

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

Division of State Government Accountability

Contract Award and Performance

New York State Energy Research and Development Authority



Executive Summary

Purpose

To determine whether the New York State Energy Research and Development Authority (NYSERDA) awarded procurement contracts according to prescribed policies and procedures. We also determined whether NYSERDA monitored vendors' performance to ensure compliance with contract terms. Our audit included contracts awarded or modified during the period April 1, 2011 through March 31, 2013.

Background

NYSERDA, a public benefit corporation created in 1975 by the New York State Legislature, is governed by a 13-member Board appointed by the Governor. Its earliest efforts focused on research and development with the goal of reducing the State's petroleum consumption. NYSERDA's mission is to "Advance innovative energy solutions in ways that improve New York's economy and environment." NYSERDA developed an Operations and Procedures Manual (Manual) that established procurement guidelines to follow when awarding contracts. According to the Manual, the two primary types of competitive solicitations are Program Opportunity Notice (PON) and Request for Proposals (RFP). Other examples of competitive solicitations include: Request for Quotations (RFQ); Request for Qualifications (RFQL); and administrative purchases over \$50,000. Non-competitive procurements include sole source; single source; unsolicited proposals; contracts whose expected value is \$50,000 or less; and Minority or Women Owned Business Enterprise (MWBE) contracts valued at \$200,000 or less.

For the two fiscal years ending March 31, 2013, NYSERDA reported that it awarded or modified 5,120 contracts greater than \$5,000. The total value of these contracts was approximately \$1.08 billion.

Key Findings

- Although NYSERDA has policies and procedures governing the contract award process, certain policies and procedures were not always followed for 19 of the 69 contracts we reviewed. For example, five contracts (valued at \$742,113) were incorrectly awarded as unsolicited proposals and, therefore, without the competition that would otherwise have been required.
- NYSERDA did not effectively monitor contract expiration dates to ensure that successor contracts were in place prior to the expiration of the previously existing contracts for similar or related work. NYSERDA paid about \$9.7 million on four contracts after they had expired or after approved extensions had been exhausted.
- NYSERDA did not adequately document the justification for allocating projects (related to four contracts) to certain contractors when there were nine additional contractors pre-qualified for the same work. Two of these four contracts amounted to \$15.4 million.

Key Recommendations

- Classify contracts properly and use the appropriate procurement method to award them.
- Ensure that the assignment of project task orders to contractors is properly justified and adequately documented. Also, ensure such documentation is retained in procurement files.

- Actively monitor contract expiration dates to ensure that new contracts are in place before the expiration of existing contracts.

Other Related Audit/Report of Interest

[New York City Department of Education: Non-Competitively Awarded Contracts \(2008-N-1\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 22, 2014

Mr. Richard L. Kauffman
Chairman
New York State Energy Research and Development Authority
17 Columbia Circle
Albany, NY 12203-6399

Dear Mr. Kauffman:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage their resources efficiently and effectively. By so doing, it provides 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 our audit report entitled *Contract Award and Performance*. The audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

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

Table of Contents

Background	5
Audit Findings and Recommendations	7
Awarding and Modifying Contracts	7
Recommendations	10
Performance Monitoring	11
Recommendations	12
Other Matter	13
Recommendation	13
Audit Scope and Methodology	13
Authority	14
Reporting Requirements	14
Contributors to This Report	15
Agency Comments	16
State Comptroller's Comment	20

State Government Accountability Contact Information:

Audit Director: Carmen Maldonado

Phone: (212) 417-5200

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

Office of the State Comptroller
 Division of State Government Accountability
 110 State Street, 11th Floor
 Albany, NY 12236

This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Energy Research and Development Authority (NYSERDA), a public benefit corporation created in 1975 by the New York State Legislature, is governed by a 13-member Board appointed by the Governor. NYSERDA's earliest efforts focused on research and development with the goal of reducing the State's petroleum consumption. Today, NYSERDA's aim is to help New York meet its energy goals: reducing energy consumption, promoting the use of renewable energy sources, and protecting the environment. NYSERDA's mission is to "Advance innovative energy solutions in ways that improve New York's economy and environment."

