



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 21, 2013

Dr. Matthew Goldstein
Chancellor
City University of New York
Office of the Chancellor
535 East 80th Street – 7th Floor
New York, NY 10075

Re: Report 2011-0046

Dear Dr. Goldstein:

Our Office examined¹ payments made by the City University of New York's Brooklyn College and Hunter College (collectively, the Colleges) from June 1, 2011 through December 31, 2011 to Communications Audio Visual (CAV) for audio visual equipment under Office of General Services Contract Award 21273-E (Award). We also examined payments made by Brooklyn College for audio visual equipment and installation services under Contract N901601 (Contract) for the same time period. Based on the nature of our findings, we expanded the scope of our examination to include CAV employee payroll records for the period January 1, 2011 through December 31, 2011.

The objectives of our examination were to determine whether (i) the payments complied with the terms and conditions of the Award and Contract, (ii) CAV paid its employees prevailing wage rates, and (iii) CAV provided Workers' Compensation coverage to all its employees.

A. Results of Examination

We found the Colleges did not comply with the terms and conditions of the Award, and Brooklyn College did not comply with the terms and conditions of the Contract. Specifically, the Colleges procured installation services not included in the Award, and Brooklyn College paid for equipment and installation under the Contract on an incorrect basis. As a result, CAV received an unfair advantage over other vendors by providing \$196,062 in equipment and services without the Colleges' seeking the required competition or obtaining a properly amended contract when necessary. In addition, the Colleges did not monitor the number of hours worked

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.

by CAV employees providing installation services, and CAV could not provide valid documentation to support hours billed. Therefore, the Colleges cannot demonstrate they obtained the best value for their purchases absent fair and open competition.

We also found CAV did not pay its employees prevailing wage rates. CAV's owner admitted to owing employees more than \$82,000 for the difference between the actual wages paid to the employees who worked at the Colleges in 2011 and the amount owed for prevailing wages and supplemental benefits. CAV could not provide valid documentation, including the required certified payroll records, to support the number of hours its employees worked and may owe the employees significantly more than \$82,000. Instead, CAV provided us with conflicting payroll records. We have referred these findings to the New York State Department of Labor for further investigation.

In addition, the Colleges did not monitor the number of hours worked by contractors and subcontractors or require contractors and subcontractors to submit certified payroll records, as required by law. As a result, the Colleges have no assurance that contractors and subcontractors were paid only for actual hours worked and that contractors and subcontractors required by law to pay their employees prevailing wages were doing so.

CAV may not have provided continuous Workers' Compensation coverage to all its employees, as required by the State Workers' Compensation Law. By under-reporting the number of employees, a contractor may obtain Workers' Compensation insurance at a cheaper rate to cut costs and increase profits. We referred this matter to the New York State Workers' Compensation Board for further investigation.

We shared a draft report with officials from the Colleges and City University of New York (CUNY) Administration. We considered their comments (Appendix A) in preparing this final report. The Colleges and CUNY Administration agree that the terms and conditions of the contract must be adhered to when procuring services and that any changes in those terms and conditions must be permissible or receive the required approvals. The Colleges also agree that they must improve their monitoring of contract performance to substantiate the payment of invoices. The Colleges are also committed to verifying the payment of prevailing wages and ensuring vendors' maintain sufficient workers' compensation coverage. The Colleges also stated that they will increase their efforts to determine vendor compliance; however, ultimate responsibility for complying with these laws must rest with the vendor.

B. Background and Methodology

CAV is an authorized reseller of audio visual equipment and accessories under multiple contracts awarded by the Office of General Services (OGS) under the Award. The Award is limited to the sale of audio visual equipment and accessories and does not include installation. Authorized users of the Award must procure installation separately.

CAV also provides audio visual equipment and installation to Brooklyn College under the Contract. According to the Contract's terms and conditions, CAV is paid for audio visual equipment on a per item basis and for installation on a per hour basis. There are no provisions in the Contract for Brooklyn College to procure audio visual equipment and installation at a combined price that includes both the equipment and installation.

To accomplish our objectives we (i) examined vouchers and other documentation supporting payments to CAV, (ii) reviewed available payroll records, (iii) analyzed the terms and conditions of the Award and Contract, and (iv) interviewed officials from the Colleges and CAV.

C. Details of Findings

Failure to Comply With Terms and Conditions of the Award and Contract

We found the Colleges procured installation services from CAV using the Award, despite College officials' acknowledging installation was not allowed. The Colleges simply awarded the services totaling \$58,567 (\$56,367 for Hunter College and \$2,200 for Brooklyn College) to CAV without competition and charged the services to the OGS contracts under the Award. As a result, the Colleges provided CAV an unfair advantage by circumventing the required procurement process and may not have paid the best price for these purchases. According to Hunter College officials, it was more convenient to procure the audio visual equipment and the installation services from the same vendor.

