
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**ST. MARY'S SCHOOL FOR
THE DEAF**

**PROCUREMENT AND
CONTRACTING PRACTICES**

Report 2008-S-126

AUDIT OBJECTIVE

Our objective was to determine whether St. Mary's School for the Deaf (School) followed the procedural guidance provided by the State Education Department (SED) and complied with its internal policies and procedures when procuring goods and services.

AUDIT RESULTS - SUMMARY

We found that the School often did not follow the procedural guidance provided by SED and its internal policies and procedures when procuring goods and services. Thus, there is limited assurance that the School received the best goods and services at the lowest reasonable prices.

The School is located in the City of Buffalo and is governed by a Board of Trustees (Board). During the 2006-07 school year, the School had an enrollment of approximately 115 children with 149 full-time staff and an average of about 50 part-time staff. The School received approximately \$11.3 million in State funds to operate the School. Of this, the School reported it spent about \$2 million on goods and services.

According to SED's guidance, the School should use competitive procurement procedures for purchases of goods and services exceeding \$10,000 and public works projects exceeding \$20,000. We judgmentally selected 20 transactions that should have been competitively procured pursuant to the guidance from SED. These transactions totaled \$1.9 million. Of the 20 transactions, we found only one was properly bid and conformed fully with SED's competitive bidding guidance. The remaining 19 transactions (totaling approximately \$1.8 million) had multiple issues, such as no public advertising and/or written specifications.

To determine if the School complied with its own procedures for purchases under the dollar thresholds set by SED, we judgmentally selected 21 smaller transactions totaling \$388,616. We found the School did not comply with its own procedures for 16 of the 21 transactions. For example, the School could not provide documentation that at least three oral or written quotes were received for certain purchases that did not have to be formally bid out.

We also determined that the Board did not effectively monitor the School's compliance with certain internal policies and procedures. For example, a committee should approve contracts and purchase orders for major purchases. However, there are no dollar thresholds for the committee to adhere to when deciding what is considered a major purchase. Further, when we reviewed our sample of 20 transactions that should have been competitively bid, we could not determine whether the committee met and approved these transactions.

Our report contains eight recommendations pertaining to the School's procurement and contracting functions. In responding to our draft audit report, School officials agreed with most of our report's recommendations, and they indicated the steps that the School has taken and will be taking to implement them.

This report, dated May 6, 2009, is available on our website 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, 11th Floor
Albany, NY 12236

BACKGROUND

St. Mary's School for the Deaf (School) is located in the City of Buffalo. The School is one of 11 private schools in New York State that receives almost all of its operating aid directly from the State to provide educational services to disabled students pursuant to Section 4201 of the State Education Law. During the 2006-07 school year, the School had an enrollment of approximately 115 children with 149 full-time staff and an average of about 50 part-time staff. The School received approximately \$11.3 million in State funds for the 2006-07 school year. Of this, the School reported it spent almost \$2 million on goods and services.

The School is governed by a Board of Trustees (Board). According to the Board's By-Laws, the Board is responsible for the general management and control of the School's financial and educational affairs. The School's Superintendent is the chief executive officer and is responsible for the day-to-day management of the School under the direction of the Board.

Regarding the procurement of goods and services, SED provides entities (such as the School) with procedural guidance derived from SED's Reimbursable Cost Manual (Manual) and the General Municipal Law (Section 103). SED's guidance helps to ensure that materials, supplies and equipment are obtained in the quantities needed and at the lowest reasonable price. SED guidance states that the School should solicit bids by advertising public works projects of \$20,000 or more and for purchases of goods or services of \$10,000 or more. A public works project designation would apply for projects that have both labor and materials involved in the project. The School has also chosen to further restrict its purchasing options beyond the guidance provided by SED. The School's

internal procedures require School personnel to obtain written quotes from at least three vendors for purchases of goods or services exceeding \$5,000 and less than \$10,000 and oral quotes for purchases between \$2,500 and \$5,000.