NYSERDA receives funding from several sources, such as the System Benefits Charge (SBC), Renewable Portfolio Standard and Renewable Allowances. The SBC was established on May 20, 1996, and specified funding from July 1, 1998 to June 30, 2001. These SBC funds were allocated towards energy-efficiency programs, research and development initiatives, low-income energy programs, and environmental disclosure activities. Part of this funding went into: the creation of New York Energy \$mart, which helps to maintain momentum for the State's efforts to develop competitive markets for energy efficiency; demand management; outreach and education services; research, development, and demonstration; low-income services; and direct economic and environmental benefits to New Yorkers. The SBC has been extended several times, most recently through December 31, 2016.

NYSERDA developed its Operations and Procedures Manual (Manual) that prescribes the procurement guidelines to follow when awarding contracts. According to the Manual, the two primary types of competitive solicitations are Program Opportunity Notice (PON) and Request for Proposals (RFP). Other examples of competitive solicitations include: Request for Quotations (RFQ); Request for Qualifications (RFQL); and administrative purchases over \$50,000. Non-competitive procurements include: sole source; single source; unsolicited proposals; contracts whose expected value is \$50,000 or less; and Minority or Women Owned Business Enterprise (MWBE) contracts valued at \$200,000 or less.

For the two fiscal years ended March 31, 2013, NYSERDA reported that it awarded or modified 5,120 contracts greater than \$5,000. The total value of these contracts was approximately \$1.08 billion.

NYSERDA categorizes its contracts as follows:

- Subscription Based Contract - contract awarded on an open-enrollment basis within the energy research, development, or demonstration program, the energy efficiency services program, and the residential energy affordability program where payment is based on implementation of energy-efficiency measures and resulting energy savings.
- Program Contract - contract to perform work in the energy research, development, or demonstration program (energy efficiency services, energy analysis, economic development, residential energy affordability, and system benefits charge-funded).
- Personal Service Contract - contract to provide a personal service of a consulting,

professional, or technical nature to NYSERDA.

- Other Administrative Contract - contract for services to support NYSERDA's administrative function.
- Goods Contract - contract to procure office supplies, furniture, computer equipment, other equipment, and other miscellaneous items of physical property.

The number and dollar amounts of the contracts (\$5,000 or more) awarded or modified during our audit period are summarized by contract category in the following table.

Type of Contract	Number	\$ Amount (in millions)
Subscription Based	4,214	\$397.6
Program	774	639.9
Personal Service	91	37.4
Other Administrative	23	1.1
Goods	18	.4
Totals	5,120	\$1,076.4

Audit Findings and Recommendations

NYSERDA has formal policies and procedures for the contract award process. However, for 19 of the 69 contracts we reviewed, certain policies and procedures were not followed. In addition, NYSERDA's policies and procedures did not include certain controls that are important to a sound contract award process.

We determined that 12 contracts were not awarded in compliance with the Manual or other requirements. Specifically, we identified: contract modifications over 20 percent or \$50,000 without the required documented approval; contracts continued after expiration or after all allowable extensions to the original contract had been exhausted; and certain procurement procedures that were not followed. We also determined that NYSERDA did not sufficiently verify deliverables enumerated in three contracts; and changes in the amounts of four contracts were not updated in NYSERDA's management information system.

The following table summarizes the results of our testing of the 69 contracts we judgmentally selected for review.

Nature of Sample Group	Total Contracts Reviewed	Contracts Awarded and/or Monitored Appropriately	Contracts with Issues Identified
Unsolicited (See Note)	7	2	5
\$50,000 or less	33	33	0
Over \$50,000	29	15	14
Totals	69	50	19

Note: Each of the seven unsolicited contracts was in excess of \$50,000.

As the table indicates, we identified problems with five unsolicited contracts and 14 contracts over \$50,000.

Awarding and Modifying Contracts

Award Process

NYSERDA did not follow its Manual for six of the 36 contracts valued over \$50,000 in our sample (including the seven unsolicited contracts). This included five contracts where the guidelines for unsolicited contracts were used; however, those guidelines should not have been used because the procurements were not unsolicited. The Manual defines unsolicited as a "contract proposal submitted at the sole initiative of the offerer, not duplicating work then being performed or in the planning request stage, and involving unique, innovative, or unusually meritorious methods or ideas."

