2006 Financial Audit Report and 2007 Information Systems Audit Report and Investigative Audit Report Released Since Last Meeting By the North Carolina Office of the State Auditor:

1. Fayetteville State University: – (Information Systems Audit - Public Report): No Findings

   Report URL:
   http://www.ncauditor.net/EPSWeb/EDSreportdetail.asp?RepNum=ISA-2007-6088

2. The University of North Carolina at Greensboro: – (Investigative Audit): Two Audit Findings

   Report URL:
   http://www.ncauditor.net/EPSWeb/EDSreportdetail.asp?RepNum=INV-2007-0319

   See attachment

3. North Carolina Central University: – (Financial Audit): No Audit Findings

   Report URL:
   http://www.ncauditor.net/EPSWeb/Reports/Financial/FIN-2006-6090

4. North Carolina A&T State University: – (Financial Audit): Three Audit Findings

   Report URL:
   http://www.ncauditor.net/EPSWeb/Reports/Financial/FIN-2006-6070

   Matters Related to Financial Reportin2 or Federal Compliance Objectives

   The following audit findings were identified during the current audit and describe conditions that represent significant deficiencies in internal control or noncompliance with laws, regulations, contracts, grant agreements or other matters.

   1. INSTANCES OF FRAUD/ABUSE

      During the course of our audit, there were several allegations of fraud/abuse that were brought to our attention. These allegations were investigated by the University's internal auditors and/or a team of outside consultants hired by the University. Significant findings from those investigations include:

      Office of Naval Research Grant

      The program manager who administered the HBCU Future Engineering Faculty Fellowship Program funded by the Office of Naval Research was responsible for several improper business practices and expenditures. During the 2005-06 fiscal year, program expenditures for student stipends, travel, tuition and fees, and other payments increased significantly, the same year that the program manager's husband became a student participant in the program. The following items were noted:

a. Stipends of over $66,000 were paid to the program manager's husband during 2005-06. The highest yearly stipend payout prior to his entry in the program was less than $23,000. In many cases, payments made to the program manager's husband exceeded those paid to other students. Stipend payments also exceeded the amount included in the grant proposal.

b. The program manager hired and supervised her daughter as a student worker in violation of State nepotism policy.

c. Unreasonable and unnecessary travel expenses were paid. The program manager spent 41 nights in hotels during 2005-06 at program expense, with an average cost of $328.74 per night. She also approved travel expenses for her husband in excess of the $1,500 student travel budget. Further, the program manager paid for her daughters, as well as other student workers not enrolled in the program, to attend out-of-State conferences. Finally, lodging and meals for a symposium held in the city where the University is located were paid. Expenditures for the symposium included payments for one room for the program manager and another room for her husband for three nights during the two-day symposium (other participants only stayed two nights). Restaurant/room service charges in the amount of $369.68 were incurred by the program manager and her husband and paid for by the grant.

d. Payments were made for tuition that exceeded actual tuition costs, and payments were made for books and supplies even though those costs were supposed to be covered by the base stipend.

e. Payments were paid to students for reimbursement of personal computer and health insurance costs without requiring proof of purchase.

f. Equipment purchased by grant funds could not be located. Missing items included computer equipment, a digital camcorder and a digital camera. In total, approximately $500,000 of program expenditures were questioned by the consultants. The program manager was terminated from University employment in September 2006.

This finding is applicable to award number NOOO 14-0 1-1-0987 for the period July 1, 2001, through June 30, 2006, and contract number NOOO 14-0 1-C-040 1.

Natural Resources and Environmental Design Department

An administrative assistant in the Natural Resources and Environmental Design Department misused a total of eleven accounts related to Natural Resources and the School of Agriculture, resulting in a loss to the University of $101,000. The loss involved unauthorized financial aid awards, stipends, student employment, purchases of goods and travel. The administrative assistant was terminated from University employment in February 2006 and later pled guilty to charges stemming from the misuse of funds.