AUDIT FINDINGS AND RECOMMENDATIONS

Conformance with SED Bidding Guidance

According to SED's guidance, the School should use competitive bidding when procuring goods and services over \$10,000 and for public works projects which exceed \$20,000. However, we determined that the School often did not conform with SED's guidance.

To determine whether the School followed SED's guidance for competitive bidding, we judgmentally selected 20 transactions from the period July 1, 2004 through August 29, 2008, that were for purchases of goods or services of over \$10,000 and public works projects that exceeded \$20,000. These transactions totaled \$1.9 million. Of the 20 transactions, we found that only one conformed with SED's guidance and was properly bid. The remaining 19 transactions (14 of which were public works projects) totaling approximately \$1.8 million were not publicly advertised for bid. Thus, there is limited assurance that the School paid a reasonable price or that the contracts were awarded in a fair and equitable manner. This is contrary to how public funds should be expended.

We also noted other significant problems related to the bidding with the 20 transactions we reviewed. The School did not prepare detailed written specifications for bidding 18 of the 20 transactions totaling \$1.2 million. Without detailed written specifications, the

School would have no way to judge the price and quality of bidders' proposals when awarding the contracts. Nor does this provide a level playing field for prospective bidders.

Eight of these 18 transactions were for public works projects that had base prices totaling \$780,401. These contracts were subsequently increased by \$121,669 through the use of change orders. For example, School officials did not prepare written specifications for renovations to bathrooms, the dormitory lounge, kitchen, and fire pump system, yet they awarded the project to the low bidder for \$309,000. The School later paid for 14 change orders resulting in the vendor receiving an additional \$50,838 for work performed. School officials also awarded a contract for a sprinkler system to the vendor who submitted a low bid price of \$21,600. However, a change order for additional plumbing excavation and equipment increased the project cost by \$25,076 to \$46,676, an increase of 116 percent.

School officials told us the plumbing costs for the first example increased because the bidder had underestimated the cost to drill through bedrock to connect the system to the main water supply. Yet we question how change orders could have occurred or been allowed since there were no detailed written specifications for the original scope of work. This is a prerequisite before a change order can be negotiated. Had these projects been properly bid with written specifications, these change orders might not have been needed and/or the School may have received a better price for the work.

In addition, the School did not fully conform with the prescribed guidance for a major procurement of janitorial services. In this instance, the School solicited bids from five vendors and awarded the winning vendor a three-year contract totaling about \$563,000.

However, the School did not publicly advertise its intent to contract for the janitorial services (as prescribed by SED guidance), and therefore, it did not optimize the competition for a provider of those services.

Three other transactions that were not publicly advertised were for leasing vehicles at a cost of \$82,763. According to SED's guidance, the Board should adopt a resolution stating the reason why such an agreement is in the best financial interest of the School. However, we found that the Board never adopted any such resolutions. School officials told us the vehicle vendor was selected because of the close physical proximity to the School. However, we found three different vendors within the same proximity of the School.

Other problems noted in our review include a failure to have legal counsel review the contracts. Although the School's procedures require a review for all contracts over \$10,000, we found no evidence that the School's legal counsel reviewed 18 of the transactions selected for audit. Consequently, there is limited assurance that the School's best interests were protected. When we asked School officials why they did not advertise for bids as required and/or prepare written specifications, School officials told us it was not their practice to do so. Consequently, based on the results of our review, we concluded that the School had insufficient evidence that it paid fair and reasonable prices for the various goods and services purchased.

In responding to our draft audit report, the School stated that St. Mary's was not legally bound to comply with SED's Reimbursable Cost Manual or the General Municipal Law. We acknowledge the School's position on this matter. However, we also note that the State Education Law provides the Commissioner of Education with the general supervision of all

schools and institutions that are subject to the provisions of the Education Law. Because the direct provision of State funding to St. Mary's is authorized explicitly under the Education Law, we believe the School should follow SED's formal guidance pertaining to financial operations. Moreover, we are pleased that School officials acknowledge the value of clearly defined and consistently followed policies and procedures for procurement and contracting, and consequently, officials intend to follow SED's guidance in this area.

