



# **STATE OF NORTH CAROLINA**

## **INVESTIGATIVE REPORT**

**ELIZABETH CITY STATE UNIVERSITY**

**ELIZABETH CITY, NORTH CAROLINA**

**MARCH 2010**

**OFFICE OF THE STATE AUDITOR**

**BETH A. WOOD, CPA**

**STATE AUDITOR**

**INVESTIGATIVE REPORT**

**ELIZABETH CITY STATE UNIVERSITY**

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**Beth A. Wood, CPA**  
State Auditor

STATE OF NORTH CAROLINA

# Office of the State Auditor

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## AUDITOR'S TRANSMITTAL

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The Honorable Beverly Perdue, Governor  
Members of the North Carolina General Assembly  
Dr. Willie J. Gilcrest, Chancellor, Elizabeth City State University  
Dr. Harold E. Mitchell, Chairman, Board of Trustees, Elizabeth City State University  
Mr. Erskine Bowles, President, The University of North Carolina  
Ms. Hannah D. Gage, Chair, Board of Governors, The University of North Carolina  
Mr. J. Keith Crisco, Secretary, North Carolina Department of Commerce

Ladies and Gentlemen:

Pursuant to North Carolina General Statute § 147-64.6(c) (16), we have completed a special investigation of an allegation regarding Elizabeth City State University. 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 North Carolina General Statute § 147-64.6 (c) (12).

Respectfully submitted,

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

Beth A. Wood, CPA  
State Auditor

March 23, 2010

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## INTRODUCTION

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The Office of the State Auditor received a complaint through the *State Auditor's Hotline* concerning a Request for Proposal (RFP) for a guaranteed energy savings performance contract at Elizabeth City State University (University). Allegedly, a prohibited communication occurred between a bidder and a Board of Trustees member in violation of the RFP.

To conduct our investigation of this allegation, we performed the following procedures:

- Examination of relevant documents and records related to the RFP.
- Interviews with State agency personnel, University employees, board members, and vendors involved in the bid process.
- Review of applicable North Carolina General Statutes related to the bid process.

This report presents the results of our investigation. The investigation was conducted pursuant to North Carolina General Statute § 147-64.6 (c) (16) rather than as a financial or performance audit. The Office of the State Auditor performs a financial statement audit for the University annually.

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## **ORGANIZATION AND CONTRACT OVERVIEW**

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### Elizabeth City State University

Elizabeth City State University (University) was founded on March 3, 1891 as a teacher's college for African-American students. The institution was elevated from a two-year normal school to a four-year teachers college in 1937. The institution's name was officially changed to Elizabeth City State Teachers College on March 30, 1939, and the mission was expanded to include "the training of elementary school principals for rural and city schools."

The University was granted full membership in the Southern Association of Colleges and Schools in December 1961. The General Assembly changed the name from Elizabeth City State Teachers College to Elizabeth City State College in 1963. Effective July 1, 1969, the college became Elizabeth City State University. In 1971, the General Assembly redefined The University of North Carolina system with all 16 senior public institutions becoming constituents of The University of North Carolina, effective July 1972.

When the University first began operation in 1892, it had 23 students. Today, enrollment is increasing as there were 3,061 students enrolled during the 2007 fall semester. After the spring commencement that academic year, 16,000 alumni held undergraduate and graduate degrees.<sup>1</sup>

### Guaranteed Energy Savings Performance Contract

According to North Carolina General Statute §143-64.17(3), a guaranteed energy savings performance contract is "a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment or meters, in which all payments, except obligations on termination of the contract before its expiration, are made over time, and in which energy savings are guaranteed to exceed costs."

Before entering into a guaranteed energy savings contract, the University is required by statute to issue a Request for Proposals. The University must evaluate a sealed proposal from any qualified provider. The proposals contain estimates of all costs of installation, modification, or remodeling including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.

