

THOMAS P. DiNAPOLI  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

February 1, 2016

Dr. William J. Fritz  
President  
College of Staten Island  
The City University of New York  
2800 Victory Boulevard  
New York, NY 10314

Re: Report 2015-BSE4-01

Dear Dr. Fritz:

We examined<sup>1</sup> a \$22,800 claim for payment from the College of Staten Island (the College) payable to Fast Track MK LLC (Fast Track) to determine if the procurement and the claim for payment were appropriate. College officials procured brackets, support components and hardware that will serve as supports for wooden benches on the campus.

We shared a draft report with College officials and considered their comments (Attachment A) in preparing the final report. The State Comptroller's comments on the College's response are included in Attachment B.

We found the College did not conduct the procurement in accordance with State Finance Law. Specifically, the College did not: (i) reject quotes from offerers that did not comply with mandatory requirements; (ii) specify all the elements of a responsive quote or disclose the process for awarding contracts to potential offerers; or (iii) advertise the procurement in the New York State Contract Reporter. While the College awarded the procurement to the lowest responsive offerer, it is critical that College officials develop practices to ensure that future procurements comply with applicable laws, rules and regulations so that the College achieves its mission, protects taxpayer money, and deals fairly with the business community.

We also found the College approved the claim for payment, even though it was inappropriate, because Campus Planning and Facilities Management (Campus Planning) officials informed the Accounts Payable department that they received the brackets and hardware when, in fact, they only received the brackets. Campus Planning officials explained they did so because they determined the cost of the undelivered hardware was immaterial.

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<sup>1</sup> 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, and Article VII, Section 111 of the State Finance Law.

Lastly, we found Accounts Payable staff failed to exercise reasonable care and professional skepticism when reviewing the claim for payment. Specifically, staff approved the claim for payment even though several anomalies were present on the shipping documents they reviewed. For example, Fast Track provided two versions of the shipping document to the College – one to satisfy the initial request from College officials and a second one based on an inquiry from our Office. Both documents had altered, hand written addresses and the second version included new information in a font that does not appear elsewhere on the document. In addition, the receiving documentation did not include a bill of lading, a standard document issued by carriers to support the merchandise shipped. Had Accounts Payable staff followed up on these anomalies, they could have identified that Fast Track altered the documents. This could have prompted staff to look further to ensure receipt of the brackets and hardware.

We found the College eventually received all the goods ordered. However, it is imperative that College officials incorporate reasonable care and professional skepticism into the claims review process to ensure payment authorization only for goods actually received.

### **Recommendations**

- 1. Ensure vendors provide all goods and/or services prior to submitting claims for payment to our Office.*
- 2. Train staff to audit and process claims for payment in accordance with Title 2, Part 6 of the New York Codes, Rules and Regulations.*
- 3. Train staff to conduct procurements in accordance with Section 163 of the State Finance Law.*

We would appreciate your response to this report by March 1, 2016 indicating any actions planned to address the recommendations in this report. We thank the management and staff of the College for the ongoing courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

Encl: Attachment A  
Attachment B

cc: Gordon Taylor, Director of Internal Audit & Management Services  
Ira Persky, Vice President of Finance and Administration



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Ira S. Persky  
Vice President for Finance and Administration

January 15, 2016

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

Dear Mr. McHugh:

Subject: Response to Office of State Comptroller audit Draft Report 2015-BSE4-01

We have reviewed Draft Report 2015-BSE4-01 from the Office of the State Comptroller dated December 17, 2015 and appreciate the opportunity to comment on its findings and recommendations. Below is a summary on the report's findings with comments and identified corrective actions.

**Findings:**

- 1) The College did not conduct the procurement in accordance with State Finance Law. Specifically, the College did not: (i) reject bids from offerers that did not comply with mandatory requirements; (ii) specify all the elements of a responsive bid or disclose the process for awarding contracts to potential bidders; or (iii) advertise the procurement in the New York State Contract Reporter. While the College awarded the procurement to the lowest responsive bidder, it is critical that College officials develop practices to ensure that future procurements comply with applicable laws, rules and regulations so that the College achieves its mission, protects taxpayer money, and deals fairly with the business community.

**Comments:**

The College conducted the procurement utilizing a competitive informal purchasing method – the Request for Quote – in accordance with the University's guidelines and consistent with the discretionary purchasing authority granted the University by the State of New York. It was not a competitive sealed bidding procurement. Accordingly, all references in the draft report to the "acceptance or rejection of bids," or to "offerers" are not relevant to the subject procurement. Additionally, consistent with University informal procurement policy, the subject procurement was not required to be advertised inasmuch as the purchase was below the \$50,000

ment



threshold for advertising. Although the total dollar value of all of the items for which quotations were submitted by a respondent may have exceeded \$50,000, the actual purchase was below the threshold. The College could not have been expected to know when they issued the RFQ that the installation component of the purchase would have raised the procurement over the \$50,000 threshold. The fact that the purchase order issued by the College did not include installation proves that installation by an outside party was not an essential element of the overall project.

