



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 30, 2012

Ms. RoAnn M. Destito
Commissioner
Office of General Services
Corning Tower – 40th Floor
Empire State Plaza
Albany, NY 12242

Re: Report 2011-0005

Dear Commissioner Destito:

Our Office examined¹ select payments the Office of General Services (OGS) made to Schindler Elevator Corporation (Schindler) during the period September 1, 2010 through February 28, 2011 for equipment maintenance services under contract CMU60AG. The objectives of our examination were to determine whether: (i) Schindler provided all the services required under the contract, (ii) payments to Schindler were appropriate according to contract terms, and (iii) Schindler paid its employees the appropriate prevailing wage rate under the contract.

A. Results of Examination

We found Schindler did not repair 32 maintenance deficiencies cited by a third-party inspector within 30 working days, as required by the contract. In fact, these deficiencies were not repaired for at least five months. We also found OGS paid Schindler \$6,797 for 24 instances of preventive maintenance services Schindler may not have performed.

We found the OGS Facility Manager, who is responsible for ensuring Schindler complies with the terms and conditions of the contract and for approving Schindler invoices for payment, does not have the knowledge, skills or ability to carry out those responsibilities. As a result, OGS: (i) did not receive all of the repairs required by the contract, (ii) does not know if the replacement parts Schindler installed when performing maintenance services met contract specifications, and (iii) may have paid for services not performed. Additionally, riders may be put at risk if

¹We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

maintenance is not completed, as specified, and the elevators and escalators may have a higher likelihood of future repairs.

During our examination, we also noted OGS did not assess Schindler \$201,900 in liquidated damages for failing to repair equipment deficiencies within 30 days, and did not ensure Schindler maintained the level of General Liability Insurance coverage required by the contract. Without appropriate insurance coverage, Schindler exposed New York State to potential liabilities the contract was intended to prevent.

Finally, we found Schindler underpaid its employees \$623 by not paying its employees the correct prevailing wage rate for overtime and holiday hours worked.

We shared a draft report with OGS officials and considered their comments (see Appendix A) in preparing this final report. The comments of the Comptroller to OGS's response are attached as Appendix B. OGS officials stated they recently contracted for a maintenance audit by an independent inspection contractor, who found the elevators to be in good condition. OGS is also taking necessary measures to improve its process to assure Schindler's complete contract compliance.

In addition to the findings contained in this report, we identified several matters which we consider to be of lesser significance. We conveyed these matters to OGS in a separate letter and did not include them in this final report.

B. Background and Methodology

OGS entered into contract CMU60AG with Schindler to provide personnel, materials, tools and equipment for maintaining elevator equipment (e.g., elevators, escalators and dumbwaiters) located in State-operated buildings in the Albany area, including equipment located in the Corning Tower, Convention Center, Executive Mansion and the Health Laboratories. The contract is valued at \$2.5 million, and covers a five-year period ending March 31, 2014. During our examination period, OGS paid Schindler approximately \$194,000 to perform contract services.

To achieve our objectives, we reviewed selected vouchers, Schindler invoices and supporting documentation. We also interviewed various OGS staff.

C. Details of Findings**Failure to Perform Repairs**

Contract CMU60AG requires Schindler to repair maintenance deficiencies noted by OGS's third-party equipment inspector, CNY Elevator Inspection, Inc. (CNY), within 30 working days from the inspection date. To ensure these repairs are made in a timely manner, OGS provides the CNY inspection reports to Schindler for appropriate action.

We found Schindler did not repair 32 maintenance and other elevator deficiencies noted in the Fall 2010 CNY inspection reports. These 32 deficiencies were still not repaired five months later, well after the 30 working days required by the contract. Timely repairs are essential to ensure the safety of the people who ride the elevators/escalators and to keep the equipment in optimal working condition.

In response to our draft report, OGS determined that its internal process for tracking the remediation of deficiencies by Schindler was not properly performed. OGS is working to ensure that all outstanding deficiencies are fixed. Ten of the deficiencies have been resolved and OGS is working with Schindler to address the remaining deficiencies.

