

SINGLE PAGE COMMUNICATION TO THE COMMON COUNCIL

TO: THE COMMON COUNCIL

DATE: March 14, 2006

FROM: DEPARTMENT: Audit & Control

DIVISION: Audit

SUBJECT: [Board of Education
[Audit Follow-up

PRIOR COUNCIL REFERENCE:

TEXT:

The Comptroller's Department issued a report based on the findings uncovered in our audit. Two specific findings are unresolved.

Findings on two large contracts uncovered in the audit involved invoices in the range of tens to hundreds of thousands of dollars. The total contracts amounted to several millions of dollars. These findings have not been explained to our satisfaction. Not only has the Board of Education (BOE) not explained why they have paid invoices on a contract without the proper documentation, but in its' reply has not asserted that it would research the invoices and immediately cease making any future payments until such documentation is forthcoming.

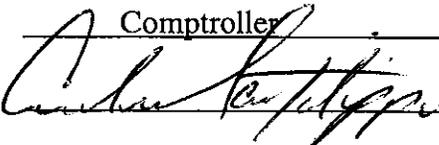
With respect to our finding on the FOIL, the BOE has the right under the contract to require documentation as to the scope of and completion of the work. The Comptroller has the right to require documentation sufficient to pay invoices against this contract. As a party to the contract, the BOE and the Comptroller have every right to require this documentation, regardless of the FOIL, in order to protect the public's trust.

The audit follow-up is attached, which displays the findings from the audit and the subsequent replies from the BOE. Additionally, we have included information from audited reports of the State Comptroller's Office that is relevant to this issue. We also included excerpts from the State Finance and Public Authorities laws on "proper invoices".

We will submit this report to the State Comptroller and the State Education Department within the next two weeks. Hopefully a resolution is forthcoming in the interim.

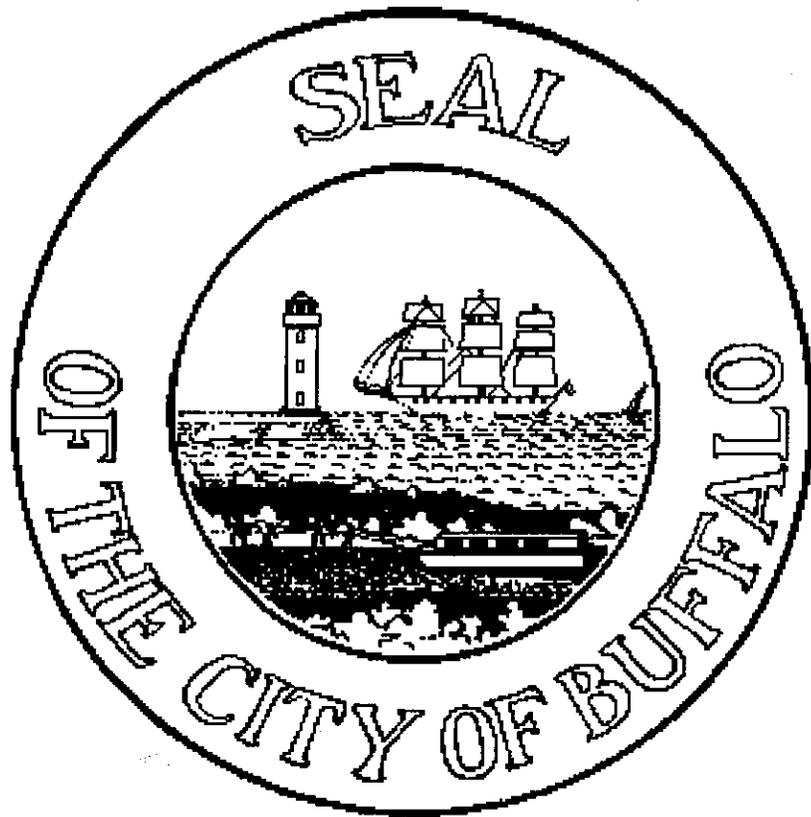
Department Head Name: Andrew A. SanFilippo

Title: Comptroller

Signature of Department Head: 

**CITY OF BUFFALO
AUDIT REPORT FOLLOW-UP**

Board of Education



**For the Period
July 1, 2003 through December 31, 2004**

Summary

The Comptroller's Department issued a report based on the findings uncovered in our audit. Two specific findings are unresolved.

