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**INDEPENDENT STATE AUDITOR'S REPORT
ON A FRUIT AND VEGETABLE CONTRACT
ISSUED BY THE
UNIVERSITY OF MASSACHUSETTS**

**OFFICIAL AUDIT
REPORT
JUNE 19, 2002**

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In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, we conducted an audit of the University of Massachusetts–Amherst (UMA) Auxiliary Dining Services prime vendor contract. The vendor contracted to supply the Amherst campus with fruit and vegetable products, including processed items and pre-made salads. The contract is for a one-year period commencing September 1, 1999 with an option to extend for three additional one-year periods. The UMA requested bids for this prime vendor contract for the procurement of these products in August 1999 in response to programmatic decisions and its desire to consolidate, upgrade, and improve upon fruit and produce choices being made available for students in its dining services on the Amherst campus. A vendor from Charlestown, Massachusetts was awarded the contract in September 1999.

The Office of the State Auditor (OSA) initiated an audit of UMA’s prime vendor contract for fruit and vegetables at the request of members of the Massachusetts Legislature, to examine alleged questionable procurement practices and determine whether the contractor was being paid in compliance with the contract requirements.

Our audit examined UMA’s procedures and practices employed in developing, awarding, procuring, and operating the prime vendor contract for fruit and vegetables. Our objectives were to determine whether UMA (1) established an adequate system of management controls over procurement in developing and awarding the prime vendor contract; (2) complied with all applicable laws, rules, and regulations for the procurement of the contract; (3) employed sound business practices in managing and monitoring its prime vendor contract to ensure that its goals and objectives in this procurement process were met in the most economical and efficient manner and assets were properly safeguarded; and (4) had adequate internal controls to monitor the vendor’s compliance with the terms and conditions of the contract.

We found that UMA’s procurement process (involving funds that will exceed \$3 million by contract end) was not developed properly and not adequately followed during the bid award process, and that the contract was not adequately monitored in the actual purchasing and payment process.

AUDIT RESULTS

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The Process Used to Evaluate the Responses Was Not Adequate to Ensure That All Vendor Bids Were Impartially and Equitably Considered: Our audit disclosed that the process used to evaluate the responses of bidders for the fruit and vegetable contract was not documented in writing and that members of the evaluation team consequently did not have uniform guidelines and procedures on how evaluation criteria should be measured and scored. This resulted in a questionable assignment of points. Further, we found that certain evaluation criteria were not considered, were considered twice, or were added to the criteria list after issuance of the Request for Responses, and that the criteria listed were in some cases vague and subject to individual interpretation.

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INTRODUCTION

Background

The University of Massachusetts at Amherst (UMA) is organized pursuant to Chapter 15A of the Massachusetts General Laws, with the purpose of providing, fostering, and supporting public higher education of the highest quality throughout the Commonwealth. Chapter 75 of the General Laws authorizes and conveys to the trustees of UMA administrative power for the management, control, and administration of its affairs. Section 10 of Chapter 75 requires the trustees to maintain an accounting system as required by the Office of the State Comptroller and to establish and maintain additional accounts as they deem necessary for the management of UMA, and Section 11 authorizes trustees to establish and manage trust funds for self-amortizing projects and student-supported or self-supporting activities. In conjunction with this authorization, the trustees have established certain trust fund operations consolidated under the management of the UMA's Auxiliary Services Division. Among these trust fund operations is Auxiliary Dining Services, which is responsible for serving meals at UMA's major dining halls, snack bars, and other campus-based facilities.

On November 29, 2000, local area legislators requested the Office of the State Auditor (OSA) to review UMA's bidding and contract awarding process for a prime vendor contract to supply fruit and vegetable products, including processed items and pre-made salads, for a one-year period commencing September 1, 1999, with an option to extend for three additional one-year periods. UMA issued a Request for Responses (RFR) for this prime vendor contract for fruit, vegetables, processed items, and pre-made salads in July 1999 in response to programmatic decisions and its desire to consolidate, upgrade, and improve upon choices being made available for students in its dining services on the Amherst campus. The contract was awarded to a vendor located in Charlestown, Massachusetts.

As stated in the preface to Section I, Scope, of the RFR, each bidder was instructed to:

Submit your lowest bid prices to furnish fresh fruit, vegetables, processed items, and pre-made salads on a cost plus basis as specified in Exhibit and Schedules for the period September 1, 1999 through August 31, 2000 with the option to extend for three (3) additional one (1) year periods.

In accordance with Schedule 7 of the RFR, each bidder was required to submit a bid on 104 specific fresh fruit and vegetable products and on 27 specific frozen food products. Paragraph A of Section VI, Pricing stated:

Prices entered on the Schedule 7 quotation shall be for prices that are in effect on the date of September 1, 1999.

Provide quotation for each item according to the unit specified.

