



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS – BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

BRIAN FISCHER
COMMISSIONER

November 29, 2010

Mr. Thomas DiNapoli
State Comptroller
Office of the State Comptroller
110 State Street
Albany, NY 12236

RE: Report 2009-S-6: Violations of Law, Conflicts of Interest and Other Improprieties at the Department of Correctional Services' Food Production Center

Dear Mr. DiNapoli:

In accordance with Section 170 of the Executive Law, this letter serves as the Department of Correctional Services' official ninety day response to your joint report dated August 31, 2010, on the audit and investigation of improprieties at the DOCS' Food Production Center.

As previously discussed, and acknowledged in response to a prior audit of the Food Production Center, the actions taken by the former Director and some currently employed individuals, were unsanctioned and improper on every administrative level. Should any of their behavior ultimately lead to criminal charges, this agency has and will continue to fully support and rigorously assist the appropriate law enforcement jurisdiction in that pursuit.

In reviewing the detailed audit findings, several distinct and unacceptable practices were allowed to occur. The Department concurs with the auditors' conclusions and that the agency has already taken steps to either correct the problems or develop plans to ensure that such problems are never again allowed to take place. As a result of the findings, and those of a prior audit report, the Department has already taken a number of steps beyond merely stopping the actions by a few staff members.

The practice of accepting and/or soliciting free dinners or donations no longer exists. The practice of allowing the staff member (tractor trailer driver) to drive his truck home instead of returning to the facility was halted. Moving forward, the purchasing unit for vendor selection may be moved to Albany and will be independent of the food production operations. A policy is being drafted where any food tasting decisions will be done by various executive members and food service managers from the facilities within the Oneida hub but independent of the Food Production Center. The Central Office Nutritionist is independent of the Food Production Center but will be a standing member of the food tasting panel. Evaluation forms will be used and kept as part of the selection record. The food tasting members will blind test the sample products so they do not know who the vendor is for the tasted product.

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Lastly, administrative action against individuals identified in the audit report is being seriously considered. Such action will be dependent upon available and specific documentation and evaluated after consultation with the District Attorney in whose district the Food Production Center exists.

In regard to the recommendations contained within the audit report, the Department will act aggressively in meeting the intent of both. For clarity, I have included my original response from August 25, 2010 and have added updated comments in italic bold print.

Recommendation #1

Institute safeguards to ensure that similar practices will not occur in the future at the Food Production Center or other locations within the prison system.

Original Response

As already noted, steps have been taken that have put a stop to all inappropriate actions. Additional action is in the process of being taken to prevent any reoccurrence, and to deal with individuals on an administrative level. Issues pointed out in the audit, particularly those that relate to potential ethical code or finance law violations have been brought to the attention of staff throughout the Department. Establishing an internal audit unit within the Department to review and audit the agency's internal policies and practices is under discussion with the Division of the Budget and Office of Taxpayers' Accountability. Lastly, all staff, but particularly those at the highest management level, have been made aware of the problems at the Food Production Center. The latter will be given more details in an upcoming All Superintendent and Division Head conference to be held in September. At that conference, a presentation by the Commission on Public Integrity will also take place, heightening everyone's awareness of their responsibilities.

On September 15, 2010, this audit report finding was discussed at the all Superintendent and Division Head conference as part of a more comprehensive review of ethical behavior by management and staff. The Associate Counsel from the Commission on Public Integrity made a presentation on ethics as a guest speaker. Our proposal for an Internal Audit Director and Internal Audit Unit was submitted in our 2011 – 2012 budget request to the Division of the Budget.

Please see attached addendum.

Recommendation #2

Assist the District Attorney and the Commission on Public Integrity.

Original Response

The Department has, and will continue, to assist both in any further investigation or actions deemed necessary.

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The Department continues to work with the District Attorney. The DOCS Inspector General's Office is reviewing the investigation documents for possible administrative action.

