STATE OF DELAWARE

OFFICE OF AUDITOR OF ACCOUNTS

CAPE HENLOPEN SCHOOL DISTRICT

CAPE HENLOPEN HIGH SCHOOL CONSTRUCTION ELECTRICAL CONTRACT

SPECIAL INVESTIGATION

FIELDWORK END DATE: JULY 28, 2010
REPORT ISSUANCE DATE: SEPTEMBER 2, 2010

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Case ID SI2010-107
July 28, 2010

State of Delaware
Office of Auditor of Accounts
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At a Glance

Working Hard to Protect YOUR Tax Dollars

Why We Did This Review
The Office of Auditor of Accounts (AOA) received the following hotline allegations regarding the Cape Henlopen High School Construction Project: (1) The electrical contract awarded for the construction of the Cape Henlopen High School included the Base Bid and Alternate 11 for an encelium system. An encelium system is an electronic dimming system that senses daylight and adjusts electrical lighting accordingly. The complainant alleged the cost for the encelium system for the Cape Henlopen High School were added as change orders after the project was awarded when it should have been a part of the original bid. The additional costs may be between $700,000-$1,000,000. (2) Another complainant alleged the hourly rates charged in the change orders were well above the prevailing wage rates.

Background:
In 2009, Cape Henlopen School District completed the new construction of a 210,000 square foot high school. $32,572,800 in bonds were approved for issuance per House Bill Number 535 on June 30, 2006 for Fiscal Year 2007 ($4,248,600 State and $28,324,200 Local). Students and staff were permitted to occupy the building on September 8, 2009.

Cape Henlopen School District,
Cape Henlopen High School Construction, Electrical Contract

What We Found:

There was a dispute between the contractor and the District over the scope of work to be performed for Alternate 11 due to confusion resulting from the re-bid process. In order to avoid costly arbitration and any delay to the construction project, an agreement was reached that allowed the contractor to submit a change order for $400,000 (the original change order request was $554,829). With the addition of this change order, the contractor was still the low bidder and the project was able to continue without further delays. Delaware Code, Title 29, Chapter 69, §6928 permits the District to remedy the situation in a manner that provides for the best interests of the State. Cape Henlopen School District, in an effort to avoid delays in construction and costly arbitration, negotiated a fair price with the vendor to complete the work. Therefore, Cape Henlopen School District resolved the dispute in a fair and equitable manner. Therefore, the allegation is determined to be unsubstantiated.

The prevailing wage regulations dictate that employees will not be paid *less* than the prevailing wage. We determined that employees on this construction project were paid in accordance with the prevailing wage rate schedule for Sussex County in compliance with the prevailing wage regulations. Allegation is unsubstantiated.

Please read the complete report.

For further information on this release, please contact:

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AUDIT AUTHORITY

Title 29, Del. C. c. 29 authorizes the Auditor of Accounts to file written reports containing:

1. Whether all expenditures have been for the purpose authorized in the appropriations;
2. Whether all receipts have been accounted for and paid into the State Treasury as required by law;
3. All illegal and unbusinesslike practices;
4. Recommendations for greater simplicity, accuracy, efficiency, and economy; and
5. Such data, information, and recommendations as the Auditor of Accounts may deem advisable and necessary.

ALLEGATION AND BACKGROUND

ALLEGATION

The electrical contract awarded for the construction of the Cape Henlopen High School included the Base Bid and Alternate 11 for an encelium system. An encelium system is an electronic dimming system that senses daylight and adjusts electrical lighting accordingly. The complainant alleged the costs for the encelium system for the Cape Henlopen High School were added as change orders after the project was awarded when it should have been a part of the original bid. The additional costs may be between $700,000-$1,000,000. Another complainant alleged the hourly rates charged in the change orders were well above the prevailing wage rates.

BACKGROUND

Cape Henlopen School District

The mission of the Cape Henlopen School District (the District) is to prepare each student for a healthy, creative, and rewarding life in a diverse and global society by creating an educational environment, which enables each student to achieve personal excellence and lifelong learning skills to become a productive and responsible citizen.

In 2009, the District completed the new construction of a 210,000 square foot high school. $32,572,800 in bonds were approved for issuance per House Bill Number 535 on June 30, 2006 for Fiscal Year 2007 ($4,248,600 State and $28,324,200 Local). Students and staff were permitted to occupy the building on September 8, 2009.