Moreover, paragraph Q of Section II, Instructions, stated:

Unless otherwise stated, bid prices will be firm for ninety (90) days from the date of bid closing.

As a result, all bidders were made aware that for the initial 90 day period they could not charge UMA more than the bid amounts for these 131 (104 +27) products.

Each bidder was also required to quote a percentage markup over “landed cost,” which would be used to establish a sales price for all products other than the 131 products for which a specific bid was requested. This markup percentage would also apply to the 131 products after the 90-day period had ended. Section I of the RFR defined cost, markup, and university cost (i.e., the sales price to UMA) as follows:

10. *“Landed Cost”, “Base Costs” or “Line Item Pricing” – the actual cost of an item delivered to Supplier’s dock. This cost is determined by the actual invoice cost per item plus freight costs if not included in the invoice price less any applicable nonprofit manufacturer’s allowances.*
11. *“Markup” is the Supplier’s quotation of a fixed percentage which represents the Supplier’s operating margin and remains constant during the term of the contract.*
12. *“University Cost” is the Supplier’s landed cost plus the markup and shall include delivery to the specific University locations.*

Paragraph A of Section III, which cited various conditions and terms of the contract, stated:

All “Off-Bid” items purchased must be at a set percentage over landed cost.

Paragraph B of Section VI, Pricing, stated:

Fixed Percentage Markup Schedule – Provide your Fixed Percentage Markup on Schedule 2. The prices used for the purpose of this bid must come from documented suppliers cost plus markup. Please supply the formula used for achieving the prices offered.

The conditions of the contract procurement prompted a legislative inquiry and review of UMA's procurement, development, awarding, and monitoring of this contract. Specific questions were raised regarding prices, brands, quality, or proper amounts of produce delivered that the UMA's RFR was not adequately drafted and that the contract was not being properly monitored by UMA officials. The OSA initiated an audit to review these concerns, examine alleged questionable procurement practices, and determine whether appropriate payments were being made under this contract.

During our audit, and at the conclusion of our on-site audit work, we met with UMA officials to discuss in detail the results of our review, including the Vice Chancellor for Administration and Finance, the Director of Procurement, and the Principal Auditor/Manager of the Internal Audit Staff. Our discussions included reviews of examples of the evidentiary documentation developed during our audit. We provided draft copies of the audit report to these officials for their use and discussed the terms of the contract. Both the Vice Chancellor and the Director of Procurement concurred with our understanding of the contract. Specifically, the bidder awarded the contract was expected to hold the bid prices on the 131 products for 90 days from the date of the bid closing and adhere to the agreed markup percentage for all other items during this 90-day period and for all products sold to UMA thereafter. These officers expressed their concerns over the matters discussed and disclosed in our report and indicated that they would bring their concerns to the attention of the higher executive levels of the university and take appropriate corrective action in the interests of UMA and its students.

We subsequently met with the legislators who had requested that we review this issue, discussed the audit, and reviewed with them examples of the evidentiary documentation. The legislators advised us of their intent to contact UMA officials to inform them of their concern and support for corrective action by UMA.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12, of the General Laws and Chapter 647 of the Acts of 1989, an act relative to improving internal controls at state agencies, we have conducted an audit of the UMA's

Auxiliary Dining Services prime vendor contract for the procurement of fruit and vegetables. In addition, we examined various components and related transactions regarding this procurement process, including the award and payments under this contract to the vendor awarded the contract. Our audit was conducted in accordance with applicable generally accepted government auditing standards.

Our objectives were to determine whether (1) UMA established an adequate system of management controls over procurement in developing and awarding the prime vendor contract; (2) UMA complied with all applicable laws, rules, and regulations for the procurement of the contract; (3) UMA employed sound business practices in managing and monitoring its prime vendor contract to ensure that its goals and objectives in this procurement process were met in the most economical and efficient manner and that assets were properly safeguarded; (4) UMA had adequate internal controls to monitor the vendor's compliance with the terms and conditions of the contract, (5) prices charged were consistent with the terms of the contract; (6) the vendor was supplying the brands, quality, and proper amounts of produce that bid awards were contingent upon; and (7) UMA's RFR was properly drafted.

In order to meet our overall audit objectives, we:

- Reviewed and analyzed documentation related to the UMA's award of a procurement contract for fruit and vegetables to a prime vendor.
- Reviewed designated transactions identified through UMA's internal reports relative to procurement practices and procedures and subsequent payments under this contract.
- Reviewed UMA's internal controls established over fiscal, managerial, and programmatic aspects for the operations of the procuring prime vendor contract.
- Reviewed existing UMA internal reports to follow up on audit results by UMA internal audit staff in this area.
- Examined fiscal records maintained by the vendor to support pricing determination and charges to UMA under this contract.
- Interviewed UMA employees and officials of the vendor as deemed necessary.
- Reviewed applicable laws and university policies, procedures, and guidelines.

