

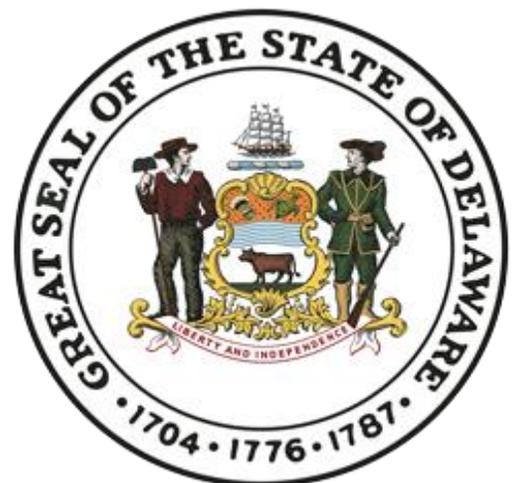
**State of Delaware
Office of Auditor of Accounts**

**Delaware State University
HVAC Contracts and Other Allegations**

Special Investigation

**Fieldwork End Date: December 13, 2011
Issuance Date: February 2, 2012**

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts





**State of Delaware
Office of Auditor of Accounts
R. Thomas Wagner, Jr., CFE, CGFM, CICA**

At a Glance

Working Hard to Protect YOUR Tax Dollars

Why We Did This Review

The Office of Auditor of Accounts (AOA) received nine allegations regarding Delaware State University (DSU). Some of the complaints alleged that a particular HVAC vendor was paying kickbacks to DSU employees and installing non-functional HVAC equipment. We also received allegations related to DSU's process for procuring vendors, hiring and firing employees, and collecting revenue from race weekend parking sales.

Background

DSU, located in Dover, Delaware, currently offers 56 undergraduate degree options, 25 master's degree programs, and 5 doctoral degree programs to approximately 4,200 students.

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

For further information on this release, please contact:

**Kathleen O'Donnell
(302) 857-3919**

What We Found

Of the nine allegations, five were simply unsubstantiated, two were inconclusive, one was partially substantiated, and one was substantiated.

The most predominate theme was with DSU's non-compliance with State procurement requirements for State funds, which include no formal bidding, improper use of emergency contracts, and multiple purchase orders issued with the same vendor, purpose, and date.

Further, DSU lacks formal policies and procedures outlining the requirements and the processes for compliance with the State requirements.

Additional observations in the area of procurement include purchasing records that were inadequately supported or approved and outdated signature cards used for purchasing approval.

The investigation also identified the hiring of an unqualified employee and building maintenance logs that contained insufficient details to evaluate the nature of the service calls.

Table of Contents

Background	1
Allegations and Conclusions	2
AOA’s Evaluation of DSU’s Response	5
Appendix A	6

Background

Delaware State University (DSU), located in Dover, Delaware, was founded in 1891 as one of the country's first land-grant educational institutions. The mission of DSU is "to provide for the people of Delaware and others who are admitted, meaningful and relevant education that emphasizes both the liberal and professional aspects of higher education. While recognizing its historical heritage, DSU serves a diverse student population with a broad range of programs in instruction, service, and research, so that its graduates will become competent, productive and contributing citizens." DSU currently offers 56 undergraduate degree options, 25 master's degree programs, and 5 doctoral degree programs. The university focuses on several core values including community, integrity, diversity, scholarship, and outreach.

Beginning as a 100-acre property with 3 buildings, DSU's physical infrastructure has grown to a 400-acre pedestrian campus with over 50 buildings and 4 outdoor athletic fields. DSU also has two farm properties in Kenton and Smyrna and two satellite locations in Wilmington and Georgetown. The Airway Science Program at DSU maintains its fleet of planes and base of operation at the Delaware Air Park in Cheswold. DSU student enrollment has also grown to approximately 4,200 students.

DSU receives funding primarily through State appropriations, student tuition and fees, and government grants. DSU's financial data includes its two component units, the Delaware State University Housing Foundation and the Delaware State University Foundation, Inc.