Failure to Perform Preventive Maintenance Services

The contract requires Schindler to generate a Monthly Preventive Maintenance Report (Monthly Report) that lists: (i) each preventive maintenance service completed, (ii) the technician who completed the service, (iii) the equipment receiving the service and (iv) the location of the equipment. Schindler submits the Monthly Report to OGS to support the charges on its monthly invoice.

OGS procedures require Schindler technicians to sign logbooks when entering State-operated buildings to conduct preventive maintenance services as evidence they were on-site providing those services. During our examination period, Schindler technicians should have signed the logbooks on 200 occasions to indicate they were on-site. However, our comparison of the Monthly Reports to the logbooks found that Schindler billed OGS on 24 occasions where there is no technician entry in the logbooks. As a result, OGS may have paid Schindler \$6,797 for preventive maintenance services not performed.

In response to our draft report, OGS stated it has stressed the importance of signing the log book to Schindler and is getting better compliance from the technicians. OGS also stated Schindler may very be able to provide other evidence to support its performance of the required preventive maintenance work. If such evidence exists, OGS needs to obtain that evidence and ensure that, like the logbooks, it provides independent verification that Schindler technicians were onsite on the 24 occasions where there is no technician entry in the logbooks.

OGS Staff Lacks Knowledge, Skills and Abilities Needed to Oversee the Contract

The OGS Facility Manager is responsible for monitoring and evaluating Schindler's compliance and performance under contract CMU60AG. The Facility Manager is also responsible for approving Schindler's monthly invoices for payment.

In order to meet these responsibilities, the Facility Manager should ensure, pursuant to the contract, that: (i) Schindler's preventive maintenance schedule complies with the American Society of Mechanical Engineers (ASME) Guidelines, (ii) replacement parts installed by Schindler technicians are either new manufacturer parts, or are of equal or better quality, (iii) Schindler repairs all deficiencies noted by the third-party inspector within 30 working days from the inspection date, (iv) Schindler provides all preventive maintenance services required under the contract, and (v) Schindler's monthly invoices are appropriate for payment.

During the scope of our examination, we found the Facility Manager is unfamiliar with ASME Guidelines and could not provide assurance that Schindler's preventive maintenance schedule included all necessary tasks to meet these Guidelines. We also found the Facility Manager does not know, and there is no documentation on file to demonstrate, if the quality of the replacement parts Schindler technicians install meet or exceed manufacturer specifications.

In addition, we found the Facility Manager did not ensure Schindler repaired deficiencies noted by OGS's third-party equipment inspector within 30 working days and approved Schindler invoices, totaling \$6,797, for services that may not have been performed.

Based on our findings, we conclude the Facility Manager does not have the knowledge, skills or ability to monitor and evaluate Schindler's compliance with the terms and conditions of the contract, or to determine if Schindler's monthly invoices are appropriate for payment. As such, the elevators and escalators may pose a safety hazard to the riders, all of the equipment may have a higher likelihood of future repairs, and OGS may have paid Schindler for preventive maintenance not provided.

OGS agreed that its building managers are not familiar with the ASME 17 Guidelines and do not have the ability to approve the maintenance plan as being code compliant. To address this issue, OGS has used its third-party inspector to review the plan to ensure it satisfies the ASME code. OGS also assigned new staff to Plaza Operations to ensure it has the right people to handle this task.

Failure to Assess Liquidated Damages

As stated previously, we identified 32 maintenance and other deficiencies cited in CNY's Fall 2010 Report that were not repaired by Schindler in a timely manner as required by contract CMU60AG. As a result, the contract allows OGS to assess Schindler liquidated damages, which totaled \$201,900 for our examination period. However, we found OGS did not assess Schindler liquidated damages for not repairing the 32 deficiencies.

In the future, OGS officials anticipate developing a process to address deficiencies cited by CNY in a timely manner. Once implemented, this should eliminate the need for OGS to assess Schindler liquidated damages. Until then, OGS should assess Schindler for liquidated damages when deficiencies are not repaired in a timely manner.

OGS's Office of Legal Services is analyzing the contractual provisions and all relevant facts concerning Schindler's non-performance of tasks under the contract. Legal Services will determine the most defensible and equitable manner in which to proceed with imposing liquidated damages.

