

THOMAS P. DiNAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 15, 2021

Dr. Betty A. Rosa
Commissioner
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Re: Report 2019-BSE2-01

Dear Commissioner Rosa:

Our Office examined¹ certain advance payments made pursuant to grant contracts or agreements (contracts) by the New York State Education Department (SED) during the period of July 2012 through July 2018. The examination focused on contracts where SED only made a single advance payment under the contract totaling 25 percent of the total value of the contract and the contract expired on or before June 2018. The objective of our examination was to determine whether SED monitors their contractors' performance to ensure they expended the advance funds in accordance with the terms and conditions of the contracts. We found that SED needed to improve its contract monitoring in this area. SED officials previously indicated to us they were making changes to their monitoring practices to address our finding.

SED is required to follow contract terms and its relevant guidelines, the Fiscal Guidelines and Special Legislative Projects and Assistance Guidelines (collectively Guidelines), when making advance payments to contractors under associated contracts. These Guidelines state the contractor is entitled to receive an initial payment in "advance" of incurring expenditures. Depending upon the grant program, an automatic first payment may be made. SED routinely advances the first 25 percent of a grant contract amount whether the contractor requests the advance or not.

According to the Guidelines, if the contractor requested subsequent funds, the contractor was required to provide SED an interim report documenting how the initial advanced funds were expended. Contractors are also required to file additional reports as they complete activities or request additional funds, or when contracts expire. However, if the contractor does not file any

¹ We performed our examination in accordance with the State Comptroller's authority set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8(1) and (7), and Article VII, Section 111 of the State Finance Law.

reports, SED officials stated their program managers would not contact the contractors to close out the contracts until the grant funds were no longer re-appropriated instead of when the contracts expired. Consequently, SED may not seek these reports for years, reducing the likelihood of receiving an accounting of how advanced funds were expended.

Since 2012, SED made 216 advance payments totaling \$546,625 to 113 contractors whose 25 percent advance payment was the only expenditure made under the contract. The contracts had a total value of \$2,186,500. We selected 13 contracts totaling \$224,000 (\$56,000 in advances) to review their terms and conditions and assess the steps SED performed to monitor these contracts. We found SED officials did not obtain any reports from the 13 contractors at the time of our review even though the contracts had expired. Therefore, SED did not obtain documentation detailing how these contractors expended the advanced funds they received. As a result, SED did not have assurance the contractors expended the funds as required by the contract nor did SED know whether the contractors owed a refund of unspent funds to the State.

To accomplish our examination objective, we interviewed the SED official responsible for administering these contracts. We also reviewed contract terms and conditions for the 13 grants in our sample, all correspondence between SED and the contractors, and the Guidelines.

Recommendations

- 1) *Continue to implement improved procedures that will help determine timely whether funds were expended in accordance with the terms and conditions of the contracts.*
- 2) *Determine whether funds were expended in accordance with the terms and conditions of the contracts and recover overpayments as appropriate.*
- 3) *Implement a policy for new contracts of only sending advance payments when requested by contractors.*

We shared a draft report with SED officials and considered their comments (Attachment A) in preparing this final report. SED officials agreed with our recommendations and stated they had previously lowered the advanced amount for contracts funded from 2019-20 and 2020-21 appropriations to 10 percent of the total contract value. In addition, SED will: discontinue advance funding for 2021-2022 appropriations; implement a dunning process to ensure previously advanced funds meet the terms and conditions of the contracts; and require any contractor that

has not submitted a Final Expenditure Report to substantiate the expenditure of funds received to date.

We thank the management and staff of the State Education Department for the courtesies and cooperation extended to our auditors. Since your response to the draft report is in agreement with this report, there is no need for a further response unless you feel otherwise. If you choose to provide a response, we would appreciate receiving it by October 15, 2021.

Sincerely,

Holly Reilly
Director of State Expenditures

Encl: Attachment A

cc: James Kampf



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

EXECUTIVE DEPUTY COMMISSIONER
(518) 473-8381
E-mail: Sharon.Cates-Williams@nysed.gov

July 13, 2021

Holly Reilly
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Ms. Reilly:

The New York State Education Department (Department) offers the following response to the Office of the State Comptroller's draft report (2019-BSE2-01) associated with their examination of certain advance payments made by the Department during the period July 2012 through July 2018.

Recommendation 1:

"Continue to implement improved procedures that will help timely determine whether funds were expended in accordance with the terms and conditions of the contracts."

The Department previously lowered the advanced amount for contracts funded from 2019-20 and 2020-21 appropriations to 10% of the total value of the contract and will no longer advance any funding for 2021-22 appropriations. In addition, we will be implementing a dunning process to ensure that any funds previously received meet the terms and conditions of the contracts.

Recommendation 2:

"Determine whether funds were expended in accordance with the terms and conditions of the contracts. Recover overpayments as appropriate."

The Department agrees with the recommendation and will issue a letter (template attached) to any contractor that has not submitted a Final Expenditure Report to substantiate the funds received to date.

Recommendation 3:

"Implement a policy for new contracts of only sending advance payments when requested by contractors."

The Department previously lowered the advanced amount for contracts funded from 2019-20 and 2020-21 appropriations to 10% of the total value of the contract and will no longer advance any funding for 2021-22 appropriations.

If you have any questions regarding this response, please contact Ed Lenart at Edward.Lenart@nysed.gov.

Yours truly,

A handwritten signature in black ink that reads "Sharon Cates-Williams". The signature is written in a cursive style.

Sharon Cates-Williams

Attachment

c: Phyllis Morris
Edward Lenart
Nell Brady
Kristen Alderman
Michelle Doyle
James Kampf

[Letterhead]

[TODAY'S DATE]

[RECIPIENT]
[SALUTATION] [NAME 1] [NAME 2]
[STREET] [ADDRESS 2]
[CITY], [STATE] [ZIP CODE]

Dear Special Legislative Grant Recipient,

You are receiving this letter because you have an approved contract with the NYS Education Department for a Special Legislative Project, and we processed an advance payment to your organization a year or more ago.

Contract: [CONTRACT #]
Purpose: [LEGISLATIVE INTENT OF GRANT]

The terms and conditions in Attachment D of your contract outline the Payment and Reporting Schedule. In summary, Special Legislative Projects are reimbursable grants; organizations must spend money above and beyond the initial advance payment, and then submit requests for reimbursement. You can do so on an interim basis (up to 90% of the total grant amount) or through a Final Report when the project is complete, and you've spent the balance on the grant.

Your action is required, please see below for the situation that applies to your organization:

1. If your organization has expended the advance payment and then some, or has expended 100% of the grant award, you should submit a Final Report. The Final Expenditure Report should detail all expenses that fall within the approved contract period.
2. If a portion of the advance has been expended, but not all of it, you should fill out a Final Expenditure Report for the amount spent and return the remaining funds.
3. If the advance payment has not been expended, you must return the funds.

Submitting a Final Expenditure Report: If your organization has a contract on the Grants Gateway, please log-in as a Grantee Payment Signatory and submit a Final Claim. If your contract was processed on paper, the report consists of three documents: Expenditure Form (SLP-10-F), State Aid Voucher (AC1171), and Final Program Narrative. The forms and instructions can be found on our website: www.oms.nysed.gov/budget/slp/.

Returning funds to the state: Make the check out to *Commissioner of Tax and Finance*, include your contract number on the memo line, and mail to my attention at the address below in my signature line.

Attachment A

If you have any questions, please contact Kristen Alderman at kristen.alderman@nysed.gov so she can respond with requested information, or schedule a call as needed.

Thank you,

Kristen M. Alderman