An excerpt of revenues and maintenance expenditures, as listed in DSU's Comprehensive Annual Financial Statements for Fiscal Year 2010, Fiscal Year 2009, and Fiscal Year 2008, are summarized in the table below.

	2010	2009	2008
Revenues:			
Operating Revenues			
Student tuition and fees	\$ 16,705,880	\$ 19,930,340	\$ 20,576,613
Government grants and contracts	25,447,278	21,354,587	19,418,809
Sales and services of educational departments	187,898	231,644	230,099
Auxiliary enterprises	9,743,968	9,139,376	9,189,757
Other revenues	5,818,974	5,114,037	5,660,454
Total Operating Revenues	\$ 57,903,998	\$ 55,769,984	\$ 55,075,732
Non-operating Revenues			
State Appropriations	\$ 36,330,189	\$ 36,310,678	\$ 36,492,165
Other Revenues			
Capital Appropriations	\$ 1,000,000	\$ 5,000,000	\$ 3,505,000
Expenditures:			
Operations and Maintenance	\$ 6,278,437	\$ 5,905,971	\$ 6,483,399

DSU is required to follow State procurement guidelines for all State-funded expenditures, including Minor Capital Improvements (MCI). MCI projects encompass renovations, minor reconstruction, and/or equipment with a life expectancy of ten years or more and a total cost not to exceed \$500,000, or that represents less than 50 percent of an agency's MCI appropriation, whichever is less. MCI projects should focus on keeping State-owned facilities in their original condition and maintaining building efficiencies.

Allegations and Conclusions

Allegation #1 - Improper Use of Emergency Contracts - Substantiated

With an emergency certificate, DSU used MCI funds to construct a patio and make improvements to the President's House prior to the President's inauguration party.

Results of our Review

The DSU President approved an emergency contract to add a recreation room, full kitchen, screened porch, and patio to his campus residence that had a final cost of more than \$98,000, \$16,537 of which was used for upgrades. The emergency contract, signed on July 6, 2010, waived the formal procurement process in order to complete the addition before the President's inauguration that was scheduled for September 17, 2010. Per 29 Del. C. 29, § 6907, an emergency contract is used when "...a critical need exists by reason of conditions or contingencies that could not reasonably be foreseen and guarded against..." DSU confirmed that the Martin Luther King Jr. Student Center, used for the annual State of Delaware Employee Recognition Ceremony, was available for the inauguration party. Further, Dr. Williams officially became DSU's president on January 10, 2010, allowing ample time for the formal procurement process.

This demonstrates that the improvements to the President's House were not a critical need of DSU, DSU is not properly using emergency contracts, and therefore, DSU may not have received the best price for the work performed.

Additionally, DSU did not have any process in place to ensure compliance with formal procurement procedures, as required by 29 Del. C. §6962. As of December 2011, they still had not implemented the draft policy and procedure manual to address this issue. The penalties for violations of State procurement procedures are explained in 29 Del. C. §6903. Based on these provisions, we will inform the Attorney General's Office of DSU's noncompliance with State procurement.

Allegation #2 - Theft of Time and Unqualified Employee - Partially Substantiated

A Supervisor authorized his secretary to pay a DSU Carpenter for time that was not worked as the carpenter did not show up for work for a three- to four-week period in January and February 2010. The secretary has reportedly done this before for other individuals as well as herself. That same DSU Carpenter was inexperienced and unfamiliar with carpentry.

Results of our Review

Payroll documentation showed that this individual did not receive compensation for three to four weeks in January and February 2010.

We compared the carpentry position's job requirements to the qualifications from the individual's employment application and found the carpenter unqualified for 5 of 15 job requirements, including 3 of 6 essential functions and 1 of 4 required knowledge items.

Allegation #3 - Non-functional Equipment Allegation - Unable to Conclude

Absolute HVACR and DSU have a contract regarding HVAC services, but the equipment installed is unnecessarily replaced or not functional.

