



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

March, 1, 2019

MaryEllen Elia  
Commissioner of Education  
New York State Department of Education  
89 Washington Avenue  
Albany, NY 12234

Re: Report 2018-BSE2-001

Dear Commissioner Elia:

Our Office examined<sup>1</sup> payments the Department of Education (SED) made under contracts C813016, C81403A, T815055, and T816040 to the not-for-profit entity, Tough Man Inc. (Tough Man). SED made five payments totaling \$150,000 under the contracts for services provided during the period July 1, 2013 through June 30, 2017. The purpose of the contracts was to provide funding to support an in-school program encouraging students to exercise and to support triathlons in which students would compete. The objectives of our examination were to determine whether funds were used for the contracts' purposes, and whether the expenses claimed exceeded program revenues as required under the terms of the contracts.

**A. Results of Examination**

SED did not request, and there is a material risk Tough Man did not maintain, sufficient, appropriate evidence to demonstrate the expenses claimed under the contracts were incurred for contract purposes and exceeded program revenues and other reimbursements by \$150,000, as required.

We shared a draft report with SED officials and considered their comments (Attachment A) in preparing this final report. SED officials agreed with our recommendations, stating they will request and review all supporting documentation to support payments made under the contracts and request the return of funds from Tough Man if it is appropriate to do so. SED officials also stated they will require Tough Man to submit full supporting documentation to substantiate requests for payment on future contracts and be paid on a reimbursement only basis.

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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(1) and (7), and Article VII, Section 111 of the State Finance Law.

## **B. Background and Methodology**

Tough Man is a not-for-profit corporation formed to sponsor community sporting events such as walks and races in New York. The contracts provide funding for Tough Man to provide an in-school program to students and to operate triathlons for kids and teens. The president of Tough Man is the Chief Executive Officer of the for-profit entities Tough Man Enterprises Corp. and Tough Kids Inc. According to the president of Tough Man, the triathlons supported by the contracts were operated cooperatively by Tough Man, Tough Kids Inc. and Tough Man Enterprises Corp.

The contracts require Tough Man to establish and maintain complete and accurate books, records, documents, receipts, accounts and other evidence directly pertinent to its performance under the contracts, and to retain and produce records necessary to substantiate the proper expenditure and deposit of funds received under the contracts.

The contracts prohibit payment for expenses reimbursed or reimbursable from other funding sources. This includes registration fees, sponsorships, licensing fees, and royalties. Therefore, Tough Man is eligible to request contract funds when the expenses for contract-related activities exceed the revenues generated (and other reimbursements received) up to the contract value—collectively \$150,000 for the contracts we examined. Each student paid a registration fee to participate in the triathlons supported by the contracts and the Tough Man websites identify multiple corporate sponsors for triathlons.

To accomplish our objectives, we: (i) analyzed the terms and conditions of the contracts; (ii) interviewed SED officials, the president of Tough Man, and employees of the accounting firm retained by the president of Tough Man; (iii) reviewed vouchers and final expenditure reports provided by SED for all of the contracts; and (iv) reviewed additional documentation from Tough Man, including Tough Man's bank statements and general ledger, for contract T816040.

## **C. Details of Findings**

### **1. SED Claim Review**

We found SED did not obtain or review sufficient, appropriate evidence to support claims for payment certified by Tough Man prior to approving them for payment. Instead, SED only reviewed lists that contained: (i) names, titles, broad service date ranges (e.g., "7/1/16 - 6/30/17") and lump sum salaries for personal service costs; and (ii) dates, names, check numbers, and dollar amounts for non-personal service costs. We note that certain entries on the lists were not legible.

## 2. Tough Man Records

Tough Man did not maintain sufficient, appropriate evidence to support the expenses claimed under contract T816040 were incurred for contract purposes and exceeded revenues by the \$25,000 contract amount. For example, Tough Man did not provide time cards, work schedules, consultant agreements, or other relevant documentation to support the personal service and consulting expenses charged to the contract. We also found Tough Man did not have written agreements with vendors from whom it procured goods or services. The president of Tough Man explained he had “handshake agreements” with vendors.

