



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Selected Human Resource Controls and Potential Conflicts of Interest

The Research Foundation for the State University of New York



Report 2011-S-24

October 2012

Executive Summary

Purpose

To determine if certain aspects of the Research Foundation for the State University of New York's (Research Foundation) employee practices, contracts and purchases complied with applicable requirements. The audit covers the period July 1, 2008 through January 31, 2012. In addition, we determined the status of implementation of the recommendations from our prior report (2004-S-13) entitled Research Foundation for the State University of New York: Administrative and Discretionary Costs.

Background

The Research Foundation was chartered in 1951 by the Board of Regents as a private, nonprofit educational corporation. Its mission is to work with campus leadership to support research and discovery at the State University of New York (SUNY) through administering sponsored projects and sharing intellectual property for public benefit and economic growth. The SUNY Chancellor serves as ex officio chair of the 15-member Research Foundation governing board. The Research Foundation has a central office in Albany (Central Office) and offices at 30 SUNY locations. The locations are responsible for day-to-day administration of sponsored programs.

Key Findings

- Edgar H. Turkle III, Operations Manager for the Research Foundation at Buffalo State College, charged \$130,887 to his corporate credit card for such questionable items as foreign travel, high-end dining and hotels, and personal items such as a laptop computer, an iPad, iPhones and groceries. His actions violated policy and resulted in his personal enrichment at the expense of the Research Foundation.
- The Central Office compensated a former General Counsel \$345,034, plus a severance package, for less than a year of service. In fact, we calculated the total cost of hiring and employing this individual was \$665,356 for an 11-month period. We question the Research Foundation's justification for agreeing to these payments in the employment contract it entered into with this individual.
- The Research Foundation assisted a retiree in circumventing Retirement and Social Security Law limits on retiree compensation by hiring this former SUNY Stony Brook employee when she neared the \$30,000 salary cap. The employee continued to perform work for SUNY Stony Brook even though she was being paid by the Research Foundation.
- The Research Foundation paid \$3 million for 10 contracts where we identified a potential conflict of interest and violations of Research Foundation policies. As a result, the Research Foundation has little or no assurance that reasonable prices were paid for services.
- The Chancellor's account was charged \$27,968 to pay for questionable items, including membership to a private club. Given the nature of these items, we recommend that criteria be strengthened to make clear when such expenses are appropriate.
- We had questions regarding the time and attendance of a Research Foundation employee and referred these matters to the State Attorney General's Office.
- Certain of the findings we identified are similar to the findings in our prior audit of the Research Foundation. In this regard, Research Foundation officials made limited progress in correcting

the problems we identified in the prior audit. Of the prior report's six recommendations, one was implemented, two were partially implemented, and three were not implemented.

- We believe that many of the problems reported here are attributable to a weak internal control environment. Since multiple people and locations were involved in the problems we found, we believe an improved internal control environment is necessary to prevent abuses.

Key Recommendations

- Improve the control environment at the Research Foundation to better ensure compliance with all relevant laws and policies, including those related to procurement and payroll.
- Recover funds spent on purchases and personnel costs that were excessive or not in line with the Research Foundation's mission.

Other Related Audit/Report of Interest

[Research Foundation of the State University of New York: Administrative and Discretionary Costs \(2004-S-13\)](#)

**New York State
Office of the State Comptroller**

Division of State Government Accountability

October 19, 2012

Dr. Nancy L. Zimpher
Chancellor
State University of New York
State University Plaza
Albany, NY 12246

Dear Chancellor Zimpher:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. 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 the Research Foundation for the State University of New York entitled *Selected Human Resource Controls and Potential Conflicts of Interest*. This audit report includes a follow up on the status of recommendations made in our prior audit of the Research Foundation (2004-S-13 Research Foundation for the State University of New York: Administrative and Discretionary Costs). This audit was performed pursuant to State Comptroller's authority under Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law. It was also performed pursuant to the Agreement between the State University of New York and the Research Foundation of the State University of New York, dated June 1, 1977.

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*

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Background

The Research Foundation for the State University of New York (Research Foundation) was chartered in 1951 by the Board of Regents as a private, nonprofit educational corporation. Its mission is to work with campus leadership to support research and discovery at the State University of New York (SUNY) through administering sponsored projects and sharing intellectual property for public benefit and economic growth. Because of its status as a public charity under Internal Revenue Code Section 501(c) (3), the Research Foundation enjoys exemption from federal income tax and is also eligible to receive tax deductible charitable contributions. It received public support (State and federal) of almost \$950 million during the fiscal year ending June 30, 2011, or about 80 percent of total revenues of nearly \$1.2 billion, with the remainder from investment income and other sources. The Research Foundation is governed by a 15-member board of directors that includes researchers and representatives from the campuses and System Administration, as well as representatives from private business and industry. The SUNY Chancellor serves as ex officio chair of the governing board.

The Research Foundation has a central office in Albany (Central Office) and offices at 30 SUNY locations. The locations are responsible for the day-to-day administration of sponsored programs, including financial, human resources, procurement, and reporting functions. The Central Office has established policies and procedures that apply to all locations, though location policies may be more restrictive or contain provisions specific to that office.

Each year the Research Foundation gives a portion of its funds to the campuses to support the SUNY research enterprise. These funds come from the following sources:

- Indirect costs reimbursed to the campus;
- Investment income;
- The 60 percent share of royalties earned by an inventor's campus; and
- "Gifts and other" amounts allocable to the particular campus.

Total campus allocations for fiscal year 2010 were \$144.8 million. Research Foundation policy states that these funds may be used to support three functions of the campus: instruction, organization research and other sponsored activities, and institutional activities. Our audit primarily focused on the use of these discretionary funds.

Our audit was prompted by specific concerns related to Research Foundation executive management functions and oversight under the tenure of President John J. O'Connor. On June 17, 2011, Mr. O'Connor resigned his post with the Foundation amid continuing scrutiny of his leadership.

On June 9, 2005, the State Comptroller issued audit report 2004-S-13 entitled Research Foundation for the State University of New York: Administrative and Discretionary Costs. Among a number of issues, we determined that the Research Foundation made certain payments with discretionary funds that were improper or highly questionable.

Audit Findings and Recommendations

Research Foundation policy states that expenses must support instruction, organization research and other sponsored activities and institutional activities. However, we concluded that a culture of entitlement among some employees, coupled with a cavalier attitude that certain Research Foundation officials demonstrated toward their own policies and responsibilities as a nonprofit organization, undermined the internal control environment and led to abuses.

At Buffalo State College, a senior management official charged \$130,887 to his corporate credit card for such questionable items as foreign travel, high-end dining and hotels, as well as personal items such as a laptop computer, an iPad, iPhones, and groceries. His actions violated Research Foundation policy and resulted in his personal enrichment at Research Foundation expense.

