

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF MANAGEMENT AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit of the School Construction Authority's Contractor Prequalification Practices

MD05-068A

June 30, 2005



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has audited the prequalification procedures of the School Construction Authority (SCA) to determine whether the SCA adheres to its prequalification procedures for awarding contracts.

The results of our audit, which are presented in this report, have been discussed with SCA officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

Report: MD05-068A
Filed: June 30, 2005

Table of Contents

AUDIT REPORT IN BRIEF

Audit Findings and Conclusions 1

INTRODUCTION

Background..... 3
Objectives..... 4
Scope and Methodology..... 4
SCA Response..... 5

FINDINGS AND RECOMMENDATIONS

Applicant Files Lacked Evidence of a Manager’s
Review and Current Authorization by OIG.....6

SCA Procedures Do Not Address Violations.....8

ADDENDUM – SCA Response

*The City of New York
Office of the Comptroller
Bureau of Management Audit*

**Audit of the School Construction
Authority's Contractor Prequalification Practices**

MD05-068A

AUDIT REPORT IN BRIEF

This audit determined whether the School Construction Authority (SCA) adheres to its prequalification procedures for awarding contracts.

Audit Findings and Conclusions

Overall, the SCA adheres to its procedures for prequalifying firms. Contractor Qualification Unit (CQU) and Office of the Inspector General (OIG) officials reviewed the applications to determine whether the firms were qualified to bid. SCA officials also ensured that references were checked, licenses, if applicable, were placed in the files, and that firms' performance histories were recorded in the SCA's database. In addition, SCA officials ensured that Vendor Information Exchange System, Occupational Safety and Health Act, and Dun & Bradstreet reports were reviewed and placed in the files. Our review of these reports revealed that the SCA included the findings from these reports in the applicants' files.

However, there were instances in which we saw no evidence that a manager reviewed the files, indicating that a complete review of applicant files may not have been performed. There were also instances in which we saw no evidence of a recent Statement of Findings from OIG, indicating a lack of current SCA authorization prior to requalification of these firms. In addition, the SCA does not have procedures that address the disposition of firms with a history of wage and labor violations or OSHA violations.

Based on our findings, we make the following three recommendations:

The SCA should:

- Ensure that all applications are reviewed and signed by a manager.

- Ensure that all applicant files contain a current Statement of Findings as evidence of OIG review.
- Consider establishing procedures for determining the degree of wage and labor law violations and/or OSHA violations that should prevent a firm from being included on its prequalification list.

INTRODUCTION

Background

The New York City School Construction Authority (SCA) was established by the New York State Legislature in December 1988 to build new public schools and manage the design, construction, and renovation of capital projects in New York City's 1,200 public school buildings. SCA, which is funded through the City capital budget, has budgeted \$13.1 billion for its five-year capital plan for Fiscal Years 2005 through 2009.

SCA prequalifies all firms wishing to be considered to bid on SCA projects. The prequalification process evaluates the capability and credentials of potential firms before invitations for bids are issued. To be prequalified, prospective firms are required to complete an extensive application form that examines the following factors:

- Experience
- Quality and timeliness of past performance
- Financial capability
- Reliability and responsibility
- Safety record
- Compliance with equal employment requirements
- Compliance and enrollment with wage, hour, and other fair labor standards
- Enrollment in New York State Department of Labor-approved apprenticeship training programs for those trades in which applicants seek prequalification
- Integrity of the firm, its key people, affiliates, current and past owners, and principals.

Applications are reviewed by the SCA's Contractor Qualification Unit (CQU) and the SCA's Office of the Inspector General (OIG). The CQU evaluates prospective contractors' work experience, past performance, technical competence, and financial soundness. Firms need to have been in existence for at least two years to prequalify for contracts. A firm that had been in existence for less than two years may also prequalify if the key person of the firm was a key person of a previous firm with a satisfactory work history. Small firms that are part of a mentor program can prequalify if they have been in existence for at least one year.