Results of our Review

For the projects we reviewed for Absolute HVACR and its two related businesses, we found that DSU did not follow formal procurement procedures established by the Purchasing and Contracting Advisory

Council and 29 Del. C. §6962. These issues create the risk that DSU may be in collusion with a vendor, DSU may not use the most qualified vendor, or DSU may not get the best price for the project.

We also reviewed building maintenance logs to identify non-functional HVAC equipment; however, DSU did not maintain enough documentation to allow us to evaluate the nature of the service calls.

Allegation #4 - Prevailing Wage Laws Allegation - Unable to Conclude

Absolute HVACR, Advanced Mechanical, and Custom Air Services appear to not be in compliance with prevailing wage laws.

Results of our Review

According to 29 Del. C. §6960, prevailing wage payroll information is only maintained by the Department of Labor (DOL) and all allegations are to be investigated by DOL. Since DSU is not required to maintain prevailing wage documentation, we could not review any documents to satisfy the allegation. We referred the matter to DOL.

Allegation #5 - Vendor Kickbacks Allegation - Unsubstantiated

Absolute HVACR is offering kickbacks and overcharging for services performed and, when a search was done by the complainant for a contractor's license, the company did not exist.

Results of our Review

Since DSU paid more than \$2 million to Absolute HVACR and its two related businesses, we reviewed purchase order (PO) and payment voucher (PV) records for the three HVAC businesses to determine if they were properly approved and supported. We found the following exceptions:

- Four PVs reviewed, totaling \$139,973, did not contain supporting documentation.
- DSU did not properly approve three POs, totaling \$25,124.
- DSU does not periodically update signature cards for PV/PO authorization.

We also found 21 instances where DSU issued multiple POs for the same purpose, including 10 instances in which multiple POs were issued with the same purpose, vendor, and date.

All three businesses were registered with the State of Delaware Division of Corporations, but we could not find a State of Delaware business license for one of the three HVAC businesses.

We subpoenaed the bank records of several DSU employees involved in the contracting process to review for suspicious transactions. Based on the procedures performed, our review did not reveal any conclusive evidence of a kickback scheme; however, we will provide the Attorney General's Office with all documentation for further consideration.

It came to our attention that proper permits were not obtained for all HVAC projects and other HVAC projects were in violation of various building codes. We recently contacted the City of Dover and verified that these issues have been resolved.

Allegation #6 - Internal Controls Surrounding NASCAR Parking Allegation - Unsubstantiated

DSU collects upwards to \$200,000 in parking on race weekend. Control over the money is not good.

Results of our Review

AOA determined that DSU has very detailed risk-based policies and procedures regarding parking ticket sales on race weekend. Although any process involving cash is inherently risky, the internal controls in place would require collusion between several people to steal a significant amount of money.

Allegation #7 - Improper Termination Allegation - Unsubstantiated

An individual believes to have been wrongfully terminated due to political pressures at both DSU and Absolute HVACR. While working at Absolute HVACR, he installed HVAC parts in a Newark Hotel, but the parts were charged to DSU.

Results of our Review

DSU had proper documentation to support the employee’s termination. We will provide information on the second item to the Attorney General’s Office for their consideration.

Allegation # 8 - Use of Snow Removal Vendors Allegation - Unsubstantiated

DSU purchased snow removal equipment several years ago but contracted out snow removal this past winter¹, neglecting a lower bid from another individual.

Results of our Review

AOA found that DSU had several pieces of equipment, purchased in 2004, that were available for snow removal, but did not have the staffing necessary to safely and efficiently remove the snow.

We also reviewed DSU’s bid file for contracting snow removal. Although there was a lower bidder, DSU awarded the contract to a vendor who was better qualified for the services needed.

Allegation #9 - Unqualified Carpentry Vendor Allegation - Unsubstantiated

One particular carpentry vendor does poor work but receives all DSU contracts related to carpentry.

