



STATE OF NORTH CAROLINA

INVESTIGATIVE REPORT

FAYETTEVILLE STATE UNIVERSITY

FAYETTEVILLE, NORTH CAROLINA

APRIL 2010

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

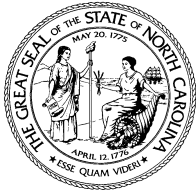
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Beth A. Wood, CPA
State Auditor

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AUDITOR'S TRANSMITTAL

The Honorable Beverly Perdue, Governor
Ms. Hannah D. Gage, Chair, Board of Governors, The University of North Carolina
Mr. Erskine Bowles, President, The University of North Carolina
Gloria Moore Carter, Chair, Board of Trustees, Fayetteville State University
Dr. James A. Anderson, Chancellor, Fayetteville State University
Members of the North Carolina General Assembly

Ladies and Gentlemen:

Pursuant to North Carolina General Statute § 147-64.6(c)(16), we have completed our investigation of an allegation regarding transportation contracts at Fayetteville 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

April 19, 2010

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INTRODUCTION

The Office of the State Auditor received a complaint through the *State Auditor's Hotline* concerning procurement operations at Fayetteville State University (University). Allegedly, the University steered all transportation contracts to a single contractor without following proper contracting procedures. Further, the contractor was allegedly a company owned by a University employee who had influence over securing transportation contracts.

To conduct our investigation of these allegations, we performed the following procedures:

- Examination of relevant documents and records of the University
- Interviews with University employees and individuals external to the University
- Review of applicable North Carolina General Statutes, the North Carolina Administrative Code, and University policies

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 OVERVIEW

History:

Fayetteville State University (University) is located in Fayetteville, North Carolina and is a constituent institution of the University of North Carolina System. The University was founded in 1867 as the Howard School for African-Americans, became a four-year school in 1933, and achieved university status in 1969. The University now awards bachelors, masters, and doctoral degrees. It is regionally accredited by the Southern Association of Colleges and Schools.

The University continues to enroll large numbers of African-American students and its current enrollment is 6,301 curriculum and continuing education students. The University employs 249 full-time and 26 part-time faculty members. For the fiscal year ended June 30, 2009, the University received \$55,160,000 in State appropriations.

Purchasing Department:

The Purchasing Department is the sole entity on campus with the authority to place purchase orders and authorize the use of small purchase procedures to acquire commodities (such as supplies, materials, and equipment) and contractual services (to include printing and professional consultant services) by purchase, rent, lease, lease-purchase or installment purchase.

The University's Purchasing Department policy manual states that the department makes every effort to recommend the best possible combination of price, performance, warranty, service, and system compatibility for purchases. The University Purchasing Department adopted policies and procedures that mirror those of the North Carolina Department of Administration, Division of Purchase and Contract's policies and procedures. The policies require that all purchases must be from State-approved vendors. Historically Underutilized Business (HUB) vendors are given preference when possible.

University Purchasing Policy requires that "the purchasing processes of the University are guided by the principles of fairness, impartiality, and propriety. The actual absence of, or even the appearance of the absence of, these principles may constitute a conflict of interest where the University, or individual, is adjudged as practicing favoritism or preferential treatment toward a particular vendor or contractor . . . In this regard, it is the policy of the University that employees must avoid conflicts of interest that may compromise professional objectivity."¹

Shuttle Bus Services:

The University contracted for on-campus shuttle bus services in October 2006. The no-bid contract originated as a safety experiment because students had to cross Murchison Road from their University housing to the University campus. However, after the University banned on-campus automobiles for freshmen during the 2008 fall semester,

¹ Fayetteville State University Purchasing Policy, Section II, Paragraphs 2 and 3.

ORGANIZATION OVERVIEW (CONCLUDED)

additional off-campus shuttle bus services were added to provide student transportation to local malls, restaurants and retail stores – especially after regular school hours, on holidays, and on weekends.

Charter Bus Services:

During 2008, the Vice Chancellor for Business and Finance identified the need to secure a contract for University charter bus services because uninsured campus maintenance personnel were transporting students to University-sponsored activities. He instructed the Director of Purchasing to secure a contractor to provide charter bus services. Following the bid process, the University selected the same contractor that provided shuttle bus services.

FINDINGS AND RECOMMENDATIONS

1. THE UNIVERSITY CONTRACTED FOR CAMPUS SHUTTLE BUS SERVICES WITH A COMPANY OWNED BY AN EMPLOYEE.

On October 10, 2006, the University Division of Student Affairs secured contracts with Personalized Tours and Transportation Services, LLC (Personalized Tours) to provide on-campus shuttle bus services for the periods October 15, 2006 through December 15, 2006 and January 10, 2007 through May 12, 2007. The owner of Personalized Tours was employed by the University as the Admissions Department Associate Director (Associate Director) until October 31, 2006. The Associate Director's ownership interest in Personalized Tours violated State and University policy and contract provisions that prohibit contracting with employees or their families.