Findings on two large contracts uncovered in the audit involved invoices in the range of tens to hundreds of thousands. The total contracts amounted to several millions of dollars. These findings have not been explained to our satisfaction.

Not only has the BOE not explained why they have paid invoices on a contract without the proper documentation, but in its reply has not asserted that it would research the invoices, and immediately cease making any future payments until the documentation is forthcoming.

The BOE has a right under the contract to require documentation as to the scope of work and its completion under the contract. The Comptroller has the right to require documentation sufficient to pay invoices against the contract. As a party to the contract, the Board and Comptroller have every right to require it, regardless of the FOIL in order to protect the Public's Trust.

The following pages will display the findings as included in the report and the subsequent replies from the BOE. After those extracts, we have included information from audited reports of the State Comptroller's Office that is relevant to this issue. We also included excerpts from the State Finance and Public Authorities laws on **“proper invoices.”**

We will submit this report to the State Comptroller and the State Education Department within the next two weeks. Hopefully a resolution is forthcoming in the interim.

The following are excerpts from New York State Law on the subject of "Proper Invoice"

State Finance Law § 109 Proofs required upon audit by the comptroller.

§ 109. Proofs required upon audit by the comptroller.

1. The comptroller shall not draw his warrant for the payment of any sum appropriated, except for salaries and other expenditures and appropriations, the amounts of which are duly established and fixed by law, until the person demanding the same presents to him a detailed statement thereof in items and makes all reports required of him by law. If such statement is for services rendered or articles furnished, it must show when, where, to whom and under what authority they were rendered or furnished; if for traveling expenses, the distance traveled, between what places, the duty or business for the performance of which the expenses were incurred, and the dates and items of each expenditure; if for reimbursement of other necessary and incidental expenses, a bill duly receipted must be attached to the statement. Each statement of accounts must contain a certificate by or on behalf of the party presenting the same to the effect that it is just, true and correct, that no part thereof has been paid, except as stated therein, and that the balance therein stated is actually due and owing.
4. The comptroller shall not approve for payment any expenditure from any fund except upon audit of such vouchers or other documents as are necessary to insure that such payment is lawful and proper.

State Finance Law § 179-E Definitions.

5. "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price, and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the state comptroller or individual state agency may reasonably require.

Title 4 - CONTRACTS OF PUBLIC AUTHORITIES
§ 2880.

- (f) "Proper invoice" means a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property, or services delivered or rendered, in such form and supported by such other substantiating documentation as the corporation may reasonably require.

The State Comptroller in a recent summary of findings in audits of Authorities has specific findings that are similar in nature to what has not been in-force at the Board of Education, at least for these specific large contracts.

State University of New York Research Foundation

“In fact, auditors determine that from the 31 invoice payments already made to this vendor, 14 of the payments (for amounts ranging from \$50,00 to \$60,000) were made without documentation as to specific services rendered ...”

Westchester County Health Care Corporation

“About \$945,000 in reimbursed expenses were not properly itemized, documented or supported by paid bills that would have permitted a proper audit of the charges. Officials at WCHCC did not determine whether they received all of the services paid for or whether the consultants’ expenses were WCHCC related.”

Rochester-Genesee Regional Transportation Authority

“...guidelines require staff to approve invoices to verify that goods and services have been received and that invoice amounts are in agreement with contract terms.

. One invoice for reengineering design services, worth \$32,000, lacked support for the hours billed,

. One invoice for construction management servicestotaling \$22,500, indicated the percentage of work completed, but not the actual tasks performed, as required by the contract terms,

RGRTA may have overpaid for the professional services noted above because it paid the invoices without having proper documentation to support the costs.”

It should be noted that the amounts of the contracts and the exceptions dollar amounts are significantly smaller than what was discovered at the Board of Education audit.



NEWS

From the Office of the New York State Comptroller

Alan G. Hevesi

February 21, 2006

Hevesi Proposes Legislation Providing Oversight of Contracts Awarded by State Authorities

**Bill Addresses Reform Issue Ignored in Public Authorities
Accountability Act Signed into Law in January**

Comptroller Also Issues Report Showing Weaknesses in Authority Procurement Practices – Billions of Dollars Awarded Without Oversight

State Comptroller Alan G. Hevesi today proposed legislation providing for oversight of public authority contracts similar to that required for State agencies and addressing weaknesses identified through dozens of audits of procurement practices at New York's public authorities.