We also found that Brooklyn College initially procured audio visual equipment on a per item basis and installation on a per hour basis, as required by the Contract. However, the College later procured audio visual equipment and installation services totaling \$137,495 from CAV at a combined price that included equipment and installation on a per room basis. There are no provisions in the Contract for procuring equipment and installation on a per room basis. Brooklyn College officials claimed it was cheaper to procure audio visual equipment and installation services in this manner.

By procuring audio visual equipment and installation from CAV in a manner not provided for in the Contract, Brooklyn College changed the scope of services obtained under the Contract. According to Chapter XI, Section 2.H of the Office of the State Comptroller's (OSC) Guide to

Financial Operations, if during the contract term there is a change in the scope of services, the agency must submit an amendment to OSC for review and approval (if appropriate) before the change can be made. Brooklyn College did not amend the Contract. Therefore, Brooklyn College should have followed the terms and conditions of the Contract. By not doing so, Brooklyn College provided CAV an unfair advantage over other vendors and may not have paid the best price for these purchases.

In addition, the Colleges did not monitor the number of hours worked by CAV employees providing installation services, and CAV could not provide valid documentation to support that its employees actually worked hours billed. Consequently, the Colleges cannot demonstrate they paid a competitive price for the installation services under the Award, and Brooklyn College cannot demonstrate it was cheaper to procure audio visual equipment and installation services on a combined, per room basis.

Failure to Pay Prevailing Wage Rates

Article 8, Section 220 of the State Labor Law requires contractors and subcontractors working on Public Works projects to pay their employees at least the prevailing wage rates and pay or provide the prevailing supplemental benefits (e.g., health insurance). Contractors and subcontractors are also required to keep original payrolls or transcripts showing the hours and days worked by each employee, the occupation at which he/she worked, the hourly wages paid and the supplements paid or provided. Contractors and subcontractors are also required to certify the payroll records are true under the penalty of perjury and to submit the certified payroll records to the entity for which they are providing services.

In order to determine if CAV paid its employees the appropriate prevailing wage rates, we requested CAV's payroll records for 2011. CAV provided two sets of payroll records. According to the first set of payroll records, nine CAV employees provided 1,883 hours of service at Brooklyn College and nine CAV employees provided 1,608 hours of service at Hunter College. According to the second set, eight CAV employees provided 199 hours of service at Brooklyn College and nine CAV employees provided 428 hours of service at Hunter College. CAV's payroll records did not include the employees' last names, the occupations worked, the hourly wages paid, or the supplements paid or provided.

Subsequently, CAV hired an accounting firm to compile payroll records for 2011. According to a spreadsheet prepared by the accounting firm, 11 CAV employees provided 2,031 hours of service at Brooklyn College and 10 CAV employees provided 1,401 hours of service at Hunter College in 2011.

In response to our questions regarding the state of CAV's payroll records and the differences between CAV's payroll records and the spreadsheet prepared by the accounting firm, CAV's owner admitted he did not pay his employees prevailing wage rates. He also admitted to owing his employees more than \$82,000 (\$49,907 for Brooklyn College and \$32,200 for Hunter College) for the difference between the actual wages paid to the employees who worked at the Colleges in 2011 and the amount owed for prevailing wage rates and supplemental benefits.

The lack of information maintained by CAV and the inconsistencies in the payroll records cause us to question whether CAV provided our auditors with potentially fraudulent payroll records in an attempt to cover up the fact that it did not pay its employees the appropriate prevailing wage rates or maintain certified payroll records. Based on these inconsistencies, we also question if CAV owes its employees more than the \$82,000 the owner admitted he owed. Therefore, we have referred our findings to the New York State Department of Labor for further investigation.

We found the Colleges did not monitor the number of hours worked by contractors and subcontractors or require those contractors and subcontractors to submit certified payroll records, as required by law. Had the Colleges done so, they could periodically review the certified payroll records to ensure contractors and subcontractors were paid only for actual hours worked and that contractors and subcontractors paid prevailing wage rates. As a result, the Colleges have no assurance that contractors or subcontractors are paid only for actual hours worked and are complying with Article 8, Section 220 of the State Labor Law.

Workers' Compensation Coverage

Workers' Compensation insurance provides cash benefits and/or medical care for workers who are injured or become ill as a direct result of their job. The State Workers' Compensation Law requires employers to provide continuous Workers' Compensation insurance coverage for all employees, including part-time staff. The law also requires employers to keep accurate records of the number of employees, job classification, wages and accidents for four years. If an employer fails to maintain coverage and an employee is injured or becomes ill as a direct result of his or her job, the employer is liable for the actual award (including both compensation and medical costs), plus any other penalties the Workers' Compensation Board assesses. Pursuant to the law, Appendix A of the Contract requires CAV to maintain Workers' Compensation insurance coverage for its employees during the life of the contract.

