



H. Tina Kim  
DEPUTY COMPTROLLER

THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
JOHN C. LIU

BUREAU OF AUDIT

MUNICIPAL BUILDING  
ONE CENTRE STREET, ROOM 1100  
NEW YORK, N.Y. 10007-2341

TELEPHONE: (212) 669-8459  
FAX NUMBER: (212) 815-8559  
TKIM@COMPTROLLER.NYC.GOV

July 29, 2011

The Honorable Dennis Walcott  
Chancellor  
NYC Department of Education  
Tweed Courthouse  
52 Chambers Street Room 320B4  
New York, NY 10007

**Re: Letter Report on the Awarding of the Future Technology Associates, LLC, Contract in 2005 (FP11-117AL)**

Dear Chancellor Walcott:

We are writing this Letter Report to advise you of issues noted so that your department may take them into consideration in the future when issuing non-competitively bid contracts. Our objective was to determine whether the Department of Education (DOE) complied with applicable procurement rules and regulations when soliciting and awarding Future Technology Associates' (FTA) initial contract in 2005. In our opinion, FTA was incorrectly awarded this contract based on what appears to be misleading and inaccurate information.

On November 7, 2005, the Division of Financial Operations (DFO) submitted a request to the Committee on Contracts (CoC) to award a sole source contract to FTA as required by DOE's Standard Operating Procedures (SOP) and to amend an existing Memorandum of Understanding (MOU) with Tier Technologies (Tier). In our opinion, this request appears to have contained inaccurate and misleading statements from FTA, which, if DOE had known, should have precluded FTA from being awarded this contract. Additionally, some of the terms and conditions described in the request presented by DFO to CoC were significantly modified when they were incorporated as provisions in the actual contract.

In the request, the DFO Executive Director stated that FTA had an active New York State Office of General Services (NYS OGS) backdrop contract. However, had DFO properly researched this vendor, it would have determined that, regardless of having a backdrop contract, at the time FTA was being considered for a sole source contract, it was a newly formed entity with no prior business record by which it could be judged. The Executive Director's statement provided an unsupportable vote of confidence for FTA indicating that it had the ability and integrity to

provide the specific services. Presumably, CoC relied upon this statement as a factor in its decision to approve the sole source request.

The request to the CoC also stated that;

- FTA's owner had given assurance that FTA would employ all of the 18 Tier consultants then working at DOE, ensuring the continuity of service at the same level of expertise;
- The Contractor [Tier] agreed to reimburse the Board on a pro rata basis for any qualified employee who failed to provide Services to or for the Board for at least six months; and
- DFO requested an appropriation of up to \$780,000 to pay Tier to release its employees from their non-compete/non-disclosure agreements to enable them to be employed by FTA.

As a result of the sole source approval, DOE amended its MOU with Tier in order to maintain "business continuity." However, the amended MOU reduced the terms that were originally presented. Specifically, the amendment provided the following:

- Lists only 12 of the 18 previously identified employees who will provide continuity;
- That Tier agrees to reimburse the Board on a pro rata basis should less than eight qualified employees provide services to or for the Board for at least 21 business days each during the six-month period immediately following execution of this amendment. It more appropriately should have provided a pro-rata reimbursement if any of the 12 employees did not continue on the BOE job for six months; and
- Requires DOE to pay Tier \$731,250 for the release of 12 employees. This is not a pro-rata reduction, which would have been expected after a 33 percent reduction (from 18 to 12) in the number of Tier employees FTA was to hire.

Furthermore, regardless of the amount DOE appropriated to pay Tier, we believe that the approval of this payment was inappropriate and contrary to standard business practice because the cost to release these Tier employees from their non-compete clause is an expense that should be borne by their future employer, FTA. It is the responsibility of a vendor seeking a City contract to ensure the availability of capable staff to appropriately dispense the services required by the contract. If DOE thought it was a prudent business decision to fund these costs with City money, these employees should have been put on DOE's payroll and thus the City would have avoided paying FTA's markup on their hourly rate when billing DOE for their services.

Our review also found that the amount of projected savings that was reported to CoC was inflated. The request reported a potential savings of approximately 28 percent over the hourly rates Tier was charging at that time. Our comparison of the hourly fees paid to Tier for its employees during the last few months of their contract and the hourly fees FTA charged for its employees during the first six months of its contract resulted in an actual savings of only 20

percent. We also found that DOE's analysis, reported that Tier employees were being paid more per hour than Tier actually billed DOE.

The request went on to apply the 28 percent savings percentage to Tier Fiscal Year 2005 billings of \$3.6 million and estimated a savings of \$1.1 million per year under the FTA contract. However, this methodology should not have been used because the total amount of services that was requested and subsequently approved by the CoC for this sole source award was for up to \$2.5 million per year. Recalculating the projected savings based upon the correct savings rate of 20 percent and applying it to the cost of services being procured by contracting with FTA, the actual savings amounts to only \$500,000.

Therefore, although DOE complied with the SOP requirements and sought and received CoC approval to award this sole source contract, there were misrepresentations by FTA and inaccurate information concerning cost savings in the request as well as significant changes to material provisions outlined in the request that were altered when incorporated into the FTA contract. Thus said, it appears that the sole source contract awarded FTA was not the contract approved by the CoC.