A provision for contract oversight that was included in authority reform legislation advanced by Comptroller Hevesi and Attorney General Spitzer was omitted from the Public Authorities Accountability Act signed into law in January.

"We have completed dozens of audits that show that too often public authorities are not following the rules when awarding contracts and are wasting public dollars. These bad contracting practices can be ended by instituting the same oversight that exists now for all State agencies," Hevesi said. "Last year's public authority reform legislation was only the first step towards comprehensive reform because it did not include this and other important measures."

Many of the audit findings were included in a report, *Public Authority Contracting Practices: Billions of Dollars of Public Funds Committed without Adequate Oversight*, issued today by the Comptroller's Office. The findings include:

- Failure to follow competitive bidding requirements.
- Failure to record lobbying activities relating to procurement.
- Payments made to vendors with little or no supporting documentation.
- Improper use of credit cards or use of the cards to circumvent competitive bidding requirements.
- Lack of commitment to attaining Minority/Women Business Enterprise contracting goals.

Under law, the Comptroller's Office reviews the contracts of all State agencies and has done so for more than 90 years. In fiscal year 2004-2005, the Comptroller's Office reviewed 13,707 contracts valued at nearly \$16.6 billion, as well as 27,591 contract amendments. These 41,298 transactions were valued at more than \$28 billion. As part of the process, the Comptroller's Office works with agencies to improve the terms of contracts. In some cases, however, the Comptroller's Office does reject non-responsible vendors selected for an agency award. For example, the Comptroller's Office recently rejected a Thruway Authority construction contract with Worth Construction because, according to law enforcement and public records, the firm and its principals have a long history of association with members of organized crime. This determination of non-responsibility, and the Comptroller's authority to make the determination, were recently upheld by the Supreme Court in Albany County.

The bill submitted to the Legislature today would require an authority to submit contracts to the Comptroller's Office for review before awarding the contract, if the Comptroller determines that there is a need for increased oversight. In making that decision, the Comptroller's Office would consider factors such as the size of a contract, the past practices of an individual public authority, and comments or complaints from vendors and the business community.

The bill would strengthen current requirements for authorities to establish and enforce procurement guidelines and require approval by two-thirds of an authority's board of directors for exemptions to competitive bidding requirements. Further, it would require each authority to designate a procurement officer and each authority governing board to establish a committee on procurement policy.

Comptroller Hevesi and Attorney General Eliot Spitzer proposed comprehensive authority reform legislation including these provisions in 2004. The Assembly passed an expanded version of the legislation in 2005.

Currently, 46 of the State's public authorities submit annual procurement reports to the Comptroller's Office. In 2004-05, these authorities entered into 10,404 contracts valued at \$5.5 billion, and \$4.8 billion in payments were made pursuant to contracts. These annual reports cover activities of subsidiary corporations, making information available on 189 of the 740 public authorities that exist in New York State.

Only two of the State's major authorities must submit procurement contracts to the Comptroller's Office for review before they can become effective, as is required for most State agency contracts. The Long Island Power Authority (LIPA) is required by its enabling legislation to do so, and the Thruway Authority's board passed a resolution to require such review when the Authority was established in 1950.

The Comptroller's Office does have the power to conduct audits of authorities. These audits review past expenditures, management and oversight practices and other aspects of authority operations. The Comptroller's Office has completed 88 audits of authorities since January 2003, 56 of which dealt with procurement and contracting. Of the 56:

- 24 audits demonstrate a disregard for procurement rules, including 12 that show a disregard for competitive bidding requirements and 10 show that contracts were not approved in advance by either the board or other authorized individuals.
- 33 involve poor quality procurements resulting in waste or inefficiency, of which 16 reveal vendor payments made with little or no supporting documentation to

justify the amount and purpose of the purchase and nine expose inadequate procurement guidelines or lack of written procedures.

- Nine demonstrate apparent abuses of procurement authority. For example, seven describe improper use of credit cards or use of credit cards to avoid competitive bidding, and two show authorities adding unrelated work to existing contracts instead of re-bidding.