The five contracts valued at \$742,113 were not unsolicited, and they should have been subject to NYSERDA's regular procurement process. For example, one contract was for membership renewal in a partnership in a lighting research center that NYSERDA helped to create, and another was for a workshop on the New York State Hydrokinetic Generation Environmental Policy. We found two of the unsolicited contracts were awarded to vendors that NYSERDA had experience with and that NYSERDA believed performed high quality work. However, NYSERDA did not provide evidence that either contract was at the sole initiative of the contractor and involved a unique, innovative, or unusually meritorious method or idea. NYSERDA officials agreed that three of the contracts were incorrectly categorized as unsolicited, but asserted the other two contracts were unsolicited. NYSERDA was unable to provide documentation to support that position. NYSERDA must comply with the Manual and should seek competition when awarding contracts to the greatest extent possible to ensure it is getting best value from its procurements.

The sixth contract was for cleaning services at a building where NYSERDA leases space for its New York City regional office. The lease stated that the cleaning service contract must be approved by the landlord. NYSERDA staff stated that the landlord would only approve the cleaning contract with the company that cleans the rest of the building. Therefore, NYSERDA awarded the cleaning contract non-competitively, whereas the Manual requires this type of service to be competitively procured. This contract was for \$80,403, of which \$72,591 was spent from April 1, 2012 through March 31, 2013. NYSERDA management determined that the clause allowing the landlord final approval of the vendor for cleaning services was acceptable without determining if the cost of the cleaning contract was reasonable. Prior to signing this lease, NYSERDA should have determined if the price of the cleaning contract was appropriate. Further, officials did not notify the Board of the unusual lease provision regarding the cleaning contract, and the Board approved the lease for the building despite the questionable cleaning requirement.

The Manual allows for competition to be waived for contracts valued at \$50,000 or less or contracts with a certified MWBE of \$200,000 or less. Although not required by the Manual, we believe that NYSERDA officials should formally analyze and document the comparative reasonableness of the costs to be incurred as well as the selection of the particular vendor(s). From the 69 contracts we selected for review, there were 22 contracts (totaling \$750,080) for \$50,000 or less or with MWBEs wherein the cost reasonableness and justification for vendor selection could have been applied.

According to NYSERDA officials, staff assessed the reasonableness of the costs for the goods and services, but the documentation of such assessments were sometimes not maintained on file. Officials acknowledged that file documentation of cost reasonableness could be strengthened, and they indicated that steps would be taken to ensure that appropriate documentation was retained on file.

Modification and Extension Process

From the 29 contracts for over \$50,000, we identified nine where the contract amounts increased (from 68 to 3,054 percent of their initial amounts) without the documented justification required by the Manual. The increases raised the total value of these contracts from \$6.4 million to over

\$33.4 million. For example, one contract increased from \$3.5 million to over \$15.3 million since it was awarded in June 2010. The Manual states that a meeting with the Project Team is required in advance of submitting a Project Planning Request (PPR) for any modification to a project that will result in a dollar increase greater than either: (a) \$50,000 or (b) 20% of the current contract amount, whichever is less.

We noted that four of the six contracts were awarded under an RFQL, where several contractors are pre-qualified to be awarded projects as part of the overall RFP. However, these additional task orders were assigned to contractors by NYSERDA staff without vendor competition. Often, a mini-bid process is used for contracts for additional project work and all pre-qualified vendors have the opportunity to submit a proposal. However, that process was not used for the contracts in question. In addition, NYSERDA officials could not provide justification for awarding these additional task orders to one vendor over another.

We also noted that the initial RFQL for these four contracts stated that there was \$15.8 million available; 20 vendors submitted proposals, and 13 were awarded contracts. Since the RFQL was issued in July 2006, the funding has increased to over \$39.2 million as of September 2013, and \$15.4 million of that was awarded to two vendors. NYSERDA officials stated that when assigning a project they take several factors into consideration, including the contractor's experience, prior performance, and geographic location. To help ensure that task orders are properly assigned to contractors, the assessment of the pertinent factors should be completely documented. However, in these instances, they were not. When contract modifications are made without competition, there is less assurance that the best value is obtained. In addition, had other contractors been aware of the significant increase in project funding, they might have submitted bids for the work.

