



Thomas DiNapoli
Comptroller of the State of New York
110 State Street
Albany, New York 12236

February 24, 2017

Re: Request immediate OSC review of Buffalo State deal with Greenleaf Development per Campus Walk One LLC.

Dear Comptroller DiNapoli,

We write today to request that the Office of the State Comptroller review the “Affiliation Agreement” and real estate land “swap” deal between SUNY Buffalo State and Greenleaf Development as part of Greenleaf’s Campus Walk One LLC project. (The *Investigative Post*’s February 21, 2017 story “Buff State’s Deal with Greenleaf Raises Red Flags” provides more background on the deal.)

Though we have serious concerns about the Greenleaf deal, we also wonder if this deal is an example of SUNY’s systemic problem complying with state procurement laws. This deal raises serious questions about whether SUNY has the necessary internal controls to ensure that its various campuses and affiliates are making agreements that are fair, competitive, transparent and clean.

We learned about the Buffalo State Greenleaf deal from a journalist scrutinizing the Campus Walk One LLC project. He supplied us with the affiliation agreement and emails he obtained under the Freedom of Information Law. Based on this information, we believe that officials at Buffalo State may have:

- violated state procurement laws requiring Comptroller approval;
- ignored state laws and SUNY rules that require competitive contracting; and
- failed to establish an arms length relationship with Greenleaf during deal negotiations.

At a minimum, it appears to us that Buffalo State violated Section 112, Subdivision 3 of the State Finance Law, which requires the Comptroller to approve contracts entered into by state entities when:

“the state or any of its officers, agencies, boards or commissions agrees to give a consideration other than the payment of money, when the value or reasonably estimated value of such consideration exceeds twenty-five thousand dollars.”

The affiliation agreement between Buffalo State and Greenleaf is clearly worth over \$25,000. The agreement allowed Greenleaf to obtain a bank loan worth \$21.5m dollars to build an apartment building. Under the agreement, Buffalo State will steer undergraduate seniors to Greenleaf’s Campus Walk One apartment, generating approximately \$800,000 a year in rent for Greenleaf.

According to the FOILED emails, Buffalo State chose to ignore state contracting laws and rules and signed the affiliation agreement—worth millions of dollars to the developer—without any kind of competitive or public contracting process. Nor did Buffalo State justify its decision not to conduct a competitive award by claiming that the Affiliation Agreement was a sole source contract. New York State law and SUNY rules call for competitive contract awards when possible. When a state agency believes a sole source is necessary, it requires a state agency to explain why.

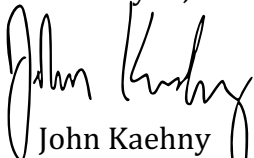
Lastly, Buffalo State officials disregarded the letter and spirit of state guidances intended to keep a vendor from influencing procurement officers:

State Finance Law §139-j and 139-k “prohibits a communication (a “Contact”) which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the “restricted period”

FOILED emails show that Buffalo State officials continued to communicate with Greenleaf during the entire period leading up to the land swap and Affiliation Agreement. Notably, Buffalo State officials not only communicated with Greenleaf, they accompanied Greenleaf to a meeting with a bank loan officer. At that meeting, Buffalo State officials encouraged the bank to loan Greenleaf \$21.5m, backed by the student rental income that Buffalo State would steer to Greenleaf via the Affiliation Agreement.

Please free to contact me or my staff for more information.

Thank you,



John Kaehny
Executive Director

CC: Office of Attorney General Eric Schneiderman