We also identified contracts totaling nearly \$3 million at other Research Foundation locations for which single and sole source procurements were not adequately supported or where there was a potential conflict of interest. In addition, we question certain payments from the Chancellor's Fund. Also, we questioned the time and attendance and other employment related issues for one former employee. We referred this matter to the State Attorney General.

In response to our audit findings, Research Foundation officials indicated that they have taken actions to improve the Foundation's leadership, culture, procedures, and internal controls.

We acknowledge that changes have taken place that should strengthen control and adherence to policy. However, we also note that the problems we identified involved multiple persons and locations and, therefore, there is a need for continual monitoring and reinforcement of expectations on a system wide basis.

Abuses at Buffalo State College

Use of Funds for Personal Benefit

The Research Foundation is responsible for creating and maintaining a control environment, or 'tone at the top,' that models and supports effective work that helps achieve its mission and is conducted with integrity. A good control environment is marked by clear and effective reporting and accountability relationships, senior management compliance with policies and laws, and effective communication about ethical values. An adequate control environment also reinforces ethical behavior while encouraging employees to report improprieties and threats to integrity. On the other hand, an inadequate control environment can provide and even condone opportunities for unethical behavior at all levels. We believe the poor control environment at the Research Foundation contributed to the abuses we detail in this report.

The Research Foundation provides credit cards to its employees to facilitate the purchase of business-related goods and services. It requires a review of these charges to ensure they are necessary and that payment records adequately support them. Adequate documentation includes

records describing the amount, date, place, and business purpose of the expenditure. Operations Manager and Vice President for Research Administration and Economic Development, Edgar H. Turkle III, knowingly violated policies and procedures requiring that expenditures support the mission of the Research Foundation and used his Research Foundation provided credit card to personally enrich himself. We reviewed 424 of Mr. Turkle's credit card transactions for the 48-month period November 2007 through November 2011, and found 348 purchases totaling \$130,887 were not adequately supported as being business-related. Mr. Turkle traveled to foreign countries in 29 out of the 48 months we reviewed, incurring \$125,342 for foreign travel, primarily to Asia.

According to Mr. Turkle, he often accompanied Buffalo State faculty members on trips to China and Thailand because, as he said, "I am the guy. No other way to put it." Charges included travel upgrades (e.g., United Air Red Carpet Club upgrades which included complimentary beer and wine, and United Air mileage upgrades totaling \$3,470) and travel insurance for himself and his wife. Mr. Turkle's travel vouchers related to these trips did not include itineraries or agendas. Rather, there was only a short description of the purpose of travel. For one voucher submitted in 2008, Mr. Turkle indicated the purpose of his travel to Kuala Lumpur, Malaysia was to attend a conference. However, he also charged the Research Foundation for expenses incurred after the Conference when he spent an additional four days in Bangkok. In addition, family members often accompanied Mr. Turkle and other faculty members on many of the trips. We note family members usually reimbursed the Research Foundation for their airfare, but not for certain other costs associated with the trip.

Mr. Turkle also charged the Research Foundation \$22,225 for Buffalo Sabres Hockey tickets (which he admitted were his personal season tickets), and other personal items such as a birthday celebration for his wife, an Apple laptop computer, an iPad, iPhones, Godiva chocolates, and groceries. These purchases clearly benefited only Mr. Turkle and may be taxable under the Internal Revenue Code. We note Mr. Turkle reimbursed the Research Foundation \$10,674 for personal charges on his credit card; a small portion of the \$130,887 in unsupported charges.

Mr. Turkle also inappropriately credited himself with leave time. The Research Foundation has an established Time Reporting Policy which requires certain employees to sign a monthly exception report, certifying they worked the stated dates and times. It was Mr. Turkle's responsibility to ensure these forms were completed and retained in accordance with the policy. However, Mr. Turkle himself did not submit accurate forms. On five exception reports between May 2010 and October 2011, he credited his "Other" accrual column for weekends he was in Thailand and China, resulting in his receiving 14 additional days of leave. We brought this to the attention of Research Foundation Central Office officials, who agreed the extra accruals were not appropriate and later said they recovered the improperly-credited leave.

Research Foundation policy allows people to receive extra service payments for additional services they perform, provided the services exceed what is normally performed as regular work responsibilities and do not interfere with those responsibilities. Mr. Turkle received \$50,000 as an extra service payment for services that were neither different from, nor in addition to, his normal professional obligations. In fact, it was simply an additional payment to Mr. Turkle,

above and beyond his annual base salary of \$148,815, to compensate him for performing in his existing Operations Manager position. A March 3, 2010 email from Buffalo College Provost Dennis Ponton approved this payment to Mr. Turkle, which included a retroactive lump-sum payment of \$14,758 and an additional \$1,144 in his biweekly paychecks, totaling \$50,000. We believe these transactions are highly questionable and potentially fraudulent.

We also determined that a SUNY Associate Professor received \$50,000 in extra payments from the Research Foundation for which there was no documentation to show what services he provided in addition to regular duties. Further, there was no written prior approval for the extra service payments even though SUNY policy states that extra service performed in advance of approval will not be compensated. Research Foundation staff said the \$50,000 in payments were made because Mr. Turkle told them to put the payments through.

We were provided with an email from Benjamin C. Christy, SUNY Dean of Arts and Humanities, that stated that he and Mr. Turkle discussed and supported the extra assignment to the faculty member to serve as Research Foundation liaison to the School of Arts and Humanities in order to facilitate the development of grant applications among arts and humanities faculty. The email, however, was drafted only after we questioned the payments, and was dated December 24, 2011; more than two years after these payments were made.

After we brought our findings to the attention of Research Foundation staff, its Internal Audit unit conducted an investigation. As a result, Mr. Turkle was put on administrative leave in January 2012 and was terminated on February 10, 2012. The Research Foundation referred the matter to the Albany County District Attorney's Office on February 10, 2012. We have also shared our findings with the Albany County District Attorney.

Mr. Turkle's comments and his actions demonstrate a sense of entitlement that we believe undermined the control environment at the Research Foundation at Buffalo State College and helped establish the culture in which improper transactions took place. Further, we doubt that many of the trips taken and expenses incurred helped the Research Foundation achieve or advance its public purposes.

Questionable Contracts and Purchases

The Research Foundation's procurement policies require that three bids or proposals be obtained for certain contracts and purchases, depending on amount. The threshold triggering this requirement changed twice during our audit period, ranging from \$10,000 to \$50,000. We reviewed 75 invoices at Buffalo State College to determine whether goods and services were purchased in accordance with established policies and procedures. Based on this review, we found three Buffalo State College contracts totaling \$95,574 that were procured without required written or verbal bids. One of these procurements went to a professor at Buffalo State College, who was awarded a \$30,000 contract to work as a consultant on a project to improve the quality of service that the Research Foundation provides to its constituents. The other two contracts totaled \$30,389 and \$35,185 and were to rebuild a piano and to pay for a research microscope system, respectively.