To review a firm's work history, the CQU looks at the firm's performance on its four most recent largest contracts and reviews the firm's work history, as noted in the Vendor Information Exchange System (Vendex)—an automated information system developed by New York City to track the performance of firms awarded City contracts. The CQU also looks at previous SCA contracts and outside references for commercial projects completed within the three years prior to the application date. CQU staff are also required to review available Dun & Bradstreet reports and ensure that applicable Occupational Safety and Health Act (OSHA) inspection reports, which examine a firm's past safety records, are on file.

For contractors seeking work exceeding \$1 million, CQU reviews potential firms' audited financial statements for the previous two years. If the financial statements have not been audited, the CQU examines the applicant's compiled or reviewed financial statements and

federal tax returns for the previous two years. A financial review is not necessary for contractors seeking contracts of less than \$1 million.

The CQU sends a copy of the application to OIG for an integrity review of the firm to determine whether key persons of the prospective firm have been involved in illegal or unethical activities. OIG staff review references and Vendex reports, check for undisclosed relationships of firms, and examine credit reports and public records to verify information in applications. If OIG officials become aware of major integrity issues, they contact CQU and outside resources such as law enforcement agencies.

If a prospective firm is approved by CQU and OIG, it is placed on a list of firms considered qualified to bid on SCA projects. Firms that want to remain on the prequalified list and to be allowed to bid on SCA projects are required to update their applications for requalification every three years. During Fiscal Years 2003 and 2004, the SCA prequalified a total of 658 firms, requalified a total of 483 firms, and awarded a total of 380 contracts.

Objective

The objective of this audit was to determine whether the SCA adheres to its prequalification procedures for awarding contracts.

Scope and Methodology

The scope period of our audit was Fiscal Years 2003 and 2004. To obtain an understanding of SCA operations, we interviewed the Contract Administration Unit Senior Director, the Contractor Qualification Unit Director, and the Assistant Inspector General in charge of prequalification.

We reviewed SCA's policies and procedures for its contractor prequalification process, as well as its procedures for awarding contracts. In addition, we reviewed the competitive bidding documents and contract agreements that SCA uses.

To determine whether the SCA adhered to the policies and procedures for its prequalification process, we reviewed 50 randomly selected application files out of the total of 1,141 files for firms that were prequalified and requalified during Fiscal Years 2003 and 2004.

We determined whether CQU and OIG had properly reviewed and approved the prequalification applications. We also checked that as part of their review CQU and OIG officials examined a firm's experience, the quality and timeliness of its past performance, its financial capability, its safety record, compliance with equal employment requirements and fair labor standards, and its enrollment in applicable New York State Department of Labor-approved apprenticeship training programs. We also reviewed the firm's key employees, affiliates, and current and past owners.

We determined whether SCA officials reviewed firms' financial statements when required and obtained their Vendex, Dun & Bradstreet, and OSHA reports. To check the validity of the information in the files, we performed our own searches of Vendex, Dun & Bradstreet, and OSHA reports and also searched for any labor law violations. We compared the results of our searches to the results noted by SCA in its application files.

The results of the above tests, while not projectable to the entire population of applicant firms, provided us a reasonable basis to determine whether the SCA adheres to its prequalification and requalification procedures for awarding contracts.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

SCA Response

The matters covered in this report were discussed with SCA officials during and at the conclusion of this audit. A preliminary draft report was sent to SCA officials and discussed at an exit conference held on May 4, 2005. On May 24, 2005, we submitted a draft report to SCA officials with a request for comments. We received a written response from SCA on June 17, 2005. Though SCA officials did not agree with our findings, they generally agreed with our recommendations.

