



# Lexington School for the Deaf

## Review of Procurement Practices

Report 2008-S-129



Thomas P. DiNapoli



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# State of New York Office of the State Comptroller

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## Division of State Government Accountability

January 14, 2010

Dr. Regina Carroll  
Superintendent/CEO  
Lexington School for the Deaf  
30<sup>th</sup> Avenue and 75<sup>th</sup> Street  
Jackson Heights, NY 11370

Dear Dr. Carroll:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government operations and programs. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of procurement practices at the Lexington School for the Deaf. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*





## State of New York Office of the State Comptroller

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### EXECUTIVE SUMMARY

#### **Audit Objective**

Our objective was to determine whether Lexington School for the Deaf has established and maintains an adequate system of internal control over its procurement operations.

#### **Audit Results - Summary**

We found that the Lexington School for the Deaf (School) needs to strengthen controls over its procurement operations. The Lexington School for the Deaf (School) should use competitive procurement methods for making major purchases. According to guidance provided by the State Education Department (SED), the Lexington School should use competitive bidding when procuring goods and services over \$10,000 and for public works projects which exceed \$20,000. For procurements under these limits, SED also recommends that schools develop procurement policies that incorporate competitive requirements into major purchases.

We determined the School did not comply with SED guidance for procurements over \$10,000 and \$20,000. In eight of the eleven instances we tested, bids were not solicited. For purchases under the SED limits, the School's policies and procedures require all purchases over \$5,000 to be procured with competition in the form of at least two (2) documented telephone, facsimile or Web quotes from responsible vendors. We also found non-compliance with these procedures as well.

Our report contains two recommendations for improving controls over procurement operations. School officials generally agreed with our recommendations.

This report, dated January 14, 2010, is available on our web site at: <http://www.osc.state.ny.us>.  
Add or update your mailing list address by contacting us at: (518) 474-3271 or  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236





## Introduction

### Background

The Lexington School for the Deaf (School), founded in 1869, is located in the Borough of Queens, New York City. Pursuant to Section 4201 of the State Education Law, the Lexington School is one of 11 private schools in New York State that receive operating aid directly from the New York State Department of Education (SED) to provide educational services for certain types of disabled students. The Lexington School serves approximately 350 children in kindergarten through the 12<sup>th</sup> grade. The school also has a dormitory residence on site and operates an infant center and a pre-school.

The Lexington School is regulated by SED and is governed by an 11 member Board of Trustees (Board). For the fiscal year end June 30, 2007, the school received approximately \$22.4 million in revenues, including approximately \$20.3 million from New York State.

### Audit Scope and Methodology

The objective of our audit was to determine whether Lexington School for the Deaf has established and maintains an adequate system of internal control over its procurement process. Our audit period was July 1, 2006 through September 30, 2008.

To accomplish our objectives, we reviewed the School's records related to procurement. We reviewed Board meeting minutes, and financial statements prepared by the School's independent certified public accountants (CPA), as well as the School's completed CFRs for the audit period. We interviewed School officials and staff to obtain an understanding of the School's policies and practices over the procurement function. We also reviewed both applicable laws and regulations and the School's policies and procedures related to procurement. Further, we reviewed a sample of procurements for compliance with applicable laws, regulations, policies, and procedures.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts,

refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

**Authority**

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution and Article II, Section 8, of the State Finance Law.

**Reporting  
Requirements**

We provided a draft copy of this report to School officials for their comment. We have considered their comments in preparing this audit report and they are included in their entirety at the end of this report. Our rejoinders to School official's comments are included thereafter in our State Comptroller's Comments. School officials disagree with some of our conclusions but agree with our recommendations.

Within 90 days of the final release of this report, we request the Superintendent of the School to advise the Comptroller's office what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

**Contributors to the  
Report**

Major contributors to this report include Steven Sossei, Kenrick Sifontes, Sheila Jones, Tania Zino, Trina Clarke and Teeranmattie Mahtoo-Dhanraj.

## Audit Findings and Recommendations

### **Procurement**

SED provides entities such as the School with procedural guidance, related to procurement, derived from its Reimbursable Cost manual and the State's General Municipal Law (Section 103). SED's guidance helps to ensure that purchases of goods and services are obtained in the quantities needed at the lowest reasonable price. It states that the School should solicit bids by advertising public works projects of \$20,000 or more and purchases of goods and services values at \$10,000 or more. However, we determined the School did not comply with SED guidance for procurements.