The new high school is a two-story building with departmental wings, including computer banks and wireless technology throughout each wing. The school design incorporates energy efficient materials and design solutions throughout the facility. The inclusion of natural light is instrumental in the design. A separate 9th grade academy and vocational wing were also incorporated into the design.

OBJECTIVES, SCOPE, & METHODOLOGY

OBJECTIVES:

The objectives of this investigation were:

1. To determine whether change orders were paid for items that should have been part of the original contract as awarded and, if so, the total dollar value of these change orders; and
2. To determine whether hourly rates charged in the change orders were more than the prevailing wage rates.

SCOPE

The scope of the investigation was July 1, 2007 through May 31, 2010.

The investigation was performed in accordance with the President's Council on Integrity and Efficiency, *Quality Standards for Investigations*.

METHODOLOGY

Investigative techniques included:

- Interviews and inquiry.
- Inspection and confirmation of documentation.

The conclusion of the allegation(s) is defined as follows:

Substantiated:	The allegation has been verified by competent evidence.
Partially Substantiated:	A portion of the allegation has been verified by competent evidence; however, competent evidence to verify the entire allegation could not be provided by the agency or obtained by AOA.
Unsubstantiated:	Competent evidence was found to dispute the allegation.
Unable to Conclude:	Competent evidence to verify the allegation could not be provided by the agency or obtained by AOA.

CONCLUSIONS

OBJECTIVE #1
To determine whether change orders were paid for items that should have been part of the original contract as awarded and, if so, the total dollar value of these change orders.

Results of Testing
There was $7,244,255.65 in expenditures for the electrical component of the construction project, of which, the change orders for the project totaled $507,686.01 (7%). There was a dispute between the contractor and the District over the scope of work to be performed for Alternate 11 due to confusion resulting from the re-bid process. In order to avoid costly arbitration and any delay to the construction project, an agreement was reached that allowed the contractor to submit a change order for $400,000 (the original change order request was $554,829). With the addition of this change order, the contractor was still the low bidder and the project was able to continue without further delays. Delaware Code, Title 29, Chapter 69, §6928, Failure to Comply with Contract, permits the District to remedy the situation in a manner that provides for the best interests of the State. It states: "If any firm entering into a contract under the authority of this chapter neglects or refuses to perform it or fails to comply with the terms thereof, the agency may terminate the contract and proceed to award a new contract in accordance with this chapter or the agency may require the surety on the performance bond to complete the contract in accordance with the terms of the performance bond. *Nothing herein shall preclude the agency from pursuing additional remedies as otherwise provided by law.*" (Emphasis added by AOA).

Cape Henlopen School District, in an effort to avoid delays in construction and costly arbitration, negotiated a fair price with the vendor to complete the work. Therefore, Cape Henlopen School District resolved the dispute in a fair and equitable manner.

Conclusion
Unsubstantiated.

OBJECTIVE #2
To determine whether hourly rates charged in the change orders were more than the prevailing wage rates.

Results of Testing
The prevailing wage regulations only dictate that employees shall not be paid *less* than the prevailing wage. Delaware Code, Title 29, Chapter 69, §6960 Prevailing Wage Requirements states: "(a) The specifications for every contract or aggregate of contracts relating to a public works project in excess of $100,000 for new construction . . . to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Delaware Department of Labor, Division of Industrial Affairs, to be prevailing in the county in which the work is to be performed. . . ."

AOA determined that employees on this construction project were paid in accordance with the prevailing wage rate schedule for Sussex County in compliance with the prevailing wage regulations.

CONCLUSIONS

Conclusion
Unsubstantiated.

DISTRIBUTION OF REPORT

Copies of this report have been distributed to the following public officials:

The Honorable Jack A. Markell, Governor, State of Delaware
The Honorable Russell T. Larson, Controller General, Office of the Controller General
The Honorable Joseph R. Biden, III, Attorney General, Office of the Attorney General
The Honorable Lillian Lowery, Secretary, Department of Education

Officials of Audited Entity
Dr. David E. Robinson, Superintendent, Cape Henlopen School District
Sgt. Spencer E. Brittingham, President, Board of Education, Cape Henlopen School District