

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR
BETH A. WOOD, CPA



UNIVERSITY OF NORTH CAROLINA SCHOOL OF THE ARTS

WINSTON-SALEM, NORTH CAROLINA

INVESTIGATIVE REPORT
OCTOBER 2017



NCOSA
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The Office of the State Auditor received a complaint through its Hotline alleging the Vice Chancellor of Business Affairs (Vice Chancellor) at the University of North Carolina School of the Arts (University) inappropriately influenced the award of a contract. More specifically, it was alleged that the Vice Chancellor negotiated and altered bid and quote terms to ensure that a company employing her husband received a contract.

BACKGROUND

The University of North Carolina School of the Arts is a state-supported school that was established by the General Assembly in 1963. More than 1,300 students from middle school through graduate school train at the school for careers in the arts.

KEY FINDING

- Vice Chancellor inappropriately influenced award of contract

KEY RECOMMENDATIONS

- University management should consider disciplinary action regarding the Vice Chancellor's failure to follow the University Conflicts of Interest policy
- University management should ensure all employees involved in the purchasing process understand and follow the University Conflicts of Interest policy

STATE OF NORTH CAROLINA
Office of the State Auditor



Beth A. Wood, CPA
State Auditor

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AUDITOR'S TRANSMITTAL

The Honorable Roy Cooper, Governor
Members of the North Carolina General Assembly
Mr. W. Louis Bisette, Jr., Chair, Board of Governors, University of North Carolina
Ms. Margaret Spellings, President, University of North Carolina
Mr. Michael Tiemann, Chair, Board of Trustees, University of North Carolina School
of the Arts
Mr. M. Lindsay Bierman, Chancellor, University of North Carolina School of the Arts

Ladies and Gentlemen:

Pursuant to *North Carolina General Statute §147-64.6(c)(16)*, we have completed an investigation of allegations concerning the University of North Carolina School of the Arts. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with *G.S. §147-64.6(c)(12)*. We appreciate the cooperation received from the management and employees of the University of North Carolina School of the Arts during our investigation.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Beth A. Wood'.

Beth A. Wood, CPA
State Auditor

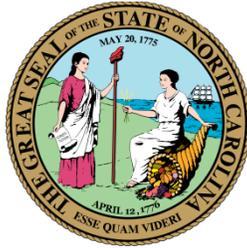


Beth A. Wood, CPA
State Auditor

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Article 5A, Chapter 147 of the North Carolina General Statutes, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every state agency and any organization that receives public funding. The Auditor also has the power to summon people to produce records and to answer questions under oath.



BACKGROUND

The Office of the State Auditor received a complaint through its Hotline alleging the Vice Chancellor of Business Affairs (Vice Chancellor) at the University of North Carolina School of the Arts (University) inappropriately influenced the award of a contract. More specifically, it was alleged that the Vice Chancellor negotiated and altered bid and quote terms to ensure that a company employing her husband received a contract.

Our investigation of these allegations included the following procedures:

- Review of applicable state and University policies and procedures
- Interviews with University personnel
- Examination and analysis of documents and records
- Examination and analysis of electronic communications

This report presents the results of the investigation. The investigation was conducted pursuant to *North Carolina General Statute § 147-64.6 (c) (16)*.



FINDING AND RECOMMENDATIONS

VICE CHANCELLOR INAPPROPRIATELY INFLUENCED AWARD OF CONTRACT

The Vice Chancellor of Business Affairs at the University of North Carolina School of the Arts (University) inappropriate involvement in the selection of a contractor was a conflict of interest. The Vice Chancellor received an indirect financial benefit when she disregarded a University policy which prohibited such involvement.

Vice Chancellor's Inappropriate Involvement in Selection of Contractor Resulted in a Conflict of Interest

The Vice Chancellor of Business Affairs (Vice Chancellor) used her influence to ensure the company that recently employed her husband, Company A, was awarded a contract for \$28,800. The Vice Chancellor met directly with the owner of Company A to negotiate a contract for a renovation project at the Stevens Center.¹

In September 2016, the Vice Chancellor contacted the Associate Vice Chancellor for Facilities Management (Associate Vice Chancellor) and asked him to obtain a quote for a renovation project in the lobby of the Stevens Center. Among the project specifications was that it must be completed before the University's first showing of *The Nutcracker* in November. Because of the extremely tight deadline, the Associate Vice Chancellor asked his Structural Maintenance Supervisor to get a quote for the project from Company B. He explained that the Facilities Management Department had used Company B several times in the past and felt confident the company would be able to meet the University's deadline.

On Friday, September 30, 2016, the Structural Maintenance Supervisor received a proposal via e-mail from Company B. He forwarded Company B's proposal to the Associate Vice Chancellor. The Associate Vice Chancellor in turn forwarded the quote to the Vice Chancellor. She replied that the quote was too high. This was despite having no training or experience in engineering or construction.

However, others did not think the proposal was too high. The Associate Vice Chancellor said Company B's proposal did not seem high because of the time frame and complexity of the job. Additionally the Structural Maintenance Supervisor, who has held a building inspector license since 1997, said Company B's proposal "was in the ballpark."