To test whether the School complied with SED guidance for competitive bidding, we judgmentally selected eleven vendors that received payments in excess of \$10,000 for the 2007-08 school years. The eleven vendors provided services such as transportation and employment development services. We found that in eight of the eleven instances, the School did not comply with SED guidance and seek competitive bids when procuring goods and services. For example, the School had paid a car service company \$29,943 to transport certain students and their parents to and from the school, without obtaining bids from other companies. Lexington also paid a total of \$69,266 to an employment agency for human resource evaluation services as well as the services of a human resource director. School officials state that fee comparisons were performed but not documented. As a result, there is no assurance that the School paid a reasonable price for goods and/or services involved in these transactions. This is contrary to the manner in which public funds should be expended. Officials state that it is their position that SED's guidance is not applicable to the School. However, they recognized the need to have adequate policies regarding procurement.

### **Purchases Not Subject to SED Guidance**

SED guidance also recommends that the School adopt written policies and procedures for the procurement of goods and services that are below the \$10,000 and \$20,000 thresholds. The School's policies and procedures require all purchases over \$5,000 to be procured with competition in the form of at least two (2) documented telephone, facsimile or Web quotes from responsible vendors. The quotes should include such information as the name and address of the supplier/company, name of person giving the quote, date of quote, unit price, etc. The School's procurement procedures allow an exception to be made when competitive bidding is impractical, such as emergencies or sole source procurements or when a purchase is made from an established vendor.

We tested compliance with the School's procurement guidelines for purchases in excess of \$5,000 but less than the \$10,000 and \$20,000 limits

set by SED guidance and found non-compliance with these procedures as well. For example, the School initially entered into a one-year contract with a pest control company in 1997. Although the contract expired in 1998, the School is still utilizing the services of this same company and abiding by the terms of the expired contract. In another example, the School paid \$9,957 for plumbing supplies without obtaining two quotes. School officials stated that this vendor was selected due to an emergency, however there was no justification on file as to the nature of the emergency and why the School selected this particular vendor.

- Recommendations**
1. Comply with SED guidance for competitive procurements for goods and services and public works projects.
  2. Comply with School procedures and policies for purchases less than the limits set by SED guidance.

## Agency Comments



October 14, 2009

Mr. Kenrick Sifontes  
Audit Manager  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street 11<sup>th</sup> Floor  
Albany, New York 12236

Dear Mr. Sifontes,

This letter contains the response of the Lexington School for the Deaf to the Draft Audit Report (2008-S-129) of the Office of the State Comptroller (OSC). While our comments include points on which we disagree with OSC, we do agree on the importance of following guidelines for procurements in order to obtain the best prices possible. In fact, during the audit we provided the Comptroller's Office with evidence that we have been ensuring competitive bidding for new vendors. We are also going back to vendors who have been doing business with Lexington School for the Deaf for several years to update contracts and rebid for services; however, we acknowledge that we need to accelerate this process and set up a system for maintaining the process.

### Comments on the Procurement Section of the Report

OSC cited the State Education Department (SED) Reimbursable Cost Manual (RCM) and the State's General Municipal Law (Section 103) as entities providing procedural guidance related to procurements. The guidance in the most recent RCM for Programs Receiving Funding under Article 85 of the Education Law to Education Students with Disabilities (July 2002), is ambiguous. The Manual states that "When applicable, competitive bidding practices should be used in conformance with the General Municipal Law 103." It is Lexington's position that the provisions of General Municipal Law, section 103 are not applicable to it. Specifically, the entities to which Section 103 is applicable are municipal corporations, school districts, district corporations and boards of cooperative educational services. (See General Municipal Law, section 100 and 103.) Since the Lexington School for the Deaf does not fall within this definition, the provisions of Section 103 are not applicable to it. However, Lexington takes very seriously its obligations to protect its funding through appropriate internal Policies. To that end, Lexington has in place a comprehensive "Accounting Policies Manual" which includes requirements for the procurement of goods and services. We review the provisions of the policy on a regular basis.

\*  
**Comment**  
**1**

\* See State Comptroller's Comments, page 17.



Despite Lexington School's position regarding the applicability of this law, we are addressing the situations brought up in this report. There are some specific examples, however, on which we disagree with the findings of OSC or on which we want to clarify for the record.

We disagree with the determinations that were made regarding three of the vendors that were selected for the sample. One such vendor was an engineering, planning, and architecture firm hired for a large project funded by a governmental agency other than SED. This other agency had its own specific guidelines for securing the firm for the project, which guidelines are much more expansive than those contained in the General Municipal Law<sup>1</sup>.