The full text of the SCA response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

Overall, the SCA adheres to its procedures for prequalifying firms. CQU and OIG officials reviewed the applications to determine whether the firms were qualified to bid. SCA officials also ensured that references were checked, licenses, if applicable, were placed in the files, and that firms' performance histories were recorded in the SCA's database. In addition, SCA officials ensured that Vendex, OSHA, and Dun & Bradstreet reports were reviewed and placed in the files. Furthermore, our review of these reports revealed that the SCA included the findings from these reports in the applicants' files.

However, there were instances in which we saw no evidence that a manager had reviewed the files prior to prequalifying the firm, indicating that a complete review of applicant files may not have been performed. There were also instances in which we saw no evidence of a recent Statement of Findings from OIG, indicating a lack of current SCA authorization prior to requalification of these firms. In addition, the SCA does not have procedures that address the disposition of firms with a history of wage and labor violations or OSHA violations. The full details of our findings are discussed below:

Applicant Files Lacked Evidence of a Manager's Review and Current Authorization by OIG

The applicant files for 22 (44%) of our 50 sampled applications lacked a manager certification that an adequate background check of the firm had been conducted. In addition, four (8%) of our 50 sampled applicant files lacked a current Statement of Findings from the OIG indicating that the Inspector General had recently investigated the firms and approved their requalification. These reviews are necessary to ensure that firms bidding on contracts are able to meet the minimum standards for requalification.

Without the manager's and Inspector General's review, there is a possibility that application files may lack other required documents. For example, one firm whose file did not contain a Review of Application Process signed by an SCA manager also lacked a current Vendex check showing the firm's past performance on other City contracts. Another firm whose file did not contain a Review of Application Process signed by an SCA manager also lacked the OSHA 200/300 Form. This firm employed 54 employees; according to SCA rules and regulations, any firm with more than 10 employees is required to submit the OSHA 200/300 Form. Another firm that did not contain a Review of Application Process was found to be financially "unbalanced" by Dun & Bradstreet.

One firm whose file did not contain a Review of Application Process signed by an SCA manager also lacked a current Statement of Findings from the OIG showing that the Inspector General had finished investigating the firm. The last OIG review for this firm was conducted on December 22, 2000. The application to requalify was dated February 10, 2003—more than two years after the last OIG authorization. By not performing an OIG review upon requalification, the SCA will not be able to determine whether a firm's circumstances, conditions or status may have changed.

Three other files lacked a current and updated Statement of Findings from the OIG. One of these firms also had three separate and ongoing complaints of labor and wage violations filed against it, as well as three serious OSHA violations relating to electrical wiring. This firm was suspended from the SCA's prequalification list because of unsatisfactory performance evaluations.

During the exit conference, SCA officials informed us that they did not have a manager during part of our scope period. As a result, the director of the Contractor Qualification Unit made notations on the Review of Application Process and issued a qualification letter to firms. However, the notations alone, without a manager's signature, do not evidence that a complete review of the qualification process was conducted.

SCA officials also told us that according to their policies and procedures, a current Statement of Findings from the OIG was required for the prequalification but not for requalification of firms. SCA officials stated that an additional signature to indicate completion of a review is not necessary as long as the requalification takes place within three years of the prior qualification. However, according to SCA policies and procedures, both prequalification and requalification of an applicant must be approved in writing by the OIG. The purpose of an OIG review is to uncover financial irregularities or contradictory qualifications. By not performing an OIG review upon requalification, SCA officials cannot guarantee that they uncover all circumstances that otherwise may have precluded a firm from being requalified.

A Review of Application Process signed by an SCA manager and a current Statement of Findings from OIG are required to ensure that all essential information regarding the credentials of firms is included in the applicant files for review by key SCA officials. Without all the required documents and evidence of review by SCA officials, firms allowed to bid on contracts may not meet the minimum standards for prequalification.

Recommendations

The SCA should ensure that all:

1. Applications are reviewed and signed by a manager.

SCA Response: "We have implemented a procedure where the Director or Senior Director will sign the Prequalification Check-off List in the absence of the Manager."