CAV submitted proof of Workers' Compensation insurance to Brooklyn College as part of the bid process for the Contract. Our review showed that this policy covered three employees. However, payroll records CAV provided to us indicate CAV may have at least 14 full-time and/or part-time employees. Accordingly, CAV may not have provided Workers' Compensation coverage to all employees as required by law and the Contract.

Based on the nature of our findings throughout the examination, we question whether CAV may have intentionally and materially understated or concealed payroll to obtain Workers' Compensation insurance at a cheaper rate. Doing so could result in a fine and/or criminal conviction. Therefore, we referred this matter to the New York State Workers' Compensation Board for further investigation.

Recommendations

To Brooklyn and Hunter Colleges

- 1) *Establish a process to monitor and evaluate vendors' compliance with contract terms and conditions.*
- 2) *Ensure invoices only for work within the scope of existing contracts are charged against those contracts.*
- 3) *Ensure all contractors and subcontractors with Public Works contracts submit certified payroll records, as required by law.*
- 4) *Periodically review certified payroll records to ensure contractors and subcontractors are paid only for hours worked and are paying prevailing wage rates.*
- 5) *Ensure all contractors and subcontractors provide Workers' Compensation insurance to all employees.*

To Brooklyn College

- 6) *Ensure staff complies with Chapter XI, Section 2.H of OSC's Guide to Financial Operations.*

We thank the management and staff of the City University of New York, Brooklyn College, and Hunter College for the courtesies and cooperation extended to our auditors. Since your response to the draft is in agreement with this report, there is no need for further response unless you feel otherwise. If you choose to provide a response, we would appreciate it by April 19, 2013.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Attachment: Appendix A

cc: Karen Gould, President of Brooklyn College
Jennifer Raab, President of Hunter College
Barry Kaufman, University Comptroller, City University of New York
Gordon Taylor, Director of Internal Audit, City University of New York



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March 8, 2013

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

Re: Draft Report 2011-0046—Communications Audio Visual

Dear Mr. McHugh:

We have reviewed the above-captioned draft report of OSC's examination of payments made by Brooklyn College and Hunter College to Communications Audio Visual (CAV) and of CAV's employee payroll records. The colleges' responses to the recommendations contained in the report are attached.

The audited colleges generally agree that in procuring services from the subject vendor or any other vendor, pursuant to an OGS contract or college contract, the strictures of the contract must be adhered to and that changes in the scope of contract performance must be permissible or receive the proper approvals. The colleges also agree that they must improve their monitoring and tracking of contract performance so as to substantiate the payment of invoices.

With respect to the vendor's compliance with New York State Labor Law and New York State Workers' Compensation Law, the colleges are committed to exercising the requisite due diligence with respect to verifying the payment of prevailing wages and the vendor's provision of workers compensation coverage to its employees; however, the colleges are not in a position to absolutely ensure that a vendor is complying with either law. There may be instances, for example, where a college may request and receive documentation that purports to provide evidence that a vendor is complying with the law, but the documentation may in actuality be fraudulent. The colleges would have limited means to verify the authenticity or veracity of such documentation. While the colleges will enhance their efforts to ascertain vendor compliance, ultimate responsibility for complying with these laws must rest with the vendor.

If you have questions about the colleges' responses, please do not hesitate to contact me.

Very truly yours,


Gordon Taylor
Director

Attachments [2]

cc: Chancellor Matthew Goldstein
Executive Vice Chancellor and COO Allan H. Dobrin
Senior Vice Chancellor Marc V. Shaw
Associate Vice Chancellor Matthew J. Sapienza

IA# 2172



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March 4, 2013

To: Gordon C. E. Taylor, Esq., Director of the Office of Internal Audit and Management Services, CUNY

From: Alan Gilbert, Assistant Vice President for Finance, Budget and Planning/Comptroller *AG*

Re: Draft Report 2011-0046

1. Establish a process to monitor and evaluate vendors' compliance with contract terms and conditions.

We agree that due diligence was not performed in the monitoring of hours and also in not ensuring that prevailing wages were paid to the employees who performed the onsite work. Going forward the College will ensure that for any public works contracts awarded, it will:

Require that the contracting area provide a designated campus liaison who will maintain a signed log consisting of the start and finish times, the names and classification of the employees on site and the location(s) worked on that day. The liaison will also perform a walkthrough at the end of each day to verify that the work is progressing in a timely manner and is being performed in accordance with the contract.

The Accounts Payable department will request the campus liaison to provide the log documentation and copies of the certified payrolls to support invoices submitted for payment of labor hours.

2. Ensure invoices only for work within the scope of existing contracts are charged against those contracts.

Vendors will be reminded that items not covered under the contract should not be included on the invoices relating to that contract, but rather should be purchased and invoiced separately. Also, Purchasing and A/P departments will be instructed to pay closer attention to vouchers and invoices to ensure that payments are made in accordance with the contract.