Although certain contract modifications are presented to the Board for approval, the information provided includes only the dollar amount of the modification and the new total value of the contract. The Board is not informed of the reason for the modification or the contract's initial value. Thus, the Board is not advised of the total modification (or increase) to a contract since its inception. Further, NYSERDA also modifies contracts to set the maximum amount a contractor can receive, but the Board is not informed of these modifications. Instead, the Board is only made aware of the total amount actually committed to the contractor for approved projects. NYSERDA should ensure the Board has all the information it needs to make informed decisions on whether or not to approve contract modifications and increases.

We also identified four contracts where the term of the contract had expired or the extensions in the initial contract were exhausted, yet NYSERDA continued to have the contractors work. These four contracts included \$9.7 million of additional work after their initial expiration. One contract had \$7.2 million in additional work added after it expired on November 30, 2011. The contractor provided technical assistance for NYSERDA's Existing Facilities Program for commercial companies. The tasks included application review and project monitoring, including measurement and verification. The competitive bidding process should have been used when seeking vendors for these services once the preceding contracts expired, or a written justification for extending these vendors should have been approved and documented in the contract file. Further, we concluded that the contracts were extended primarily because NYSERDA officials did not start

the process (for new contracts) to replace expiring contracts timely enough.

Recommendations

1. Ensure the assignment of project task orders to contractors is properly justified and adequately documented. Also, ensure such documentation is retained in procurement files.

(NYSERDA replied to our draft report that it will document the rationale for assigning each specific project/task to a contractor in the procurement files.)

2. Notify the Board when the choice of vendors is restricted by terms of a contract that may be awarded.

(NYSERDA replied that the Board will be notified of restrictions on the choice of vendors.)

3. Fully inform the Board of the modifications to contracts by including the original contract value and the justification for the modification.

(NYSERDA replied that it will continue to fully inform the Board of modifications to contracts that rise to the level of Board approval in accordance with its governing documents and appropriate management practices.)

Auditor's Comment: NYSERDA officials' comments were unresponsive to the recommendation. Officials stated they will continue to notify the Board of contract modifications. However, auditors recommended that the agency change its notification procedures to include more information about the contracts so that the Board has a complete picture of the changes to contract since it was awarded. Auditors suggest that the Board be provided with the following additional information: the reason for the modification, the contract's initial value, and all of the modifications made to the contract.

4. Actively monitor the expiration dates of existing contracts so that the process of replacing them is started sufficiently in advance of the contracts' expiration. Revise the Manual to include steps for evaluating expiring contracts and prescribe the requirement for formal senior management approval when contracts are extended without competition.

(NYSERDA replied to our draft audit report that it has procedures in place for obtaining senior management approval of all contract extensions, and those procedures were followed in the transactions tested and documented in the contract files. Nevertheless, contract management staff will institute procedures to even more actively monitor the scheduled expiration dates and work with program staff to ensure new competitively selected contracts are in place prior to the expiration of such contracts, unless otherwise approved by senior management.)

Auditor's Comments: While we are pleased that NYSERDA's contract management staff will start monitoring the scheduled expiration dates to ensure additional monies and work are not added to expired contracts, NYSERDA appears not to have grasped the substance of the

finding. Four contracts in our sample were awarded additional work after their expiration date. For example, one contract expired on November 30, 2011 and was awarded an additional \$2.2 million on February 15, 2012, and \$58,000 on July 10, 2012. While NYSERDA's Board approved the additions to two of these contracts, it does not alter the fact that adding monies to expired contracts is a practice that should be avoided as it increases risk to the contractor and to the agency.

5. Classify contracts properly and use the appropriate procurement method to award them.

(NYSERDA replied that it has taken action to implement the recommendation.)

6. Document the reasonableness of cost and justification of vendor selection before approving contracts that are awarded non-competitively.