The grant and award periods affected by this finding are: ACQ-4-33623-07 (7/26/2004-10/26/2007), 2004-33814-15095 *(9/112004-8/31/2007),* 2005-338820-16385 (9/1/2005-*8/3112008),* NCX-207-5-06-130-1 (10/1/2005-9/30/2006), 2005-38820-16356 *(9/15/2005-9/1412008),* ACQ-4-33623-07 (7/26/2004-7/25/-2006), NCX-171-5-02-130-1 *(10/1/2004-9/3012005,* U91619901-0 *(8/1/2003-9/3012005),* 68-3A75-3-111 (9/30/20049/30/2005), 68-3A75-5-147 (10/18/2005-10/18/2007).

Information Technology and Telecommunications Division

The former Vice Chancellor for Information Technology and Telecommunications misappropriated $87,000 in university funds during the period May 2004 through February 2006. The majority of the funds came from rebates on computer purchases that were directed to a discretionary account held by the North Carolina A&T Foundation. The Vice Chancellor approved purchases from the fund that appeared to have no business purpose. The Vice Chancellor is no longer employed by the University and has been charged by legal authorities in connection with this matter.

The former Vice Chancellor for Information Technology and Telecommunications also participated in awarding a contract that is questionable. The Purchasing Department bid committee initially ranked a vendor third, but after assistance from the Vice Chancellor in evaluating proposals, the vendor was ranked first. The vendor in question is the mother of the former Vice Chancellor's executive assistant. The $93,100 contract was for training services and had explicit documentation requirements for the sessions. The vendor submitted invoices totaling $94,100, which were approved for payment by the former Vice Chancellor. Not only was the contract overpaid by $1,000, the vendor also did not submit required documentation to indicate that the requirements of the contract were completed.

Recommendation: The University should establish, communicate and reinforce proper ethical and behavioral standards for employees. Further, the University should reevaluate controls over expenditure activity and the delegation of authority at the department level and closely monitor controls to ensure that they are effective. No University accounts should be maintained by the Foundation.

University's Response: We concur with the recommendation. University and State policy prohibits the maintenance of University funds in any non-University account. This policy is communicated to campus annually.

a. Office of Naval Research Grant: The Office of Naval Research (ONR) and the University have finalized grant amendments in writing, approving $422,415 of the questioned program expenditures, including stipends, tuition, travel, insurance, and laptop computers. The University recognizes that control over expenditure activity is strengthened by obtaining written agency approvals or amendments before enacting transactions.

b. The University terminated the program manager's employment and has initiated legal action to recover a major portion of the remaining questioned costs and missing equipment.

c. Natural Resources and Environmental Design Department: The University has recovered a portion ($75,851) of the loss from insurance proceeds and legal actions taken against the administrative assistant. The University anticipates some additional restitution from the former employee. The Purchasing Office conducts ongoing campus workshops stressing the proper use and control of the University procurement card, and they audit the monthly departmental procurement card reconciliations.

d. Information Technology and Telecommunications Division: The University terminated the employment of the Vice Chancellor for Information Technology and Telecommunications and has initiated legal action to recover the misappropriated funds. The University has reinforced its existing ethical and behavioral standards and communicated those standards to the University community through numerous seminars. Additionally, the University and the

Foundation have strengthened the policies for establishing accounts in the Foundation and for expenditures from those accounts. The existing policy of the University stipulates that no University funds are to be placed in any accounts outside of the University.

2. DEFICIENCIES IN GRANTS MANAGEMENT

In January 2007, a team of outside consultants hired by the University identified a number of problems in the management of federal grants, some of which had also been noted by internal auditors. The team's findings included:

a. Since June 30, 2005, the University has not maintained documentation required by OMB Circular A-21 to support personnel charges to federal programs. As a result, the University has a potential liability for questioned costs associated with personnel charges to federal programs. The amount of potential questioned costs is not readily determinable.

b. Of the approximately 500 grant fund accounts maintained by the University, 184 accounts have had no recorded activity since July 2005, indicating that the grants were closed. There were 69 inactive accounts with deficit cash balances totaling over $395,000, which indicates that the budget for the grants was overspent using other funds. The other 115 grant accounts reflected a total cash balance of over $716,000, which indicates excess federal revenues could have been received. However, the residual balances in these accounts could also be the result of accounting errors. A clearing account managed by the Contracts and Grants Office had a balance of over $784,000 as of February 14,2007. The account is used for the deposit of receipts that have not been identified to a particular program. These grant accounting deficiencies could also result in questioned costs in an amount that is not readily determinable.