We have also brought this matter to the attention of SED officials. SED officials recognize that there is a need to strengthen the existing guidance on procurement and other fiscal practices of State-supported schools (such as St. Mary's). Consequently, SED will explore the most appropriate method to enhance accountability over the use of State funds in the area of procurement.

Purchases Subject to School Procedures

The School has established procedures that require oral quotes from at least three vendors for expenditures between \$2,500 and \$5,000 and written quotes from at least three vendors for purchases of goods and services over \$5,000 but less than \$10,000.

To determine if the School was complying with their own established procedures, we judgmentally selected 21 transactions for audit. These transactions totaled about \$388,000 from the period July 1, 2004 through August 29, 2008. We found the School did not comply with its own procedures. For example:

- School officials could not provide documentation to show that three quotes were solicited and received for 11 transactions totaling \$211,788.

Therefore, there is no way to verify that the vendor who offered the lowest price was awarded the contract or purchase order.

- 11 transactions totaling \$232,890 did not have evidence of the School's counsel review. Consequently, there is limited assurance that the School's best interests were protected.

We note that of these 21 transactions, three were credit card charges. We reviewed one credit card statement from each of the three school years to determine whether they were appropriate. There were 19 purchases totaling \$5,460 on the three statements. We found all of the credit card purchases were appropriately documented.

Less Than Arm's Length Transactions

SED guidance defines a less-than-arm's-length transaction as those that are between parties who are related in some manner. When these transactions occur, School officials are required to disclose this to SED.

We found School officials did not comply with SED's requirement to disclose less than arm's length transactions in one instance. In the 2004-05 school year, the School employed an architectural firm owned by a Board member. The School paid this architectural firm a total of \$94,539 (\$14,254 in the 2004-05 school year and \$80,285 in the 2005-06 school year) to prepare plans for different building renovations. These transactions are considered less-than-arm's-length transactions. School officials disclosed the relationship to SED in the 2005-06 school year, but not in the 2004-05 school year, as required.

Board Governance Over Procurement

The Manual indicates that the Board should monitor the School's compliance with policies and procedures. The Manual also indicates that Board members should avoid any conflicts of interest or even the appearance of a conflict of interest and maintain a conflict of interest policy for board members and employees. In addition, the Board should promote fiscal responsibility and ethical conduct among all staff and board members.

We determined that, while the Board met on a regular basis, it did not adequately monitor the School's compliance with policies and procedures. A committee was supposed to approve contracts and purchase orders for major purchases. However, there are no dollar thresholds for what constitutes a major purchase. Further, when we reviewed our sample of 20 transactions that should have been competitively bid based on SED's guidance, we could not determine whether the committee met and approved any of these transactions.

We also found that that one of the transactions we reviewed, totaling \$30,395, was related to fund raising activities by the School. According to the Manual, State funds cannot be used for fundraising purposes. Consequently, the School should refund the \$30,395 in question to the State.

Recommendations

1. Comply with SED's guidance for competitive procurements of goods and services, and public works projects. Prepare written specifications for these procurements.
2. Ensure the School's counsel reviews all contracts over \$10,000.

3. Ensure the Board adopts a resolution prior to entering into leases.
4. Comply with School procedures when procuring goods and services not subject to formal competitive bidding.
5. Disclose all less-than-arm's-length transactions to SED.
6. Require the Board to monitor the School's compliance with policies and procedures.
7. Develop criteria defining major purchases and create dollar thresholds for what should be reviewed by the committee. Once the threshold is established, have the Board document all reviews.
8. Repay the \$30,395 in State funds used for fundraising purposes and ensure State funds are not used for fundraising activities in the future.