We also found ten invoices, totaling \$5,033, that represent gifts and benefits not in keeping with the Research Foundation's mission, including charges for a golf tournament for the President's office, gift cards for both Research Foundation and SUNY employees, catering for holiday luncheons and celebrations, and reimbursements for annual health club memberships.

Questionable Matters at Other Research Foundation Locations

Certain Employees Receive Special Treatment

We reviewed 32 employee files at four Research Foundation locations (Central Office, University at Buffalo, University at Stony Brook, and Downstate Medical Center) and found that the contents of most supported compliance with Research Foundation and SUNY policies, where applicable. However, we found two employees received costly special treatment for which we question the justification.

The Research Foundation hired an individual to serve as General Counsel and Secretary, Senior Vice President effective March 1, 2010, who was then terminated 11 months later reportedly because she was "not a good fit" for the organization. However, she was compensated \$345,034 for the 11 months that she was employed. In fact, she was the most highly compensated employee at the Research Foundation for fiscal year 2010–2011. While her base salary was \$260,000, she had been compensated \$245,034 by the time of her termination. She also received a \$100,000 lump sum payment upon acceptance of employment, and a 2010 Buick Enclave purchased for \$41,460 for her use.

After her brief tenure, pursuant to her contract of employment, she received a severance package totaling \$308,546. This included a payment of \$260,000 for one year's salary, \$30,000 in accrued vacation leave, and \$18,546 in COBRA health insurance benefits through December 31, 2011. In addition to the perquisites and severance package she received, the Research Foundation also paid for her moving expenses (\$8,508), interviewing costs (\$2,361), portrait and business cards (\$218), and applications and attorney registrations (\$689). Therefore, the total cost to hire and employ the former General Counsel and Secretary, Senior Vice President, excluding the cost of her vehicle, was \$665,356. It is unclear why the Research Foundation agreed to these payments and other benefits in the employment contract with this individual and, consequently, we view the costs as excessive.

Retirement and Social Security Law limits the total annual compensation certain retirees who return to public employment may earn before suffering a consequent reduction in pension benefits. However, these limits on compensation do not apply to salary received by a State retiree while employed by the Research Foundation because the Research Foundation is not a participating employer in the State's retirement system.

In September 2010, a State retiree, who had returned to employment at SUNY Stony Brook, was hired by the Research Foundation and placed on the Research Foundation payroll when the retiree's compensation on the Stony Brook payroll neared the \$30,000 cap. On December 9, 2010, this employee returned to employment on the Stony Brook payroll. The employee's file

confirmed that the duties assigned while on the Stony Brook payroll remained in place while on the Research Foundation payroll. Therefore, it appears that the hiring by the Research Foundation was solely to enable a circumvention of the Retirement and Social Security Law limits. Regardless, the Research Foundation should not be employing individuals who are not performing work for the Research Foundation.

Inappropriate Contracts Totaling Nearly \$3 Million

A single source procurement is a purchase from a supplier who is chosen without soliciting the minimum number of bids or proposals, despite the fact that competition exists, because of limiting circumstances (e.g., experience, service of the supplier or product quality). A sole source procurement is the purchase of a particular product or service from the only available supplier; therefore, no bids or proposals can be obtained. Because single and sole source contracts are exceptions to a competitive bidding process, purchasing documentation should include a justification for single or sole source procurements.

We reviewed the files for 13 Central Office contracts awarded on a sole or single source basis. We found that 10 of these contracts totaling almost \$3 million involved a potential conflict of interest and violated Research Foundation policy for sole or single source procurement. For example, the Research Foundation circumvented its own prescribed policy and knowingly created a sole source procurement justification after the fact for a contract for audit services.

Once hired as interim Vice President of Internal Audit, Mr. Michael Barone secured successive extensions of his existing consulting contract, through October 31, 2010. Subsequently, the Research Foundation let a new sole source contract with Barone continuing as Interim Vice President of Internal Audit, and adding staff from his company, Barone & Associates, LLC, to perform further audit services. In total, Mr. Barone and his company received \$469,700 for the 17-month period December 2009 through May 2011 including \$304,549 for his original contract as interim Vice President and \$165,150 to his company.

Mr. Barone's role as Vice President of Internal Audit and the selection of his firm to provide audit services (from which he could benefit financially) presented a potential conflict of interest. Moreover, the contracting for audit services should have been done under Research Foundation procurement policy requiring a minimum of three written bids or proposals. Nevertheless, the contract was not competitively bid and was made on a sole source basis. In addition, the sole source justification for the contract was written after the audit committee approved the contract, and at Mr. O'Connor's request.

Research Foundation officials and board members were aware of and communicated their concerns about a conflict of interest. One email from an audit committee member to Mr. Barone stated, "Please make sure necessary process steps take place to avoid potential conflict-of-interest concern over the usage of the external resources be (sic) provided by your firm." Another email addressed the need to "plan ahead to address potential questions such as, 'Did other firms get consideration and evaluated,' and 'How did the decision get made in selecting Barone & Associates, LLC.'"

Eight other contracts were awarded either as a single or sole source contract even though there

was insufficient documentation or justification to support forgoing competitive bidding. The details of these arrangements are as follows:

- The Research Foundation paid \$913,500 on a single source contract with Skadden, Arps, Slate, Meagher & Flom, LLP and Affiliates to perform an investigation and legal analysis of the men's basketball program at Binghamton for the SUNY Board of Trustees. Justification to support the use of a single source contract should be documented and used to gain approval for the award of a single source contract prior to the contract being let. Instead, the single source documentation was dated February 22, 2010, the day Skadden Arps, Slate, Meagher & Flom, LLP and Affiliates received payment. Therefore, the contract was let and the work was performed before the justification for sole source was documented.
- Documentation justifying a sole source contract to O'Connell & Aronowitz for legal services for which the Research Foundation had paid \$908,437 was not dated or signed, raising questions about failure to support a departure from policy.
- The Central Office entered into six sole source contracts with law firms totaling \$348,916. Officials justified using a sole source because of the firms' expertise in the given area of need and a request for proposal was not practical because of the sensitivity and urgency of the matters. However, there was no documentation to support this.