2. Applicant files contain a current Statement of Findings as evidence of OIG review.

SCA Response: "We agree with this recommendation. In no instance is a firm initially prequalified without the sign-off from the Office of the Inspector General. The SCA practice regarding firms seeking requalifications has been to enable a firm to continue doing business with the SCA . . . while an OIG sign-off is pending."

Auditor Comment: According to SCA policies and procedures, both prequalification and requalification of an applicant must be approved in writing by the OIG. During the interval between prequalification and requalification, a firm's circumstances, conditions, or status may have changed. An OIG review is required to determine whether any changes have occurred and, if there have been changes, whether they affect an applicant firm's requalification status.

SCA Procedures Do Not Address Violations

Although SCA procedures require it to review a potential firm's compliance with fair labor standards and OSHA inspection standards, it does not have established guidelines for determining the degree of wage and labor law violations and/or OSHA violations that should prevent a firm from being included on its prequalification list. Fourteen (28%) of the 50 firms in our sample that SCA approved for its prequalified list had wage and labor law violations and/or OSHA violations or had active cases pending against them.

Nine firms were found either to be in violation of wage and labor laws or to have active cases pending against them—five of these firms also had OSHA violations. Six of the nine firms were found guilty of violations and had to pay settlement costs ranging from \$254 to \$114,724. Two of the six firms with violations also had current and active cases filed against them. The remaining three firms have active cases pending against them.

Ten firms had OSHA violations—five of these firms also had labor law violations. Eight of the 10 firms had OSHA violations that were reported as “serious,” and the fines that the firms had to pay ranged from \$100 to \$4,900. Some of these firms were cited for violations relating to head protection, scaffolding, and electrical wiring.

SCA Response: “Our review revealed that four of the ten firms on the list did not have any OSHA violations at all during the relevant time period.

“Violations listed as ‘other’ are not reportable according to the SCA prequalification application instructions as they are not considered ‘serious.’”

Auditor Comment: According to our review, each of the 10 firms had OSHA violations during our audit scope period and as stated above, eight of the 10 firms had OSHA violations that were reported as “serious.”

Though the minimum degree of a violation considered by the SCA is a “serious violation,” the maximum penalty for both “serious” and “other” violations is the same, and both are considered violations under OSHA rules and regulations.

One of the firms had 36 OSHA violations, ranging from serious to repeat violations. A repeat violation can bring penalties of up to \$70,000 and constitutes any standard, regulation, rule, or order for which reinspection finds a substantially similar violation. The firm with the 36 OSHA violations had also been cited for a wage and labor law violation, for which the firm had

to pay \$20,000 in settlement fees; and it currently has two active wage and labor law cases pending. Though this file had been reviewed by SCA's OIG and signed by an SCA manager, there was no indication in the file that they took these violations into consideration when going through the prequalification process.

SCA Response: "While the auditors cite a possible penalty of up to \$70,000, we were unable to locate any firm in the sample of 50 that had 36 OSHA violations. The one firm that had 26 violations did have a repeat violation that carried an initial penalty of \$10,000, which was subsequently reduced to \$7,650 by OSHA."

Auditor Comment: The \$70,000 cited in the report is the maximum amount of penalties that according to OSHA can be assessed for a repeat violation. It is not the penalty associated with the firm that had 36 OSHA violations.

The firm that we cited as having 36 OSHA violations had 10 violations classified as "other" that the SCA discounted upon its review of the firm for prequalification. However, based on OSHA's classification of violations, they were considered to be violations.

In addition to the firm cited above that had 36 OSHA violations, one of the sampled firms had five OSHA violations, one firm had three OSHA violations, and three firms had four OSHA violations. The remaining four firms each had one violation.

The SCA's current guidelines do not set forth objective criteria for determining the degree of wage and labor law violations and/or OSHA violations that should prevent a firm from being included on its prequalification list. As a result, firms with wage and labor law violations or unsafe work practices are nonetheless being prequalified and allowed to bid on contracts.