### Energy Service Company

As defined by the National Association of Energy Service Companies,<sup>2</sup> an Energy Service Company (ESCO) is a type of business that provides a range of energy-saving solutions. An ESCO designs and implements energy savings, energy conservation, energy infrastructure outsourcing, power generation and energy supply projects as well as risk management services. An ESCO performs an in-depth analysis of the property,

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<sup>1</sup> <http://www.ecsu.edu/about/history/index.cfm>

<sup>2</sup> <http://www.naesco.org/resources/esco.htm>

## **ORGANIZATION AND CONTRACT OVERVIEW (CONCLUDED)**

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designs an energy-efficient solution, installs the required elements, and maintains the system to ensure energy savings during the payback period. The savings in energy costs is often used to pay back the capital investment of the project over a five to 20-year period or invested into the building to allow for capital upgrades that may otherwise be unfeasible. If the project does not provide returns on the investment, the ESCO is often held responsible to pay the difference.

## **FINDING AND RECOMMENDATION**

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### **A COMMUNICATION BETWEEN A BIDDER AND A UNIVERSITY TRUSTEE VIOLATED A REQUEST FOR PROPOSAL PROVISION.**

During the bid review process for a guaranteed energy savings performance contract, a contractor for a bidder contacted a member of the University's Board of Trustees in violation of a Request for Proposal (RFP) provision. The RFP specifically prohibited contact between bidders and any University official except the Issuing Officer.

The University Trustee who was contacted by the bidder's contractor served on the Board's Property Committee that was responsible for making a bid recommendation to the full Board of Trustees. The Trustee admitted that he was influenced by this contact because it referenced the use of a local, Historically Underutilized Business (HUB) which had prior University project experience and was owned by a University alumnus. The Trustee said that the information conveyed in this contact was the determining factor in his recommendation to the Board. Ultimately, the Board selected this bidder.

The Trustee said the Board of Trustees Property Committee met just once to discuss and vote on this RFP. He said the University review team submitted the names of three bidders scored in order of preference. The Trustee said an important issue for him has always been the use of a local HUB in any project. He noted that he was concerned that the bidder recommended by the review team was from New York. The Trustee said that, when he learned the second-rated bidder would be utilizing a local contractor he was familiar with, that information swayed his decision. The Trustee said he received an e-mail from someone at the contractor prior to the meeting. Although he could not recall specifically who sent the e-mail, he said that he knew the owners of the company from prior projects they had completed at the University.

The Trustee admitted that his decision to choose the second-rated bidder was based primarily on the information that he received in the e-mail prior to the meeting and not on the information provided in the bid or at the meeting. He added that he had been contacted by bidders before in relation to other RFPs so he did not think anything unusual about this contact.

Before entering into a guaranteed energy savings contract, State law requires the University to issue a RFP. The University must evaluate a sealed proposal from any qualified provider. The proposals contain estimates of all costs of installation, modification, or remodeling including costs of design, engineering, installation, maintenance, repairs, debt service, and estimates of energy savings.

The University utilized a review team of University engineers and building maintenance officials to evaluate and recommend a qualified provider that met the needs of the University. The review team submitted its recommendations to the Board of Trustees Property Committee for additional review and approval.

## **FINDING AND RECOMMENDATION (CONTINUED)**

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According to the RFP Issuing Officer, three bidders were referred to the Property Committee. The review team scored and ranked the bidders by preference. The Issuing Officer said that it was close between the top two bidders but the committee would have felt comfortable with any of the three choices.

The Issuing Officer said that, when the review team presented their recommendation to the Property Committee, one Trustee referenced an e-mail that he received from one of the bidders. The e-mail said that the bidder would be utilizing a local HUB owned by a University alumnus. The Issuing Officer said that HUB consideration is often a determining factor in awarding a bid. The fact that the Trustee mentioned an e-mail correspondence did not raise a question as this is common in most bids.