- 2) The College approved the claim for payment, even though it was inappropriate, because Campus Planning and Facilities Management (Campus Planning) officials informed the Accounts Payable department that they received the brackets and hardware when, in fact, they only received the brackets. Campus Planning officials explained they did so because they determined the cost of the undelivered hardware was immaterial.

Comments:

Campus Planning officials did inform Accounts Payable staff that they received full shipment of the goods ordered when in fact partial shipment was initially delivered. While Campus Planning staff believed the undelivered hardware was immaterial, their representation to Accounts Payable personnel failed to follow College guidelines in reporting partial shipments.

Corrective Action Plan:

Campus Planning staff will be required to attend a refresher course on requirements for reporting discrepancies with orders and processing claims for payment.

- 3) Accounts Payable staff failed to exercise reasonable care and professional skepticism when reviewing the claim for payment. Specifically, staff approved the claim for payment even though several anomalies were present on the shipping documents they reviewed.

Comments:

Current business practice requires end user departments to process a payment request once goods and/or services ordered are received, examined and deemed acceptable. Specifically, an authorized representative from the department must enter a system generated receipt in CUNYfirst, sign and attach packing slips and invoices received (in CUNYfirst) and forward all original supporting documentation to the Accounts Payable Office for review and processing, if deemed sufficient and appropriate. While staff demonstrated proper protocol, in identifying missing documentation (proof of delivery), and took reasonable steps to confirm receipt of goods ordered, it relied wholly on vendor documentation to process the claim for payment. Finally, as noted in the Draft Report, despite this unintentional oversight, it is important to reiterate that the College received all the goods ordered.

Corrective Action Plan:

Accounts Payable staff will be required to attend refresher training to audit and process claims for payment pursuant to State regulations.

**OSC Recommendations**

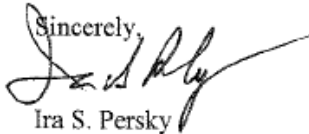
- 1) Ensure vendors provide all goods and/or services prior to submitting claims for payment to our Office.
- 2) Train staff to audit and process claims for payment in accordance with Title 2, Part 6 of the New York Codes, Rules and Regulations.
- 3) Train staff to conduct procurements in accordance with Section 163 of the State Finance law.

**Comments on Recommendations:**

We concur with recommendations #1 and #2 and have outlined corrective action measures in our responses to those findings that we believe will serve to enhance internal business practices and controls going forward. We do not concur with recommendation #3 for the reasons outlined in our comments to finding #1 above.

The College of Staten Island will continue to require its supervisory staff to attend monthly CUNY Purchasing / Accounts Payable meetings, the Office of the State Comptroller's annual Procurement and Accounts Payable forums and keep abreast of current guidelines, rules and regulations to improve our business operations.

Sincerely,



Ira S. Persky  
Vice President for Finance and Administration

C: William J. Fritz, President, College of Staten Island  
Gordon C. E. Taylor, Esq., University Executive Director  
Carlos A. Serrano, Assistant Vice President for  
Finance and Budget, College of Staten Island

**State Comptroller Comments on Auditee Response**

1. Section 163 of the State Finance Law requires State agencies to purchase from responsive offerers whether by formal or informal procurement, hence the use of the term offerers. We changed the term “bid” to “quote” in the final report to accurately characterize the document each vendor used to respond to the Request for Quote.
2. Section 163 of the State Finance Law requires State agencies to advertise in the Contract Reporter all procurements they estimate will exceed \$50,000. The Request for Quote (RFQ) issued by the College requested that vendors submit separate quotes for fabricating and installing the brackets, support components and hardware (collectively, goods). Prior to issuing the RFQ, College officials solicited a price estimate from Fast Track to fabricate the goods, but did not solicit a price estimate to install them. Had they solicited price estimates for both, they could have estimated the aggregate value of the procurement. Since both quotes that included fabrication and installation materially exceeded \$50,000, it is reasonable to conclude that College officials should have advertised the procurement in the Contract Reporter.



# College of Staten Island

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William J. Fritz, PhD  
President

March 4, 2016

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

Dear Mr. McHugh:

Subject: Response to Office of State Comptroller audit Report 2015-BSE4-01

We have reviewed Draft Report 2015-BSE-01 (the Draft Report) from the Office of the State Comptroller dated February 5, 2016 and appreciate the opportunity to comment on its findings and recommendations. Below is a summary of the Draft Report's findings with comments and identified corrective actions.