To meet our objectives, we assessed the conditions relative to the procurement of goods under these circumstances and assessed the internal controls established by UMA covering procurement procedures and payment transactions to determine the internal control environment and flow of transactions through

the Amherst campus, specifically the Auxiliary Dining Services. We used this assessment in developing our audit plan and performing the audit tests necessary under the circumstances of our review.

AUDIT RESULTS

The Process Used to Evaluate Responses Was Not Adequate to Ensure That All Vendor Bids Were Impartially and Equitably Considered

University of Massachusetts - Amherst's (UMA) Auxiliary Dining Services did not document in writing the process used to evaluate bids for a prime vendor contract to supply fruits and vegetables. As a result, members of the evaluation team did not have uniform guidelines and procedures on how evaluation and award determination criteria should be measured and scored, resulting in a questionable assignment of points. Further, we found that certain evaluation criteria were not considered, were considered twice, or were added to the criteria list after issuance of the Request for Responses (RFR), and that the criteria listed were in some cases vague and subject to individual interpretation.

The RFR listed 13 evaluation criteria to be used in evaluating the vendor responses and awarding the fruit and vegetable contract. The evaluation criteria were assigned scores ranging from 5 points to 20 points, with criteria numbers 5, 6, and 7 receiving a combined score of 10 points. The total of points assigned to all 13 criteria was 100, and the prospective bidders were not informed of the points assigned to each criterion at the time the RFR was issued. (The Exhibit on page 21 lists the 13 criteria and the points assigned to each for the evaluation.)

Seven vendors responded to the RFR, and an evaluation team composed of nine UMA employees was selected to review and evaluate them. The team was not issued any written instructions to guide them in reviewing the responses to the 13 criteria or, if a criteria was only partially satisfied, the method by which points should be assigned. Further, they were given no written instructions on how responses were to be analyzed, verified, and documented, or how the evaluations of the nine members were to be compiled.

Five members of the evaluation team were assigned to review and report on the responses of one vendor each. The other four members formed two-person teams, each of which was assigned one of the other two vendors.

One of the team members was assigned the responsibility of preparing a document to collect and tally the points awarded each bidder for each criteria evaluated. This two-page document, entitled "Analysis of

Bids,” listed all seven bidders, the individual evaluation criteria, the maximum points to be awarded for each criteria, and the criterion number. The completed evaluation sheets provided to us listed the bidders’ responses to each criterion and the points assigned thereto, as determined by the evaluation team. Our review of the “Analysis of Bids” document disclosed the following:

- Criterion No. 8: List of Guaranteed Firm Pricing (5 points) was not listed on the Analysis of Bid document, and bidder responses to this item were therefore not considered by the evaluation team.
- Criterion No. 12: Restrictions – (5 points) was listed twice on the document and thus each bidder could have received up to 10 points rather than the 5 points assigned to this criteria. The second time criterion #12 was listed it was incorrectly listed in the Inducements column (criteria 5, 6, and 7).
- A criterion identified as “Lowest Pricing” was listed and assigned 5 points. This was not one of the original 13 criteria which the prospective bidders were advised of.
- As a result of the above three items, the maximum score which could be achieved was 105 points, rather than the 100 points that were initially decided upon.

In reviewing the individual vendor responses to the RFR, we found that the five team members who were assigned to individually review the submission of a specific vendor were the only members who reviewed each particular response. Their reviews were verbally reported to other team members, and, based on their verbal presentation, points were awarded to the vendor. The extent to which reviewers prepared notes of their review is unknown because it was not documented. Also, none of the other members were charged with ensuring that the reviewing team member’s conclusions were reasonable. Although the extent to which both members of the two-person teams participated in the evaluation of the vendors assigned to them is unknown, there is at least some assurance that the process provided for a cross-check of the information verbally conveyed to the other seven team members.

Each of the bidders was requested to provide three or more references and information on any produce and fruit contracts that had been cancelled by their former customers. Each evaluator was also given a list of 26 questions to ask during a telephone call to the references cited by each bidder.

Our review of the bid responses disclosed that there was a lack of verification and review of information reported by bidders, a lack of proper evaluation documentation, and an inadequate

compilation of scores by the evaluation team. As a result, the point scores awarded to certain vendors for certain criteria is questionable. Our review disclosed the following:

a. Criterion No. 1: Fixed Markup Rates of the Net Cost (20 points)

This criterion refers to the percentage of markup above landed cost which the bidder agreed to charge UMA for each product sold. The markup includes all administrative costs, freight costs from the vendor's facility to UMA, and the vendor's profit.

We noted there was a wide difference between the high bid of a 29.5% markup (the next highest proposal was 22%), and the low bid of 8%. Auxiliary Services officials indicated they did not attempt to verify and determine why there was such a large difference between the high and low markup percentages. Significant differences such as these should have raised a question as to the basis of the percentages quoted.

