Report of the Vermont State Auditor

November 10, 2005

REGIONAL TECHNICAL ACADEMY DEVELOPMENT PROJECTS

Monitoring of Capital Construction Spending Needs Improvement

Randolph D. Brock
Vermont State Auditor

Rpt. No. 05-03

Mission Statement

The mission of the Auditor's Office is to be a catalyst for good government by promoting reliable and accurate financial reporting as well as promoting economy, efficiency, and effectiveness in state government.

RANDOLPH D. BROCK
STATE AUDITOR

STATE OF VERMONT
OFFICE OF THE STATE AUDITOR

November 10, 2005

Speaker of the House of Representatives Gaye Symington
President Pro Tempore of the Senate Peter Welch
Governor James H. Douglas
R. Tasha Wallis, Commissioner, BGS

Dear Colleagues,

I am pleased to provide you with the following report, ***REGIONAL TECHNICAL ACADEMY DEVELOPMENT PROJECTS: Monitoring of Capital Construction Spending Needs Improvement.*** This report examines the State's policies, procedures and controls related to approximately $3.1 million appropriated by the General Assembly in support of three regional technical education projects.

Regional technical education projects, whether new construction or renovation, are capital-intensive efforts which present ongoing challenges in the areas of planning, design, governance, curriculum, and financing. We found that the State did not develop clear, comprehensive agreements with local school districts, technical education centers, and local nonprofit organizations to ensure that planning, design and construction funds are spent in accordance with legislation and accounted for properly.

We noted that, with several exceptions, expenditures appeared directed to achieving the goals set out in the authorizing legislation. However, we noted several questionable expenditures, including an overpayment of at least $257,855 for property carrying costs related to the Chittenden Regional Technical Academy project. We recommend that the Department of Buildings and General Services and the Department of Education seek repayment of inappropriate expenditures and a refund of unspent planning funds where necessary. Other findings are summarized on page 1 of the report.

This report also recommends improving the way the State monitors the expenditure and accounting of General Fund dollars provided to local organizations in grants or other pass-through mechanisms. New legislation creating a "Vermont Single Audit Act," as well as new procedures for monitoring spending, can provide a solid framework for organizations to properly account for the State funds they receive.

It is clear that the people of Vermont and the General Assembly desire improvements in the area of regional technical education. Improved systems for monitoring State funds in support of this important goal will provide taxpayers with increased assurance that funds are being used and accounted for properly.

Sincerely,

Randolph D. Brock
State Auditor

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Abbreviations

BGS	Department of Buildings and General Services
DOE	Department of Education
LCRCC	Lake Champlain Regional Chamber of Commerce
MOU	Memoranda of Understanding
NCEEC	North Country Education and Employment Center
OENSU	Orleans-Essex North Supervisory Union
RTA	Regional Technical Academy
VSC	Vermont State Colleges
WIB	Workforce Investment Board

Highlights: Report of the Vermont State Auditor

Regional Technical Academy Development Projects: Monitoring of Capital Construction Spending Needs Improvement

(November 2005, Rpt. No. 05-03)

Why We Did This Audit

Technical education is of increasing importance in Vermont, and regional centers can be costly and complex construction projects.

We wanted to assess how funds appropriated by the Legislature have been used, monitored and accounted for in three technical education construction projects.

What We Recommend

The Legislature should consider a "Vermont Single Audit Act," similar to federal legislation, that outlines how the State shall monitor State funds granted to community and non-State organizations.

The State should seek to recoup funds overpaid to vendors, and unspent grant funds from local organizations, where necessary.

The State should follow regulations regarding the public, competitive bidding of architectural and engineering services.

We also recommend that State agencies review what information should be submitted with invoices and make these requirements clear to vendors and contractors.

Appendix I of the report contains the Administration response to our report.

Findings

1. Approximately \$3.1 million in State funds has been disbursed since Fiscal Year 1999 in support of the three capital construction projects we examined, largely through the annual Capital Construction Act managed by the Department of Buildings and General Services (BGS). BGS did not have grant agreements, contracts, or memoranda of understanding in place to help ensure that recipients of State funds understood allowable uses of funds and financial reporting requirements. There appears to be no explicit statutory guidance *requiring* BGS to monitor the expenditure of State funds appropriated to or for local organizations. Nevertheless, the Commissioner of BGS has the responsibility to "manage and expend all appropriations made in each annual capital construction act to the department of buildings and general services…" (29 V.S.A. §152(a)(17)), which can help ensure that taxpayer funds are spent wisely. In addition, we found that BGS spent \$248,065 for property carrying costs of the proposed Chittenden site after voters rejected the project – funds that the Legislature mandated should be spent only if county voters approved the project.

