



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 19, 2016

Nancy L. Zimpher
Chancellor
State University of New York
State University Plaza
Albany, NY 12246

Re: Report 2015-BSE1-03

Dear Chancellor Zimpher:

As part of our daily audit, we examined¹ \$2,572,765 in payments SUNY Downstate Medical Center (Downstate) made to Growe Technologies, Inc. (Growe) under contract TQ00015 during the period April 8, 2014 through April 7, 2015. Under this contract, Growe is required to provide healthcare IT services to Downstate to (i) implement an electronic medical record system capable of meeting defined performance objectives, commonly referred to as Meaningful Use (MU), and (ii) convert hospital systems and procedures to accommodate updated international standards for coding patient symptoms and diagnosis, commonly referred to as ICD-10. The objective of our examination was to determine whether Downstate conducted an appropriate procurement for the services provided by Growe and paid reasonable prices for those services.

A. Results of Examination

Downstate paid up to \$1.3 million more than necessary by using a non-competitive procurement to obtain IT healthcare services rather than bidding the services or using existing competitive contracts available to Downstate. We found the decision to use the non-competitive contract was based on unsupported claims from Downstate officials.

We shared a draft report with SUNY officials and considered their comments (Attachment A) in preparing this final report. SUNY officials agreed with our recommendations and did not provide additional substantive evidence to support that its procurement with Growe was appropriate or that Growe's prices were reasonable.

B. Background and Methodology

In January 2009 through federal legislation, the Centers for Medicare & Medicaid Services (CMS) set new standards for electronic medical health records called MU and ICD-10. There were significant fiscal implications for complying with these standards. For example, MU included

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, and Article VII, Section 111 of the State Finance Law.

financial incentives for hospitals to meet certain milestone stages during the period 2011 through 2016, and Downstate received a \$4.2 million incentive payment in 2013 for certifying compliance with the first phase of MU implementation. Also, implementing ICD-10 by the deadline would allow Downstate to continue to bill and receive payments from Medicaid and Medicare for patients' medical expenses.

In November 2013, the Foundation entered into a non-competitive agreement with Growe for healthcare IT services to implement MU and ICD-10 at Downstate. In April 2014, Downstate entered into a subsequent, State-funded, non-competitive, single-source contract with Growe under Part Q of Chapter 56 of the Laws of 2013 (Part Q). Neither Foundation contracts nor contracts SUNY let under Part Q were subject to our Office's pre-audit and approval.

To accomplish our examination objective, we analyzed the terms and conditions of the Foundation agreement and the Downstate contract (TQ00015) with Growe; interviewed Downstate officials and Growe consultants; and reviewed vouchers and other pertinent documentation, including Part Q, New York State Finance Law, New York State Procurement Guidelines, SUNY's Purchasing and Contracting Guidelines, and Downstate's procurement records for the contracts.

C. Details of Findings

State Finance Law, Article 11, §163(h), New York State Procurement Guidelines, and SUNY's Purchasing and Contracting Guidelines all require Downstate to document in the procurement record the circumstances leading to the selection of a single-source vendor, including the alternatives considered, the rationale for selecting the specific vendor, and the basis upon which the agency determined the price was reasonable. For emergency procurements, the New York State Procurement Guidelines require an agency to make a reasonable attempt to obtain at least three oral quotes to substantiate price reasonableness. We found Downstate did not have sufficient, appropriate evidence to justify selecting Growe as a vendor or for supporting Growe's prices were reasonable.

Vendor Selection

We question the appropriateness of the process Downstate used to procure the services from Growe. At the time of the State-funded contract, Downstate sought to continue a contractual relationship with Growe that was initiated without competition through the Foundation. Like the Foundation, Downstate also did not competitively bid its contract, with the Former CFO citing to the Vice Chancellor such factors as (a) the urgent, limited time in which to implement MU and ICD-10, and (b) the lack of specialized resources to meet Downstate's needs. We found Downstate and the Foundation provided no evidence in the procurement record to support these

claims. Also, the Downstate Contracts Director and the Chief Information Officer (CIO) did not provide any additional evidence. However, we found evidence to contradict the former CFO's claims.