We also noted that Question No. 3 of the telephone questionnaire asked the references if the vendor was being paid "on a bid or a price plus cost" (i.e., cost plus a markup). It would have seemed prudent that the question had been phrased to ask what the bid percentage was and thus verify if the markup was the same rate being charged other customers of each vendor.

b. Criterion No. 2, Product Quality and Consistency (20 points)

This criterion was evaluated by telephone responses from references to Questions No. 4-23 on the questionnaire. We found that the responses to this criteria were not thoroughly reviewed and were not scored consistently by the evaluation team. Examples of problems noted were:

- One bidder received a score of 16 points; however, there was no evidence that any telephone calls had been made to the bidder's references.
- One bidder received a score of 12 points; however, the questionnaire for both of its references did not reflect any responses to Questions No. 4-23, and therefore there was no basis for determining and documenting how this score was determined.
- The bidder who was awarded the contract received 17 points. We noted, however, that one of the two references rated "quality and consistency of whole produce" as a 3 (out of 5 points) while the second reference rated them as a 4. We noted a second bidder received only 13 points on this

criteria, although they had received an average point score of 4+ for quality and consistency of whole produce.

c. Criterion No. 3: Service Capabilities (10 points)

This criterion was not adequately defined, and therefore what was being measured was not clear. The criteria listing referred to “Schedule 6”, which was the document that bid respondents were required to use to list the names, addresses, and contact persons of their references. Certain responses reflected on the Analysis of Bid scoring sheet referred to Questions No. 1-3 on the telephone questionnaire; therefore, this was the basis used to measure this criteria. Questions No. 1-3 involved three different types of actions that may have been taken by the references to evaluate the vendor (e.g., had they ever inspected the vendor’s facilities and what did they find, for how long had they purchased from the vendor, was the contract with the vendor on a bid quote or a percentage markup basis). Certain of the other responses on the Analysis of Bid sheets also referred to Questions No. 4, 11, 12, 18, 19, and 23 of the questionnaire, however, these questions were covered by criterion No. 2, thus indicating the evaluation team members’ uncertainty as to the meaning of this criterion. Five of the respondents received a point score of 10, one a 9, and one a 7. Again, we noted a lack of a comprehensive review and an inconsistency in assignment of points. Examples of other problems noted during our review were as follows:

- Two references for one bidder who received the full 10 points responded that the bidder’s facility is clean; however, one reference cited poor delivery and periodic shortages of produce.
- Two references for one bidder did not respond to Questions No. 1-3, but the bidder was awarded a point score of 9.
- Although one reference stated that the bidder’s facility was clean and a second reference said it was only “OK,” the bidder was awarded the full point score of 10.
- No telephone calls were made to the references of one bidder; however, the bidder was awarded the full point score of 10 points.

d. Criterion No. 4: Produce Facilities and Equipment Inspection and Certification (10 points)

This criterion required that each vendor “must be inspected and certified by the American Sanitation Institute (ASI), Hazard Analysis and Critical Control Point (HACCP), and the American Institute of Baking (AIB) and receive a superior rating.” One of the bidders did not respond and received zero points for this criteria. All of the other six responded to a degree and received between 3 to 10 points; however, none of them offered any evidence that both the ASI and AIB had inspected their facilities and equipment.

We were later provided with information that which demonstrated how this contract language may have been subject to misinterpretation. Specifically, we found that produce companies generally have either ASI or AIB inspection certification. In addition, the Hazard Analysis and Critical Control Point (HACCP) refers to a U.S. Food and Drug Administration promulgated system that identifies and monitors specific food-borne hazards that can adversely affect the safety of food product. While a review of this system by a food inspection entity such as ASI or AIB will involve a validation and accreditation of the system, this review will be performed as a multipart inspection process rather than a stand-alone certification. Our review disclosed the following issues:

- One bidder received the full 10 points and submitted two certificates, which covered AIB inspections of their main facility and a secondary processing facility. Both documents reflected a superior rating and were both dated November 13, 1998. However, we noted that although dated on the same day, the two certificates reflected different names for the AIB’s Chairman of the Board. One certificate was signed by the Vice President, Audit Services, while the second was signed by the Director, Audit Services. Two different names and signatures were also reflected for these audit officers. In addition, we noted that the fonts of the letters and characters on both documents were different. The file contained no indication that this issue was questioned by the evaluation team. However, we were later provided a copy of a letter from the AIB to this bidder. This letter, dated September 25, 2001, confirmed that both of the bidder’s facilities did in fact receive a Superior rating following its November 13, 1998 inspection. Although we do not question the cleanliness of the vendor’s facilities, the inconsistencies surrounding the two certificates should have prompted UMA officials to raise questions.
- One bidder who received a score of 10 full points stated that it had received an HACCP certification, however the evidence provided was a certification as a fish processor and not as a produce and fruit vendor.
- A bidder who received a score of 9 points stated that it had received a superior rating in a recent inspection, but provided no evidence for this claim.