When the University secured the original contracts with Personalized Tours, Student Affairs officials were not aware that the Associate Director owned Personalized Tours because they dealt solely with another individual. Student Affairs officials learned later that the representative was the Associate Director's brother. However, by the time they learned the owner's name, he was no longer a University employee.

The Associate Director acknowledged that he was employed by the University and was the owner of Personalized Tours when the shuttle bus contract was executed. However, he said he had limited involvement with the business at that time. The Associate Director said his brother handled all negotiations with the University.

According to State policy, "Every reasonable effort shall be made to avoid making purchases from or through employees of any agency. Prior written approval from the [State Purchasing Officer] is required in any instance which may develop of doing business with such personnel. In deciding to grant approval, the [State Purchasing Officer] shall consider the type item or service needed, the prevailing market conditions, whether competition is available, the cost involved, and the effects of doing business with the employee."²

In addition, University policy³ prohibits the purchase of materials or services from State or University employees or their families. Finally, the University Student Affairs shuttle bus contracts contained the statement, "The Contractor shall not permit any member of [the University] or any of its employees or officers to obtain a personal or financial interest in any Agreement, subcontract or other agreement related to this contract, either for it or for those with whom it has family or business ties."

RECOMMENDATION

The University should comply with State and University policies prohibiting contracting with companies owned by University employees. When contracting for University services, University officials should verify the contractor's identity and secure complete information on the contractor. For example, the University should review corporate information with the Secretary of State's Corporations Division. Finally, the University

² Title 01, North Carolina Administrative Code, Subchapter 5B, Section .1509.

³ Fayetteville State University Purchasing Policy, Paragraph III.B.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

should review all existing contracts to determine whether services are provided by companies owned by employees.

2. UNIVERSITY OFFICIALS SPLIT SHUTTLE BUS CONTRACTS TO CIRCUMVENT THE BID PROCESS AND AVOID APPROVAL BY THE DIVISION OF PURCHASE AND CONTRACT.

The initial University shuttle bus contracts were prepared and signed on October 10, 2006. Rather than executing a contract for the entire academic year, the University prepared separate contracts for each semester even though both semester contracts were signed on the same day. The total cost for the two semesters was \$58,100⁴. Subsequent shuttle bus contracts continued to be prepared on a semester basis. Total annual costs were \$58,100⁵ for the 2007-08 academic year and \$87,840⁶ for the 2008-09 academic year.

Student Affairs officials acknowledged that contracts exceeding a \$50,000 threshold require the solicitation of proposals, bids, and price quotations from contractors. In addition, contracts exceeding \$50,000 must be approved by the North Carolina Department of Administration, Division of Purchase and Contract (Purchase and Contract). By creating separate contracts for each semester, the University avoided the bid and approval requirements.

University Student Affairs officials said that the shuttle bus contracts were drafted on a semester basis because the amount of anticipated usage and certainty of funding sources were unknown. However, they could not explain why binding contracts for two semesters were drafted and signed on the same day for the 2006-07 academic year.

Purchase and Contract policy states, “An agency shall not divide requirements in order to keep the expenditure under its benchmark or delegation and thereby avoid following the appropriate contracting requirement. In the case of similar and related items and groups of items, the dollar limits apply to the total cost rather than the cost of any single item.”⁷

In addition, University policy states that “public law establishes that it is not permissible to divide requirements to assure a requirement does not exceed \$50,000 limit or any other imposed limit and thus avoid placement through the State or, as required, any other threshold prescribed herein.”⁸

⁴ Fall 2006--\$16,600; Spring 2007--\$41,500

⁵ Fall 2007--\$29,050; Spring 2008--\$29,050

⁶ Fall 2008--\$43,920; Spring 2009--\$43,920

⁷ Title 01, North Carolina Administrative Code, Subchapter 5B, Section .0315.

⁸ Fayetteville State University Purchasing Policy, Paragraph VII.

FINDINGS AND RECOMMENDATIONS (CONCLUDED)

RECOMMENDATION

University management should follow State and University purchasing policies and not divide requirements to circumvent bidding and approval thresholds. The University Purchasing Department should review existing contracts to determine whether other split contracts are currently in effect. Finally, the University should consider taking appropriate disciplinary action against individuals who knowingly split the contracts to avoid bidding and approval requirements.

3. THE UNIVERSITY FAILED TO EXECUTE A SIGNED, WRITTEN CONTRACT FOR CHARTER BUS SERVICES.

In 2008, the Vice Chancellor for Business and Finance identified the need to secure a contractor for charter bus services because uninsured campus maintenance personnel were transporting students to University-sponsored activities. The University's Purchasing Department issued a Request for Proposal on November 7, 2008 to secure charter bus services. The University received three bids and a faculty "Charter Bus Review Committee" made the final selection of the winning bidder. On January 27, 2009, the Purchasing Department mailed a selection notification letter to Personalized Tours. University policy requires the Chancellor's signature or an official designated by the Chancellor to execute an enforceable, written contract.⁹ However, the Purchasing Department never prepared and executed a formal contract with Personalized Tours.