In their response to our draft report, School officials generally concurred with recommendations nos. 1 through 4 and nos. 6 and 7. Regarding Recommendation no. 5, officials stated that the less-than-arm's-length transaction referenced in our report was, in fact, reported to SED, as required. However, although School officials disclosed this transaction to SED for the 2005-06 year, they had not reported it for the 2004-05 year (as detailed previously in our report). Regarding Recommendation no. 8, School officials did not agree that the \$30,395 related to fundraising activities can be paid back to SED at this time. We note, however, that officials provided no documentation demonstrating that the expenses in question were eligible per the Manual. Consequently, we maintain that the \$30,395 in expenditures for fundraising-related matters were not eligible, and therefore that amount should be refunded to the State.

AUDIT SCOPE AND METHODOLOGY

The objective of our audit was to determine whether the School followed prescribed policies and procedures when procuring goods and services. Our audit period was July 1, 2004 through August 29, 2008.

To accomplish our objective, we reviewed the School's records related to procurements, including purchase, contract and lease transactions. We reviewed applicable laws and regulations, as well as SED and the School's policies and procedures related to procurement. We interviewed School officials and staff to obtain an understanding of the School's procurement and contracting practices. We analyzed a data download of vendor transactions provided by School staff. For our audit period, transactions for goods and services totaled approximately \$7.8 million. Of this, we judgmentally selected 20 transactions that were subject to competitive bidding (pursuant to SED's guidance) and totaled \$1.9 million. We reviewed these transactions to see if they conformed with SED's guidance. We then judgmentally selected 21 transactions that were not subject to competitive bidding per SED. Of these, 19 were selected because they were over \$2,500 and two were selected because they were the highest credit card purchases in our scope period. We also reviewed Board meeting minutes and financial statements prepared by the School's independent certified public accountants as well the School's Consolidated Fiscal Reports for the audit period.

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 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 draft copies of this report to School officials for their review and formal comment. We considered the School's comments in preparing this report and have included them as Appendix A. Our rejoinders to the School's comments are presented in Appendix B, State Comptroller's Comments. School officials agreed with most of our report's recommendations, and officials indicated the steps that they have taken and will be taking to implement them.

Within 90 days of the final release of this report, we request the Superintendent of the School to report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Brian Mason, Karen Bogucki, Mary T. Roylance, Laurie K. Burns, and Sue Gold.

Exhibit A**Purchases Requiring Competitive Bid**

Type of Service/Product	Original Transaction Amount	Change Order Amount	Total Amount Paid
Janitorial Services	\$ 562,592		\$ 562,592
Roof Repair	27,367		27,367
Roof Repair	18,254		18,254
Air Conditioning Renovation	86,390	\$ 855	87,245
Sprinkler System	21,600	25,076	46,676
Building Renovations	309,000	50,838	359,838
Cafeteria Renovations	128,770	24,765	153,535
Air Conditioning Renovation	41,250		41,250
Window Installation	63,855		63,855
Window Installation	22,760		22,760
Food Service	132,937		132,937
Transportation	83,764		83,764
Transportation	81,525		81,525
Transportation	57,346	4,125	61,471
Boiler and Tank Work	27,971	4,600	32,571
Monument & Brick Memorial	18,985	11,410	30,395
Car Lease	30,266		30,266
Car Lease	31,552		31,552
Car Lease	20,945		20,945
Athletic Equipment	11,984		11,984
Totals	\$ 1,779,113	\$ 121,669	\$ 1,900,782

APPENDIX A - AUDITEE RESPONSE



January 6, 2009

Brian E. Mason
Audit Manager
New York State Office of the Comptroller
110 State Street, 11th floor
Albany, New York 12236

Dear Mr. Mason:

We received the draft Audit Report (2008-S-126) of the Office of State Comptroller ("OSC"), dated December 8, 2008, regarding the procurement and contracting practices of St. Mary's School for the Deaf ("SMSD" or the "School"). This letter constitutes the School's comments pertaining to that draft audit report's findings and recommendations. We understand that these comments will be included as an appendix to your final report.

As discussed below, while we continue to disagree with the OSC's assertion that certain State Education Department ("SED") manuals and/or policies apply to SMSD, we understand the value of having clearly defined and consistently followed policies and procedures for procurement and contracting. Accordingly, we agree to substantially comply with most of your recommendations, as outlined below.