Recommendation*:* The University should consult with federal grantor agencies to determine the corrective action to be taken. Also, the University should evaluate its accounting procedures for grant funds and make changes to ensure that receipts are properly applied and that over-expenditures are prevented.

University's Response:

a. A revised, more efficient time and effort reporting model was in the process of implementation at June 2005. Campus seminars had been conducted and programming was being initiated. However, resources were reprioritized with the implementation of the Banner Finance ERP and the time and effort project was not resumed until November 2006, when certification forms were distributed and informational seminars were conducted with project investigators by the Office of Contracts & Grants. Delinquent reports are now being collected (95% complete) and a policy has been developed that should ensure ongoing compliance.

b. The University practice is to consult federal or sponsor grantor agencies for guidance with respect to contentious issues or questionable expenditures. The specific grant deficiencies identified will be resolved by October 2007, with procedures put in place by September 2007 to prevent future occurrences. Following newly established procedures final resolution of grants will be completed in a more timely manner.

c. The clearing account relates to University funds, predominately wired from outside sources that did not have proper documentation for immediate identification but are required to be deposited within 24 hours of receipt. Normally this account is reconciled monthly but the reconciliation was deferred during the Banner Finance ERP implementation. To date, over $400,000 of the $784,000 noted has been identified and properly credited. The remaining balance of approximately $384,000 is being reviewed.

3. MISUSE OF VENDING RECEIPTS

The University inappropriately transferred $380,000 of vending receipts to the Chancellor's Discretionary Fund maintained by the North Carolina A&T Foundation. These receipts were then primarily used for purposes that are inconsistent with those outlined in University of North Carolina System policy.

The University has a five-year campus vending contract that began in October 2003 that includes exclusive beverage service. The beverage vendor pays the University $140,000 per year. During 2003 through 2005, $380,000 of the vending receipts were transferred to the discretionary fund at the Foundation. In 2005, the former Chancellor signed a gift document indicating that the funds were solicited from the vendor for the Foundation; however, there is no mention ofthe Foundation in the vending contract. Internal auditors and a team of consultants hired by the University both concluded that the moneys should not have been transferred to the Foundation account.

We examined 89% of the expenditures from the Chancellor's Discretionary Fund during the 2006 fiscal year. Since, the majority of the receipts in the fund (85% in the 2006 fiscal year) came from the vending contract, we compared the expenditures to those allowed by University of North Carolina System policy related to vending receipts. The policy provides that vending moneys may be used for scholarships and direct student financial aid programs, debt service on self-liquidating facilities, and other specific student activities as authorized by the chancellor.

We concluded that 87% of the expenditures we examined were for unallowable purposes. Unallowable items included commission for art work, travel for the former Chancellor's wife to accompany him on University-related travel and payments for Foundation/ Alumni events.

The largest unallowable expenditure was the payment of $150,000 to a faculty member exempt from the State Personnel Act for the purchase of an annuity. System poiicy requires all constituent institutions to have a policy concerning the granting of non-salary compensation for personnel exempt from the State Personnel Act other than the Chancellor. The policy shall either provide specified non-salary compensation to a defined category of employees uniformly or shall require approval by the board of trustees regarding non-salary compensation granted to an individual employee. The University was unable to produce a University policy regarding non-salary compensation or documentation to indicate the payment had been approved by the board of trustees.

