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COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 19, 2005

Mr. Edward Cox  
Chairman  
State University Construction Fund  
State University Plaza  
Albany, New York 12201

Re: Procurement of Consultants  
Report 2005-S-1

Dear Mr. Cox:

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 State University Construction Fund's (Fund) compliance with prescribed policies and procedures pertaining to the selection of and contracting with consultants. Our audit covered the period April 1, 2001 through December 31, 2004.

**A. Background**

The Fund is a public benefit corporation, established within the State University of New York (SUNY) and governed by a three-member Board of Trustees appointed by the Governor. The purposes of the Fund are to provide academic buildings, dormitories, and other facilities for colleges under the jurisdiction of the SUNY and to aid in the construction, acquisition, reconstruction, rehabilitation, and/or improvement of such facilities. For the fiscal year ended March 31, 2005, the Fund had revenues of \$622 million and had a fund balance of \$21 million. As of March 31, 2005, the Fund's workload included 58 design projects valued at \$309 million. The Fund submits an Annual Report (Report) of its activities and operations to the Governor, the State Board of Regents, the SUNY Trustees, and the Legislature. The Report details projects in the planning/construction phase, projects completed, the performance record of the Fund in completing construction, estimated costs approved by the Legislature, and the architects, engineers, and other private consultants engaged by the Fund on a contract basis.

Many of the Fund's capital projects require consultants to assist with architectural design and engineering services. The Fund, using an evaluation process to select the most qualified firm for a specific contract, negotiates contracts for architectural/engineering services in excess of \$25,000 with the highest qualified professional firm at a fair and reasonable price. The Office of the State Comptroller's Contracts Unit and the State Attorney General's Office review and approve consultant

contracts negotiated by the Fund. According to the Fund, there were 140 consultant contracts, ranging from \$5,762 to \$9.1 million, approved for the period April 1, 2001 to December 31, 2004. These 140 contracts were awarded to 97 firms.

**B. Audit Scope, Objective and Methodology**

We audited the Fund's compliance with prescribed policies and procedures pertaining to the selection of, and contracting with, consultants for the period April 1, 2001 through December 31, 2004. Our objective was to determine if the Fund has fully complied with applicable laws, rules, regulations, and other formal guidance regarding the procurement of consultants. To accomplish our objective, we reviewed applicable policies, procedures, and Fund guidelines, interviewed Fund personnel, and reviewed a sample of consultant contract awards.

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 Fund operations included in our audit scope. Further, these standards require that we understand the Fund'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 Fund personnel are very knowledgeable about the consultant procurement process and that they adhered to Fund procedures during the awarding of such contracts. Our review of a sample of consultant contract awards found that they are processed in accordance with the State Finance Law and the Public Authorities Law. We believe that controls would be further enhanced if Fund officials retained documentation to substantiate the development of the Fund's final list of prospective consultants.

Section 2879 of the Public Authorities Law requires that the Fund adopt comprehensive guidelines that detail operative policy and instructions regarding the award of procurement contracts. In addition, Section 136-a of the State Finance Law states that it is State policy to negotiate contracts for architectural services and/or engineering services and/or surveying services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair

and reasonable fees. The State entity is required to negotiate a contract with the highest qualified professional firm for consultant services at compensation which the entity determines in writing to be fair and reasonable. The legislation applies only to engineering and/or architectural services and/or surveying services in excess of \$25,000.

Fund guidelines state that the selection process begins after a project is advertised in the New York State Contract Reporter. For projects under \$5 million, interested firms must fill out a questionnaire and submit an informational form to the Fund. This information is subsequently entered into their computer database and is used to generate a list of qualified applicants. For projects over \$5 million, interested firms submit statements of qualifications and/or requests for proposals that the Fund uses to develop a list of qualified applicants. For feasibility studies and other such projects, interested firms must submit both statements of qualifications and detailed proposals that are used by the Fund to develop a list of qualified applicants. The Fund's Consultant Selection Coordinator assigns all prospective projects to two subcommittees; the short list subcommittee, which is responsible for assessing the initial listing of all qualified firms and narrowing it to at least three to five (the short list); and the selection subcommittee, which is responsible for rating each of the firms on the short list. Each subcommittee is composed of three members and has a Chair to lead discussions and perform specific tasks. For any project, each subcommittee may perform the duties of the short list or selection subcommittee, but not both.

During the short list selection process, committee members follow similar procedures for each type of project.

- For projects under \$5 million, committee members define the project variables, which are used by the Chair to perform an inquiry of the Funds' computer database to create the initial list of prospective firms. The Chair also provides the list of prospective firms and their qualifications to the campus officials that had requested the project. Committee members meet to review the results of the database inquiry and any feedback obtained from the campus and to develop their short list (in no order of preference).
- For study projects and those projects over \$5 million, the Consultant Selection Coordinator provides the committee and campus officials that had requested the project, with a list of interested firms and their statements of qualifications. After the committee receives input from the campus, they meet to review the scope of the project and the statements of qualifications, and to develop their short list.