(NYSERDA replied that its policies will be revised and provided to all staff to document vendor selection and cost reasonableness for contracts not competitively awarded.)

Performance Monitoring

NYSERDA is responsible for monitoring vendors to ensure it receives the goods and services it procures as prescribed by its contracts. We reviewed certain deliverables for 57 of our 69 selected contracts to determine whether NYSERDA monitored contractor performance and that it received the services or goods paid for, according to quality and delivery specifications. For the 57 contracts, we reviewed the deliverables corresponding to payments totaling \$23 million, made from April 1, 2011 through March 31, 2013. Generally, NYSERDA officials adequately ensured contractor compliance with contract provisions pertaining to deliverables. Nonetheless, for three contracts, there were issues pertaining to certain deliverables.

Two contracts were for the production of renewable energy from wind farms. NYSERDA paid the two wind farm vendors about \$4.95 million based on the amount of energy reported by the Independent System Operator (Operator) of New York State's power grid without verifying the accuracy of the amounts claimed. This verification process should include inspections of the meters measuring energy volume to ensure they are properly calibrated or reviews of meter inspection reports prepared by other agencies. NYSERDA officials state that the Operator has very strict requirements for meter accuracy, and therefore, they rely on the Operator to ensure the meters function properly. However, NYSERDA did not confirm the Operator followed its own internal procedures. Consequently, officials had limited assurance that the electricity for end users in New York State was produced. Even relatively small calibration errors could result in material overpayments over time, given the amounts of energy and related payments in question.

The other contract, valued at \$1.2 million, was for technical support and administrative infrastructure for participation in the State's Carbon Dioxide Budget Trading Program. Under this contract, NYSERDA received revenue and expense data (based on annual budget information and auction proceeds statements) from the contractor and made payments based on this data. However, NYSERDA did not verify the data received from the contractor to the pertinent source

documents. Thus, the amounts in question were not independently verified. Therefore, NYSERDA could be paying more than its fair share of expenses for program management or receiving less than the proper amount of revenues from the auction of carbon allowances.

We also found that monitoring of the deliverables generally did not include site visits. Further, when site visits were conducted, they usually were not documented. NYSERDA officials explained that monitoring of its New Construction and Existing Facilities Programs is performed by firms under consultant contracts. Each project is assigned an implementation contractor, responsible for performing pre- and post-construction inspections. The results are reported to NYSERDA. In addition, another consultant contractor verifies this data on a sample basis.

NYSERDA staff stated that they sometimes perform site visits to confirm the work the contractors stated was completed. According to the staff, these site visits help to provide reasonable assurance that contractors comply with the terms of their contracts with NYSERDA. Nonetheless, NYSERDA staff performs the great majority of their monitoring through the collection of reports (progress, monthly, quarterly, and/or final), and not through site visits. We reviewed several reports supporting the receipt of deliverables, but did not find project manager notes documenting their site visits. Such visits by NYSERDA staff would put an additional control in place to document work completed by contractors. Therefore, it is important to completely and accurately document them.

Recommendations

7. Develop and implement policies and procedures to provide sufficient assurance that contractors fully comply with the obligations for deliverables, as prescribed by the terms of contracts. This should include, but not be limited to, verifying data received from vendors in energy production reports and budget and revenue data where the information is used to determine NYSERDA's share of expenses and revenues.

(NYSERDA replied that its policies and procedures regarding deliverables are sufficient and that NYSERDA staff diligently follow them.)

Auditor's Comments: For the wind farm contracts, NYSERDA officials responded that they rely on controls instituted by the Operator to ensure data is reliable. However, due to the high value of these contracts, we continue to believe that NYSERDA should verify that these controls were actually implemented. Regarding the Regional Greenhouse Gas Initiative (RGGI) contract, we were advised by the agency that it receives the proceeds from the quarterly auction of carbon dioxide allowances and technical support. However, the contract manager has limited information to support the completeness and accuracy of these payments. According to NYSERDA staff, the proceeds are automatically deposited into NYSERDA's bank account and the contract manager only receives an e-mail confirmation of the auction distribution notices. NYSERDA states that it relies on quarterly financial reports and audited financial statements to ensure the accuracy of this revenue. However, the Project Manager responsible for monitoring this contract did not have the financial statements or refer to them as a source of information when questioned by auditors. We reviewed RGGI's financial statements for the year ended

December 31, 2013, and there is no information on the auctions. Thus, such reports do not provide the necessary detail related to the transactions to provide adequate assurance.