Inapplicability of Legal Provisions and SED Purchasing Manual

As you know, the School previously disagreed with the OSC's preliminary audit findings with respect to the applicability of certain General Municipal Law and Education Law provisions generally applicable to school districts. Put simply, SMSD argued that those provisions did not apply to SMSD because it was not a "school district" and was instead a private school organized and existing under Article 85 of the Education Law. We stated:

As an initial matter, we note that the audit and your conclusions appear to be predicated on the notion that various legal provisions apply to SMSD, including but not limited to General Municipal Law (GML) Section 103, GML Section 104-b, GML Section 109-b, Education Law Section 305(14), and Education Law Section 1725. However, each of these laws by their terms apply only to a "school district." While that term is not defined specifically in the Education Law, it is clear that SMSD is not a "school district" for any purpose. This is evidenced by the fact that St. Mary's School for the Deaf does not have the words "school district" in its name, which is required of all School Districts under 8 N.Y.C.R.R. Part

240. Additionally, SMSD is referred to as an “institution” throughout Article 85 of the Education Law, and Section 4204-b of that Article distinguishes SMSD from school districts, in fact recognizing that SMSD enrolls students from multiple school districts. Education Law 1725(3) also contains a reference to the “voters of the district,” which clearly has no application to SMSD. Accordingly, there is no basis for applying the requirements of the legal provisions above to SMSD, which is a private school, as recognized by the OSC on page 2 of its preliminary report.

The Reimbursable Cost Manual for Programs Receiving Funding Under Article 85 of the Education Law (the “Manual”) also is ambiguous concerning procurement and contracting requirements. First, contrary to the Notes in your preliminary report, the Manual does not specifically refer to the SED Purchasing Handbook. Rather, the most recent (July 2002) edition of the Manual deletes a reference to the School Business Management Handbook and mentions that competitive bidding practices under GML 103 should be used “when applicable,” and then refers to the SED web page regarding Educational Management Services, much of which is also inapplicable to a private school such as SMSD. Moreover, the Purchasing Handbook itself refers to school districts throughout and, as noted above, SMSD is clearly not a school district.

*
Comment
1

SMSD Comments on Preliminary Audit Findings, dated September 26, 2008.

While the draft audit report deletes references to General Municipal Law and Education Law, it continues to assert throughout that the SED Purchasing Handbook is binding on SMSD. The School continues to disagree with this assertion, particularly when the SED Purchasing Handbook refers to “school districts” throughout and ties many of its requirements to the General Municipal Law and Education Law, which the OSC agrees clearly do not apply to SMSD.

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Comment
2

Notwithstanding the foregoing, we agree with many of the OSC’s recommendations and have taken or are taking steps to implement revised policies and procedures to ensure that SMSD’s procurement and contracting practices are reasonable, prudent and responsible.

Office of State Comptroller Recommendations

As an initial matter, we note that the eight (8) recommendations on page 6 of the draft audit report differ from the ten (10) recommendations contained in the preliminary audit findings to which the School previously responded. Thus, the OSC’s statement on page 5 of the draft audit report that “School officials agreed with our findings and said they would address the issues noted in our report” is somewhat misleading, as the School’s prior general agreement to the OSC’s recommendations related to the preliminary audit findings, and even there the School did not agree with all of the OSC’s findings.

*
Comment
3

* See State Comptroller’s Comments, p. 15

Indeed, the quoted statement above appears immediately after the OSC's claim that a transaction totaling \$30,395 was related to fundraising activities, which is not reimbursable pursuant to the Manual, and immediately prior to the OSC's recommendations, which include Recommendation #8, recommending repayment of \$30,395 to the State. While the transaction referenced was discussed during the audit and in the preliminary audit findings, the OSC previously acknowledged that only \$11,410 of the project (not the full cost of the project) related to fundraising activities. Moreover, there was no recommendation in the previous preliminary audit findings that any amount be repaid to the State. Indeed, it is not clear that any such refund could be made with respect to the School's 2004-2005 CFR.