e. Criterion No. 9: Completeness of Product Line (5 points)

This criterion required that all products be bid on and that, if no bid were received, no score would be awarded on this criteria. The products as listed on Schedule No. 7 of the RFR included: fresh vegetables, fresh fruits, frozen vegetables, and frozen fruits. Our review disclosed the following:

- One bidder did not bid on frozen foods and therefore received zero points for this criteria. Two other bidders also did not bid on frozen foods; however, one was awarded a score of 5 and the second a score of 4 for this criterion.
- We understand that UMA did not order frozen foods from the vendor who was awarded the contract. In fact, UMA had an active frozen foods contract with another vendor at the time the RFB was issued.

f. Criteria No. 13: Experience in the Higher Education Accounts (5 points)

This criterion refers to the vendor's experience in selling to other colleges/schools. Our audit disclosed the following issues:

- Two bidders did not list any college/schools as references, and yet one was awarded the full 5 points while the other was awarded zero points.
- Two bidders listed three colleges/schools and were awarded the full 5 points.
- The other three bidders listed only two colleges/schools and were also awarded the full 5 points.

The preceding sections clearly demonstrate that the procurement process lacked uniformity and left the scoring to the subjectivity of the reviewers.

While no specific problems were found with the evaluation and scoring of Criteria No. 5, 6, 7, 10, and 11, two other situations of a general nature were noted, both of which raise a question as to the establishment of the evaluation criteria. Under Criterion No. 5, Market and Support Program, the bidders were asked to comment on their ability and willingness to supply UMA certain management reports, including a monthly usage report that UMA would use to control inventory and order produce fruit and other items based on the needs of individual dining rooms. Submission of this report was also specifically required by Section III A, Paragraph 11, of the contract. In its September 2000 review, the UMA Internal Audit staff noted that this report was not being submitted, and in November 2000 UMA began to receive it. However, our review of this report revealed that it was merely a listing of products sent to UMA by

date. UMA officials indicated that this report was not used and that the only reason they asked to receive it was because of the Internal Audit staff's recommendation. These officials stated that UMA prepares its own usage report; however, they could not explain why the usage report was included as one of the items to be scored on in the RFR.

In addition, we noted that the Analysis Bid sheet and Schedule 6a required that the bidders identify any entities that had cancelled contracts with them. We found that three bidders, including the vendor, had each reported that two companies had cancelled contracts with them. However, we found no evidence that the evaluators had made any attempt to contact these companies to determine whether the reasons for the cancellations cited by the bidders were accurate. This is important information to take into consideration when evaluating these vendors, especially if the contract was cancelled for nonperformance or for some other reason that could affect the vendor's performance under the contract.

In our review of the 26-question document used to record responses from references cited by the bidders, we were provided with two documents that ostensibly recorded responses from references identified by the vendor. One of these documents included a telephoned response by one of the companies that the vendor had identified on Schedule 6a as a company that had cancelled its contract with them. Our review of this document disclosed that all of the answers to the questions were responded to as if the contract was ongoing and all terms and conditions were being performed by the vendor in a satisfactory manner. In a concluding statement on the questionnaire, the evaluation team member had written that this company also recommended another fruit and produce vendor who had also bid on the contract. In fact, this particular vendor had cited this company as one of its references, but received no credit for this positive evaluation.

The validity of the handwritten response questionnaire as well as its use as a reference document to award points is questionable. This issue further illustrates the lack of verification and review of the evaluation process, and the lack of assurance that all responses were uniformly and equitably considered.

The RFR includes a four-page description of the dining services program and states that UMA is “required to follow State purchasing rules and guidelines” in its procurement of food services. These rules are included in the Procurement Policies and Procedures Handbook issued by the Operational Services Division of the Executive Office for Administration and Finance. Chapter 3, Step 7, of this handbook, which relates to the evaluation of bid process, states, in part:

Step 7 – Evaluation Responses

The evaluation process used by departments is a critical aspect of the RFR process. Departments have great flexibility to develop evaluation procedures that are most appropriate to the RFR being issued.

Internal evaluation procedures should include:

- *The process to be used in scoring and evaluation responses.*
- *Definition of the composition, roles and responsibilities of the individual(s) participating in the evaluation process.*
- *The process for training the individual(s) participating in the evaluation process.*
- *Requirements for documentation of the evaluation process including scoring sheets, list of reviewers, written comments, written reports or recommendations summarizing the evaluation process, rankings of responses and selection recommendations.*

Based on the above criteria, UMA’s contract evaluation and award process was not appropriately planned, and the recommendations and actions of the evaluators were not properly monitored. As a result of the lack of controls and management overview, the equity of the evaluation and award process is questionable.