Recommendation*:* The University should account for all of its activity in its own records and should not maintain any additional accounts within the Foundation. The University should adopt policies to ensure that it adheres to University of North Carolina System policy regarding the use of vending receipts and non-salary compensation for employees.

University's Response*:* University and State policy prohibit the maintenance of University funds in any non-University account. This policy is communicated to campus annually. We concur with the recommendation and are enforcing policies relating to vending receipts and non-salary compensation.

STATE OF NORTH CAROLINA
Office of the State Auditor

Leslie W. Merritt, Jr., CPA, CFP
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June 19, 2007

Dr. Patricia A. Sullivan, Chancellor
University of North Carolina at Greensboro
303 Mossman Building
Greensboro, North Carolina 27402-6170

Dear Dr. Sullivan:

We received a complaint through the State Auditor's Hotline concerning the process for selecting a contractor for the guaranteed energy savings performance contract at the University of North Carolina at Greensboro (University). Allegedly, the Associate Vice Chancellor for Facilities violated bidding procedures to award the contract to a preferred vendor. We have completed an investigation of this matter and are presenting the following findings and recommendations for your review and written response.

North Carolina General Statute § 143-64.17 authorizes state agencies to use guaranteed energy savings contracts to reduce the State's utility costs. Guaranteed energy savings performance contracts provide energy savings through building renovations and upgrades with costs of the project being recovered through energy cost savings over a 12-year period. The project for energy-related capital improvements is financed at no net cost to the agency. The agency contracts with an energy service company (ESCO) which guarantees savings will be achieved to cover all project costs.

With guidance from the North Carolina Department of Administration's State Energy Office, the University became the first state university in North Carolina to participate in this program. In compliance with North Carolina General Statute § 143-64.17A(a), the University posted a request for proposal (RFP) on October 13, 2004 with bids accepted from the 14 ESCO's that were pre-certified by the State Energy Office. The University received a sealed "Preliminary Technical and Cost Proposal" from eight interested companies on December 9, 2004.

Violation of Request for Proposals Conditions

The University formed a committee to evaluate the proposals and perform reference checks on the bidding ESCO's. This committee included employees from the Facilities Department as well as representatives from each of the four buildings to be upgraded. In addition, representatives from the State Energy Office and the University of North Carolina General Administration attended evaluation team meetings to observe the process and provide advice.

Section I-6(5) of the RFP stipulated the University would "select (shortlist) up to three (3) of the ESCO's on the basis of rankings of the written proposal and the client references." On January 27, 2005, the evaluation committee selected three companies to move forward to the oral interview process. Six of the seven committee members voted for their top three companies with the Associate Vice Chancellor for Facilities abstaining. Noresco received five votes, Ameresco, Inc. tallied four votes, and Sempra Energy Solutions garnered three votes to continue in the selection process.

On the following day, the University's Energy Engineer, who was the primary contact for this contract, sent a letter to all eight companies notifying them of the three companies selected for the oral interviews. On January 31, 2005, the Associate Vice Chancellor contacted the Energy Engineer by telephone and left a voicemail message to request that Trane Comfort Solutions, Inc. (Trane) be added to the shortlist for oral interviews "for very obvious reasons." During a meeting the next day, the Associate Vice Chancellor informed the Energy Engineer to increase the shortlist to five companies by adding Trane and Alliant Energy/Cogenex since each received two votes from the committee. The Energy Engineer sent a letter to the five companies on February 4, 2005 informing them of the expanded shortlist at the request of the Associate Vice Chancellor.

The three ESCO's originally selected responded with letters questioning this expansion, the fairness of the evaluation process, and the potential violation of the RFP. While acknowledging the RFP condition allowing "up to three" finalists, the University's legal counsel concluded "we do not believe the addition of two other companies to be interviewed constitutes a material deviation sufficient to bring the process into question." The legal counsel disputed the additions provided any company an "unfair advantage."

The Associate Vice Chancellor said he wanted Trane added to the shortlist because he believed they presented one of the best proposals and he questioned the ability of the building representatives on the committee to evaluate the technical proposals. However, our review indicated the only two committee members to select Trane for the shortlist were building representatives while Facilities Department personnel selected the three companies that originally comprised the shortlist.