1. Urgent, Limited Time

In a March 2014 letter, the former CFO described to the Vice Chancellor an urgent need to enter into a non-competitive, single-source contract with Growe to implement stage 2 of MU and ICD-10. The former CFO claimed Downstate met our Office's requirements for conducting the procurement. This includes the need to address an emergency arising from "unforeseen causes." We question whether this constituted an emergency and how this could have been interpreted as having arisen from unforeseen causes.

CMS first introduced MU and ICD-10 requirements in 2009. In 2012, CMS updated the stage 2 MU requirements and extended the compliance deadline to December 2015. Also in 2012, CMS extended the ICD-10 implementation deadline to October 2014. This ultimately led to the non-competitive Foundation agreement with Growe in November 2013. As described in the New York State Procurement Guidelines, an agency's failure to properly plan in advance – which then results in a situation where normal practices cannot be followed – does not constitute an emergency.

Moreover, less than two weeks after the former CFO sent the letter to the Vice Chancellor, CMS extended the deadline for ICD-10 to October 2015. This left ample time for Downstate to competitively procure these services. Soliciting bids from multiple vendors helps promote fairness in contracting with the business community and ensures the best value for the state. Downstate had no record of the former CFO communicating this extension to the Vice Chancellor, nor was there any effort to conduct a competitive procurement given the extensions to 2015 for both MU and ICD-10.

2. Lack of Specialized Resources

In the March 2014 letter, the former CFO claimed Downstate's traditional resources for providing consultants were unavailable. Neither the letter nor the procurement record included evidence to support which sources Downstate solicited to arrive at this conclusion.

Also in the letter, the former CFO claimed to have circulated position descriptions to each Hourly Based Information Technology Services (HBITS) vendor on the state centralized contract, but based on a limited number of responses, Downstate did not solicit proposals from them. Neither the letter nor the procurement record included evidence of the position descriptions circulated or the responses from HBITS providers.

We asked the Downstate Contracts Director for evidence to support which vendors were solicited for the procurement. She did not have any evidence.

We reviewed the profiles of 25 HBITS vendors and found at least 14 vendors' profiles made reference to the ability to provide healthcare IT services. One of the 14 vendors' profiles indicated that the company had the capacity to provide specific hospital IT services related to MU and ICD-10 implementation. Further, a representative from this vendor confirmed the availability of resources at the time of Downstate's procurement.

Price Reasonableness

Downstate ultimately procured services from Growe under Part Q, which gave Downstate the authority to bypass certain State procurement requirements. For example, under Part Q, Downstate had the ability to avoid (i) purchasing from existing centralized contracts like HBITS, (ii) conducting a formal, competitive procurement, and (iii) obtaining contract approval from our Office. Part Q did not release Downstate managers from their fiduciary responsibility to ensure a reasonable price for the procurement.

In the March 2014 letter, the former CFO claimed Growe's prices were fair, but did not include any information to support this. Downstate included no evidence of price reasonableness in the procurement record. We asked the Downstate CIO for evidence to support how the former CFO came to the conclusion that the Growe prices were reasonable. The CIO did not have any documents to support the price reasonableness but claimed the hourly contract rates were standard within the technology industry. While these rates may have been standard, State procurements, particularly competitive ones, often yield better-than-market rates.

For example, the centralized HBITS contracts were procured competitively. Because the HBITS vendors had the ability to provide resources to meet the MU and ICD-10 requirements, and Downstate had the ability to use them, we compared the hourly rates for titles offered by an HBITS vendor to the hourly rates Growe charged for the same titles. We found Growe's rates exceed the HBITS vendor's rates by as much as \$118 per hour. Based on the titles of the consultants Growe provided and the total hours they worked, we found Downstate could have saved up to \$1.3 million if it had obtained these services from an HBITS vendor.