Commercial General Liability Insurance

The contract requires Schindler to maintain Commercial General Liability Insurance coverage with a \$5 million limit per occurrence. While Schindler had aggregate coverage of \$5 million, we found each occurrence was limited to a \$2 million payout. As a result, Schindler did not maintain the appropriate level of Commercial General Liability Insurance coverage required by the contract. This could result in OGS paying claims in excess of \$2 million per occurrence.

OGS has taken action to obtain proof of adequate insurance coverage from Schindler. Until such proof is received, OGS informed Schindler that future payments for equipment maintenance services will not be processed.

Prevailing Wage Rate

The contract requires Schindler to pay its employees the hourly prevailing wage rate established by the New York State Department of Labor. This includes a base rate for regular work hours and a higher rate for overtime and holiday hours worked equal to twice the base rate. Although Schindler paid its employees the correct prevailing wage rate for regular hours worked, it underpaid its employees \$623 for overtime and holiday hours worked over a two-month period.

OGS will refer this issue to the Department of Labor for appropriate action.

Recommendations

- 1) *Ensure Schindler has corrected all past deficiencies cited by the third-party inspector. Implement a process to ensure Schindler remedies all future deficiencies cited by the third-party inspector in accordance with the terms of the contract.*
- 2) *Determine if Schindler performed preventive maintenance on the 24 occasions where there is no evidence a technician was on-site. Recover any payments for services not performed.*
- 3) *Ensure the person responsible for monitoring Schindler's compliance and performance under contract CMU60AG and for approving payments to Schindler has the knowledge, skills and ability to perform those duties.*
- 4) *Ensure preventive maintenance services provided by Schindler meet ASME guidelines and all replacement parts provided by Schindler meet or exceed equipment manufacturer specifications, as required by the contract.*
- 5) *Assess Schindler \$201,900 in liquidated damages for deficiencies cited by the third-party inspector that were not corrected in a timely manner.*
- 6) *Ensure Schindler maintains adequate Commercial General Liability Insurance.*

We would appreciate your response to this report by August 30, 2012, indicating any actions planned to address the recommendations in this report. We thank the management and staff of the Office of General Services for the courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enclosures: Appendix A
Appendix B

cc: R. Curtin



ANDREW M. CUOMO
GOVERNOR

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

ROANN M. DESTITO
COMMISSIONER

May 10, 2012

Mr. Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. McHugh,

This letter is in response to your letter of March 14, 2012 in which you provided the results of the audit of our elevator maintenance service contract for the Empire State Plaza (CMU60AG). Given all of the maintenance issues you raised in the audit, we would first of all like to assure you that the subject elevators are in safe working order. OGS recently contracted for a maintenance audit by an independent inspection contractor, and the elevators were found to be in good condition, demonstrating that maintenance has in fact been performed.

While the OSC audit identified deficiencies in the oversight of this contract, please be advised that OGS is taking necessary measures to improve our process to assure complete contract compliance, including the maintenance of documentation confirming that our elevator maintenance contractor is providing all contractually required services. For example, we have brought in new senior management for ESP operations to effectuate the needed changes in the administration of this contract. Further, we have re-assigned existing staff and also added more staff to ensure that this very salient function is carried out by an adequate number of qualified personnel. The remainder of this response will address the specific issues identified and our actions to resolve them.

The OSC audit found that the contractor, Schindler Elevator Corporation (Schindler), had not been addressing all deficiencies noted in the biennial inspections performed by our independent inspection contractor. As a result of the audit observations, OGS determined that an internal process of tracking the remediation of deficiencies by the maintenance contractor was not being properly performed. OGS is working to ensure that all outstanding deficiencies are fixed and will implement a formal process to track the completion of items with our maintenance provider. To date, based on the latest independent inspections, 8 of the 32 deficiencies have been resolved. Additionally, 5 are only tested once a year so there is not yet an independent report of that work. The priority of the efforts has been focused on items that relate to safely operating the elevators. We would like to point out that these figures do not

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present a complete picture of the situation, as many of the items listed on the biennial inspections are not related to adequate maintenance or safety of the elevators. Rather, they are items like light covers or providing floor numbers on the hoistway side of each door. OGS fully expects that Schindler will resolve the smaller items now that the larger, more time intensive items have been addressed.