A contract with Harvest Fund Raising Council, Inc. (Harvest) was awarded in 2007 after the Research Foundation issued a request for proposal to solicit "professional philanthropy and development services." However, the Research Foundation could not show the contract was advertised, or if there were any other responses. In addition, most of the invoices submitted by Harvest did not detail the hours worked or the services provided. Emails we reviewed indicated Research Foundation officials questioned some of the invoices as well. Details of services provided were not included on Harvest's invoices until February 2011. Nevertheless, the Research Foundation paid Harvest \$333,944 before terminating the contract in July 2011.

Given the circumstances under which these contracts originated and continued (including the absence of open competition), the Research Foundation lacked sufficient assurance that reasonable prices were paid. In responding to our preliminary audit observations, Research Foundation officials agreed that the justifications of single and sole source procurements should be properly documented at the time of engagement. Officials further indicated that the Research Foundation has established procedures to ensure thorough, detailed, and timely documentation for major single and sole-source contracts.

Other Questionable Expenditures

Expenses should clearly support the Research Foundation's mission. In this regard, procedures and guidelines should be sufficiently detailed to make clear what specific expenses are permissible. However, Research Foundation policy is fairly general and simply states that funds may be used to support instruction, organization research and other sponsored activities and institutional activities.

We reviewed a judgmental sample of 395 invoices totaling almost \$21 million from five Research

Foundation accounts (Central Office, SUNY at Buffalo, Stony Brook University, SUNY Chancellor's account and Downstate Medical Center). We concluded that most of these expenditures supported the Research Foundation mission. However, we questioned 36 invoices totaling \$42,968 charged to accounts for SUNY's Chancellor and Downstate Medical Center. In total, \$27,968 of this amount was charged to the Chancellor's account for items including membership to a private club. The remaining \$15,000 was charged to the account at Downstate Medical Center for liability insurance for directors and officers at BioBAT, a corporate affiliate of the Research Foundation. However, Research Foundation officials stated they provide no financial assistance to affiliate organizations other than for start-up costs.

In these instances it was not clear how the expenses from public funds were necessary and appropriate to support and benefit the instructional, organization research and sponsored activity and institutional activities of the Research Foundation. We believe that Research Foundation guidelines need to be more detailed to specify in what circumstances such expenses are justifiable and for what amounts of money.

Employment of Susan Bruno

Ms. Susan Bruno was employed by the Research Foundation from May 2003 through March 2009 (with annual salaries ranging from \$70,000 to \$84,000). Her initial appointment was to the position of Assistant Director of Foundation Relations for Legislation. In May 2004, Ms. Bruno assumed the title of Special Assistant to the President (John O'Connor). As a result of our audit fieldwork, we referred questions regarding Ms. Bruno's time and attendance and other issues related to her employment to the State Attorney General's Office for its review and consideration.

Follow-Up on Prior Audit Report Recommendations

On June 9, 2005, we issued audit report 2004-S-13 entitled Research Foundation for the State University of New York: Administrative and Discretionary Costs. The audit determined if certain research Foundation expenditures complied with policies and procedures and whether discretionary expenditures supported the University's mission. We concluded that the expenditures we tested generally complied with established policies and procedures, and that the discretionary expenses were for program activities that generally supported the mission of the University. However, we identified certain exceptions, and in some cases it appeared that the Research Foundation was used to circumvent prescribed State policies and laws applicable to SUNY. The objective of our follow-up was to assess the extent of implementation, as of January 31, 2012, of the six recommendations included in this report.

We concluded that Research Foundation officials made limited progress in correcting the problems we identified in the prior audit. Of the report's six recommendations, one recommendation was implemented, two recommendations were partially implemented, and three recommendations were not implemented. The following details the recommendations from the prior audit, their status of implementation, and the actions taken by Research Foundation officials to address them.

Recommendation 1

Comply with all provisions of the 1977 agreement regarding payment of monies to the University's Income Fund. To facilitate consultation with the State Comptroller, the Foundation should provide a formal analysis and justification of the amount to be deposited into the University's Income Fund each year.

Status - Not Implemented

Agency Action - The Research Foundation has not complied with the provisions of the 1977 agreement regarding payment of monies to the University's Income Fund and, therefore, has not provided a formal analysis and justification of the amount to be deposited into the University's Income Fund each year. In fact, the Research Foundation has not paid any monies to the University Income Fund since 1990-91. Research Foundation officials continue to assert that the State Legislature's approval to eliminate the projected payment into the University Income Fund in 1991-92 was a permanent change and not just a one-time change for the 1991-92 fiscal year.

Recommendation 2

As prescribed in the Foundation's procurement policies and procedures, require the central office and the campuses to obtain a minimum of three written or verbal bids or proposals for purchase requisitions ranging from \$10,000 to \$25,000 and a minimum of three written bids or proposals for purchase requisitions greater than \$25,000. Adequately document the justification for using single and sole source contracts.

Status - Not Implemented

Agency Action - A review of a sample of transactions found that Research Foundation officials have not consistently followed their policies and procedures regarding when to obtain three written or verbal bids or proposals. Moreover, as detailed previously in this report, officials continue to not adequately document the justification for using single and sole source contracts.

Recommendation 3

Before paying invoices, require the vendor to provide adequate supporting documentation of the products and services provided.

Status - Partially Implemented

Agency Action - A review of a sample of transactions found that Research Foundation officials generally require the vendor to provide adequate supporting documentation of the product or services provided before paying invoices. However, as detailed previously in this report, we identified one vendor who had not provided adequate supporting documentation of the product and services it provided and still was paid \$333,944. The vendor's invoices stated that Research Foundation officials should refer to their contract as to the types of services they were expected

to provide. There was no explanation or support of what was actually provided on the invoices until shortly before the contract terminated.

Recommendation 4

Develop formal guidance and formalize limitations regarding how the Foundation's indirect cost recoveries and miscellaneous revenues should be spent, and perform periodic tests of transactions to ensure these policies are followed. For instance, limitations on expenditures should include, but not be limited to, restrictions of payments to employees for their child's tuition costs and restrictions of payments to employees for personal entertainment.

Status - Not Implemented

Agency Action - Research Foundation officials disagreed with this recommendation and did not develop formal guidance and formalize limitations regarding how indirect cost recoveries and miscellaneous revenues should be spent, and perform periodic tests of transactions to ensure these policies are followed. Officials believe that existing controls assure that Research Foundation resources are expended in a manner that supports the University and its programs. However, as detailed previously, Research Foundation officials used funds for items such as private club memberships, and golf tournaments. It was not clear that these items were necessary and appropriate to support the mission of the Research Foundation.

Recommendation 5

Discontinue the arrangement with the one employee who remains on the University's payroll while performing only Foundation-related activities.

Status - Implemented

Agency Action - The Research Foundation discontinued the arrangement with the employee who was on the University payroll while performing only Foundation-related activities. As of September 1, 2006, this person was no longer employed by the Research Foundation.