8. Revise policies and procedures in the Manual to require staff to prepare and maintain notes documenting the results of their site visits.

(NYSERDA replied it will revise its policies to require that its staff document their site visits.)

Other Matter

We also identified eight contracts where the contract value from the NYSERDA's information system did not match the amounts documented in the contract file as of March 31, 2013. For example, the file for one contract listed the contract's total value at \$9,048,086, but the same contract's value per NYSERDA's automated management information system was \$12,092,271. According to NYSERDA officials, the value in the contract file for four contracts was different because the contract file value was a "not-to-exceed" amount and the management information system amount reflected actual payments as of March 31, 2013. Officials agreed that the contract files for the remaining four contracts should be modified to match the amount in the management information system used to generate the report as of March 31, 2013. NYSERDA staff did not ensure that the computerized tracking system or contract file data was properly updated when changes or modifications were made to contracts. Consequently, NYSERDA decision-makers had conflicting or inaccurate contract information on which significant management decisions could have been based.

Recommendation

9. Ensure the contract management information system and contract files are updated timely and accurately when changes are made to the contract values. Periodically verify that information system and file data are consistent. Resolve differences when they occur.

(NYSERDA replied that it has taken corrective action.)

Audit Scope and Methodology

We audited NYSERDA to determine whether it awarded procurement contracts according to the prescribed policies and procedures. We also determined whether NYSERDA monitored vendors' performance to ensure compliance with contract terms. Our audit included 5,120 contracts awarded or modified from April 1, 2011 through March 31, 2013 valued at approximately \$1.08 billion, as reported by NYSERDA on September 26, 2013.

We selected a judgmental sample of 69 contracts (totaling \$330.5 million) from the population of 5,120 contracts (totaling approximately \$1.08 billion). This included 33 contracts for \$50,000 or less, 29 contracts over \$50,000, and seven unsolicited contracts. We selected our sample to include contracts that were: competitively and non-competitively awarded; high and low dollar

value; and for various purposes (i.e., goods and personal services, administration, and program). For each contract we selected, we determined if the contract was awarded according to NYSERDA policies and procedures and if NYSERDA staff were properly monitoring vendor performance. We reviewed NYSERDA's procurement policies and procedures and interviewed NYSERDA employees to obtain an understanding of the internal controls related to contract award and performance. We also reviewed contract files, financial statements, invoices and documentation supporting invoiced amounts, and Public Authorities Reporting Information System procurement reports. We did not review any contracts that were specifically for rebates/incentives to individuals or businesses for purchasing/installing energy efficient products.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

A draft copy of this audit report was provided to NYSERDA officials for their review and comments. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Energy Research and Development Authority shall 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.

Contributors to This Report

Carmen Maldonado, Audit Director
Robert Mehrhoff, Audit Manager
Christine Chu, Audit Supervisor
Kathleen Hotaling, Examiner-in-Charge
Brandon Ogden, Examiner-in-Charge
Peter Carroll, Staff Examiner
Gayle Clas, Staff Examiner
Joseph Robilotto, Staff Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

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



August 28, 2014

Carmen Maldonado, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

RE: Response to draft audit report, Contract Award and Performance (2013-S-45)

Dear Ms. Maldonado:

Thank you for your office's draft audit report on Contract Award and Performance. We are pleased that your office found effective processes for monitoring contractor compliance pertaining to deliverables and generally adequate policies and procedures for awarding and modifying contracts for the transactions tested. We are also pleased to note that the draft audit report's findings primarily address filing methods, notification and record-keeping procedures that NYSERDA can and will quickly improve. To be sure, while we continue to make improvements to the contract award process and performance monitoring, we strongly believe that we are headed in the right direction across all our programs, including compliance with reporting requirements and adherence to contract terms.