*
Comment
4

Another representative difference between the preliminary audit findings and the draft audit report is the reference to the School's contract for janitorial services. In the preliminary audit findings, the OSC noted that SMSD did not publicly advertise for bids (although it contacted five companies and received three bids) and entered into a multi-year contract. However, both the requirement to publicly advertise and the alleged prohibition on multi-year contracts were contained in Education Law and General Municipal Law provisions not applicable to SMSD. In the draft audit report, the OSC notes that the School solicited proposals from "only five vendors" and awarded the winning vendor a three-year contract, stating that the transaction was "mishandled." This is not an appropriate characterization of the transaction, particularly when the OSC has no evidence on which to conclude that additional vendors besides the five contacted were able to perform the janitorial services required and/or that a multi-year contract was not economically justified. Indeed, the preliminary audit findings specifically stated that "it was not possible to determine the amount of money saved by outsourcing or if contracted awarded was for the lowest price for the services received," but with no additional information than the OSC had before, the draft audit report now concludes that the transaction was "mishandled." The School believes that this characterization should be removed from the final audit report.

*
Comment
5

Notwithstanding the substantial and material difference between the recommendations contained in the preliminary audit findings and in the draft audit report, SMSD understands the wisdom and value of having clearly defined and consistently followed policies and procedures for procurement and contracting. To this end, as discussed below, we agree with many of the recommendations set forth in your draft audit report.

*
Comment
3

* See State Comptroller's Comments, p. 15

OSC made the following recommendations concerning procurement and contracting in the draft audit report:

OSC Recommendation #1: Comply with SED's guidance for competitive procurements of goods and services, and public works projects. Prepare written specifications for these procurements.

OSC Recommendation #2: Ensure the School's counsel reviews all contracts over \$10,000.

OSC Recommendation #3: Ensure the Board adopts a resolution prior to entering into leases.

OSC Recommendation #4: Comply with School procedures when procuring goods and services not subject to formal competitive bidding.

OSC Recommendation #5: Disclose all less-than-arm's length transactions to SED.

OSC Recommendation #6: Require the Board to monitor the School's compliance with policies and procedures.

OSC Recommendation #7: Develop criteria defining major purchases and create dollar thresholds for what should be reviewed by the committee. Once a threshold is established, have the Board document all reviews.

OSC Recommendation #8: Repay the \$30,395 in State funds used for fundraising purposes and ensure State funds are not used for fundraising activities in the future.

With respect to OSC Recommendations 1-4 and 6-7, the School is in the process of reviewing and revising its procurement and contracting policies, procedures, and forms in conjunction with its legal counsel. The Board of Trustees is expected to consider and adopt a new Procurement and Contracting Policy at its January meeting. In the meantime, while the policies, procedures and forms referenced above are being developed and approved, the School has already begun to employ competitive bidding procedures for new projects/purchases, and is in fact in the process of advertising and re-bidding two capital improvement projects.

The revised policies and procedures (and the School's interim practice) use \$20,000 and \$10,000 thresholds for public works contracts and purchase contracts, respectively, notwithstanding SMSD's position regarding the inapplicability of the General Municipal Law. When soliciting bids, SMSD will provide written specifications to evaluate the proposals equitably and ensure that the School can acquire goods and services at maximum quality and the lowest price. Standard forms will be created and/or revised to

be used for procurement of goods and services, including those for which competitive bidding does not apply. The revised policies and procedures will also provide for review of contracts over \$10,000 by legal counsel and approval by the Board of Trustees (or a committee thereof) when certain thresholds are met. The leasing of vehicles or other equipment, if any, will be supported by an analysis showing that such leasing is in the best financial interests of the School.¹ The revised policies and procedures, as well as the forms used, will be reviewed on an annual basis by the School and its legal counsel.