The RFP for this contract clearly indicated the shortlist should only include "up to three" companies. The Associate Vice Chancellor for Facilities circumvented this requirement by adding two companies to the shortlist thereby violating the terms and conditions of the RFP and undermining the integrity of the selection process.

Conflict of Interest / Personal Relationship with Vendor

The five remaining companies gave oral presentations on March 3, 2005. Afterwards, the evaluation committee discussed the results. By secret ballot, the eight representatives (two additional Facilities Department personnel were added to the committee) voted to select Noresco with five votes while Trane received three votes. Based on that vote, the committee members believed Noresco would be presented to the University's Board of Trustees for approval on April 7, 2005 and an action item was sent to the Trustees requesting that Noresco be approved to proceed.

However, the Associate Vice Chancellor requested another evaluation committee meeting to discuss the decision and, according to an e-mail from the Physical Plant Director, "to try to convince us to use Trane." The committee reconvened on April 4, 2005. The Associate Vice Chancellor told the committee he contacted the North Carolina Department of Administration, State Construction Office who recommended the North Carolina Office of State Budget and Management (State Budget) review the proposals from a financial perspective. Representatives from those two offices confirmed the request.

The Associate Vice Chancellor said State Budget recommended Trane and that the University's Chancellor supported that recommendation. This recommendation was not voted upon by the evaluation committee but they accepted the decision made solely by the Associate Vice Chancellor. The Associate Vice Chancellor said he followed State Budget's recommendation due to financial considerations only because Trane had submitted a good proposal and the committee vote was close. However, in our interviews, all committee members indicated financial information was only one factor of many to be considered. In addition, the State Energy Office prepared a guide which specifically stated "project cost is not the **only** criteria"[1] and the RFP lists 11 items as part of the evaluation criteria.

The State Budget Office representative who prepared the financial analysis disputed the contention that he recommended only Trane as the best financial value. Rather, he said the analysis only indicated Trane provided the "best value" financially using interest rates provided by each ESCO while Alliant Energy/Cogenex provided the "best value" financially using interest rates provided by the North Carolina Department of State Treasurer. The State Budget Office representative said he did not recommend the selection of *any* company and that his analysis only focused on financial aspects without considering the technical abilities of the companies. After approval by the University's Board of Trustees, the University presented Trane as the winning bidder to the University of North Carolina's Board of Governors for final approval on May 12, 2005.

[1] "Evaluating RFP Responses for Performance Contracting"

Other committee members said the Associate Vice Chancellor told committee members he was only attending meetings to observe and was not a voting member. The Associate Vice Chancellor told us he did not vote on the original proposals to shortlist to three companies because he had missed a prior committee meeting at which the proposals were discussed. However, he voted after the oral interviews for the final selection. In addition, he inserted himself into the process by requesting the addition of two companies to the shortlist and by making the final recommendation to select Trane based upon the State Budget Office financial analysis.

We learned the Associate Vice Chancellor for Facilities is a personal friend of the owner of the local Trane authorized company which was selected as the guaranteed energy savings performance contract vendor. Several committee members were aware of the relationship and mentioned the relationship as a potential reason for the addition of Trane to the shortlist and the change of the final selection from Noresco to Trane. The Associate Vice Chancellor told us he has been a friend of the local Trane owner for years, is a fellow member of the local Rotary Club, and has breakfast with the owner on a periodic basis.

The University adopted a conflict of interest policy in November 1993. The policy notes that a conflict of interest may arise when "personal considerations may compromise, or have the appearance of compromising, an employee's professional objectivity in meeting University duties or responsibilities." Further, the policy requires "employees must avoid conflicts of interest that have the potential…to compromise objectivity in carrying out University responsibilities." However, the University's policy does not directly address potential conflicts based on personal friendship; rather, only immediate family relationships are specified in the policy.