The major steps required by this agency are:

1. Solicit Consultant Proposals
  - Provide Detailed Data to Interested Consultant Firms
  - Review Proposals and Rank Firms
  - Obtain a Scope of Work form the Highest Firm
  - Select a Consultant to Provide an Independent Estimate of Consultant's Fee
2. Fee
  - Obtain the Independent Estimate
  - Negotiate the Fee with the Design Consultant
  - Execute the Design Consult Contract Provide Notice to Proceed

\*  
**Comment**  
2

Lexington School followed the procedure mandated by the funding agency.

We also disagree with the statement made that "Lexington also paid \$69,266 to an employment agency for placement fees without using competitive bidding." The amount cited was actually for three different services. The original fee which was under \$5,000 was for a comprehensive assessment of the Human Resources (HR) department. A search was made to select an agency to conduct this assessment and companies were compared. Since the first project was under \$5,000, it did not require documentation of the bidding procedures we used to hire the consultant. After the initial project had been completed, we determined that we would contract out for a consultant HR Director rather than hire a full time employee. The total fee for the services of an HR Director was \$47,765.63 for the periods October 2007 to March 2008. Prior to hiring this consultant, prices were compared from the employment agency who conducted the assessment, one other company, and salary information from resumes received after the HR Director position was posted. After hiring the consultant for several months, Lexington paid a placement fee of \$18,000 to hire the consultant directly. The placement fee rate was compared to several other placement agency fees. Only one agency would put their rate in writing. The placement fee rate Lexington paid was lower than the rate of the other agency. While our documentation did not clearly demonstrate three bids were secured, fee comparisons were obtained. In the future, Lexington will document quotes obtained on the phone.

\*  
**Comment**  
3

<sup>1</sup> Section 103 specifically excludes professional services such as architectural services from the requirements for competitive bidding.

\* See State Comptroller's Comments, p. 17

The third vendor for which we disagree with the findings was a vendor that provided a computerized IEP program. The Lexington School engaged in a lengthy search for the best provider. During the process we consulted with other 4201 schools and Nassau BOCES and determined that two vendors were utilized. Bids from both companies were obtained and the decision was based on our specific needs and recommendations from other schools.

\*  
**Comment**  
**4**

#### Comments on Purchases Not Subject to SED Guidance

OSC stated that the School paid \$9,957 for plumbing services without obtaining two quotes. The payments which totaled \$9,957 were for plumbing supplies, not services, used for an emergency repair of the pool. The amount paid to the vendor is the total of several purchase orders for items needed during the course of the repair project. The company from whom we purchased the supplies is the only supply house in the tri-state area that sells the special items that were needed; therefore, bids were not obtained. Lexington School will seek guidance from SED regarding proper documentation for sole source purchases, multiple purchases from a single vendor, and emergency situations.

\*  
**Comment**  
**5**

OSC also reported that Lexington is still utilizing the services of a pest control company although the contract expired in 1998. We do not disagree with this statement but wish to note that the company had given quality service at no increase in fee since 1998.

#### Comments on Recommendations

1. Comply with SED guidance for competitive procurements for goods and services and public works projects.

Lexington School is revisiting its Financial Accounting Manual and will revise it as needed to come into compliance with SED guidelines as determined by OSC. The School will seek clarification from SED and its counsel as needed.

2. Comply with School procedures and policies for purchases less than the limits set by SED guidance.

Lexington School Management is reviewing its own Purchasing Policy with the assistance of counsel and will recommend revisions to the Board of Directors in order to clarify the policy. The School has accelerated its work to comply with its own policies related to procurements.

Sincerely,



Regina M. Carroll, Ph.D.  
Superintendent/CEO

\* See State Comptroller's Comments, page 17.





## State Comptroller's Comments

1. Our report acknowledges the School's position and we continue to believe that given the significant amounts of State funds used in the operation of the School, conformance with SED procurement guidance should occur. Significant procurements were made without competitive procurements. We will continue to work with SED to strengthen the procurement requirements related to Schools supported by State funds. In the interim, we do support the School's efforts to strengthen its own internal procurement policies.
2. We were not provided with evidence that supports the School's position during the audit. Therefore, no change was made to the report.
3. We have changed the report to reflect that the payments were for services in addition to a placement fee.
4. This matter was not highlighted in the report, although it was included in our summary numbers as an exception. We were not provided with evidence to support the School's position during the audit.
5. The report was modified to reflect that it was plumbing supplies, not plumbing services.