Tough Man also did not provide evidence to demonstrate it properly allocated to the contract expenses incurred and revenues earned from contract related activities. The president of Tough Man explained that the kid, teen, and adult triathlons occur at the same location on the same weekend. However, only the kid and teen triathlons are supported under the contracts. Accordingly, Tough Man officials should have been able to demonstrate that they allocated expenses and revenues proportionately among the races, and only allocated kid and teen triathlon expenses and revenues to the contract. Without an appropriate allocation, Tough Man cannot demonstrate expenses incurred exceeded revenues earned by the contract amount, which is required to receive full reimbursement under the contract. The president of Tough Man claimed the triathlon events are “so intertwined” that he could not allocate the expenses or revenues.

We found neither the general ledger nor the bank records reflected the deposit of the \$25,000 check from the grant contract into the Tough Man bank account. An official of the accounting firm retained by the president of Tough Man advised our auditors the check was most likely deposited into a separate bank account owned by the president of Tough Man.

Given Tough Man’s incomplete financial books and records related to the contract, we were unable to verify that the \$25,000 payment under contract T816040 was made in accordance with the terms and conditions of the contract.

The president of Tough Man advised our auditors that the financial books and records for contracts C813016, C81403A, and T815055 are substantially similar to the documentation Tough Man provided for contract T816040. Accordingly, there is a material risk that Tough Man also did not maintain sufficient, appropriate evidence to support the remaining \$125,000 in payments.

**Recommendations**

- 1) *Require Tough Man to provide sufficient, appropriate evidence to support that the expenses claimed under the contracts were incurred for contract purposes and exceeded program revenues by \$150,000, as required. Recover as appropriate any amount for which Tough Man cannot properly account.*
- 2) *Ensure future payments to Tough Man are supported by sufficient, appropriate evidence and ensure the amount requested represents expenses which exceed revenues and funding from other sources.*

We thank the management and staff of the Department of Education for the courtesies and cooperation extended to our auditors during this examination. Since your response to the draft report is in agreement with this report, there is no need for a further response unless you feel otherwise. If you choose to provide a response, we would appreciate receiving it by April 1, 2019.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

Encl: Attachment A

cc: Andrew Klippel, Director of Financial Administration & Budget  
Karla Ravida, Audit Services  
NYS Office of the Attorney General Charities Bureau



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February 6, 2019

Bernard J. McHugh  
Director of State Expenditures  
Office of the State Comptroller  
110 State Street-11<sup>th</sup> Floor  
Albany, NY 12236

Dear Mr. McHugh:

The following is New York State Education Department's (Department) response to draft audit report 2018-BSE2-001.

**Recommendation 1:** Require Tough Man to provide sufficient, appropriate evidence to support that the expenses claimed under the contracts were incurred for contract purposes and exceeded program revenues by \$150,000, as required. Recover as appropriate any amount for which Tough Man cannot properly account.

We agree that Tough Man needs to provide sufficient and appropriate evidence for the funds received. The Department intends to request all supporting documentation to support payments made for contracts C813016, C81403A, T815055, and T816040 and cross reference to the Final Expenditure Reports. The Department will also request documentation of program income for each contract to confirm program income was deducted from the total expenditures to determine the appropriate amount charged to the contract. The Department will request the return of funds from Tough Man Inc. if sufficient documentation is not provided.

**Recommendation 2:** Ensure future payments to Tough Man are supported by sufficient, appropriate evidence and ensure the amount requested represents expenses which exceed revenues and funding from other sources.

We agree with the recommendation requiring full support of requested funds and the Department will require Tough Man Inc. to submit supporting documentation to substantiate requests for payment on future contracts and be paid on a reimbursement only basis.

Yours truly,

A handwritten signature in cursive script that reads "Sharon Cates-Williams".

Sharon Cates-Williams  
Deputy Commissioner

cc: David Sears  
William Keane  
Karla Ravida  
Andrew Klippel