Recommendation 6

Discontinue paying salary and/or wage supplements to University employees (including the employee who failed to pass promotional exams and the retired State Trooper, as detailed in the prior report) unless such payments are for hours of service beyond the employees' standard work schedules for which the University pays them.

Status - Partially Implemented

Agency Action - The Research Foundation discontinued making salary payments to the two University employees cited in our prior report. However, as previously detailed, the Research Foundation hired a State retiree who had returned to public employment. This allowed the

employee to exceed the \$30,000 statutory limitation on compensation that certain employees may earn. Moreover, there is no indication the employee performed services for the Research Foundation. Rather, the employee continued to do work for Stony Brook while being paid by the Research Foundation.

Recommendations (for Current Audit)

1. Improve the control environment at the Research Foundation to better ensure compliance with all relevant laws, policies, and procedures, including those related to procurement and payroll.
2. Recover from Mr. Turkle and others, as applicable:
 - the amount of Research Foundation purchases for which there is inadequate or no documentation to support the relationship to Research Foundation business. In particular, this includes amounts spent for personal items; and
 - the amount of improper extra service payments they received.
3. Strengthen controls to ensure:
 - open competition takes place in procuring contracts, and a reasonable price is paid;
 - personnel actions are appropriate, justified, and documented; and
 - justification for sole or single source contracts is documented prior to approving and starting the contracts.
4. Review the implementation statuses and agency actions pertaining to the recommendations from report 2004-S-13. Take appropriate actions to address the recommendations that have not been fully implemented.

Audit Scope and Methodology

The objective of our audit was to determine if certain aspects of the Research Foundation's employee practices, contracts and purchases complied with applicable requirements. The audit covers the period July 1, 2008 through January 31, 2012. In addition, we determined the status of implementation of the recommendations from our prior report (2004-S-13) entitled Research Foundation for the State University of New York: Administrative and Discretionary Costs.

We reviewed Research Foundation policies and procedures relevant to our audit objective. We analyzed payroll and accounts payable data for our audit scope. We also selected judgmental samples of 12 purchasing cards, 42 personnel files and 470 invoices at the Central Office, University of Buffalo, Stony Brook University, Downstate Medical Center and Buffalo State College. We reviewed purchasing card statements for a 12-month period at the Central Office, University of Buffalo, Stony Brook and Buffalo State College (Downstate Medical Center does not use purchasing cards) to determine if purchases were business-related and documented in accordance with Research Foundation policies and procedures. We expanded our scope to a 48-month period at Buffalo State College based on our findings. We reviewed personnel files to determine if they complied with Research Foundation policies for personnel functions, time and attendance, and compensation. We reviewed invoices to determine if funds were used in support of mission-related activities and if goods and services were appropriately procured. We selected an additional 13 contracts from the Central Office to determine if they were procured in compliance with Research Foundation policies. We also interviewed Research Foundation officials at the Central Office and campuses.

With the exception of our follow-up on the status of implementation of the recommendations presented in prior audit report 2004-S-13, 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. Our follow-up on prior audit report recommendations was performed according to our internal standards and procedures.

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 (some of whom have minority voting rights) to certain boards, commissions and public authorities. 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. It was also performed pursuant to the Agreement between the State University of New York and the Research Foundation of the State University of New York, dated June 1, 1977.

Reporting Requirements

We provided a draft copy of this report to Research Foundation officials for their review and formal comment. We considered the Research Foundation's comments in preparing this report and have included them in their entirety at the end of it. Our rejoinders to certain Research Foundation comments are included as State Comptroller's Comments.

Within 90 days of the final release of this report, we request the Research Foundation to report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



Office of the President

October 1, 2012

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Mr. Brian Mason
Audit Director
Office of the New York State Comptroller
110 State Street
Albany, New York 12236

Dear Mr. Mason:

I appreciate the opportunity to respond to the Office of the New York State Comptroller's ("OSC") report on "Selected Human Resource Controls and Potential Conflicts of Interest" at The Research Foundation for The State University of New York ("RF") (Report 2011-S-24, the "Report"). The issuance of the Report follows a broad and comprehensive internal and external review of the RF operation and the RF-SUNY relationship led by SUNY Chancellor, Nancy L. Zimpher. That review and this audit validate the critical role the RF plays in supporting essential research throughout the state.

As a private non-profit educational corporation, the RF administers nearly \$1 billion in SUNY research activity annually, providing sponsored programs administration and commercialization support services to SUNY faculty, students and staff who are making ground-breaking discoveries every day in the areas of nanotechnology, biotechnology, materials science, high speed computing and other fields.

This audit covered a period of July 1, 2008 through January 31, 2012, and was prompted by specific concerns related to previous management and oversight of the RF. It focused primarily on the management of indirect cost recovery (ICR) funds, also known as facilities and administrative costs or "overhead". These are funds allocated to the general operation of the corporation. The funds in question represent a limited portion of the RF's overall operation when compared to much larger direct costs associated with grants and contracts in play across SUNY's 30 state-operated campuses.

With regard to the administration of the grants and contracts themselves, and during the same period of review, the RF received independent audits by an external public accounting firm on its annual financial statements and its compliance with U.S. Office of Management and Budget Circular A-133. These audits have validated our compliance and speak to the sound RF management of sponsored funds.

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Comment

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* See Comptroller's Comments, page 29.

Mr. Brian Mason

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The RF, together with SUNY leadership, has viewed the subject OSC audit of the ICR management as an opportunity to acknowledge past problem areas, strengthen internal controls, embrace improvement, refocus on our mission to serve SUNY, and work to fully earn the public trust. We pledged our full cooperation throughout, and I am pleased to know that this pledge has been fulfilled.

Today, the RF is a markedly different organization than it was just a year ago, and it continues to move forward. Changes already implemented or underway are in large part due to the introspection and work triggered by these reviews, and they address many of the specific issues and recommendations made in the Report. We have:

- instituted new controls, procedures and protocols that raise the standards of accountability of officers and employees alike, and set clear expectations of ethical behavior;
- reviewed our policies and procedures relating to procurement and contracting across the operation;
- strengthened our governance and attracted new members to our Board of Directors, each one of whom brings a different and diverse skill set and recognized expertise; and
- changed the “tone from the top” to inculcate and reinforce our institutional commitment to the highest standards of integrity and ethical behavior.

We recognize and greatly appreciate the time and commitment invested by OSC staff to perform its work. As the new RF President, I also want to acknowledge the responsiveness and professionalism of the RF team.

The performance of this audit was the right thing for the RF. We have advanced as a result of this process and we appreciate that there is still more work to be done. We are a better, stronger and more responsive organization today, with full awareness of the tremendous opportunities and challenges ahead.