Recommendation

3. The SCA should consider establishing procedures for determining the degree of wage and labor law violations and/or OSHA violations that should prevent a firm from being included on its prequalification list.

SCA Response: "We agree that procedures are needed and the SCA already has them in place. . . .

"If a firm has a history of Labor Law complaints, but has not been debarred by the Comptroller, the SCA would not deny the company prequalification status.

"The SCA does conduct its own review of those companies we believe may pose a safety problem based on repeated violations in their area of expertise. These companies are referred to the SCA's Safety Director for review. Site safety monitors may be required, or the contractor may be limited in the number of contracts awarded, or required to enter into a separate safety agreement."

Auditor Comment: It is the responsibility of the Comptroller's Office to obtain fair wage and labor standards for workers who have been denied equitable payment. It is up to SCA officials to review the findings of the Comptroller's Office regarding wage and labor law violations and to decide which firms should be prequalified to bid on its contracts. If the debarment of a firm by the Comptroller's Office for unfair labor law practices is the only criterion SCA wishes to use, then why do SCA procedures require it to review a potential firm's compliance with fair labor standards. Firms that are debarred by the Comptroller's Office would automatically be ineligible for prequalification.

SCA's monitoring of firms with a history of repeated safety problems was not part of the audit's objective. However, we note that no documentation was provided to us showing that companies cited in the report were referred to SCA's Safety Director for review, were required to have site safety monitors, were limited in the number of contracts awarded, or were required to enter into a separate safety agreement. The absence of such actions underscore the importance of establishing a specific degree of OSHA violations that should prevent a firm from being included on its prequalification list.



NEW YORK CITY SCHOOL
CONSTRUCTION AUTHORITY

WILLIAM H. GOLDSTEIN
PRESIDENT & CEO

June 17, 2005

Mr. Greg Brooks
Deputy Comptroller – Policy, Audits, Accountancy & Contracts
The City of New York
Office of the Comptroller
1 Centre Street
New York, NY 10007

Dear Mr. Brooks:

This is in response to the May 24, 2005 Draft Report of the Audit of the School Construction Authority's Contractor Prequalification Practices. The Draft Report contains three recommendations. I will respond to each of the three recommendations in turn.

Ensure that all applications are reviewed and signed by a manager.

We agree with this recommendation. Page 6 of the Draft Report indicates that 22 sample files "lacked evidence of a manager's review". The 22 files all had attached letters signed by a Director or a Senior Director, as well as dates and/or notations made by the Director or Senior Director within the file. Both the Director and Senior Director are managerial titles and are higher-ranked titles than the title "Manager".

The distinction observed in the Draft Report is that there is a specific location in the Prequalification Check-off List for a Manager's signature which was not completed. When the Manager's position was vacant, neither the Director nor the Senior Director signed the Prequalification Check-off List. However, the Director or Senior Director did, in fact, thoroughly review the file and sign the letter approving the applicant firm. In order to eliminate this ambiguity, we have implemented a procedure where the Director or Senior Director will sign the Prequalification Check-off List in the absence of the Manager.

The Draft Report, on page 6, refers to one file in which the OSHA 200/300 Form was not included and states that the OSHA form "would have showed any previous safety violations". In fact, the OSHA 200/300 Form does not show safety violations, but would show illnesses, accidents and missed days of work, which would not preclude prequalification. The form indicates the number of work days missing due to illnesses and accidents, and is used to evaluate the firm's Experience Modification Rating.

Ensure that all applicant files contain a current Statement of Findings as evidence of OIG review.

We agree with this recommendation. The observation in the Draft Report, that four files lacked a current Statement of Findings, relates to firms that were already prequalified and were seeking requalification. In no instance is a firm initially prequalified without the sign-off from the Office of the Inspector General. The SCA practice regarding firms seeking requalification has been to enable a firm to continue doing business with the SCA after a complete review of its re-qualification application by the Contractor Qualification Unit and while an OIG sign-off is pending. This practice prioritizes the use of staff to increase competition by prequalifying more companies initially and, at the same time, permitting those companies that are already prequalified to continue working. Although the OIG may not have reviewed a firm for re-qualification, the OIG does conduct an integrity review of a firm prior to a contract being awarded.