Results of our Review

We determined that the alleged vendor was equally qualified for the contract and found that multiple vendors were used for different carpentry projects. We could not measure the alleged vendor’s performance as DSU does not complete written vendor evaluations.

In reviewing the documentation, we again found that DSU did not consistently follow State procurement procedures.

¹ AOA received this allegation in March 2010.

The conclusion of the allegation 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, or competent evidence was found to dispute a portion of the allegation.
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.

AOA's Evaluation of DSU's Response

The following is AOA's evaluation of DSU's response, which does not accurately reflect the information presented in our report. DSU's response is included in its entirety at Appendix A.

AOA is disappointed in DSU's lack of accountability for State procurement requirements. Our investigation identified that DSU has not complied with procurement throughout the period of our investigation. Further, our report stated as of December 2011, they still had not implemented their draft policy and procedure manual.

As for DSU's suggestion that we did not identify which records were inadequately supported or approved in our report, the numerous items tested for all allegations were brought to their attention during fieldwork. Of the 30 purchase orders tested for Allegations #5 and #9 alone, only one complied with State procurement. These purchase orders spanned from Fiscal Years Ended June 30, 2008 to June 30, 2010, and are by no means considered successful compliance with State procurement.

We also hold DSU accountable for interviewing and hiring those applicants who meet the posted requirements of the position. Since the employee's application does not demonstrate that the minimum job requirements were met, the individual should have never been selected for an interview. This is particularly true if other candidates with qualified applications did not have the opportunity to interview. This practice goes to the heart of the allegation. Interviewing applicants that clearly do not meet minimum requirements based on their written representation in an application demonstrates some form of favoritism. Our investigation did not deal with the motivation behind the selection, but does recommend holding all applicants accountable for their representations and ensuring a fair application and interviewing process.

We recognize that DSU perceived the addition to the President's residence as an act in their best interest, rather than an emergency situation. However, DSU's representation that the \$98,000 improvement was a critical need is not supported by the nature of the work. Clearly, the improvement was more about comfort and stature and far less than an acute or crucial expenditure. AOA believes DSU's response is reflective of their lack of understanding about their responsibilities when accepting State funds. If DSU did not want to participate in a fair and competitive bid process for this project, they had the option to fund with non-State funds, leaving them accountable to the student body and not Delaware taxpayers. Further, what DSU believes to be "the best interest" of the University does not justify circumventing the State procurement requirements that are required with such funding. As mentioned in the report and if DSU did not have non-State funds available for the project, they could have utilized their Martin Luther King Jr. Student Center, a brand new facility that was available.

In regard to DSU's response to Allegation #3, part of our sentence was taken out of context. AOA's position is that State procurement guidelines serve to act as a safeguard against the risk that an agency: 1) may be in collusion with a vendor; 2) may not use the most qualified vendor; and 3) may not get the best price for the project. Again, we suggest if DSU does not want to comply with the State requirements, then they should pass on State funding.

DSU is laboring under a false pretense in their response to Allegation #5 by indicating that our office has some responsibility to refute or substantiate statements made by the press. Additionally, at no point did we share the details of the investigation or who may have been mentioned in the allegation. While DSU may choose to make business decisions and place full factual reliance on the press, AOA has and will conduct their own fact-finding and investigations in a professional manner and report with professional integrity.

Appendix A



DELAWARE STATE UNIVERSITY

OFFICE OF THE GENERAL COUNSEL

December 8, 2011

Kathleen A. O'Donnell
Chief Administrative Auditor
Delaware Office of Auditor of Accounts
Townsend Building, Suite 1
401 Federal Street
Dover, DE 19901

RE: Response of DSU to State of Delaware Office of Auditor of Accounts Special Investigation

Dear Ms. O'Donnell:

The following is the Response of Delaware State University.

Response to "What We Found"

Delaware State University ("DSU") disagrees with the Auditor of Accounts ("AOA") comment that the "predominate theme was DSU's noncompliance with state procurement requirements". In fact, the AOA, after 5 months of investigation, found a single, identified case in which DSU allegedly failed to comply with state procurement requirements.