The RF exists to serve SUNY and to capitalize on its scope, scale and diversity as an engine of New York State’s innovation economy. We are working actively and collaboratively across the state to grow research, advance a culture of entrepreneurship, develop the needed human capital, stimulate commercialization, and build out SUNY’s innovation ecosystem for the benefit of New York and the world.

Mr. Brian Mason

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The RF aspires to be best-in-class at what we do, setting a national standard for other research foundations across the country, and I confidently commit our full attention to meet this goal, to effectively and properly fulfill our mission to serve SUNY, and perform our work with transparency and integrity in the best interests of New York State.

Sincerely,



Timothy Killeen
President

cc: Michael Abbott
Bonny G. Boice
Emily Kunchala
Melissa Little
Chancellor Zimpher

Response of The Research Foundation for The State University of New York ("RF") to The Office of State Comptroller ("OSC") Report 2011-S-24: *Selected Human Resource Controls and Potential Conflicts of Interest*

The RF administers sponsored programs for the State University of New York ("SUNY"), managing approximately \$1 billion annually. The operations of the RF are funded primarily by a small percentage of the indirect cost recoveries (also referred to as Facilities and Administrative or "F&A" costs) associated with sponsored programs. The RF is committed to managing these programs and funds with the utmost integrity and attention to the public trust and welcomes this opportunity to respond to the findings and recommendations of OSC Report 2011-S-24: *Selected Human Resource Controls and Potential Conflicts of Interest*.

<p>* Comment 1</p>

This audit focused on selected human resource controls and potential conflicts of interest related to the use of allocations primarily funded by F&A cost recoveries. The majority of expenditures and transactions handled by the RF were not implicated in the findings of this audit. The RF is subject to frequent and regular external audits by the federal government and external auditors, such as KPMG, as well as rigorous internal audits.

This response is outlined in three sections: 1. Key Recommendations; 2. Key Findings; and 3. OSC Findings and Recommendations.

1. Key Recommendations

- *OSC Key Recommendation: Improve the control environment at the Research Foundation to better ensure compliance with all relevant laws and policies, including those related to procurement and payroll.*

RF Response: The RF agrees that the control environment must be continuously reviewed and improved to ensure compliance with applicable law and policy. The RF has implemented extensive controls and continuously updates and improves its policies and procedures, including those related to procurement and payroll, to ensure compliance. The RF recently implemented major changes to strengthen its control environment. The RF recruited new management and board members, enhanced board governance, issued a new Code of Conduct, reviewed policies, and created a new compliance oversight function that is managed by a full-time Chief Compliance Officer. In addition, the Internal Audit team has developed and is executing a risk-based audit plan, a best practice for concentrating audit activity in high risk areas.

- *OSC Key Recommendation: Recover funds spent on purchases and personnel costs that were excessive or not in line with the Research Foundation's mission.*

RF Response: The RF agrees that funds inappropriately expended for personal use or which management believes are excessive or not in line with the RF's mission will be recovered where legally appropriate and feasible.

2. Key Findings

- *OSC Key Finding: Edgar H. Turkle III, Operations Manager for the Research Foundation at Buffalo State College, charged \$130,887 to his corporate credit card for such questionable items as foreign travel, high-end dining and hotels, and personal items such as a laptop computer, an iPad, iPhones and groceries. His actions violated policy and resulted in his personal enrichment at the expense of the Research Foundation.*

RF Response: The RF agrees that RF policy was violated. RF management conducted an in-depth independent review of the referenced activities and took swift and appropriate action including termination from employment and referral to law enforcement. The RF also implemented new controls to help protect against misuse of funds, including fundamental changes in reporting and management and training of Operations Managers.

- *OSC Key Finding: The Central Office compensated a former General Counsel \$345,034, plus a severance package, for less than a year of service. In fact, we calculated the total cost of hiring and employing this individual was \$665,356 for an 11-month period. We question the Research Foundation's justification for agreeing to these payments in the employment contract it entered into with this individual.*

RF Response: The RF acknowledges this finding relating to the unsuccessful recruitment of a senior executive and complied with contractual arrangements, as appropriate. The recruitment, hire, compensation, and separation of the former RF General Counsel and Secretary complied with IRS guidelines and RF policies and was consistent with market trends, as verified by third party experts who benchmarked the arrangement. At the time the employment contract was signed, it was not foreseen that the chosen candidate would be employed for less than one year of service.

- *OSC Key Finding: The Research Foundation assisted a retiree in circumventing Retirement and Social Security Law limits on retiree compensation by hiring this former SUNY Stony Brook employee when she neared the \$30,000 salary cap. The employee continued to perform work for SUNY Stony Brook even though she was being paid by the Research Foundation.*

RF Response: Prior to the start of this audit, Stony Brook University initiated and completed an internal review of its compliance with *NYS Retirement and Social Security Law* and submitted a corrective action plan to OSC on January 4, 2011. OSC accepted this action plan. The finding noted in the RF audit occurred prior to implementation of this plan. It is important to note that in this audit, covering a three and one half year period (July 1, 2008 – January 31, 2012), the OSC identified a single instance involving one employee who worked for the RF part-time between September 16, 2012 and December 8, 2012 and earned \$7,245.10.

- *OSC Key Finding: The Research Foundation paid \$3 million for 10 contracts where we identified a potential conflict of interest and violations of Research Foundation policies. As a result, the Research Foundation has little or no assurance that reasonable prices were paid for services.*

RF Response: The RF acknowledges that documentation supporting the issuance of these contracts was, at times, insufficiently detailed and untimely; however, no actual conflicts of interest

* Comment 2

existed relative to the identified contracts. The vendors hired had the experience and expertise required, reasonable prices were paid, and the contracts were necessary. The RF is taking steps to ensure that any future single or sole source justification is properly documented.

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- *OSC Key Finding: The Chancellor's account was charged \$27,968 to pay for items that may appear to be personal in nature, e.g., private club membership. Given the nature of these items, we recommend that criteria be strengthened to make clear when such expenses are appropriate.*

RF Response: The RF agrees that it should improve its documentation and criteria for the expenses noted in the OSC report. The expenditures cited in the report were reasonable and legitimate and were not "personal in nature". These expenditures were made from the SUNY Strategic Plan Allocation, which consists of a small percentage of indirect cost recoveries, and RF policy allows for expenditure of these funds in support of instruction, organized research, other sponsored activities, and institutional activities. The RF validated that these expenditures did not provide personal benefit to RF or SUNY employees. The RF will conduct training to ensure the business purposes for expenditures are properly documented.