2. Improper payments were made:

a. On January 6, 2005, BGS paid \$771,071 to the owner of the proposed location of the Chittenden County project for property carrying costs, without a signed option agreement, lease, or purchase and sale contract in place. The owner said carrying costs would be calculated as "the actual difference between expenses and income," but invoices included potential interest income – or opportunity cost – on the \$15.5 million asking price as an "expense." Depreciation was not listed as an expense. A State appraisal estimated \$7.7 million as fair market value for the property. Our review of the property owner's income and expense records indicated net income of \$53,396 during the period in question, not including depreciation or opportunity cost. A further analysis by this Office, which included reasonable opportunity cost, and depreciation, determined a maximum potential carrying cost of \$513,216, which indicates that BGS overpaid the property owner by \$257,855.

b. BGS contracted for \$267,942 in architectural and design services related to the Chittenden County project with no advance public notice of its intent to hire architects, as required by 29 V.S.A. §152(a)(8). Six contract amendments increased the contract from \$120,000 to \$269,900.

c. Expenditures by North Country, Chittenden, and Hannaford local organizations generally appear in accordance with planning purposes set out in legislation, with some exceptions. Funds designated for specific planning purposes were spent on unrelated areas, including board member stipends, travel, staff development, meals, and CPR training. At North Country, complete project expenditure detail is not available, and the accounting system's confusing general ledger codes indicate a lack of internal consistency.

3. BGS' monitoring of state funds for these projects has been limited. For example, a review of the Lake Champlain Regional Chamber of Commerce (LCRCC) general ledger reports indicates that the Chittenden project has potentially \$38,655 in unexpended capital funds. BGS processed a payment related to the Chittenden project with a \$54,896 multiplication error in the vendor's favor, which has not been recovered. Some invoices from outside contractors that lacked some supporting detail appear approved without question.

Background

The State of Vermont in recent years has sought to research and implement new models and programs for delivering quality technical education to meet the needs of Vermont high school students, adult learners and employers.

The Legislature passed H. 636, "An Act Relating to Vermont's Technical Education System," in 1998, finding that "workforce education and training efforts in Vermont are limited and insufficiently funded."[1] The law noted that regional cooperation was spotty, program offerings inconsistent, performance data lacking, and that some facilities were outdated and poorly equipped.

In the statute, the Legislature set goals of engaging all schools in a region in technical education, promoting maximum access to high school students, promoting high academic and technical performance standards for all technical education students, and ensuring "a financing system that guarantees an equal opportunity for successful education and career development for all Vermonters."[2]

The Legislature also granted authority to the Department of Education (DOE) to award special pilot project grants to regional collaboratives to pursue these goals.[3] The grants were to help organizations focus on regional approaches to technical education which would feature:

- partnerships among employers, area high schools and higher education facilities;
- improved access to technical education;
- integration of academic and technical education; and
- sustainability of programs beyond the funding period.[4]

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[1] Act 138, Sec. 1(a)(1) of 1998 Session.
[2] Ibid, Sec. 1(b)(4).
[3] Act 71, Sec. 121a of the 1998 Session noted a collaborative "made up of at least a regional advisory board, a workforce investment board, a school-to-work regional partnership and a school board which operates a technical center" could apply for a pilot project.
[4] Act 138, Sec. 18 of 1998 Session.

Planning grants initially seeded each of the projects.

The DOE awarded $450,000 over three years to the Chittenden County Workforce Investment Board (WIB) under the auspices of the LCRCC, for Fiscal Years 1999-2001.[5]

The North Country Education and Employment Center (NCEEC) planning committee was created and allocated $50,000 by the Legislature in 1998 to plan a new center that would "provide North Country residents with coordinated high school, vocational, technical and occupational training, plus post-secondary educational opportunities … [and] on-the-job training opportunities and job placement services.[6]"

The following year, the Legislature allocated $99,500 to the North Country Career Center to plan an addition, renovation or new construction of a career center.[7]

In 2001 the Legislature approved $65,000 for the Patricia A. Hannaford Career Center in Addison County to plan a workforce development center in agriculture. The legislation required BGS to approve preliminary plans and a cost estimate for the project.[8]

In 2002, the Legislature expanded the authority of the BGS Commissioner to "in his or her discretion, be responsible for the design, construction, or purchase of any new buildings or alterations of existing buildings in connection with any technical center receiving funding under Title 16."[9]

In Act No. 149, Sec. 63 of the 2002 Session, the Legislature committed to 100 percent funding for two of the three projects under review:

> (a) Notwithstanding any provision of law to the contrary, the amount of an award for the construction or purchase of a new technical center building or additions or alterations to an existing technical center

[5] Act 71, Sec. 122(d) of 1998 Session was the initial appropriation.
[6] Act 148, Sec. 9(a)&(b) of 1998 Session.
[7] Act 29, Sec. 10(a)(5) of 1999 Session.
[8] Act 61, Sec. 6 of 2001 Session.
[9] Act 149, Sec. 64 of 2002 Session.

building for the following projects shall be 100 percent of the approved cost of the project:

(1) The North Country Career and Technical Center, now located in Newport, and to be located in Derby.

(2) Any portion of the combined technical center project dedicated specifically to the provision of state-approved technical education programming in Chittenden County, provided nothing in this section shall apply to any noncombined project providing technical education in Chittenden County.