As part of its RFR, UMA required each bidder to submit a per-unit bid price on 104 fresh produce and fruit items and on 27 frozen vegetable and fruit items. The contract stipulated that the bidder awarded the contract would be required to honor these unit prices for a 90-day period beginning September 1, 1999. The bid document also required that these bid prices be reflected on Schedule 7 of the bid document.

At a meeting subsequent to the audit, the vendor stated that it believed that subsequent events, practices, and conditions resulted in an unwritten agreement or amended contract with a UMA Auxiliary Services Division manager because of the weekly practice of providing prices to him thus authorizing the

vendor to exceed the bid prices for the 131 items during the first 90 days of the contract. The vendor provided documentation of this claim in the form of three audit letters sent by UMA to the vendor (including during the 90-day price freeze period) requesting “weekly price” lists from the vendor. Also, the vendor provided documentation that UMA purchased fresh produce based on weekly pricing from the commencement of the contract, including during the initial 90-day period, thus establishing a course of conduct that was not proposed in the RFR. Moreover, the vendor indicated that weekly pricing had been both UMA’s past practice and a standard industry practice. Lastly, the vendor stated that other Auxiliary Services officers were aware or should have been aware of its long-standing practice of issuing to UMA weekly price lists that generally covered all of the products it sold to UMA, and that under terms of the verbal agreement, it held the prices firm for sales for the following week.

Page 1.6.1 of UMA’s General Purchasing Policies, states:

No department or individual is authorized to commit the University for materials or services except with the prior approval of the Procurement Department. Purchases, agreements to purchase, or changes to existing purchase agreements made by any department member without the prior approval of the Procurement Department will not be honored by the University and will become the financial responsibility of the individual who incurred the commitment. Please refer to the sections on Financial Commitment, Section 1.9, and Emergency Procurement – Financial Commitment, Sections 2.16 and 2.17.

While we acknowledge the subsequent practice as noted by the vendor and the course of conduct which resulted, contrary to UMA’s purchasing policy guidelines, this practice was not formalized or properly authorized (unbeknownst to the vendor and other bidders). We therefore conducted our audit as though no amendment existed in order to determine its impact on UMA, or as if the requirements of the RFR were in force. We reviewed invoices from the vendor to UMA for the period of September 13 to September 30, 1999 to determine whether the prices charged to UMA were the same as the bid price. Initially, we selected five of the largest dollar value invoices for our test to determine whether each of the 104 fresh vegetable and fruit products and each of the 27 frozen food products had been sold to UMA and whether the sales price was the same as the bid price. In a number of cases, a product was not listed on

one of the five invoices, and therefore we screened other available invoices for that time frame until we found an invoice that reflected one of the products not included on the original five invoices.

Our review disclosed the following:

- The vendor had sold UMA 45 of the 104 fresh fruit and vegetable products during the 18-day period. As a result of the oral agreement, which in effect eliminated the initial 90-day price freeze, we found the sales price exceeded the bid price on 42 of the 45 products. We further found no evidence that the vendor had sold these 42 products at the bid price within this period.
- For three products the sales price to UMA was less than the bid price, with percentage differences ranging from 10% to 22% less.
- UMA did not purchase any frozen food products quoted in the vendor's bid response document. We determined that from September 13, 1999 through our audit period, the vendor has never sold any frozen food products to UMA, which raises a question on why a bid was requested on these items if they were not to be purchased from the vendor awarded the contract.

In addition to the 104 fresh fruit and vegetable items and 27 frozen food items on which specific prices were required to be bid, the RFR also required each bidder to identify the specific markup percentage above landed cost that would be charged on all other products sold to UMA and on each non-bid product sold to UMA after the initial 90-day period. The contract stipulated that the markup percentage was to be added to landed cost (i.e., the cost incurred by the vendor to the point where the product was delivered to its facility). The markup provided for all of the vendor's administrative costs, freight costs from the vendor's facility to UMA, and the vendor's profit. In response to Criterion No. 1 of the RFR, the various bidders quoted their proposed percentage markups. The bidders' markup quotes ranged from a low of 8% to a high of 29.5%.

We also reviewed invoices submitted to the vendor by certain suppliers to determine the vendor's landed costs for certain products and after adding its contracted markup, compared the total to the sales prices charged to UMA during the periods September 13-30, 1999 and September 2000. This portion of our audit was based on documents provided to us or made accessible to us by the vendor or by UMA officials.