In view of the violation of the RFP terms and conditions to add Trane (along with another company) to the shortlist and the personal friendship between the Associate Vice Chancellor and the local Trane owner, we believe overriding the evaluation committee's recommendations for the ESCO to perform the project created, at a minimum, the appearance of a conflict of interest.

Recommendations

University management should consider appropriate disciplinary action in response to the above findings concerning the Associate Vice Chancellor for Facilities. In addition, the University should establish standardized procedures for the awarding of all capital projects including guaranteed energy savings performance contracts. These procedures should explicitly designate how an evaluation committee should be formed, the process for evaluating proposals, and the final selection of the contractor. Further, the University should revise its conflict of interest policy to specify when personal friendships may create an actual or perceived conflict of interest.

Please provide your written response to these findings and recommendations, including corrective actions taken or planned, by July 3, 2007. In accordance with General Statute § 147-64.6(c)(12), the Governor, the Attorney General, and other appropriate officials will receive a copy of this management letter. If you have any questions or wish to discuss this matter further, please contact us. We appreciate the cooperation received from the employees of the University of North Carolina at Greensboro during our review.

Sincerely,

Leslie W. Merritt, Jr.

Leslie W. Merritt, Jr., CPA, CFP
State Auditor

Management letters and responses receive the same distribution as audit reports.

THE UNIVERSITY of NORTH CAROLINA
GREENSBORO

Chancellor's Office

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336.334.5266 Phone 336.256.0408 Fax

June 28, 2007

Mr. Leslie W. Merritt, Jr.
State Auditor
20601 Mail Service Center
Raleigh, NC 27699

Dear Mr. Merritt:

I am in receipt of your letter dated June 19, 2007 regarding the process the University undertook to hire an Energy Services Company (ESCO) and offer this response. There were four primary reasons why the University selected Trane Comfort Solutions, Inc. (Trane) to do this work:

1. Of the five vendors who made presentations, only Northeast Energy Services Company, Inc. (Noresco) and Trane received any votes from the evaluation committee. UNCG management was prepared, and in fact had distributed preliminary meeting materials to our Board of Trustees, to recommend that UNCG hire Noresco to do this work. In the meantime, we received information independently calculated by the Office of State Budget and Management (OSBM) that Trane, of the two finalists, offered the best financial value to the University and the state's taxpayers. The recommendation was therefore changed just before the Board meeting to contract with Trane.

2. The Trane proposal not only provided the best financial value, but it also resulted in equipment upgrades for the University that the other proposals did not include.

3. At the time of the vendor selection, Trane was in the process of installing equipment at the North Carolina Museum of Art under a similar contractual arrangement. From our conversations with the State Construction Office at that time, that project appeared to be going well. Since that time, these improvements have proved to be a success.

4. Trane had a proven track record of reliability in both equipment and service.

Additionally, we respectfully disagree with your conclusion that increasing the number of companies to be interviewed violated the Request for Proposal (RFP) or undermined the integrity of the process.

First, nothing in the authorizing legislation, N.C.Gen.Stat. § 143-64.17, et seq., or the implementing regulations, 1 N.C.A.C., subchapter 41 B, required that the State limit the number of finalists to be interviewed. The limitation of "up to three" ESCOs that was indicated in Section I-6, paragraph 5 of the RFP was included solely for the convenience of the University.

Second, and most importantly, increasing the number of companies to be interviewed was not a "material deviation" from the bid process because it in no respect gave any individual bidder an advantage over the other finalists. Conversely, neither did it place any bidder at a disadvantage. The requirements of the RFP were the same for each finalist, regardless of the number of finalists to be interviewed. Although at least one bidder objected to the increase, none of the unsuccessful bidders ever indicated to us or provided any evidence to show that increasing the number of finalists put their company at a competitive disadvantage. The generally accepted legal test of materiality is whether the action taken places any bidder at an unfair advantage. 64 Am.Jur.2d *Public Works and Contracts* § 58 (2004). In short, we fail to comprehend how increasing the pool of qualified bidders to be interviewed can adversely affect any interest of the citizens of North Carolina.