Moreover, we are pleased that even despite the small and potentially unrepresentative sample of contracts, the audit still found that in the vast majority of cases analyzed NYSERDA adequately followed the applicable policies and procedures. In particular, we note that the audit tested only about 1% of contracts awarded, and within that small sample selected there were a disproportionate number of contracts in certain categories. Specifically, the audit tested 5% of the contracts awarded through sole source justifications, 13% of the contracts awarded using discretionary thresholds, and 100% of the contracts awarded from unsolicited proposals, but less than 1% of the contracts awarded through competitive solicitations. The nature of the sample tested may lead to an inaccurate view of NYSERDA's awards and monitoring processes, since some of the issues identified may have been more likely to occur in certain categories of contracts.

NYSERDA takes very seriously the findings that in certain cases NYSERDA could improve upon its adherence to formal contract management policies and procedures. We are always looking for opportunities to improve our policies, procedures and practices, and appreciate the recommendations provided in the report. Therefore, please find below our responses to each of the recommendations included in the draft report.

Recommendation #1: Ensure the assignment of project task orders to contractors is properly justified and adequately documented. Also, ensure such documentation is retained in procurement files.

Response: We understand from the draft report that this recommendation is targeted to task assignments to pre-qualified contractors. For programs using such task assignments and pre-qualified contractors, the rationale for assigning each specific project/task to a contractor shall be documented in the procurement files.

New York State Energy Research and Development Authority

Albany
17 Columbia Circle, Albany, NY 12203-6399
(P) 1-866-NYSERDA | (F) 518-862-1091
nyserda.ny.gov | info@nyserda.ny.gov
Richard L. Kauffman, Chairman
John B. Rhodes, President and CEO

Buffalo
726 Exchange Street
Suite 821
Buffalo, NY
14210-1484
(P) 716-842-1522
(F) 716-842-0156

New York City
1359 Broadway
19th Floor
New York, NY
10018-7842
(P) 212-971-5342
(F) 518-862-1091

**West Valley Site
Management Program**
9030-B Route 219
West Valley, NY
14171-9500
(P) 716-942-9960
(F) 716-942-9961

*
Comment
1

*See State Comptroller's Comment, page 20

Recommendation #2: Notify the Board when the choice of vendors is restricted by terms of a contract that may be awarded.

Response: NYSERDA will notify the Board when contracts requiring Board approval include restrictions on the choice of vendors.

Recommendation #3: Fully inform the Board of the modifications to contracts by including the original contract value and the justification for the modification.

Response: We will continue to fully inform the Board of modifications to contracts that rise to the level of Board approval, in accordance with both NYSERDA's governing documents and appropriate management practices.

Recommendation #4: Actively monitor the expiration dates of existing contracts so that the process of replacing them is started sufficiently in advance of the contracts' expiration. Revise the Manual to include steps for evaluating expiring contracts and prescribe the requirement for formal senior management approval when contracts are extended without competition.

Response: NYSERDA has procedures in place for obtaining senior management approval of all contract extensions, and those procedures were followed in the transactions tested and documented in the contract files. Nevertheless, Contract Management staff will institute procedures to even more actively monitor scheduled expiration dates of contracts and work with program staff to ensure that new competitively selected contracts are in place prior to the expiration of such contracts, unless otherwise approved by senior management.

Recommendation #5: Classify contracts properly and use the appropriate procurement method to award them.

Response: Accurate procurement method classification in the contract management information system has been reinforced with Contract Management staff.

Recommendation #6: Document the reasonableness of cost and justification of vendor selection before approving contracts that are awarded non-competitively.

Response: Policies will be revised and provided to all staff to document vendor selection and cost reasonableness for contracts not competitively awarded.

Recommendation #7: Develop and implement policies and procedures to provide sufficient assurance that contractors fully comply with the obligations for deliverables, as prescribed by the terms of contracts. This should include, but not be limited to, verifying data received from vendors in energy production reports and budget and revenue data where the information is used to determine NYSERDA's share of expenses and revenues.