The vendor will be required to provide a more detailed invoice listing all of the goods (equipment supplied and the labor units (hours) for the installation work. Equipment and labor hours will be shown separately and will be itemized on the invoice.



Closer attention will be paid to the guidelines of OGS contracts by the Purchasing and A/P departments to ensure that payments are not made for items that are not covered by the contract.

3. Ensure all contractors and subcontractors with Public Works contracts submit certified payroll records, as required by law.

The College will ensure that it receives certified payroll records within the required timeframe and maintain these records in accordance with the law. The College will also advise contractors and subcontractors that non-compliance will adversely affect payment on the invoices submitted to A/P.

4. Periodically review certified payroll records to ensure contractors and subcontractors are paid only for hours worked and are paying prevailing wage rates.

The College will review the contractor certified payroll records, the signed logs maintained by the campus liaison and the invoice submitted for payment by the contractor to ensure that employees are compensated in accordance with the Department of Labor's Prevailing Wage Schedule.

5. Ensure all contractors and subcontractors provide Workers' Compensation insurance to all employees.

In addition to the Worker's Compensation Insurance Certificate, the College will request a list of the employees covered by the certificate and compare with the certified payroll records submitted to the College.

6. Ensure staff complies with Chapter XI, Section 2.H of OSC's Guide to Financial Operations.

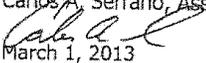
The College will ensure that any changes to the scope of a contract will be submitted to OSC for review and approval prior to the change being made by the College.

HUNTER

The City University of New York

To: Gordon Taylor, Director of Internal Audit & Management Services

From: Carlos A. Serrano, Assistant Vice President for Business Services

Date: 
March 1, 2013

Subject: Response to Office of State Comptroller Audit DRAFT Report –
2011-0046 – Communications Audio Visual

We have reviewed Draft Report 2011-0046 from the Office of the State Comptroller dated January 30, 2013 and appreciate the opportunity to comment on its findings and recommendations. Below is a summary on the report's findings, as they pertain to Hunter College, with comments and identified corrective actions.

Findings:

- 1) The College did not comply with the terms and conditions of the Award. Specifically, the College procured installation services not included in the award. As a result, the vendor received an unfair advantage over other vendors by providing services without the College seeking the required competition.

Comments: The contractor, Communications Audio Visual (CAV), is an authorized reseller of audio visual equipment and accessories under multiple contracts awarded by the Office of General Services (OGS). Hunter College correctly procured for the purchase of equipment covered within the scope of the OGS awarded contracts. Regrettably, even though internal business practices require all procured services to be in compliance with New York State contract terms and conditions, an oversight permitting this vendor to perform installation services occurred. As a result, corrective action measures will be implemented to mitigate any reoccurrence. Specifically, as part of internal business practice, copies of authorized State contract scopes of services will be matched to requested services and be included as part of the review package prior to issuance of a purchase order.

- 2) The College did not monitor the number of hours worked by CAV or require submission of certified payroll records, as required by law. As a result, there are no assurances CAV was paid only for actual hours worked and paid their employees prevailing wages.

Comments: Hunter's business practice has been to monitor vendor hours and require the submission of certified payrolls for contracts, however, at that time, we were not aware of the applicability of this requirement for goods and services procured off a state contract. Corrective action measures to mitigate a reoccurrence will include the following requirements on all solicitations, specs and purchase orders and become part of the review package prior to issuance of a purchase order:

- a) Proof of Worker's Compensation Insurance;
- b) Submission of Certified Payrolls as a condition for payment;
- c) Requirement for signing in / out while on site performing services; and
- d) Requirement for paying Prevailing Wage in accordance with New York State Department of Labor.

As a condition of payment, submission of the required documentation above will be used by Accounts Payable personnel to verify hours invoiced against vendor sign-in sheets, proof of prevailing wage compliance, and proof of existing worker's compensation insurance.

Recommendations:

- 1) Establish a process to monitor and evaluate vendor's compliance with contract terms and conditions;
- 2) Ensure invoices only for work within the scope of existing contracts are charged against those contracts;
- 3) Ensure all contractors and subcontractors with Public Works contracts submit certified payroll records, as required by law.
- 4) Periodically review certified payroll records to ensure contractors and subcontractors are paid only for hours worked and are paying prevailing wage rates.
- 5) Ensure all contractors and subcontractors provide Worker's Compensation insurance to all employees.

Comments on Recommendations:

We concur with the recommendations and have outlined corrective action measures in our responses to the findings that we believe will serve to enhance internal business practices and controls going forward.

Cc:

Leonard F. Zinnanti, VP for Administration
Sharon Neill, AVP for Budget and Financial Planning

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