Third, item I-10 of the Request for Proposal (RFP) allows the University to make amendments thereto. We wrote the five vendors under consideration to come to campus for an interview that five vendors would be interviewed, not three, which was indicated in the original RFP. We acknowledge, however, the University did not specifically state that letter was an amendment to the RFP.

We also note that when we were initially contacted by your office last fall concerning this matter, the contract with Trane Comfort Solutions, Inc. had not yet been executed. Your office advised the University that we should not delay the project based on your pending investigation and therefore the contract was subsequently signed.

Finally, we respectfully question your finding that a personal relationship between the Associate Vice Chancellor and the president of the local Trane services company tainted the process. As we have noted above, there is no evidence that any of the other bidders were better qualified than Trane. To the contrary, OSBM concluded that Trane's bid provided the best financial value for the State given the project's financing was not issued by the State Treasurer. Although we agree that financial value to the State's taxpayers was only one of several factors to be considered, it is one of the primary reasons for engaging in an energy savings contract, N.C.Gen.Stat. § 143-64.10, and, in the absence of evidence that Trane's bid was deficient in any other respect, it appropriately became one of the determinative factors in Trane's favor. We also note that the Associate Vice Chancellor had no decision making authority regarding the final selection, and there is no evidence that he personally benefited from the selection of Trane.

I hope this clarifies our rationale for the selection of Trane Comfort Solutions, Inc. to do this important work.

The University appreciates your recommendations. Our conflict of interest policy is based on that of the UNC Board of Governors. UNCG volunteered to be the first university to procure ESCO services. Having never done such a project, our normal selection process to select designers did not fit that of selecting an ESCO provider. We will expand that documented process to address methods of capital project delivery such as ESCO and Construction Manager at Risk.

Sincerely,

Patricia A. Sullivan

Patricia A. Sullivan
Chancellor

AUDITOR'S NOTE

In its response, the University provided no evidence to support its contention that adding companies to the shortlist did not violate the RFP. In addition, the University offers no justification as to why a letter to the other bidders constitutes an amendment to the RFP, yet acknowledges the letter was not identified as an amendment. Further, the RFP states that "an amendment will be issued to all Pre-Certified ESCO's" but the letter was only provided to the five companies selected for the oral interviews and not all 14 pre-certified companies.

Regarding the personal relationship, the University did not refute the existence of an appearance of conflict of interest. In addition, one need not personally benefit from a conflict of interest. Instead, a conflict of interest may exist when a related party derives a benefit or, as the University's own conflict of interest policy states, when "personal considerations may compromise, or have the appearance of compromising, an employee's professional objectivity."

While it is technically true that "the Associate Vice Chancellor had no decision making authority regarding the final selection," he made the final recommendation to the Board of Trustees for approval and was personally responsible for adding Trane to the shortlist, contacting the State Construction Office due to his concerns that Trane was not selected, and presenting Trane as the "best financial value" in an effort to convince the committee to ultimately select Trane. Such assertions and actions by the Associate Vice Chancellor would reasonably be considered a substantial influence on the committee. These repeated actions suggest that Trane was the Associate Vice Chancellor's preferred vendor from the outset and some committee members expressed such a concern to us.

Further, we believe the financial analysis performed by the State Budget Office was mischaracterized by the Associate Vice Chancellor and by the University in its response. Again, the State Budget Office did not recommend any single company but rather provided a financial analysis based upon two separate scenarios without any consideration of the technical ability of any company.

Our primary concern was the process used by the University to select the vendor for the guaranteed energy savings performance contract. We did not question Trane's ability to adequately perform the project and that ability is immaterial to our concerns. Rather, we believe Trane was a preferred vendor that was reinserted into the process twice by the Associate Vice Chancellor after elimination by the evaluation committee. It appears the Associate Vice Chancellor pre-selected Trane and did so notwithstanding the contrary recommendations of the evaluation committee.