In the same email that she stated Company B's proposal was too high, the Vice Chancellor recommended Company A, a company that employed her husband. The Vice Chancellor's husband was hired by Company A less than a week earlier on September 25, 2016. The Vice Chancellor did not update her conflict of interest disclosure form or otherwise notify the University. Therefore, no University employees, including the Associate Vice Chancellor, were aware that the Vice Chancellor's husband was employed by the vendor she recommended.

The Vice Chancellor met with the owner of Company A at the Stevens Center on Monday, October 3, 2016, and began negotiations. According to a University employee, during the meeting, the Vice Chancellor provided Company A's owner with a copy of Company B's proposal. The Associate Vice Chancellor characterized the Vice Chancellor's involvement in the contractor selection process as "unusual."

¹ The Stevens Center is located in downtown Winston-Salem, North Carolina and serves as the primary performance space for the University of North Carolina School of the Arts.

Resulted in the Vice Chancellor Receiving an Indirect Financial Benefit

The Vice Chancellor abused her authority when she positioned herself to receive an indirect financial benefit from a University transaction she negotiated and approved.

Caused by Disregard of University Policy

The Vice Chancellor knew, or should have known, about the University Conflicts of Interest policy prohibiting her actions in this transaction. Nonetheless, she influenced the awarding of the contract in spite of these prohibitions.

University Policy Prohibited Vice Chancellor's Involvement in the Award of Contract

The University of North Carolina School of the Arts Conflicts of Interest Policy #603 states "UNCSA employees must avoid conflicts of interest that have the potential to adversely affect UNCSA's or UNC's interest, to compromise objectivity in carrying out UNCSA responsibilities, or otherwise to compromise the performance of UNCSA's responsibilities." The policy provides examples of activities which create possible conflicts of interest or present obvious opportunities or inducements to favor personal interests over the University's interests. Such activities include:

- Making referrals of University business to an external business in which the employee or a member of the employee's immediate family has a financial interest
- Influencing the negotiation of contracts between the University and an outside organization with which the employee or a member of the employee's immediate family has a significant financial interest or a significant consulting relationship which create possible conflicts of interest²

The policy requires employees have an up-to-date and accurate conflict of interest disclosure form on file with the University. This includes updating the form or giving University officials notice if a potential conflict of interest arises after submitting the disclosure form. If University review determines that an employee has a conflict, the employee must take steps to eliminate the conflict or apply for a waiver.

Failure by an employee to comply with this policy may constitute misconduct and may subject the employee to discipline, up to and including termination.

RECOMMENDATIONS

- University management should consider disciplinary action regarding the Vice Chancellor's failure to follow University Conflicts of Interest policy
- University management should ensure all employees involved in the purchasing process understand and follow The University Conflicts of Interest policy

² UNCSA Policy #603, Section III. M. defines Significant Financial Interest as "... anything of monetary value, including but not limited to, salary..."



LINDSAY BIERMAN, CHANCELLOR

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September 28, 2017

The Honorable Beth A. Wood, State Auditor
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2 South Salisbury Street
20601 Mail Service Center
Raleigh, NC 27699-0601

Dear Auditor Wood,

Thank you for the recommendations in your report, with which we completely agree. As a result of your investigation and recommendations, we have taken positive steps to improve conflict of interest identification, disclosure, and compliance.

From the moment we were contacted by your investigative audit division, the University of North Carolina School of the Arts (UNCSA) has made every effort to fully cooperate and provide timely information.

UNCSA has always been a staunch advocate of maintaining a vigorous and effective conflict of interest compliance environment. We believe that the fact that we have had only one financial audit finding over the last 25 years validates UNCSA's serious efforts toward ensuring properly functioning compliance processes.

UNCSA Response to September 2017 State Auditor Investigative Report Recommendations:

- A. University management should consider disciplinary action regarding the Vice Chancellor's failure to follow University Conflicts of Interest policy.

Any disciplinary action at this time would be moot because, as of September 2017, the Vice Chancellor is no longer employed by UNCSA.

- B. University management should ensure all employees involved in the purchasing process understand and follow the University Conflicts of Interest policy.

UNCSA agrees that all employees involved in purchasing and contracting processes must understand and follow University conflicts of interest policies. In response to this recommendation, UNCSA will re-train all employees involved in purchasing and contracting processes to ensure compliance with policies; including the importance of identifying conflicts, disclosing the potential conflicts, and either

abandoning the process or creating a conflicts of interest management plan to eliminate any harm to the University and State.

UNCSA has also strengthened its compliance processes for all employees, and has placed the conflict of interest disclosure form on the Human Resources portal for better access and compliance.

In closing, we would like to express our appreciation for the professionalism with which your auditors conducted the investigation, and for the recommendations which have improved our compliance with conflict of interest policies.

Sincerely,

A handwritten signature in black ink that reads "Lindsay Bierman". The signature is written in a cursive, flowing style.

Lindsay Bierman
Chancellor

CC: David English, Provost
Jim DeCristo, Chief of Staff
David Harrison, General Counsel
James Lucas, Director of Human Resources
Shannon Henry, WSSU/UNCSA Director of Internal Audit

ORDERING INFORMATION

COPIES OF THIS REPORT MAY BE OBTAINED BY CONTACTING:

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For additional information contact:
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This investigation required 405 hours at an approximate cost of \$41,715.