The Draft Report, on page 7, identified one firm, whose re-qualification application the OIG did not review, which had “three separate and ongoing complaints of labor and wage violations filed against it, as well as three serious OSHA violations relating to electrical wiring.” We are unable to substantiate the existence of these violations *at the time the SCA conducted its review*. The SCA did not miss any of the OSHA or Labor Law violations in instances where a manager’s sign-off was absent or the OIG did not conduct a review of the re-qualification application. The SCA checked on the OSHA history of each firm and any *publicly* available information on pending Labor Law violations that existed *at the time of its review*. There was no evidence of such violations in Vendex or on the Comptroller’s Website at the time of the SCA prequalification review. The Comptroller has not yet provided the SCA with any evidence of these violations.

It may be that the violations to which the Comptroller alludes on page 7 occurred after the SCA’s review. If that is the case, the SCA cannot predict a firm’s future violations. As discussed in greater detail below, the SCA cannot deny prequalification status to a company with pending Labor Law or OSHA violations unless the Comptroller/Department of Labor or OSHA has made an adverse finding against the company. Since neither the Comptroller/Department of Labor nor OSHA found these alleged violations serious enough to debar the firm, the SCA could not do so on its own.

The SCA should consider establishing procedures for determining the degree of wage and labor law violations and/or OSHA violations that should prevent a firm from being included on its prequalification list.

We agree that procedures are needed and the SCA already has them in place, as explained to the auditors.

Wage and Labor Law

The Draft Report indicates that nine applicant firms “were found to be in violation of wage and labor laws or to have active cases against them”. We reviewed these nine firms and found that none of them are on the list of debarred firms issued by the Comptroller or

the New York State Department of Labor. According to Vendex, only one firm has a caution for a Labor Law violation. That Vendex entry reads as follows:

"Investigation re: 2 outstanding prevailing wage complaints. Comptroller determined Vendor did not commit a willful violation as defined by Article 8 of the Labor Law."

As detailed below in the Comptroller's Website (www.comptroller.nyc.gov), the Comptroller is responsible for prevailing wage compliance investigations, conducting hearings to determine the existence of Labor Law violations, and determining the "willfulness" of the violation.

The Comptroller's Bureau of Labor Law enforces New York State Labor Law §220 and 230 and New York City Administrative Code §6-109. These laws require private sector contractors engaged in public work projects in the City of New York to pay no less than the prevailing wage to their employees for work covered by the statutes, as determined by this bureau.

Under the laws, the Comptroller's Office is required to issue civil service determinations in cases where there is a prevailing wage dispute. The Office also issues prevailing wage schedules, or wage rates, for various types of trades and occupations.

The Bureau of Labor Law attempts to recover money for workers who were not paid the appropriate wages. Workers can get the amount of the underpayment plus interest. In addition, a civil penalty, up to 25% of the total violation may be imposed on violators. Depending on the circumstances, the contractor may be barred from bidding on or being given any public work within the state of New York for five years.

If the Comptroller's Office discovers that contractors or their subcontractors submitted fraudulent payroll reports or were allegedly involved in criminal activity, their cases are referred to the District Attorney.

It is the Comptroller's responsibility to determine what is a debarring event -- usually two willful violations within six years or one willful violation with false filings. Once the Comptroller has reached a disposition of a complaint, an Order and Determination is issued. If that determination includes a finding that the company committed a willful violation, the Comptroller may debar the company -- an action that is binding upon the SCA. Of the cases cited by the auditors, the Comptroller's Office itself did not find any of those firms to have willful Labor Law violations, and did not debar them. Nor were these companies debarred by the New York State Department of Labor.