During an initial interview with UMA officials, we were advised that UMA's internal auditors had performed three limited reviews of certain of the vendor's records. However these reviews were restricted

to only a few transactions in accordance with the terms of the contract (no more than 25 items), and the auditors were only provided copies of invoices from their suppliers and copies of sales invoices to UMA. These reviews did not disclose any problems with respect to prices of products invoiced to UMA. Other vendor specific information that did not pertain to the UMA contract was not provided. The vendor believes that this was necessary in order to protect confidential price information. However, the contract has a lowest pricing clause. UMA cannot be charged a higher cost than that offered to any other federal, state, municipal or similar institution. Section VI E of the contract states in part as follows:

*E. **Lowest Pricing** - The prices you quote herein should be the lowest pricing/percentage over landed costs offered to any Federal, State, Municipal or similar institution account under similar circumstances. If they are not, provide a complete explanation in Schedule 2.*

Lowest pricing is modified by the term “under similar circumstances”. The RFR also required that the vendor provide “highest quality” or “restaurant grade” produce. Also, UMA declined an annual low pricing rate based on an annual high volume purchase guarantee. Therefore, “lowest pricing . . . under similar circumstances” precluded lower prices based on lower grades or higher volume guaranteed purchases. By not having the price information relating to other similar clients, UMA does not have a means to verify the lowest pricing clause of the contract.

Initially we tested shipments of fruit and vegetables to the vendor and the sale to UMA during the period September 13 to September 30, 1999. The purpose of this review was to determine the degree to which the vendor had adhered to the terms of the contract with respect to the cost of the product plus the markup. Specifically, the terms of the contract require the following:

“Landed Cost”, - the actual cost of an item delivered to Supplier’s dock. This cost is determined by the actual invoice cost per item plus freight costs if not included in the invoice price less any applicable nonprofit manufacturer’s allowances.

Our audit of the contract was not based on the weekly price list that was the practice that evolved by both UMA and the vendor but rather on the written terms of the RFR.

The vendor pointed out that, under its unwritten agreement with UMA, it had repeatedly provided UMA with a weekly price list, which set forth the product cost for that week. At that time the vendor also

submitted to us a detailed response document, which included copies of 25 invoices covering the purchase of 56 products and detailed analyses schedules covering the weeks ended September 15, September 22, and September 29, 2000, and copies of sales invoices to UMA. The vendor indicated that these invoices supported its contracted markup above landed cost based on the required “similar circumstances”, including pricing for “highest quality” produce and excluding invoices showing lower pricing for customers agreeing to guaranteed high-volume purchases.

During our initial interview with officials of UMA’s Auxiliary Services Division, we inquired how UMA monitored the quantity and quality of products received and how they monitored the prices paid to ensure that the markup on products sold to them by the vendor did not exceed the contractual markup rate. They replied that a quantity and control mechanism was in place and that the receivers at each of their truck docking facilities had been issued written instructions on the controls required to be exercised over the quantity and quality of goods received. We were provided a copy of these instructions and during a review at one of the docking facilities found them to be fully operative. This would indicate that the vendor met its obligation of providing “highest quality” produce, in accordance with the RFR. Lowest pricing “under similar circumstances” must be calculated accordingly.

Auxiliary Services Division officials indicated that no active ongoing process is utilized by UMA to ensure that the prices of food products invoiced to UMA do not exceed the appropriate markup over landed cost. They added that they normally accept the vendor’s prices as invoiced, but periodically attempt to verify the correctness of the prices invoiced to them. First, UMA reserved the right to inspect the vendor’s books on a quarterly basis, as provided by Section A, Paragraph 14 of the contract. However, each inspection was specifically restricted to no more than 25 items under the terms of the contract, and only three limited audits had been performed prior to our audit. Second, on four or five occasions a year, Auxiliary Services Division officials compared the vendor’s sales prices with a commodity survey report issued by the National Association of College and University Food Services. They provided us with a copy of a report dated May 2000 as an example of the content of this report. In

reviewing this report, we noted that, although it included some 75 products, it listed only three vegetable and one fruit product sold to UMA by the vendor. We discussed the value of this report as a monitoring tool because of the limited number of products listed on the report that UMA purchases and informed them that there are other local reports, such as the Boston Wholesale Fruit and Vegetable Report issued by the Boston Market Terminal that lists local prices for many fruit and vegetable items on a daily basis based on market information developed by the U.S. Department of Agriculture. These officials indicated that they were not aware of this report and had not attempted to determine whether similar reports were available to monitor market pricing.

Recommendation: Because of the lack of monitoring of the vendor contract, UMA has been unable to verify that charged prices complied with the agreed upon markup above actual landed costs for fruit and vegetable products or that any increased sales prices were not attributable to market fluctuations. Based on our tests, we determined that some pricing errors occurred between the contract quoted markup over the actual landed costs for these products. UMA officials should review the RFR procedures to ensure that they conform to UMA procurement policies and to ensure that UMA receives proper pricing for goods received on all contracts.

Auditee's Response: UMA officials indicated that actions have already been taken and will be taken by the UMA to address issues identified in this report concerning UMA's contract procurement for fruit and vegetables.

SUBSEQUENT EVENTS

Following the completion of our on-site audit work, we determined that an earlier prime vendor contract was still in existence at the time of the award of the September 1999 contract to the vendor. Our review of that contract disclosed many of the same problems found in our review relating to contract with the vendor.

