Executive Director

November 30, 1999

Mr. Jerry Barber
Audit Director
Office of the State Comptroller – 13th Floor
A.E. Smith State Office Building
Albany, NY 12236

Re: Dormitory Authority – State of New York
Contracting for Construction-Related Services
Report 98-S-23

Dear Mr. Barber:

The Dormitory Authority of the State of New York has reviewed the Office of the State Comptroller's draft report. With 381 contracts totaling \$234 million, and 394 change orders and amendments valued at \$76 million awarded to date in 1999, we are continually looking for ways to improve our construction procurement processes. We appreciate the Comptroller's objective input and have the following comments.

Documentation

The report notes that while the Authority has established reasonable policy and procedures for construction procurement, OSC concluded that, in some cases, there was a lack of paper documentation in the contract files to support the Authority's compliance with those procedures. The audit recommends that the Authority fully document compliance with all requirements when awarding contracts.

While we could dispute certain instances of the auditors' interpretations of required paper documentation, we concur that documentation and policies and procedures could be improved, and in March 1998, prior to the commencement of the audit, we created a Policies and Procedures Unit to develop comprehensive policy and procedure documentation for all Authority processes. Updates to contractor and consultant selection procedures are now in the process of being finalized. These updated procedures specify the items to be included in the Requests for Agreements and Awards, and include quality control checklists to ensure that the contract files will

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contain sufficient documentation to support the Authority's full compliance with policy and procedures. Improvements in documentation and a more consistent adherence to policy across programs are expected to accompany the implementation of the updated procedures.

The report further states that lack of paper documentation "increases the risk that the Authority's procurement practices may be perceived as being less open and competitive than they should be". The Authority prides itself on its history of open and fair procurement, and has procedures in place to meet that objective. While the audit may have identified instances of less than full compliance with those procedures, they are of a minor, trivial nature and none go to the substantive matter of whether the Authority procures in an open manner at competitive costs. For example, while certain files may have lacked a paper copy of the *New York State Contract Reporter* notice, (the placement of which notice is easily ascertained by checking back copies of the *Reporter*), they contained other substantial documentation such as notices to bidders, bid tabulations, transmittal letters for return of bid bonds, minutes of meetings and price quotations; all valid evidence of an open and competitive process.

Consultant Selection Guidelines

The Comptroller concluded that the Authority has established reasonable policy and procedures for selecting personal service consultants, and the audit recommends that the Authority develop more specific guidelines detailing the elements required in the project managers' recommendation-to-award memo which justifies the selection of a consultant. As would be expected, the auditors noted stylistic variations in the memos among various project managers. In the Authority's updated consultant selection procedures, the specific requirements of the recommendation-to-award memo are listed, and our Construction division is undertaking an effort to implement more consistent formats for consultant evaluations and selections. However, it should be noted that the Comptroller did not uncover any instance of unfair or unjustified consultant selection.

Change Orders

To the extent that funding is available, our primary concerns regarding change orders are that the work is properly authorized, the changes are necessary, and that construction is not delayed. Change orders, managed properly and executed promptly, ensure that project costs are contained and potentially costly legal claims are avoided, thus best serving the interests of our clients and the taxpayers of New York State.

The auditors assert that work awarded through change orders increases the risk that the cost of the work may be higher than necessary. The Authority uses a number of cost control practices in its administration of contracts and change orders, such as unit pricing and alternates, price quotations and the review of each individual change order by our Cost Control staff. Change order work is not inherently more costly; in fact, technological advances and market fluctuations often make it possible for the Authority to obtain *better* products at *lower* prices at later stages in the project.

The audit specifically cites change orders on a CUNY project that OSC deemed unrelated to the scope of the original contract. These change orders were largely for environmental remediation that became necessary as the project progressed. Poor air quality, the result of old, moldy pipe and duct insulation in several buildings, presented serious and urgent health and safety concerns for students and faculty. For the additional critical work that was processed in response to those concerns, the Authority used competitive quotes and unit prices, and avoided contractors' mobilization costs and delay claims, to ensure the prudent use of public funds while promptly abating hazardous conditions. There is no evidence that this or any other instance cited in the audit resulted in increased costs or was to the detriment of the taxpayers of New York State. On the contrary, we believe the actions taken were in the best interests of the occupants of the buildings, the City University and the taxpayers.

The report recommends that the Authority formally require that all change order and amendment work must relate to the scope of the original contract. This criteria is included in our updated change order procedures. In March 1999 we conducted two full-day meetings with all Authority project managers, and we have scheduled additional meetings for January 2000. As part of these meetings, we share OSC's observations in this audit regarding unrelated work, documentation and procedures. We expect improvements in this area as a result of heightened awareness on the part of our staff, and the implementation of the updated procedures.

We appreciate this opportunity to respond to the Comptroller's evaluation of our construction procurement practices, and we look forward to updating the Comptroller, the Governor and the Legislature on our progress upon the final release of the report.

Sincerely,



Thomas J. Murphy
Executive Director



Gail H. Gordon
Chair

cc: Philip W. Wood, Deputy Executive Director
Douglas Van Vleck, Managing Director, Construction
William Roe, Director, Contracts and Cost Control
Karen Graber, Director, Internal Audit