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- *OSC Key Finding: We had questions regarding the time and attendance of a Research Foundation employee and referred these matters to the State Attorney General's Office.*

RF Response: The hiring and work experience of the individual in question was the subject of a comprehensive and independent external review conducted by an experienced attorney initiated by the RF prior to the OSC audit. This independent review concluded that discrepancies existed and the RF acknowledges OSC's referral to the Attorney General.

- *OSC Key Finding: Certain of the findings we identified are similar to the findings in our prior audit of the Research Foundation. In this regard, Research Foundation officials made limited progress in correcting the problems we identified in the prior audit. Of the prior report's six recommendations, one was implemented, two were partially implemented, and three were not implemented.*

RF Response: The RF has implemented actions to address all findings except one relating to a policy on allocating F&A cost recoveries. The RF consulted with SUNY officials to ensure the disagreement in that area is appropriate. For more details on these findings, see OSC Recommendation 4 below.

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- *OSC Key Finding: We believe that many of the problems reported here are attributable to a weak internal control environment. Since multiple people and locations were involved in the problems we found, we believe an improved internal control environment is necessary to prevent abuses.*

RF Response: The RF does not concur that it has a "weak internal control environment". The findings were attributable to individual instances of misconduct, which the RF promptly and effectively addressed, or simple human error that resulted in departures from policy. The RF is committed to continuous improvement of its internal control environment to ensure ongoing compliance. Over the past year, the RF has implemented extensive organizational changes and

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has developed robust new policies and procedures that have strengthened the control environment as detailed below in response to OSC Recommendation 1.

3. OSC Findings and Recommendations

The OSC provided four final recommendations to the RF:

OSC Recommendation 1: Improve the control environment at the Research Foundation to better ensure compliance with all relevant laws, policies, and procedures, including those related to procurement and payroll.

Management Response: The RF fully agrees that it must continuously monitor and improve the control environment to ensure the RF complies with all applicable laws, regulations, rules, and policies. The RF is committed to a culture of compliance, accountability, and transparency and its business must be conducted in accordance with the highest moral and ethical standards. The RF has taken significant and far-reaching actions to improve the control environment across the organization. Major changes include the following:

1. **New Leadership:** On May 31, 2012, the RF Board of Directors appointed Dr. Timothy Killeen President of the RF. Dr. Killeen publicly pledged a commitment to realize the statewide and global potential of SUNY research and its unique ecosystem of innovation, while ensuring the RF fulfills its mission with integrity and transparency. The RF also recruited a new General Counsel and Secretary, appointed a new Vice President of Operations, and is recruiting a new Chief Financial Officer.
2. **Strengthened Board of Directors:** The 17 member Board of Directors is strong and actively engaged, and represents a broad range of expertise and experience in governance from higher education administration to business. Additionally, in the past year, the Board appointed five new members with diverse backgrounds, revised its corporate bylaws, and revitalized its committees and committee charters to strengthen corporate governance and its ability to perform its fiduciary role.
3. **Increased Operations Managers' Accountability:** RF Operations Managers now report to the RF President to support closer operational review and oversight, which enhances the role of the President as the party appropriately accountable for all RF operations.
4. **Implemented Enterprise-wide Compliance Functions:** In 2011, the RF established an Office of Risk Management and Ethics, which President Killeen recently expanded to an enterprise-wide Compliance Office headed by a Chief Compliance Officer. The Office is charged with establishing and maintaining an enterprise compliance program that ensures a proper focus on ethical conduct, prevents against fraud, and maintains a strong internal control structure. Since its inception, the Office released a revised Code of Conduct, a Fraud and Whistleblower Policy, a Procedure for Investigating Fraud and Misconduct, and an Officer Accountability Policy. The Office is also responsible for managing the RF's Ethics Hotline.
5. **Revised Expenditure Approval Policies:** The RF's new Officer Accountability Policy requires RF Officers to obtain the appropriate level of review and approval for all compensation and other than personnel services determinations and transactions related to the Officer, consistent with applicable policies.
6. **Implemented Rigorous Internal Audit and Whistleblower Hotline Response Programs:** The RF has established a proactive risk-based audit program, promoted its hotline, and established detailed procedures for identifying and managing risks.

OSC Recommendation 2: Recover from Mr. Turkle and others, as applicable:

- *the amount of Research Foundation purchases for which there is inadequate or no documentation to support the relationship to Research Foundation business. In particular, this includes amounts spent for personal items; and*
- *the amount of improper extra service payments they received.*

Management Response: The RF agrees that funds inappropriately expended for personal use or which management believes are excessive or not in line with the RF's mission will be recovered where legally appropriate and feasible.

Specific to Buffalo State College ("BSC"), the RF worked cooperatively with OSC staff on its audit and conducted its own review of the activities in question. Based on its findings, the RF took quick and decisive action to preserve the assets of the organization and in February 2012 referred relevant findings to law enforcement. When review of that referral concludes and is communicated to the RF, the RF will assess the remedies available to recoup its funds and will pursue reasonably prudent action in accordance therewith.

Working with BSC leadership, the RF appointed new management to oversee RF operations on the BSC campus. The RF further responded by performing additional internal control evaluation and testing, and training staff on procurement, accounts payable, and grant and contract transactions.

As part of its comprehensive review of all policies, the RF is conducting a review of the *Salary Rules and Policies When Assigning Extra Service* including monitoring procedures and controls. The policy currently complies with federal requirements governing grants administration, but controls and processes will be further strengthened, as needed.

OSC Recommendation 3: Strengthen controls to ensure:

- *open competition takes place in procuring contracts, and a reasonable price is paid;*
- *personnel actions are appropriate, justified, and documented; and*
- *justification for sole or single source contracts is documented prior to approving and starting the contracts.*

Management Response: The RF has reviewed and strengthened its procedures with respect to procurement to ensure open competition where possible, reasonable pricing in all cases, and proper documentation when utilizing sole and single source contracts. With respect to the contracts for the vendors and services referenced in this report, the use of sole and single source contracts was appropriate to meet the needs of the organization. The work the RF performs to support SUNY research often includes fields of narrow technical, legal, or administrative experience that require single or sole source procurement. The RF will continue to utilize sole and single source contracts as needed, ensuring that such engagements are carefully supported and monitored and the agreements are thoroughly, properly, and timely documented.

The RF agrees that the control environment should ensure that personnel actions are appropriate, justified and documented.

OSC Recommendation 4: Review the implementation statuses and agency actions pertaining to the recommendations from report 2004-S-13. Take appropriate actions to address the recommendations that have not been fully implemented.