Our review of the NYS's backdrop award to FTA determined that it was based upon misleading information contained in FTA's 2004 application submitted to the NYS OGS Procurement Services Group. We identified the following inaccuracies:

- FTA misrepresented its experience on the application by stating that FTA was in business for two years. FTA did not exist until June 2004 when it filed an amendment to the articles of incorporation. This was the third name change since 2002.<sup>1</sup> As a result, it appears that FTA did not meet the minimum vendor qualification to be considered for a back-drop contract award. NYS OGS requires that "A firm must be established as a business (single, proprietorships, LLC, LLP, or corporation) for a minimum of six (6) months before consideration can be given for a back-drop contract award. It is the combination of technical knowledge as well as the administrative and business functions that are key to a firm's viability and stability." There appears to be insufficient evidence that FTA, in its prior incarnations, had any experience as a provider of information technology services. In July 2004, FTA's prospective employees were full-time employees of Tier Technology, making it difficult to measure FTA's administrative and business abilities.
- FTA's application to become a back-drop contractor contained three project abstracts that identified FTA and its employees as having two years experience performing consulting systems integration work for DOE. In fact, all the projects FTA listed on its application were projects that DOE had contracted with Tier. FTA did not exist two years prior to the submission of that application and the employees referred to in the application were Tier employees. In July 2004, when FTA filed the back-drop

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1. FTA was originally formed in February 2002 as Griffin Management, LLC, a real estate management firm. On September 9, 2003, it changed its name to Hillsboro Home Inspections. On April 19, 2004, it became Financial Technology Associates. Finally, on June 1, 2004, it filed an amendment with Florida's Secretary of State to become Future Technology Associates LLC.

application with NYS, the employees referred to were still employed by Tier. "FTA" did not exist until June 1, 2004, and its predecessor organizations (based on their names) appear to have had no experience in performing consulting systems integration work for DOE.

- FTA's application to NYS stated that it had three employees in New York City in 2004. However, according to the VENDEX Vendor Questionnaire completed by FTA's President, Tamer Sevintuna, FTA began business in New York City on November 14, 2005.

We reviewed Tier employees' timesheets completed for the last six months of their contract to determine whether these employees were subsequently hired by FTA as required by the Amendment to Tier's MOU. We found FTA in compliance with this provision. However, DOE was only able to provide time records for two of the six months requested. Instead, for the other months it provided billing records that listed the total number of hours billed for each employee. For one billing period, May 21, 2005, through June 17, 2005, it only provided records for 113 hours worked by six employees. Other four-week billing periods showed 18 or 19 employees working a total of between 2250 and 3450 hours. Similarly, our review of FTA timesheets also disclosed missing time records. DOE did not provide any time or billing records for three two-week billing periods and did not provide supporting documentation detailing the tasks worked on during any of the six months for the FMS3 integration project.

Furthermore, none of the FTA time records provided were approved and signed by the individual FTA consultant or authorized Board manager. This practice is in violation of Section 4B of DOE's November 14, 2005, agreement with FTA, which states that "[n]o invoice shall be approved by the Board until all time sheets representing consultant time on tasks have been approved and signed by the consultant and an authorized Board Manager." Therefore, we could not verify that time records were accurate and concluded that time records totaling \$1.7 million (pertaining only to billing invoices provided) were paid in contravention of the Board's stated policy. This also brings in to question the level of oversight the Board provided over this contract and may have been a significant contributing factor for cost overruns incurred on this contract.

Our review further revealed that FTA continued to submit inaccurate information in 2006. On its 2006 VENDEX submission, FTA stated that the business was formed on March 1, 2004, not the actual date of June 1, 2004. Additional inaccuracies we noted pertain to questions 8a and 8d on the VENDEX Principal Questionnaire completed by FTA's president. Question 8a asked, "[d]o you presently serve, or have you within the past five (5) years served, as a full or part-time employee in a New York City agency or as a consultant to any New York City agency?" Question 8d asked "[d]o you presently serve, or have you within the past five (5) years served, as a consultant or advisor to a New York City agency that is or was involved in the solicitation, negotiation, operation and/or administration of contracts on which the submitting vendor will work during this three year VENDEX cycle?" Mr. Sevintuna answered no to both questions. In our opinion, the answer to both of these questions should have been yes because Mr. Sevintuna was an employee/consultant of Tier during the relevant time period sought by the questions.

We are aware that DOE's current contract awarding process includes extensive pre-award investigations in making a determination on a vendor's responsibility. However, we believe that a new control should be implemented. Before a contract is sent to the Chancellor's Office for final approval, the Chancellor's Committee on Contracts should review the terms of the actual contract to be awarded and attest that there have not been any material changes to the terms initially submitted for their approval. Otherwise the Committee on Contracts' initial approval to award a non-competitively bid contract is meaningless because the contract subsequently awarded could contain different terms than approved by the Committee and may no longer merit an exemption to competitive bidding.

#### Procedures Conducted

We reviewed DOE's Standard Operating Procedures for awarding a non-competitively bid contract in effect when this award was made. In addition, we reviewed the request to the Chancellor's Committee on Contracts seeking approval for a sole source contract with FTA and for the payment of up to \$780,000 for the release of Tier employees from their non-compete agreements so they could be hired by FTA. We reviewed the CoC's response and the resulting amendment to the Memorandum of Understanding with Tier Technologies and the contract issued to FTA.

We obtained copies of FTA's filing with the Florida Secretary of State as well as the filings with the New York State Office of General Services to become a back-drop vendor and the VENDEX questionnaire FTA completed in 2006. We analyzed the timesheets submitted by Tier Technologies for the last six months of its contract and the timesheets submitted by FTA for the first six months of its contract.

The matters covered in this letter were discussed with DOE officials.

Sincerely yours,



Tina Kim

- c: Brian Fleischer, Auditor General
- Jay G. Miller, ESQ. Chief Administrator
- Samilda Perez, Audit Liaison
- Elizabeth Weinstein, Director, Mayor's Office of Operations
- George Davis, III, Mayor's Office of Operations