The Comptroller may also refer cases to the District Attorney for criminal prosecution. However, in none of the cases cited by the Comptroller has a firm or its principal been arrested, indicted, or charged with any criminal conduct.

Absent a finding of a debarring violation by the Comptroller or Department of Labor, or a pending criminal charge, any prevailing wage complaint is merely an allegation. Like other civil complaints, the SCA cannot take action until there is an agency finding or court adjudication unfavorable to the applicant firm. If there is an order by the Comptroller debarring the company, the SCA is legally bound to follow the order. However, as was explained to the auditors, if a firm has a history of Labor Law complaints, but has not been debarred by the Comptroller, the SCA would not deny the company prequalification status. As a prophylactic measure, however, the SCA may appoint a monitor or an Independent Auditing Firm to review the company's compliance with the Labor Law on its SCA projects.

Any cases that are currently pending in the Comptroller's office do not properly fall within the scope of this audit as they are, by definition, "pending". Due process requires that no adverse action be taken by the SCA on their pre-qualification status until the final determination of the charges by the Comptroller. If the Comptroller determines that a firm may not be complying with prevailing wage laws, he has the authority to issue a "Stop Payment" order to the SCA. The Comptroller has not issued such an order in the case of any of these firms.

In certain instances when the SCA has become aware of a complaint pending in the Comptroller's office, the SCA has called the contractor in to discuss the matter. In some cases the SCA has urged the contractor to settle the case. In other instances we have asked the firm to accept a monitor to audit their prevailing wage compliance on the pending contract. Generally, the SCA only becomes aware of these cases if the Comptroller has issued a Stop Payment to the SCA, or the contractor discloses the matter on its prequalification application.

The process by which Labor Law violations are handled by the SCA was clearly explained to the auditors. If the Comptroller has established that the firm committed a non-willful violation, the Comptroller itself does not seek to debar the firm. The suggestion that the Authority deny prequalification to a firm for non-willful Labor Law violations, when the Comptroller itself has taken no action against the company, is without sound legal basis and would not withstand judicial review.

OSHA

The Draft Report states that ten applicant firms had OSHA violations. This information is incorrect. Our review revealed that four of the ten firms on the list did not have any OSHA violations at all during the relevant time period. We can only speculate that the Comptroller's staff either read the OSHA reports in the files incorrectly or misinterpreted "inspections" as violations. Violations listed as "other" are not reportable according to the SCA prequalification application instructions as they are not considered "serious."

The audit also states that "one of the firms had 36 OSHA violations, ranging from serious to repeat violations." While the auditors cite a possible penalty of up to \$70,000, we were unable to locate any firm in the sample of 50 that had 36 OSHA violations. The one firm that had 26 violations did have a repeat violation that carried an initial penalty of \$10,000, which was subsequently reduced to \$7,650 by OSHA.

The SCA discussed with the Comptroller's audit staff our review of a firm's OSHA history and our own inquiry into the applicant firm's safety history, however, the Comptroller did not include this information in the Draft Report. We previously explained that, although a firm may have been cited for OSHA violations, these violations may have been mitigated by an informal settlement accepted by OSHA from which no finding resulted. The SCA does not have the authority to countermand a settlement entered into with OSHA. However, the SCA does conduct its own review of those companies we believe may pose a safety problem based on repeated violations in their area of expertise. These companies are referred to the SCA's Safety Director for review. Site safety monitors may be required, or the contractor may be limited in the number of contracts awarded, or required to enter into a separate safety agreement.

Additionally, the catalogue of violations listed by the auditors is taken out of context. Although previously explained to the auditors, the Draft Report fails to identify the size of the company or the project, the nature of its work, or the number of work hours - all of which are factors that the SCA takes into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Goldstein". The signature is fluid and cursive, with a long horizontal stroke at the end.

William H. Goldstein

cc: Kathleen Grimm