Management Response: This section represents the RF's response to OSC's 2011 follow-up to OSC's 2004 audit of the RF as outlined in the Audit Report:

- 2004 OSC Recommendation 1: *Comply with all provisions of the 1977 agreement regarding payment of monies to the University's Income Fund. To facilitate consultation with the State Comptroller, the Foundation should provide a formal analysis and justification of the amount to be deposited into the University's Income Fund each year.*

Management Response: The OSC's description of this recommendation as "not implemented" reflects the fact that the RF and OSC maintain differing opinions on the language contained in the state's 1991-92 budget regarding the University Income Fund ("the Fund"). The RF has responded previously to this recommendation and believes the language eliminated any requirement by the RF to pay monies into the Fund, and that there has been no action by the state legislature to the contrary. The monies at issue support SUNY in accordance with an established process guided by SUNY and consistent with the spirit of the 1977 Agreement.

- 2004 OSC Recommendation 2: *As prescribed in the Foundation's procurement policies and procedures, require the central office and the campuses to obtain a minimum of three written or verbal bids or proposals for purchase requisitions ranging from \$10,000 to \$25,000 and a minimum of three written bids or proposals for purchase requisitions greater than \$25,000. Adequately document the justification for using single and sole source contracts.*

Management Response: The RF is committed to an open, fair, and competitive procurement process, and acknowledges that procurement policies must be followed to fulfill this commitment. The RF procurement thresholds in place since February 16, 2011, require central office and all campuses to obtain a minimum of three written or verbal bids or proposals for purchase requisitions ranging from \$50,000 to \$100,000 and a minimum of three written bids or proposals for purchase requisitions greater than \$100,000.

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The RF has communicated to OSC its continuing practice of single and sole source contracting and its commitment to proper documentation, controls, and oversight.

- 2004 OSC Recommendation 3: *Before paying invoices, require the vendor to provide adequate supporting documentation of the products and services provided.*

Management Response: The RF implemented this recommendation. The one vendor referenced provided the service and produced the work product and deliverables required. The RF provided OSC with documentation of approximately \$3 billion in accounts payable transactions over a three-year period and for the one transaction in question, the vendor increased the level of detail on the invoices during the contract period. To the extent the documentation required clarification, this was an isolated incident.

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- 2004 OSC Recommendation 4: *Develop formal guidance and formalize limitations regarding how the Foundation's indirect cost recoveries and miscellaneous revenues should be spent, and perform periodic tests of transactions to ensure these policies are followed. For instance, limitations on expenditures should include, but not be limited to, restrictions of payments to employees for their child's tuition costs and restrictions of payments to employees for personal entertainment.*

Management Response: This is implemented. The RF has spending policies and controls in place that help management oversee F&A cost recoveries. The RF policies require that expenditures support instruction, organized research, other sponsored activities, and institutional activities. As previously noted, the RF strengthened the control environment and intends to implement further training to ensure continued proper use and documentation of expenditures. The RF will provide further guidance to support its policies.

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- 2004 OSC Recommendation 5: *Discontinue the arrangement with the one employee who remains on the University payroll while performing only Foundation-related activities.*

Management Response: The RF implemented this recommendation and discontinued the arrangement.

- 2004 OSC Recommendation 6: *Discontinue paying salary and/or wage supplements to University employees (including the employee who failed to pass promotional exams and the retired State Trooper, as detailed in this report) unless such payments are for hours of service beyond the employees' standard work schedules for which the University pays them.*

Management Response: The RF implemented this recommendation. All RF appointments must be approved in accordance with RF policies and procedures, comply with RF position titles and standards, and comply with federal and state laws and regulations regarding tax information.

State Comptroller's Comments

1. While these funds are a limited portion of the Research Foundation's overall operation, the funds have certain inherent risk especially considering the general nature of Foundation guidelines for their use.
2. We addressed this matter to Research Foundation officials (both verbally and in written form) on several occasions during the course of our audit fieldwork. Nonetheless, officials did not provide us at that time with any documentation of third party verification by experts who benchmarked the employment arrangement in question. Moreover, we continue to question the justification of the \$665,356 in costs incurred by the Research Foundation to employ its former General Counsel for 11 months.
3. Based on the available documentation, we concluded that there was an apparent conflict of interest in the sole source procurement of audit services from Barone & Associates, LLC. Hence, we question the Research Foundations' assertion that that there was no conflict of interest. Also, Foundation officials lacked sufficient documentation to conclude that reasonable prices were paid for the \$3 million in contracts in question.
4. Although we deleted the phrase "personal in nature" from our report, we continue to question whether the expenses in question were reasonable and legitimate and what tangible benefit they provided to SUNY. The questionable expenses included \$13,172 for beverages (mostly alcohol) and \$9,822 for the initiation fee and dues for the Chancellor's membership in a private club.
5. As noted in our report, we concluded that the Research Foundation fully implemented one of the prior report's six recommendations and partially implemented two others. Thus, three recommendations were not implemented.
6. A weak internal control environment is one where individual instances of misconduct are likely to have taken place. Our audit findings support our conclusions, and as detailed in our report, several of the problems cited took place with the knowledge and understanding of high level officials responsible for setting a correct tone at the top. We noted, for example, that: (a) Ted Turkle's travel vouchers were approved and processed by employees that Turkle supervised (and not by Turkle's supervisor); (b) the Provost at Buffalo State College approved the inappropriate extra service payments (totaling \$50,000) for Turkle; and (c) multiple senior Foundation officials and board members were aware of the sole source contract with Barone and Associates that was administered improperly. We also note that as a tax-exempt entity under Internal Revenue Code (Code) section 501(c) (3), the Research Foundation must be organized and operated exclusively for its designated exempt purposes - and not for the benefit of private individuals or parties. Nonetheless, we identified Research Foundation transactions that may have resulted in benefits to private interests, particularly certain employees. These transactions could raise scrutiny about the Foundation's tax exempt status.
7. It should be noted that, by comparison, state agencies must follow a more rigorous procedure of obtaining three written quotes for all procurements over \$50,000 and a written quote from the selected responsible vendor. In addition, the State University of New York must solicit five formal sealed bids for procurements of \$125,000 or more.
8. For the transaction (contract) in question, the Foundation made multiple payments (totaling \$319,944) based on invoices that merely referenced certain contract provisions.

The invoices included no details of the work product the contractor actually provided. Thus, Research Foundation officials had insufficient basis for paying the amounts claimed on the invoices. Further, because multiple invoices were improperly paid, we question whether this was an isolated incident.

9. At the time we followed up on this recommendation, the Research Foundation had not developed formal guidance that restricted specific types of expenditures (for example, costs for personal entertainment) of discretionary funds. Further, we question the extent to which expenditures of discretionary funds were tested given the abuses of such funds by the Foundation's Operations Manager at Buffalo State College. Also, we support Research Foundation efforts to provide further guidance on this matter and urge officials to explicitly prohibit certain types of expenses (including some of those detailed in our report) that provide little or no tangible benefit to SUNY and its programs.