Notable findings from these audits include:

- The **Urban Development Corporation** paid \$2.2 million for temporary personnel services to three vendors with which it did not have contracts, despite the fact that such contracts were required under the authority's own procurement guidelines.
- **New York Convention Center Operating Corporation**, which runs the Javits Center in New York City, awarded contracts without a competitive process for consulting, architectural, legal and engineering services in connection with a proposed expansion of the Convention Center. The contracts, which did not meet the Corporation's own criteria for exemption from competitive bidding, were ultimately worth a total of \$2.3 million.
- **Nassau County Health Care Corporation** awarded construction projects totaling \$981,000 without adequate competition as required by its own guidelines.
- The **Buffalo and Fort Erie Public Bridge Authority** awarded two contracts valued at \$1.7 million as sole source procurements to firms with long-standing relationships with the Authority, even though officials agreed with auditors that the services provided were not unique and could have been provided by any transportation engineering firm.
- The **Thoroughbred Racing Capital Investment Fund** circumvented oversight of payments to a consulting attorney by paying the individual \$285,267 in numerous checks of less than \$2,000. Checks for \$2,000 or more would have required additional authorization by other Authority officials.
- The **Westchester County Health Care Corporation** paid \$112,000 in credit card bills for expenses, such as payment to a yacht club and a \$1,300 dinner that were not properly itemized or documented by the officials who used the cards.
- The **Port of Oswego Authority** did not use statewide contracts that could have resulted in more than \$80,000 in cost savings on certain purchases.
- The **Archives Partnership Trust** awarded a \$65,000 graphic design services contract without a competitive process or documentation of why the vendor was selected without competitive bidding.

Auditors did find acceptable procurement practices in some authorities, including the Central New York Regional Transportation Authority, Niagara Frontier Transportation Authority, Thousand Islands Bridge Authority and Environmental Facilities Corporation.

Audit Findings References

8.) The FOIL (under the Freedom of Information Request Law) requests by the Buffalo Teacher Federation (BTF) were not fully complied with by the Board of Education (BOE).

Starting in July of 2004 and continuing through February of 2005, the Buffalo Teacher's Federation (BTF) filed a series of Freedom of Information Law (FOIL) requests with the Buffalo Board of Education concerning funds paid to the Educational Innovation Consortium (EIC), the UB Foundation and the Center for Applied Technology in Education (CATE).

The Board of Education returned to the BTF a series of documents that appear to address portions of the FOIL request. Unhappy with the answers provided by the BOE, the BTF asked that the City Comptroller audit the contracts of EIC, the BOE, the UB Foundation and CATE.

The City's Audit Department was already in the process of auditing some BOE transactions when this request arrived. In fact, some of the items highlighted by the BTF were already selected as sample items to be investigated by the audit.

The FOIL request from the BTF was specific in the information required. The FOIL legislation itself is very clear in that failure to provide information in answer to a legitimate request is a violation of New York State law and the Board can be held accountable. It is clear in this instance that the Board has neither established procedures nor any formal policy to handle FOIL requests. Procedures and policies should be established immediately and the remainder of the BTF's FOIL request should be competed.

8.) The FOIL (under the Freedom of Information Request Law) requests by the Buffalo Teacher Federation (BTF) were not fully complied with by the Board of Education (BOE).

We recommend that a procedure be put in place for reviewing foil requests. It should start with the Law Department. If the request is for information that fits within the law, then the response should include all information as requested.

9.) The invoices for the "ATLAS initiative" were paid without supporting detail.

We recommend that the repository for information pertaining to the payment of invoices (vouchers or whatever term best describes this information) be the accounting area. There can be no assumption that the instrument has been reviewed, when there is no concrete information available to the reviewer. The audit step could not be completed because the information was unable to be obtained in the area. The audit team spent a considerable amount of time researching backup in other areas of the district, and in this case was unable to be presented with any. This contract is in excess of \$5 million dollars and we should have been able to compare a Scope of Services to completion of same as referenced on the invoice.

9.) The invoices for the "ATLAS initiative" were paid without supporting detail.

More than \$2.4 million dollars was paid to vendors for the "ATLAS initiative", a project designed "to provide teachers and administrators with technology tools that allow them to perform their jobs more effectively, to organize technology training, and to get student achievement data into the hands of district staff in a timely and accurate manner." What specifically was created with ATLAS initiative funds cannot be determined by the audit team. However, ATLAS initiative software is operational and data is being collected.

Invoices for this initiative consist of but one page, usually only letterhead and one line of text. They do not state exactly what services were provided, to whom and when. Asking the Education Innovation Consortium, the vendor for ATLAS initiative services, for the detail behind the invoices proved to be pointless: attorneys representing that group have maintained that they do not need to provide information via a FOIL as they are not covered by that law. The reply to the request in the letter is included in the appendix to the report.