However, Part I-11 of the RFP for the guaranteed energy savings performance contract states, "From the issue date of this RFP until a determination is made regarding the final selection of the Project ESCO, all contacts with the issuing personnel concerning this RFP must be made through the Issuing Officer." The Issuing Officer said that he was not aware of a "no contact" requirement being included in the RFP. He said, with other RFPs in which he was involved, there was no such condition and bidders routinely contacted the trustees directly.

North Carolina General Statute §143-64.17F(b) mandates "The Department of Administration,<sup>3</sup> through the State Energy Office, shall adopt rules for (i) agency evaluation of guaranteed energy savings contracts; (ii) establishing time periods for consideration of guaranteed energy savings contracts by the Office of State Budget and Management, the Office of the State Treasurer, and the Council of State, and (iii) setting measurements and verification criteria, including review, audit, and precertification." The North Carolina Department of Commerce, State Energy Office also provides the Council of State its recommendation of each guaranteed energy savings contract for final approval.

The Program Manager with the State Energy Office said he was aware of this situation at the University. The Program Manager said he attends many pre-bid conferences and knows that bidders are put on notice about the "no contact" clause in the RFP. He said the intent is that a bid should stand alone and additions should not be made later. The Program Manager said that his job is to ensure that all bidders have a level playing field when submitting a bid. He said, even if a provision was violated, he would need to evaluate whether this violation reached a level of materiality to overturn the award.

### **RECOMMENDATION**

The State Energy Office should evaluate the magnitude of the violation of the provision in the RFP that prohibits contact between the bidder and anyone except the Issuing Officer. If the State Energy Office determines the contact breached the intent of the provision to

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<sup>3</sup> Previously the State Energy office was part of the North Carolina Department of Administration. On August 7, 2009, the Governor signed legislation that moved the State Energy Office to the North Carolina Department of Commerce.

## **FINDING AND RECOMMENDATION (CONCLUDED)**

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ensure a fair bid process, action should be taken to overturn the award and consideration given to re-awarding the RFP.

The State Energy Office and Elizabeth City State University officials should provide education to members of the Board of Trustees concerning their duties and responsibilities related to the RFP bid process. University management should also ensure that board members are aware of any restrictions the RFP includes concerning their actions.

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# RESPONSE FROM ELIZABETH CITY STATE UNIVERSITY

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ELIZABETH CITY  STATE UNIVERSITY

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March 15, 2010

Beth A. Wood, CPA  
State Auditor  
2 S. Salisbury Street  
Raleigh, NC 27699-0601

Dear Ms. Wood:

Thank you for the opportunity to respond to your confidential draft report on the investigation of an allegation of improper communication between a bidder and a university trustee. Attached is our response to your investigation.

I would like to express my appreciation to your office for bringing this issue to my attention. Please contact me if you have any other questions or require additional information.

Sincerely,



Willie J. Gilchrist  
Chancellor

Enclosure

Cc: Dr. Harold E. Mitchell, Chairman, Board of Trustees

**State Auditor Finding:**

**Issue:**

A communication between a bidder and a university trustee violated a request for proposal provision.

**Recommendation:**

The State Energy Office should evaluate the magnitude of the violation of the provision in the RFP that prohibits contact between the bidder and anyone except the Issuing Officer. If the State Energy Office determines the contact breached the intent of the provision to ensure a fair bid process, action should be taken to overturn the award and consideration given to re-awarding the RFP.

The State Energy Office and Elizabeth City State University officials should provide education to members of the Board of Trustees concerning their duties and responsibilities related to the RFP bid process. University management should also ensure that board members are aware of any restrictions the RFP includes concerning their actions.

**Elizabeth City State University Response**

The University concurs with the finding. The Board of Trustees revisited their decision to award the contract during the December 15, 2009 meeting. This decision was made based on a recommendation from the State Energy Office.

Furthermore, additional training will be provided to the members of the Board of Trustees regarding their duties and responsibilities as related to RFP bid processes.

## ORDERING INFORMATION

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Copies of this report may be obtained by contacting the:

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