During the short list subcommittee meeting, Fund guidelines require that members independently consider selection factors for all potential firms and discuss their determinations before deciding on the short list. The guidelines further state that discussions should focus on the results of the database inquiry, qualifications, requests for proposals, and/or other pertinent information. In addition, members should discuss the initial and final short list results and reconcile differences of opinion. The Fund's Guidelines state that, for each consultant contract awarded by the Fund, the selection subcommittee shall review the scope of the project, the short list subcommittee's list of prospective consultants, minutes of their meeting, and any other back up material or consultant submissions provided by the short list subcommittee. After their review and

contact with the campus to determine their preference of short listed firms (projects under \$5 million), selection committee members prepare ranking forms for each prospective consultant; the consultant with the highest score is recommended to the General Manager for approval.

To determine if the Fund has fully complied with applicable laws, rules, regulations, and other formal guidance regarding the procurement of consultants, we asked Fund officials for a computer download of all consultant contracts awarded from April 1, 2001 through December 31, 2004. The download consisted of 140 contracts with a total value of \$61.4 million. The contracts ranged in value from about \$5,800 to about \$9.1 million. The 140 contracts were issued to 97 different contractors. A majority (66) of the contractors received only one contract and the balance (31 contractors) received two to four contracts. From the population of 140 contracts, we selected a sample of fifteen contracts. Our sample included ten contracts that were selected judgmentally, and five contracts that were randomly selected.

For the 15 contracts that we reviewed, the Fund began with a preliminary list of 6 to 69 contractors and then reduced that number of contractors to between 3 and 5 for the short list. We reviewed each contract for adherence to Fund guidelines for the procurement of consultant contracts. For the fifteen contract award files, we found that Committee members followed the Fund's prescribed guidelines for the procurement of each contract. Contract file documentation contained advertisements for the projects, listings of prospective consultants, correspondence with the campuses, short list subcommittee and campus short list results, meeting minutes, selection subcommittee ranking forms and results, and recommendations to the General Manager.

Although our testing did not yield any procedural exceptions, we noted a limitation in documentation contained within the contract file that affected our ability to substantiate the development of the short list. Specifically, we were unable to determine, from documentation present in the files, how short list subcommittee members transitioned from the initial list of prospective consultants to the short list. The contract procurement files contained no documentation to justify the elimination of consultants from the initial list of qualified firms, and short list subcommittee minutes did not document committee member discussions on how they developed the short list. The short list subcommittee meeting minutes contained in the contract procurement files were documented in a generic format (per Fund guidelines) identifying the meeting date/attendees, project number, title, and campus. These minutes included a findings section stating that the committee reviewed the project, all applicable information, and contacted the campus to obtain their comments on consultant preferences. In addition, the minutes also included a recommendation section that identified the short list. However, Fund committee members stated that they do not keep notes and/or other types of documentation to substantiate the development of the short list or the elimination of firms from the prospective list of consultants. Committee members told us that prospective firms are eliminated via member discussions, individual/group research, reviews of documentation submitted by the firms, input from the regional director/campuses, and prior experiences with firms (if applicable); although the details of these activities are not documented.

Fund guidelines do not require committee members to document the specific justification(s) for the elimination of certain consultants from the initial list of qualified applicants, or for those firms that make the short list. Because this type of information is not contained in the contract procurement files, we were unable to determine the specific reasons for the short list subcommittee's choices of consultants and why those consultants, who did not make the list, were eliminated.

Therefore, we conclude that the addition and retention of documentation that substantiates the addition or removal of certain consultants to/from the short list would help strengthen controls over the overall consultant selection process.

### **Recommendation**

*Modify Fund guidelines to include documentation retention policies to substantiate the development of the short list and to justify the elimination of the consultants from the initial list of qualified firms. Modifications may include enhancements to short list subcommittee minutes and the retention of committee member notes, etc. regarding prospective firms.*

We provided Fund officials with draft copies of this report for their review and comment. Their comments were considered in preparing this report and are included as Appendix A. Fund officials agreed with our recommendation.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the State University Construction Fund 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 recommendation contained herein, and where the recommendation was not implemented, the reasons why.

Major contributors to this report were Brian Mason, Arthur F. Smith, Andrew Fischler, Alicia Bialy, Kelly Evers, Jennifer Van Tassel, and Amanda Strait.

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

Very truly yours,

Steven E. Sossei  
Audit Director

cc: John R. Ryan, Acting Chancellor-SUNY  
Philip Wood, Executive Director-SUCF  
C. Kevin O'Donoghue, University Auditor  
Robert Barnes, Division of the Budget



## STATE UNIVERSITY CONSTRUCTION FUND

Edward F. Cox, Chairman  
Eugene K. Tyksinski, Member  
Stephen V. Reitano, Member

September 2, 2005

Mr. Steven Sossei  
Audit Director  
Office of the State Comptroller  
110 State Street  
Albany, New York 12236

Re: Draft Audit Report of Procurement of Consultant Contracts –  
April 1, 2001 through December 31, 2004  
Report 2005-S-1

Dear Mr. Sossei:

On behalf of the State University Construction Fund Chairman, Edward F. Cox, I am responding to the Office of the State Comptroller's Draft Audit Report 2005-S-1.

The Fund agrees with your recommendation to modify Fund guidelines to include documentation retention policies to substantiate the development of the short list and to justify the elimination of consultants from initial lists of qualified firms.

Thank you for the opportunity to respond to the Draft Audit Report.

Very truly yours,

A handwritten signature in black ink, appearing to read "Philip W. Wood".

Philip W. Wood  
General Manager

Copy: E. Cox, Chairman  
E. Tyksinski  
S. Reitano  
R. Barnes  
K. O'Donoghue