

THOMAS P. DINAPOLI
COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 30, 2018

Kristina M. Johnson
Chancellor
The State University of New York
State University Plaza
353 Broadway
Albany, NY 12246

Re: Report 2018-BSE03-02

Dear Chancellor Johnson:

As part of our daily audit of payments, we examined¹ more than \$5,000 in bonuses for which Sunset LG Realty, LLC (Sunset) paid, and requested reimbursement, in 2016 under lease contract L120019 (Contract) with SUNY Downstate Medical Center (Downstate). Our objective was to determine whether the bonuses were appropriate and in compliance with the Contract. To accomplish our objective, we analyzed the Contract, examined pertinent documentation, and interviewed Downstate officials.

This Contract required Sunset to operate, maintain, and make necessary repairs to Downstate's Bay Ridge medical facility. The Assistant Facilities Program Coordinator, a Downstate employee, was responsible for overseeing daily operations such as housekeeping and facility improvements, which includes maintenance and repairs.

Under the Contract, Sunset may request reimbursement from Downstate for approved bonuses and other compensation paid to Sunset employees. We found one bonus for \$2,000 was inappropriate and not in compliance with the Contract because it was not paid to a Sunset employee. Rather, Sunset paid the bonus to the Assistant Facilities Program Coordinator, a Downstate employee. Based on this payment, we reviewed 2015 bonuses paid to the Downstate employee and identified an additional \$1,000 bonus. We verified the remaining bonuses paid by Sunset in 2016 were appropriate.

New York State Public Officers Law (POL) § 73(5)(a) prohibits state employees from receiving gifts, including the payment of money, having more than a nominal value where such gift could influence that employee in the performance of his or her official duties or reward the employee for

¹We 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.

any official action on his or her part. Here, the Downstate employee supervised the services provided by Sunset under the Contract. Accordingly, our Office referred this matter to the New York State Joint Commission on Public Ethics (Commission) for review. The Commission concluded the employee had violated POL § 73(5)(a). In settlement of the violation, the Downstate employee paid the Commission \$4,000 and resigned from his position on December 11, 2017.

Downstate officials require all employees to attend annual training on Downstate's Code of Ethics and Business Conduct, which prohibits employees from accepting gifts from vendors doing business with Downstate. Despite attending this training, the employee accepted the prohibited bonuses.

We provided SUNY a copy of the draft report and considered their comments (Attachment A) in preparing this final report. SUNY officials generally agreed with our recommendations, stating that employees receive POL and Code of Ethics training annually and during new hire orientation. Furthermore, SUNY will notify Sunset that Downstate employees cannot accept bonuses.

Recommendations

1. *Ensure employees understand and comply with New York State Public Officers Law § 73(5)(a) and Downstate's Code of Ethics and Business Conduct which prohibits employees from accepting gifts from vendors.*
2. *Notify the vendor they are prohibited from providing bonuses to Downstate employees.*

We thank the management and staff of SUNY Downstate Medical Center for the courtesies and cooperation extended to our auditors during this examination. 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 November 30, 2018.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Encl: Attachment A

cc: Dr. Wayne Riley
Renee Poncet
Amy Montalbano
Eileen McLaughlin



The State University
of New York

**Office of the
Chief Financial Officer**

State University Plaza
Albany, New York 12246

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October 17, 2018

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

Dear Mr. McHugh:

In accordance with Section 170 of Executive Law, we are providing our responses on the Office of State Comptroller (OSC) draft report 2018-BSE03-02, hereafter the (Draft Report). The University generally agrees with the recommendations.

OSC Recommendations and Downstate Medical Center (DMC) Responses:

OSC Recommendation #1:

Ensure employees understand and comply with New York State (NYS) Public Officers Law (POL) §73(5)(a) and DMC's Code of Ethics and Business Conduct which prohibits employees from accepting gifts from vendors.

DMC Response #1:

Agree. Upon new hire orientation and during annual mandatory training DMC Human Resources (HR) provides training and literature to employees on NYS POL and DMC's Code of Ethics and Business Conduct.

OSC Recommendation #2:

Notify the vendor they are prohibited from providing bonuses to Downstate employees.

DMC Response #2:

Agree. SUNY Office of General Counsel Brooklyn Regional Office will notify the vendor that according to POL §73(5)(a) they are prohibited from providing bonuses to DMC employees.

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

Sincerely,

A handwritten signature in cursive script that reads "Eileen McLoughlin".

Eileen McLoughlin,
Senior Vice Chancellor for Finance and Chief Financial Officer

Copy: President Riley, Dr. Azziz, Ms. Garvey, Mr. McGrath, Ms. Fargnoli, Mr. Matthews, Ms. Montalbano, Ms. Poncet/Downstate Medical Center

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