While Downstate was not required to use centralized contracts under Part Q, the amounts offered by HBITS vendors should have served as a benchmark to enable Downstate to obtain more reasonable prices from Growe. This would have been consistent with the former CFO's statement in his letter of March 2014 to the Vice Chancellor, that Downstate could "ill afford to leave money on the table" given its "financial straits."

Recommendations

- 1) *Ensure that future Downstate requests to let non-competitive, single source contracts are supported by sufficient, appropriate evidence that justify the need to rule out normal procurement processes.*
- 2) *Direct Downstate to timely and competitively procure services to promote fairness in contracting with the business community, facilitate the best possible price for the University and avoid unnecessary time constraints.*

We thank the management and staff of the State University of New York Chancellor's Office and Downstate Medical Center for the courtesies and cooperation extended to our auditors. We would appreciate your response to the final report by March 21, 2016 indicating any actions planned to address the recommendations in this report.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

cc: Dr. John F. Williams, Jr., President, Downstate Medical Center
Mike Abbott, Director, SUNY Internal Audit



Office of the
Chief Financial Officer

State University Plaza
Albany, New York 12246

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February 4, 2016

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 comments on the Office of State Comptroller's (OSC) draft report 2015-BSE01-03. Downstate Medical Center (DMC) disagrees with the OSC's findings and stands by its decision to utilize the available avenues, including New York State (NYS) Part Q Chapter 56 law of 2013, hereafter (Part Q) for this non-competitive contract award. Although the underlying documentation for this Part Q contract includes superfluous information related to sole source and emergent circumstances, the bottom line is that these services were purchased via Part Q and thus exempt from competitive bid or oral quotes as defined in NYS finance law set forth in §112 or §163. Therefore, the focus on the unnecessary underlying information is misdirected and misleading to the reader.

Part Q legislation allows SUNY DMC University Hospital of Brooklyn (UHB), for the purpose of implementing its sustainability plan, to enter into contracts without competitive bid or request for proposal process and that such contract(s) shall not be subject of the requirements set forth in §112 or §163 of the NYS finance law. Part Q legislation authorizes UHB to purchase goods and supplies where demands require an expedited process or is necessary for restructuring consultant services, revenue collection/billing services, electronic health records (EHR), clinical services, and insurance eligibility/verification services.

Downstate developed formal written procedures that set forth guidelines for the procurement of goods and services under Part Q Legislation. The procedures outline key steps in the process and the responsible individuals. There is also a required Part Q Procurement Certification form that includes required signature. These procedures help ensure Part Q Procurements are completed in accordance with applicable NYS laws and SUNY policies and procedures.

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The Growe Technologies, Inc. (Growe) contract was procured, via Part Q, for healthcare information consulting services related to compliance with ICD-10 diagnostic and procedural classification systems and to qualify for meaningful use (MU) of the EHR. ICD-10 compliance and MU qualification required the update or replacement of multiple information systems/applications and the revision of multiple interface engines. Applications and systems included, but were not limited to, inpatient admission/discharge/transfer, outpatient registration, physician order entry, ancillary clinical services, EHRs, case management, encoder and DRG groupers, accounts receivable/billing, and claims transmissions/processing. All above described applications/systems impacted revenue collection/billing services, EHRs, clinical services, and insurance eligibility/verification services and thus met the Part Q procurement criteria and consequently were appropriate.

Vendor Selection

On June 6, 2014, UHB contracted with Growe because their healthcare information technology (IT) professionals have specialized skill sets with the required knowledge of the interdependent nature of each application/system involved in the various healthcare event cycles. Furthermore, at the time of this Part Q procurement, Growe was providing IT healthcare services, for a 6 month period, to DMC via a Foundation contract. Over that 6 month period, Growe obtained a substantive understanding of UHB's IT inventory, management needs, project planning/implementation requirements and, importantly, Growe demonstrated their value and viability to DMC. Thus, UHB determined that it was fiscally and operationally prudent to build on the current experience and investment and award the Part Q contract to Growe. Failure to succeed in a timely implementation would jeopardize the Hospital's \$450 million annual net revenues.