#### Findings:

- 1) The College did not conduct the procurement in accordance with State Finance Law. Specifically, the College did not: (i) reject quotes from offerers that did not comply with mandatory requirements; (ii) specify all the elements of a responsive quote or disclose the process for awarding contracts to potential offerers; or (iii) advertise the procurement in the New York State Contract Reporter. While the College awarded the procurement to the lowest responsive offerer, it is critical that College officials develop practices to ensure that future procurements comply with applicable laws, rules and regulations so that the College achieves its mission, protects taxpayer money, and deals fairly with the business community.

#### Comments:

The College will address points (i), (ii) and (iii) of draft finding 1 in turn. However, please note that in general the subject purchase was conducted under the University's discretionary purchasing authority and using discretionary purchasing methods that are not subject to the formal solicitation requirements discussed in the Draft Report. The College instead made a discretionary purchase utilizing an informal purchasing method – the Request for Quote (RFQ) – in accordance with the University's guidelines and consistent with the discretionary purchasing authority granted to the University by the State of New York.

Under the University's Informal Purchasing guidelines, and consistent with New York State law and State Discretionary Purchasing Guidelines, purchases under the University's discretionary purchasing threshold are not subject to the formal competitive solicitation processes that are otherwise required by applicable law and policy. Accordingly, the RFQ is not a formal solicitation and therefore is not subject to the same requirements as formal solicitation methods such as Invitations for Bids (IFB) or Requests for Proposals (RFP). Under the University's discretionary purchasing authority the College may make purchases from responsible vendors that meet the College's form, function and utility requirements and



that offer a price that the College determines to be reasonable. The RFQ is one method among many (written quotes, phone quotes, OGS or less, historical pricing, etc.) that may be used to determine the reasonableness of pricing associated with a potential purchase to be made under the College's discretionary purchasing authority. Consistent with University and New York State guidelines the College correctly used the RFQ for this purpose.

- (i) The Draft Report contains a tentative finding that the College failed to reject quotes from offerers that did not comply with mandatory requirements of the RFQ. However, there is no applicable requirement that the College reject every non-responsive offer it receives. In addition, the College did evaluate the lowest quote received by the College, which was submitted by Fast Track MK LLC (Fast Track), and related information submitted by FastTrack, including vendor responsibility documentation.

There is no requirement that the College perform an evaluation of the responsiveness of each quote or offer received in the course of a formal procurement or a discretionary purchase, nor is there any requirement that the College reject each non-responsive offer. Instead the College is required to make awards to responsible vendors who are responsive to any mandatory requirements specified by the College. College staff only evaluate the responsiveness of a low bid or low quote, or the offer of any other tentative awardee or contractor, and this approach is consistent with New York State practice and guidance. For example, Section IV (B) of the New York State Procurement Guidelines provide the following guidance for verifying the responsiveness of bids received under formal IFB solicitations (emphasis added).

Step 10: Verify Responsiveness and Responsibility of Apparent Low Bid  
Beginning with the apparent low bid, the agency must verify that: 1) the **winning bid is responsive** by meeting all mandatory requirements and specifications of the IFB; and 2) the winning bidder is responsible. If the **apparent low bidder** is not found to be responsive or responsible, the bid must be rejected and the **next lowest price bid must be reviewed**. In addition, notice should be provided to **an apparent low bidder** who is being rejected as non-responsive or non-responsible.

The College reviewed the lowest quote received, which was provided by Fast Track. Upon evaluating Fast Track's quote and finding it satisfactory, and after reviewing the vendor responsibility documentation submitted by Fast Track, the College issued a purchase order to the vendor. Again, though an RFQ primarily serves as a method to determine the reasonableness of price being offered under a discretionary purchase, and is not a formal solicitation such as an IFB, the College nevertheless acted consistently with the higher standards provided by the New York State Procurement Council for formal IFB solicitations. Moreover, in the case of both formal solicitations and discretionary purchases there is no applicable requirement that the College take the extra administrative steps of evaluating every additional bid or quote received for responsiveness and to formally reject every bid or quote that fails to meet any College requirements.

- (ii) The Draft Report contains a tentative finding that the RFQ failed to specify all the elements of a responsive quote or disclose the process for awarding contracts to potential offerers. As discussed above the RFQ is not a formal solicitation document but an informal process through



which College staff can evaluate the reasonableness of prices being offered for a potential discretionary purchase. As such, and unlike in the case of formal solicitation documents like IFBs and RFPs, the RFQ is not required to prescribe the minimum requirements for vendors to be considered responsive nor the general manner of evaluation or selection. (As an example, State Finance Law Section 163(9)(b), which requires that solicitation documents contain the minimum requirements for vendors to be considered responsive and the general manner of evaluation or selection, only applies to formal solicitations in excess of discretionary buying thresholds.)