The OSC audit also questions whether all of the required preventive maintenance is being completed because the contractor's employees were not signing in the logs books as required under this contract. OGS has been stressing the importance of the log book to our ability to administer this contract, and is getting better compliance from the contractor with this requirement. The purpose for the sign in log is to support electronically created maintenance reports and to independently verify that the contractor's employee was onsite the day he says he was doing the work. While OGS agrees that it's important to have this record, we have concerns whether the lack of log entries alone is sufficient to impose damages on the contractor. The Contractor may very well be able to provide other evidence to support its performance of the required preventive maintenance work. As stated above, the maintenance audit recently performed by an independent inspection contractor determined that maintenance has been performed, although, it also found that the maintenance plan is too general and the documentation of work performed should be more detailed.

Additionally, the OSC audit found that our facility manager did not have the knowledge, skills or abilities to oversee the contract. OGS believes there are actually two components to this issue. We agree that our building managers are not versed in ASME 17 and do not have the ability to approve the maintenance plan as being code compliant. Unfortunately, the realities of current budget restraints do not afford us the luxury of maintaining in-house technically proficient repairs staff. To address this issue, we have utilized our inspection contractor to review the plan and work with us to ensure that the plan that is finally approved satisfies the ASME code. Once an approved maintenance plan and related reporting process is in place, it is an administrative function to ensure that duties are performed. As stated above, we have already assigned new staff, including a Director and Deputy Director of Plaza Operations, to ensure we have the right people to handle this important task. This review will continue to be supplemented with biennial inspections. To address the audit's concerns that these are snap shots, OGS will also utilize random maintenance audits to verify that the maintenance is being done and proper records are being maintained to evidence the work performed.

Based upon a strict application of the liquidated damages provisions of the contract, the audit recommends that OGS assess \$201,000 in liquidated damages against the contractor. Attorneys from OGS' Office of Legal Services will be fully analyzing the contractual provisions and all relevant facts concerning the non-performance of tasks, and will make a determination as to the most defensible and equitable manner in which to proceed with imposing liquidated damages. Given the realities of the marketplace, in which the number of qualified bidders for elevator maintenance contracts is limited to three or four in number, we feel a heavy-handed inequitable assessment of liquidated damages would be counter-productive in the long run. An example of the limited marketplace is found in our most recent bid for a combined elevator rehabilitation and term maintenance contract for the Senator Hughes State Office Building in Syracuse, in which we received only two bids for the work.

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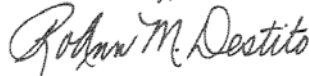
The audit further questioned whether OGS can ensure that the replacement parts installed by Schindler meet the specifications in the contract. OGS intends to make arrangements for getting reports about the installed parts and will work with our inspection firms to address this question as part of the random maintenance audits.

The audit also found that the liability insurance coverage evidenced by the insurance certificate submitted by Schindler for liability arising out of their work on this contract did not meet the minimum contractually mandated coverage amounts. OGS has actively been pursuing proof of adequate insurance coverage, and has now taken the step of notifying the contractor that payments will not be processed until proof of adequate insurance coverage has been provided. Should this situation continue to go unaddressed appropriate action will be taken.

Lastly, the audit noted that there were instances where Schindler did not pay its employees prevailing wage for overtime and Holiday time worked. In accordance with our usual practice, OGS will refer this matter to the Department of Labor for appropriate action.

OGS would like to thank the auditors for their work on these issues. Clearly, the audit identified some areas where our internal processes did not work the way they were intended, as well as other areas where our process needs updating to accomplish our objective of ensuring that our buildings are safe, and our assets are protected from deterioration through comprehensive maintenance and repairs. OGS is confident that the changes underway as a result of this audit will correct the identified issues. We fully appreciate the value of audits because they provide an objective assessment and fresh look at processes that can lead to such improvements. If you have any questions related to this audit please contact Robert Curtin, our Director of Internal Audit, at Robert.Curtin@ogs.ny.gov or (518)474-5090.

Sincerely,



RoAnn M. Destito

Comment

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State Comptroller Comments On Auditee Response

1. The response to the draft report states that OGS will refer the prevailing wage issue to the Department of Labor, which is its normal business practice. As a result, we removed recommendation number 7 from the final report.