Despite the lack of a formal contract, individuals throughout the University were aware of the selection of Personalized Tours as the charter bus contractor. As a result, departments across campus used Personalized Tours for multiple charter bus trips throughout 2009. The University paid Personalized Tours \$111,398 for charter bus services during 2009 without a fully executed contract.

The Vice Chancellor for Business and Finance admitted that he did not properly follow-up on securing the transportation contract. In addition, contracting inexperience by University officials contributed to the failure to complete the contracting process. The failure to execute a signed, written contract increased the risk that the University could not enforce the agreement for items such as prices, customer expectations, and charter bus availability.

RECOMMENDATION

Following the Request for Proposal process and the award of the winning bid to the contractor, the University Purchasing Department should secure a signed contract to ensure an enforceable legal agreement. The University should provide additional training to its Purchasing Department regarding University and State purchasing policies. The University Controller's Office should ensure that all payments for contractual services are properly supported by enforceable legal agreements.

⁹ Fayetteville State University Purchasing Policy, Paragraph XXI.B.

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OFFICE OF THE
VICE CHANCELLOR FOR
BUSINESS AND FINANCE



April 9, 2010

Ms. Beth A. Wood, CPA
State Auditor
Office of the State Auditor
2 South Salisbury Street
20601 Mail Service Center
Raleigh, North Carolina 27699-0601

**SUBJECT: FAYETTEVILLE STATE UNIVERSITY
TRANSPORTATION CONTRACTS
INVESTIGATIVE REPORT RESPONSES**

Dear Ms. Wood:

We have reviewed your draft report pertaining to the aforementioned investigation. The purpose of this memorandum is to provide you with the University's responses to the findings (3) and recommendations contained in your report.

I believe it is relevant to point out that the major portion of this report centers around the lack of operational procedures that occurred prior to the current administration. The university's goal is to establish a sound financial and accounting operation that is transparent and built on a solid business model. As a result of this situation, we have taken another step in accomplishing that goal.

FINDING NUMBER 1:

**THE UNIVERSITY CONTRACTED FOR CAMPUS SHUTTLE BUS SERVICES WITH
A COMPANY OWNED BY AN EMPLOYEE:**

UNIVERSITY'S RESPONSE:

The University agrees with this finding and recommendation. The University, with the assistance of Legal Counsel will require that all University employees disclose any outside businesses. This will include family members that might possibly want to do business with the University. Currently, the Board of Trustees, the Chancellor and senior administrators are required to disclose this information. However, other employees have not been asked or required to provide it. Establishing this policy and related procedures will prevent this from reoccurring in the future.

**Ms. Beth A. Wood, CPA
State Auditor
April 9, 2010
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FINDING NUMBER 2:

UNIVERSITY OFFICIALS SPLIT SHUTTLE BUS CONTRACTS TO CIRCUMVENT THE BID PROCESS AND AVOID APPROVAL BY THE DIVISION OF PURCHASE AND CONTRACT :

UNIVERSITY'S RESPONSE:

The University agrees with this finding and recommendation. The University has the correct policy and procedures in place; however, the Purchasing Office was bypassed. Hence, the procedures were not followed. Currently, the Office of Business and Finance is sponsoring workshops for all new hires as well as faculty and staff. These workshops are designed to inform and update individuals and offices (with budget spending authority) on the processes and procedures of the University. We believe that these regularly scheduled workshops will prevent this finding from reoccurring. Additionally, the employees associated with this finding are no longer employed by the University.

FINDING NUMBER 3:

THE UNIVERSITY FAILED TO EXECUTE A SIGNED, WRITTEN CONTRACT FOR CHARTER BUS SERVICES:

UNIVERSITY'S RESPONSE:

The University agrees with this finding and recommendation. The University did not ensure that the business process was complete. We do not believe that the University intentionally failed to execute a contract. However, it was due to an oversight and lack of experience while dealing with the bidding process. Ordinarily, the successful vendor presents the proposed agreement to the University for review, acceptance and signature. Unfortunately, this did not occur during this particular incident.

Ms. Beth A. Wood, CPA
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April 9, 2010
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This service has since been re-bid and we have completed the process with an acceptable vendor and a signed, written contract has been executed.

If you should have any questions or need any additional information regarding this matter, please feel free to contact me. We appreciate your assistance and interest in Fayetteville State University.

Thank you.

Sincerely,



Robert Botley
Vice Chancellor for
Business and Finance

CC: Mr. Orace M. Pollard
Dr. James A. Anderson
Dr. Thomas E. H. Conway
Mrs. Suzetta Perkins

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ORDERING INFORMATION

Copies of this report may be obtained by contacting the:

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