Furthermore, criticism of the lack of formal policies and procedures fails to mention that DSU is in the process of preparing a revised and comprehensive set of such policies, the draft of which was shared with the AOA during its audit process. As for the AOA's criticism of "records that were inadequately supported or approved", since no such records were identified in the audit, it is impossible for DSU to respond.

Finally, the alleged hiring of an "unqualified employee" is based on nothing more than a review of the current employee's application in comparison with the job description. The AOA made no effort to compare the skills of the applicants for the job in question, nor did it interview the employee's supervisors to determine whether the application fully described the applicant's qualifications.

Background

DSU has no comment.

1200 N. DUPONT HIGHWAY • DOVER, DELAWARE 19901-2277 • (302) 857-7841 • FAX (302) 857-7401

Delaware State University is an equal opportunity employer and does not discriminate because of race, creed, national or ethnic origin, sex or disability.

Page 2

Allegations and Conclusions

Allegation #1 – Improper Use of Emergency Contracts

This conclusion refers to statutory language which applies explicitly to an emergency condition. To rely on an emergency condition for waiver of the procurement processes, the agency has to determine that such a condition "exists by reason of extraordinary conditions or contingencies that could not be reasonably foreseen and guarded against".

However, the statute is not limited to "emergency" situations. Section 6907 also provides that the head of an agency (in DSU's case, its President) "may waive any or all provisions of this chapter to meet the critical needs of the agency as required by...conditions where it is determined to be in the best interest of the agency."

That "best interest" waiver authority is not otherwise limited by the statutory language. The "reasonably foreseen" language on which the AOA relies applies only to emergency situations, a condition which DSU admits did not exist around the President's inaugural.

DSU does not contend that there was a specific emergency, but does contend that 29 Del. C. §6907 (which is generally referred to as the emergency exception provision) authorized the DSU President to waive the provisions for this special occasion. Given the AOA's failure to analyze properly this situation under the statutory language, Delaware State University objects to this conclusion. The President of DSU properly exercised his authority under this provision.

Allegation #2 – Theft of Time and Unqualified Employee

DSU has no comment with respect to the conclusion regarding the "Theft of Time", which was not substantiated.

With respect to the contention that DSU hired an individual to fill a carpenter position that was unqualified, that conclusion is not justified by the review undertaken. The AOA did not interview the supervisor to determine whether the employee had qualifications that were not revealed by the application or had performed in a satisfactory manner. Nor did the AOA attempt to compare the successful applicant with others who applied for in the position. To conclude that the hired individual was unqualified without undertaking those two steps is simply not justified.

Allegation #3- Non-functional Equipment

The AOA concedes that it was unable to come to any conclusion regarding the allegation, but then states that there is a risk that "DSU may be in collusion with a vendor", a conclusion which is utterly unjustified by any evidence presented. Such an unsupported contention is not appropriate, and is unfair to DSU.

Page 3

Allegation #4 – Prevailing Wage Laws

DSU has no comment.

Allegation #5 – Vendor Kickbacks

This was perhaps the most important area of investigation given the press coverage pre-dating this audit. A former employee was wrongly accused in the press of improper conduct in connection with certain HVAC projects. The AOA's audit reveals absolutely no evidence of a kickback by anyone, and the conclusion should state that clearly.

Allegation #6 – Internal Controls Surrounding NASCAR Parking

DSU has no comment.

Allegation #7 – Improper Termination

DSU has no comment.

Allegation #8 – Use of Snow Removal Vendors

DSU has no comment.

Allegation #9 – Unqualified Carpentry Vendor

DSU has no comment other than it is inappropriate to conclude that DSU did not follow state procurement procedures without reference to any contract, vendor or any other evidence that would substantiate this conclusion.

Very truly yours,



Thomas P. Preston
General Counsel

TPP:ccr

tpreston@desu.edu

cc: Dr. Harry Williams
Amir Mohammadi
Jane Helm
Ed Watson
Jose' Echeverri