Response: NYSERDA has existing policies and procedures for staff to monitor contractor compliance with contract deliverables. Furthermore, as noted in the draft report, "Generally, NYSERDA officials adequately ensured contractor compliance with contract provisions pertaining to deliverables." Therefore, while we appreciate the recommendation, we believe that sufficient policies and procedures are in place, and that NYSERDA staff diligently follows them.

In the report, potential issues are noted with three of 57 contracts reviewed in this regard. Two of those contracts were for the production of renewable energy from wind farms. It is noted with regard to those projects that in order to further verify data regarding energy generated by these projects, NYSERDA should not rely on the New York Independent System Operator's ("NYISO") metering and periodic calibration requirements but should instead, itself,

independently confirm that "the [NYISO] followed its own procedures." Renewable generation data is measured by revenue grade meters to calculate financial settlements to many parties, including NYISERDA. High levels of controls and quality are placed on metering accuracy and validity. The NYISO tariffs establish and define stringent requirements for metering specification, calibration and maintenance. NYISO tariffs require the Connecting Transmission Owner to install revenue grade meters of exacting specifications that are used to track generation data and also to conduct periodic third party calibration of the meters, or face a formal investigation by the NYISO Market Monitoring Unit. Further, the NYISO utilizes a metering "true up" process whereby adjusted generation data is made available to NYISERDA if metering adjustments are necessary. This updated data is then used to adjust NYISERDA's payment as needed. As a result of using accepted industry practices, NYISERDA considers its use of data produced by NYISO's meters in calculating NYISERDA's payments to be prudent and reasonable.

The third and only other contract noted in the report in this regard is with Regional Greenhouse Gas Initiative, Inc. (RGGI, Inc.), which was established through a Memorandum of Understanding between the states participating in the Regional Greenhouse Gas Initiative (RGGI) (currently nine states including New York). RGGI Inc. provides both technical and scientific advisory services to the states and common services to the multi-state implementation of the RGGI program. These services include the auction platform and emissions tracking systems. In particular, you stated with regard to RGGI, Inc.'s revenue and expenses, "the amounts in question were not independently verified." We respectfully disagree. RGGI, Inc. subjects its revenue and expense data to both multiple levels of review inside its organization and review by independent auditors outside the organization. Each year, RGGI, Inc. approves an annual budget that includes programmatic expenses (e.g., regional auctions, emissions tracking system, etc.) and operating expenses (e.g., personnel, office rental expense, etc.). Each state agrees to pay its predetermined pro rata share of actual expenses. During the course of the year, quarterly financial reports are reviewed and approved by the Executive Committee of RGGI, Inc. At year-end, financial statements for RGGI, Inc. are independently audited to ensure that expenditures reflect actual incurred expenses. Given these multiple levels of internal and external review and verification, we believe it would be duplicative and unnecessary for NYISERDA staff to conduct a separate review of RGGI, Inc. revenue and expense data.

Recommendation #8: Revise policies and procedures in the Manual to require staff to prepare and maintain notes documenting the results of their site visits.

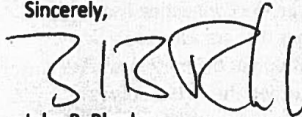
Response: As indicated in the draft audit report, NYISERDA contractors perform site inspections and document these inspections. Additional NYISERDA consultants verify the results on a sample basis. NYISERDA will revise its policies to require that NYISERDA staff also document their site visits.

Recommendation #9: Ensure the contract management information system and contract files are updated timely and accurately when changes are made to the contract values. Periodically verify that information system and file data are consistent. Resolve differences when they occur.

Response: The discrepancies noted were the result of previous practices and have since been revised. Current practices would not result in a discrepancy between the authorized tasks in the contract file and the value of the contract in the contract management information system.

We look forward to continuing to improve our processes and procedures, and thank you for the opportunity to provide comment on the draft report.

Sincerely,



John B. Rhodes
President and CEO

State Comptroller's Comment

1. We disagree with NYSERDA's comments that the sample was unrepresentative. The sample was selected to include all categories of contracts except program-related rebate payments which were outside the scope of the audit. The 57 contracts reviewed represented \$383.2 million of the \$1.015 billion awarded during the audit scope.