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COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 9, 2010

Mr. Timothy Kelly
Superintendent
St. Mary's School for the Deaf
2253 Main Street
Buffalo, NY 14214

Re: Report 2010-F-35

Dear Mr. Kelly:

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, we have followed up on the actions taken by officials of St. Mary's School for the Deaf (School) to implement the recommendations contained in our audit report, *Procurement and Contracting Practices* (Report 2008-S-126).

Background, Scope and Objectives

The School is located in the City of Buffalo and is governed by a Board of Trustees (Board). During the 2009-10 school year, the School had an enrollment of approximately 102 children with 141 full-time staff and an average of about seven part-time staff. The School received approximately \$11.6 million in State funds to operate the School. Of this, the School reported it spent about \$1.8 million on goods and services.

According to State Education Department (SED) guidance, the School should use competitive procurement procedures for purchases of goods and services exceeding \$10,000 and public works projects exceeding \$20,000. The School also established its own 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. SED guidance also requires that less-than-arm's-length transactions (i.e. those that are between parties who are related in some manner) be disclosed to it by the School.

Our initial audit report, which was issued on May 6, 2009, determined whether the School followed the procedural guidance provided by SED and complied with its internal policies and procedures when procuring goods and services. We found that the School often did not follow SED's procedural guidance and its internal policies and procedures when procuring goods and services. For example, in our review of 20 transactions totaling \$1.9 million that should have been competitively bid, we found that only one was properly bid and conformed

fully with SED's competitive bidding guidance. In addition, we found that the School did not comply with its own procedures for 16 of the 21 transactions we tested. We also found that, in one instance, the School did not disclose a less-than-arm's-length transaction to SED, as required. We concluded that because of these weaknesses, there was limited assurance that the School received the best goods and services at the lowest reasonable prices. The objective of our follow-up was to assess the extent of implementation as of November 18, 2010, of the eight recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

School officials have made some progress in correcting some of the problems we identified. However, additional improvements are needed. Of the eight prior audit recommendations, four recommendations have been implemented, two recommendations have been partially implemented, one recommendation has not been implemented and one recommendation is not applicable.

Follow-up Observations

Recommendation 1

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

Status - Implemented

Agency Action - To determine whether School officials implemented this recommendation, we reviewed a judgmental sample of five procurements. We found that the School complied with bidding and written specification requirements for three transactions sampled. For the other two procurements in the sample, the School utilized New York State Office of General Services contracts. As such, public bidding was not necessary.

Recommendation 2

Ensure the School's counsel reviews all contracts over \$10,000.

Status - Partially Implemented

Agency Action - The School has not established a procedure to ensure that all contracts over the \$10,000 threshold undergo legal review. However, School officials did provide us with evidence that indicated between July 2008 and August 2010, a law firm retained by the School had reviewed or was in the process of reviewing a total of 14 contracts that exceeded the \$10,000 threshold. Three of the 14 were contracts we reviewed as part of our testing to determine if the School had complied with SED's procurement guidance identified in Recommendation 1 above.

Recommendation 3

Ensure the Board adopts a resolution prior to entering into leases.

Status - Not Implemented

Agency Action - School officials advised that only one lease was entered into since our initial audit; a postage equipment lease covering a five-year period. However, Board meeting minutes do not indicate that the Board adopted a resolution prior to approving the awarding of this lease.

Recommendation 4

Comply with School procedures when procuring goods and services not subject to formal competitive bidding.

Status - Partially Implemented

Agency Action - In January 2009, the School revised its Purchasing Policy, largely in response to issues raised in our original audit. The Policy states that generally, for purchase contracts between \$5,000 and \$9,999 or contracts for labor, services and/or construction between \$10,000 and \$19,999, competitive bidding is not required. However, written price quotations are necessary. We sampled five purchases ranging between \$5,000 and \$10,000 and found two purchases had three written price quotations, as required. Another purchase was made from a New York State contract, negating the need for price quotations. However, two other purchases did not have price quotations.

Recommendation 5

Disclose all less-than-arm's-length transactions to SED.

Status - Not Applicable

Agency Action - School officials advised that there have been no instances of less-than-arm's-length transactions that have been brought to their attention since our original audit. We continue to maintain that, should less-than-arm's-length transactions occur in the future, School officials should disclose such transactions to SED.

Recommendation 6

Require the Board to monitor the School's compliance with policies and procedures.

Status - Implemented

Agency Action - The School's January 2009 Board meeting minutes indicate that Board members, recognizing the need for more Board involvement, approved a new Purchasing Policy. The Policy established competitive bidding requirements and stated that all

contracts subject to competitive bidding will be awarded by Board action. The Policy also stated that the Board will annually review all policies and procedures regarding the purchase of goods and services. We reviewed Board meeting minutes for April, June and October of 2009. In all three instances, the meeting minutes indicated that proper bidding and award procedures were followed. In addition, the Board's Finance Committee adopted a process to review all expiring contracts and bid proposals.

Recommendation 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.

Status - Implemented

Agency Action - The School's new Purchasing Policy requires that competitive bids or quotations should be solicited for the purchase of materials, equipment and supplies exceeding \$10,000 and/or labor, services or construction exceeding \$20,000. The Policy delegates responsibility to the School's Business Office to document that all applicable purchasing requirements have been met, including how a determination was made that the purchase did or did not meet the bidding threshold amounts described above. The Board will act to award contracts based on the Superintendent's recommendation through the Business Office, after all Business Office responsibilities have been met.

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.

Status - Implemented

Agency Action - In our original audit report, we identified \$30,395 as the amount of State funds used for fundraising purposes. Specifically the funds were used for an expenditure the School made to move a statue and create a memorial garden. In August 2009, after reviewing documentation provided by the School, SED determined that \$11,410 of the \$30,395 expenditure was related to fundraising. As such, the School returned \$11,410 to SED.

The major contributor to this report was Karen Bogucki.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the School for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Edward J. Durocher, CIA
Audit Manager

cc: Mr. Mark Coffed, Director of Business Operations
Mr. James Conway, State Education Department
Mr. Thomas Lukacs, Division of the Budget