Use of the State Contract Information Technology Service

SUNY Downstate considered the New York State Hourly Based Information Technology Services (HBITS) contracting process. However, it appeared inadequate to meet Downstate's needs. Hospital IT needs are highly specialized when compared to that of other State entities and are not well addressed by HBITS vendors. Therefore, we disagree with the OSC's hypothesis related to the utilization of HBITS vendors for this authorized Part Q procurement.

Reasonableness of Price

The fees charged by Growe are reasonable and well within the industry standard for Health Information Technology (HIT) recruiting agencies. Likewise the rates/salaries to be charged for each of the specific needed positions are competitive for HIT professionals of this caliber. Furthermore, Growe was prepared to warrant that its charges to Downstate are better, equal to, or lower than that charged for similar specialized professional resources to other government agencies.

Recommendations

OSC's Recommendations and SUNY's Response follows:

OSC Recommendation #1

Ensure that future Downstate requests to let non-competitive, single source contracts are supported in the procurement record by sufficient, appropriate evidence.

SUNY agrees with the recommendation and is working with Downstate to ensure it adequately documents its procurements.

OSC Recommendation #2

Direct Downstate to timely and competitively procure services to promote fairness in contracting with the business community, facilitate the best possible price for the University and avoid unnecessary time constraints.

SUNY agrees with the recommendation and is working with Downstate to ensure its procurements promote fairness, facilitate obtaining the best possible price consistent with the Campus' needs, and provide for timely services.

SUNY believes Growe Technologies was the right choice for the required work. They had immediate access to the requisite caliber of professionals needed for Downstate's complex IT projects, has high quality references and clientele, has government sector experience, is MWBE certified, and is fairly priced.

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

Sincerely,



Eileen McLoughlin
Senior Vice Chancellor for Finance and Chief Financial Officer

Copy: President Williams
Ms. Fagnoli
Mr. Hippchen
Mr. Abbott
Ms. Poncet/Downstate
Ms. Trzcinski/OSC



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March 18, 2016

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

Dear Mr. McHugh:

In response to your February 19, 2016 request, I am outlining our planned actions to address the following two recommendations in the Office of the State Comptroller's audit report 2015-BSEO1-03 on payments SUNY Downstate Medical Center (Downstate) made to Growe Technologies:

OSC Recommendation #1: Ensure that future Downstate requests to let non-competitive, single source contracts are supported in the procurement record by sufficient, appropriate evidence.

OSC Recommendation #2: Direct Downstate to timely and competitively procure services to promote fairness in contracting with the business community, facilitate the best possible price for the University and avoid unnecessary time constraints.

SUNY agrees with the recommendations and is working with Downstate to ensure its procurements promote fairness, facilitate obtaining the best possible price consistent with the Campus' needs, and provide for timely service. The right combination of software and staff with the necessary skills and training are key to improving Downstate's procurement of necessary goods and services and help promote fairness in contracting with the business community, facilitate the best possible price for the University and avoid unnecessary time constraints.

As such, I and members of my staff traveled to Downstate on March 2, 2016 to meet with Downstate Senior Administration and Procurement and Accounts Payable Management to better understand Downstate's needs. As a result of that meeting, Downstate is developing a work plan to identify the necessary steps and resources needed to fully implement the Lawson Procurement System, identify staffing requirements, and implement process improvements.

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Thank you for the opportunity to respond to the recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Eileen McLoughlin".

Eileen McLoughlin
Senior Vice Chancellor for Finance and Chief Financial Officer

Copy: President Williams, Ms. Fagnoli, Mr. Hippchen, Mr. Abbott, Ms. Poncet/Downstate