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Comment
6

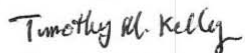
Regarding OSC Recommendation 5, we emphasize that the one transaction mentioned in the audit report, a contract with an architectural firm owned by a Board member, was in fact reported to the SED as a less-than-arm's-length transaction. The OSC also fails to note that the Board of Trustees adopted a Conflict of Interest Policy in 2006 that actually is more restrictive than the Not-for-Profit Corporation Law requires.

Finally, regarding OSC Recommendation 8, as noted above, the School disagrees with the allegation that \$30,395 related to fundraising activities and/or that amounts inadvertently reported to and reimbursed by the SED for the 2004-2005 fiscal year can be paid back to the SED at this time.

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Comments
4 and 7

We would like to thank the Office of the State Comptroller for its preliminary audit findings and its draft audit report. We value this information and we are confident that the actions to be taken above will improve our School's procurement and contracting practices.

Sincerely,



Timothy M. Kelly
Interim Superintendent

¹ The recommendation that the Board adopt a resolution prior to entering into leases is rooted in General Municipal Law § 109-b and Education Law § 1725, neither of which apply to SMSD. However, the revised SMSD Procurement and Contracting Policy will require Board approval (via a committee) for contracts over a certain threshold, which is likely to include any leases for vehicles/equipment.

* See State Comptroller's Comments, pages 15 and 16

APPENDIX B - STATE COMPTROLLER'S COMMENTS ON AUDITEE RESPONSE

1. We deleted references to SED's Purchasing Handbook and/or the School Business Management Handbook from the audit report. However, because the Reimbursable Cost Manual refers to Section 103 of the General Municipal Law, we now reference this provision in our report.
2. Our report does not assert that the School is legally bound to comply with SED's formal procedural direction on procurement and contracting. Further, we have amended our report to more consistently refer to SED's statements on procurement and contracting procedure as "guidance" (as opposed to legal requirement). Moreover, according to the State Education Law, the Commissioner of Education is responsible for the general supervision of all schools and institutions that are subject to the Education Law. Because the direct provision of State funding to St. Mary's is expressly authorized under the Education Law, we believe that the School should follow SED's formal guidance pertaining to the School's financial operations. This includes the guidance provided by the Reimbursable Cost Manual and Section 103 of the General Municipal Law.

We also brought this matter to the attention of SED officials. SED officials recognize that there is a need to strengthen the existing guidance on procurement and other fiscal practices of State-supported schools (such as St. Mary's). Consequently, SED will explore the most appropriate method to enhance accountability over the use of State funds in the area of procurement.

3. The recommendations contained in our preliminary audit findings were generally consistent with those in the draft audit report. We did reduce the number of recommendations in our preliminary findings (10) to the number in the draft audit report (8) to consolidate several of them. We also added a recommendation to the draft report that was not in the preliminary findings. We have amended the presentation of this matter in our report to more accurately reflect the School's comments regarding our recommendations.
4. We did not acknowledge that only \$11,410 (of the \$30,395 in question) pertained to fundraising activities. School officials made this assertion during our fieldwork, and they attributed the difference (\$18,985) to a request by the City of Buffalo to move a statue (on School property) to facilitate a street construction project. However, School officials were unable to provide us with documentation of the City's request. Moreover, based on the available documentation, we concluded that the costs for moving the statue (\$18,985) were related to fundraising efforts, which the Manual specifically prohibits for State funding purposes. Because the School could not adequately document the eligibility of the costs in question (totaling \$30,395), we recommend that the School refund those amounts to the State.
5. The School did not publicly advertise the procurement of janitorial services, as required. Consequently, this procurement was not properly handled. Moreover, we have revised our report to present this issue more clearly.

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6. As noted in our report, School officials disclosed the relationship in question to SED for the 2005-06 year, but not for the 2004-05 year, as was required. Also, we did not take issue with the School's Conflict of Interest Policy, and consequently we did not address it in our report.
 7. Our report does not address the timing or details of any process the School should follow to refund monies to SED for ineligible costs that were reported to and reimbursed by SED. The School should resolve this matter with SED officials.