The Department thanks the Offices of the State Comptroller and Inspector General for the comprehensive review of the improprieties at the Food Production Center. The Department wants to ensure that steps are taken to correct the problems and they do not occur again. Most of our employees do act ethically and take pride in the jobs they perform. As a result of the dedication, commitment and professionalism of our staff, we operate safe and secure correctional facilities. The Food Production Center produces a wide variety of food and drink for the more than 57,000 inmates at all 68 DOCS facilities, as well as about 3,500 local jail inmates in 21 participating counties. In a recent audit by the Office of the State Comptroller, OSC recommended that county officials should consider using our program to save money. This is the core function that the Food Production Center is focused on, operating efficiently while providing quality food and training for inmates at a savings for taxpayers. We regret that a few supervisors behaving inappropriately detracted from the positive purpose the Food Production Center offers.

Sincerely,



Brian Fischer
Commissioner

Attachment

cc: Governor David Paterson
Lieutenant Governor Richard Ravitch
Senator Dean G. Skelos
Senator Carl Kruger
Senator Malcolm A. Smith
Senator John A. DeFrancisco
Senator Ruth Hassell-Thompson
Assemblyman Sheldon Silver
Assemblyman Herman D. Farrell
Assemblyman Brian M. Kolb
Assemblyman Jim Hayes
Assemblyman Ron Canestrari
Division of the Budget (2)



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**Summary of Actions Taken to Date
Food Production Center
Report 2009-S-6**

A meeting was held on September 27, 2010, with OGS contract staff regarding the SYSCO food contract, PC #60353. Department of Correctional Services staff from the Food Production Center, Support Operations and Administrative Services attended.

Below is a summary of what actions have been taken and what will soon be implemented.

Statewide Food Contract: A discussion regarding the clause in the contract that allows agency managers to direct SYSCO Food Services to utilize other suppliers. OGS acknowledged that while DOCS is the only agency to their knowledge that utilizes this clause that it is a beneficial clause in order for agencies to be proactive with securing best pricing through joint effort procurement procedures. OGS saw no ethical issues with DOCS procurement employees researching product information to be passed along to SYSCO. SYSCO is then responsible to ensure that pricing provided by referred vendors is reasonable and fair. OGS was to schedule a vendor responsibility hearing with SYSCO Foods to ensure that these procedures had been followed in relation to the two vendors (Global Foods and Good Source,) as cited in the OSC audit.

On the Omnibus Procurement Act that prohibits state agencies from entering into contracts for reciprocity and sanctions provisions, OGS stated that while New York State contract vendors can not have their primary place of business in the specified states outlined in this Act, it does not prohibit contract vendors from using suppliers from the effected states.

No Bid Contracts: Discussion occurred on the citations in the OSC audit in relation to the out of state produce vendors exceeding discretionary purchasing guidelines. DOCS advised that due to the daily price fluctuations of perishable produce items, that securing formal contracts with vendors would be very difficult without paying inflated pricing. Most produce vendors are New York State, Pride of New York vendors that fall within different purchasing thresholds; however, delivery to some of the facilities in New York City or the downstate area has been difficult to find vendors willing to bid. OGS suggested on working with OSC to find a workable solution to the issue.

Changes to Operations at FPC that Have Been or Soon to be Instituted

Purchasing unit to Albany: The Purchasing Officer II and the Purchasing Assistant II duties will be the solicitation and selection to procure goods and services for the Food Production Center. Other duties currently assigned such as product selection, taste testing, and FPC staff supervision; will be redistributed among FPC staff.

A result from an OSC recommendation: Items purchased through SYSCO then directly shipped to FPC such as cheese sauce, dehydrated apples, kosher cold cuts, kosher cheese and chicken breasts are now being bid from FPC. This saves the approximate 2 percent mark-up fee that SYSCO was charging.

Taste Testing Procedures: A new policy has been drafted and will be in place by the end of the month. This policy will remove anyone involved with the purchasing of products from participating in the tasting of products. The new process will utilize FPC staff, executive team members and food service staff from neighboring facilities to blind, taste test the products. All records of the test will be maintained for ten years.

Sunshine Fund: We were unable to complete an audit of the sunshine fund; OSC has not returned all records required to complete the audit. The funds have been frozen until a determination can be made on whether the funds were a result of improper solicitation.