However, the subject RFQ did contain minimum requirements for responding vendors. Section 2 of the Specifications, among other things, required that respondents had completed a specified number of similar contracts, attend a mandatory meeting with college, possess a minimum amount of general industry experience, and hold any required licenses. Section 2 of the Specifications provided that responding vendors must adhere to the requirements set forth in that Section, and that failure to do so was grounds for rejection of a vendor's offer. In addition, the RFQ also contained standard administrative requirements relating to the required date for submission of quotes, the manner of submission, and limitations on contacts with College staff, and set forth other requirements with which vendors must have adhered.

Lastly, the RFQ does in fact set forth the basis under which a vendor may receive a contract with the College, and that is the University's discretionary purchasing authority. The RFQ terms and conditions specifies that the "University may make purchases using its discretionary authority under law and University policy."

- (iii) Additionally, consistent with the University's Informal Purchasing guidelines and the New York State Executive Law, the subject purchase was not required to be advertised because at the time the RFQ was issued the project was not estimated by College staff to be above \$50,000, and as the actual purchase made by the College was also below \$50,000. Although the total dollar value of all of the items for which quotations were submitted by a respondent may have exceeded \$50,000, the value of the College's actual purchase was significantly below the threshold. In addition, the potential installation work was not an essential element of this project as the College had the ability to either perform the installation itself or purchase the installation from the outside market. The College issued the RFQ to obtain separate pricing for both the fabrication and installation of the metal brackets, and this was done to both establish a reasonable price (individually and in the aggregate) for the brackets and the installation, but to also determine whether the College would purchase the installation work from the outside market or perform the installation internally. The College could not have been expected to know when it issued the RFQ that the installation component of the purchase would have raised the purchase over the \$50,000 threshold. Once the quotes were received the College determined that it would be more cost-effective to perform the installation internally and that it would therefore only purchase the brackets from the outside market. The fact that the purchase order issued by the College did not include installation proves that installation by an outside party was not an essential element of the overall project.

- 2) The College approved the claim for payment, even though it was inappropriate, because Campus Planning and Facilities Management (Campus Planning) officials informed the Accounts Payable department that they received the brackets and hardware when, in fact, they only received the brackets. Campus Planning officials explained they did so because they determined the cost of the undelivered hardware was immaterial.

Comments:

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Corrective Action Plan:

Campus Planning staff will be required to attend a refresher course on requirements for reporting discrepancies with orders and processing claims for payment.

- 3) Accounts Payable staff failed to exercise reasonable care and professional skepticism when reviewing the claim for payment. Specifically, staff approved the claim for payment even though several anomalies were present on the shipping documents they reviewed.

Comments:

Current business practice requires end user departments to process a payment request once goods and/or services ordered are received, examined and deemed acceptable. Specifically, an authorized representative from the department must enter a system generated receipt in CUNYfirst, sign and attach packing slips and invoices received (in CUNYfirst) and forward all original supporting documentation to the Accounts Payable Office for review and processing, if deemed sufficient and appropriate. While staff demonstrated proper protocol, in identifying missing documentation (proof of delivery), and took reasonable steps to confirm receipt of goods ordered, it relied wholly on vendor documentation to process the claim for payment. Finally, as noted in the Draft Report, despite this unintentional oversight, it is important to reiterate that the College received all the goods ordered.

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OSC Recommendations

- 1) Ensure vendors provide all goods and/or services prior to submitting claims for payment to our Office.
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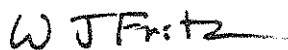
Comments on Recommendations:

We concur with recommendations #1 and #2 and have outlined corrective action measures in our responses to those findings that we believe will serve to enhance internal business practices and controls going forward.

We do not concur with recommendation #3 as the College's staff conducts procurements in accordance with applicable law and policy, including the University's Informal Purchasing guidelines, as outlined in our comments to finding #1 above. In regards to recommendation #3, the College will continue to conduct discretionary purchases in accordance with University Informal Purchasing guidelines and applicable law, and with the discretionary purchasing authority granted the University by the State of New York.

In addition, the College will continue to adhere to the requirements of applicable law and policy when conducting formal solicitations above the discretionary purchasing threshold. The College will also continue to require its supervisory staff to attend monthly CUNY Purchasing / Accounts Payable meetings, the Office of the State Comptroller's annual Procurement and Accounts Payable forums and keep abreast of current guidelines, rules and regulations to improve our business operations.

Sincerely,



William J. Fritz, PhD  
President

C: Ira S. Persky, Vice President for Finance and Administration  
Carlos Serrano, Assistant Vice President Finance and Business Services  
Kathleen Galvez, Esq., Special Counsel and Labor Designee  
Gordon C. B. Taylor, Esq., University Executive Director  
Marina B. Ho, Esq., Senior Associate General Counsel