This contract, awarded to a Wallingford Connecticut vendor, covered the period of January 1, 1996 through December 31, 1997, with three additional one-year options (through December 31, 2000). This contract covered 373 food items including canned goods, juices, cereals, refrigerated items, and frozen food products. As was the case with the September 1999 contract, the vendor was required to provide a specific sales price on each of the 373 items and to hold that price for a 90-day period after January 1, 1996. The contract allowed for a markup of 5% above landed cost for all other products sold within the first 90-day period and for all products sold after the 90-day period.

Our review disclosed that 24 of the frozen food items being sold to UMA by this vendor were also among the 27 frozen food items for which a specific bid price was required to be submitted with the bid responses for the September 1999 bid. Therefore, although a valid contract was in existence and was being utilized by UMA, all companies responding to the second prime vendor contract were asked to provide a bid price on 24 of the same items that were then being purchased from the Wallingford vendor, and our audit disclosed that the vendor had never sold any of the 27 frozen food items to UMA.

Our review of this contract and invoices submitted to UMA under it disclosed the following:

- Twenty of the 27 frozen food items identified on the vendor's bid were being sold to UMA by the Wallingford vendor during the period of September 15 through December 15, 1999. Of these, 16 products were sold at a higher price than the price reflected on the vendor's bid response.
- Our test of 27 other items included in the 373 items for which a specific bid price was cited disclosed 25 products for which the sales price during January 1996 exceeded the bid price during the 90-day period.
- We also found that the contract period had been amended and extended beyond its scheduled December 31, 2000 termination date. Documentation was provided to us on September 21, 2001

to show that the contract period change occurred in June 1997 and that the revised contract period became June 30, 2001, or six months after the initial agreed-upon period. Page 240 of the Procurement Policies and Procedures Handbook states that “the contract duration listed in the RFR is not negotiable and may not be changed.”

On August 1, 2001 (after we raised this issue with UMA) they issued a purchase order with this company for the period January 29, 2001 through January 26, 2002 that stated this was not a contract renewal, only a purchase order.

As the Wallingford vendor did not hold its prices for the first 90 days of the contract, this supports the vendor’s position that UMA officials were aware that the vendor was not adhering to the terms of the written contract but did not bring this situation to the attention of high-level UMA officials. This situation also raises a question as to whether this vendor held and is still holding to the requirement that products it sold to UMA did not exceed the agreed-upon 5% markup above its landed cost. At the conclusion of our audit, we provided the UMA with schedules and copies of invoices in support of our findings in this matter.

Recommendation: UMA’s Internal Audit division should determine:

- Why a bid was requested (in September 1999) on items then being sold to UMA by another vendor, and why the vendor charged UMA more than the vendor’s bid price in light of the fact the vendor had a higher markup than the Wallingford vendor.
- The extent to which UMA may have been overcharged during the first 90 days for the 373 items for which the specific bid price was exceeded, and take appropriate action.
- Whether the Wallingford vendor adhered to the agreed 5% markup over the 5+ years of the contract, and take appropriate action.

EXHIBIT

UMA
Evaluation and Award Determination
Criteria for the Awarding of the Produce and Fruit
Prime Vendor Contract

Evaluation and Award Determination Criteria – Quotations will compete on the basis of the lowest cost per quality point with the award(s) made to the bidder(s) with the lowest cost per quality point score(s) submitting responsible and responsive quotations meeting or exceeding specifications. All products (line items) must be bid; a “No Bid” response is not acceptable. A rating scale has been developed by the University, which takes into account the following categories listed below.

1. Fixed mark-up rates of the net cost, volume allowance and rebate. (20 points)
2. Product quality and consistency. (20 points)
3. Service capabilities as outlined on Schedule 6, previous experience with vendor, customer references inquiries, local and national references. (10 points)
4. The produce company’s facilities and equipment (production, packaging and delivery) must be inspected and certified by the American Sanitation Institute (ASI), Hazard Analysis and Critical Control Point (HACCP) and the American Institute of Baking (AIB) and received a superior rating. (10 points)
5. Market and Support Program. (No.s 5, 6 & 7 = 10 points)
6. Merchandise and Promotion Program.
7. On-Site training and after sales services.
8. List of Guaranteed Firm Pricing products/manufacturers as outlined on Schedule. (5 points)
9. Completeness of product line – responding bidders **must bid** on all product line items, a “No Bid” response is unacceptable. (5 points)
10. Delivery requirements – system, frequency, national fill rate. (5 points)
11. Vendor’s capabilities as outlined on Schedules 4 & 5, which include Corporate and Regional overviews and Value Added Services. (5 points)
12. Restrictions – type of limitations. (5 points)
13. Experience in the Higher Education accounts. (5 points)

Total Possible Score-100 points