(3) The Southeastern Vermont Career Education Center in Brattleboro.

In subsequent years, the Legislature appropriated more money for the projects in the annual capital construction bill, primarily through BGS. BGS is charged by law to manage the capital construction bill and to acquire, construct and maintain state buildings and facilities.

Objectives, Scope & Methodology

This audit was designed to assess the actions and procedures in place to meet standards established by laws, regulations, contracts, grants and other requirements in an adequate and timely manner.

Objectives

The three specific audit objectives were as follows:

1. To assess the adequacy of policies, procedures and controls, if any, to ensure that funds appropriated by the Legislature have been used as intended with respect to:

The Chittenden County Regional Technical Academy in Essex;

The North Country Career and Technical Center in Newport; and

The Patricia A. Hannaford Career Center in Middlebury.

2. To assess whether expenditures of State funds appropriated for these projects have been made in accordance with State laws and regulations.

3. To assess the adequacy of subrecipient monitoring by State agencies with respect to State funds expended in support of these projects.

Scope & Methodology

We examined financial records and procedures related to three technical education projects supported by $3.1 million of public funds, primarily from the annual capital construction bill approved by the Vermont Legislature and the Governor:

- Chittenden County Regional Technical Academy (RTA), Essex

Overview: $2.3 million in State funds disbursed during Fiscal Years 1999-2005 for proposed construction of a regional technical education center. The project planners succeeded in developing a proposal for a countywide vote despite numerous and complex questions of governance, curriculum, projected enrollment, design, financing, and law.

Status: Project bonding of $44.2 million rejected by regional vote, November, 2004. Special regional school district disbanded in 2005.

Cost: Spent to date: $2,358,346.

- North Country Career Center, Newport

Overview: Approximately $2.4 million has been appropriated since 1998 for proposed expansion of existing technical education center; however, $1.9 million of capital construction funding was reallocated to other capital projects in 2003 by the Legislature due to project delays.

Status: Vote on local bonding share of an estimated $12-16 million project cost is expected in 2006.

Cost: Spent to date: $396,408; planning and technical design work is ongoing.

- Patricia A. Hannaford Career Center, Middlebury

Overview: $383,000 appropriated for Fiscal Years 2002-2004 for proposed expansion.

Status: Project bonding of $4.3 million approved by voters March 2005, and groundbreaking took place in August, 2005.

Cost: Spent to date: $353,402.

Table 1 summarizes the funds dispersed for each of these projects by fiscal year.

Table 1: Disbursements for Selected Regional Technical Education Projects

Public Funds Disbursed by Fiscal Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total State Funds Disbursed to Date
Chittenden Regional Project										
LCRCC/WIB Capital Appropriation			35,000	69,405	200,102	340,000	149,341			*$793,848
LCRCC Technical Education Pilot Funds from Dept. Of Education	150,000	150,000	150,000		22,151					$472,151
BGS Capital Appropriation						65,764	107,570	1,039,013		$1,212,347
$120,000 in unspent funds was returned to the State by the District on Aug. 9, 2005										$-120,000
Refunded airfare of $1,006 by LCRCC										$-1,006
Chittenden Co. Regional Technical Center Total										**$2,357,340**
North Country Career Center										
Capital Appropriation Dept. of Education to Chamber of Commerce						10,000	8,300			$18,300
Capital Appropriation Dept. of Education to Career Center	50,000	99,500								$149,500
Capital Appropriation BGS			70,000		12,500	18,790	26,051	91,476	9,791	$228,608
North Country Career Center Total										**$396,408**
Patricia Hannaford Career Center										
Capital Appropriation Dept. of Education				65,000						$65,000
Capital Appropriation BGS							141,752	146,650		$288,402
Patricia Hannaford Career Center Total										**$353,402**
									TOTAL	**$3,107,150**

*Note: This amount includes $213,465 transferred to the Lake Champlain Regional Technical Center School Board.

Note: Some disbursements overlap fiscal years.

September 12, 2005 State Auditor's Office, Source: BGS, VISION, local organizations

We reviewed and analyzed relevant financial records of the following organizations:

Department of Buildings & General Services

Department of Education

Lake Champlain Regional Chamber of Commerce

Lake Champlain Regional Technical School District

Patricia Hannaford Career Center

Orleans Essex North Supervisory Union

North Country Career Center

Vermont's North Country Chamber of Commerce

We reviewed Legislative appropriations for these projects. We interviewed current and former BGS staff members involved with the Chittenden, North Country and Hannaford Center proposals. We talked to local education officials, Chamber of Commerce employees, and board members of local educational organizations. We gained an understanding of the history of these three projects and general project management procedures at BGS. We also met with Mr. Robert Miller of the Miller Realty Group to discuss his company's involvement in the Chittenden proposal.

We performed our review between May 2005 and early November 2005 in accordance with generally accepted government auditing standards.

Controls to Monitor Capital Construction Spending Are Inadequate

In 2002, the Legislature gave the Commissioner of BGS responsibility for "the design, construction, or purchase of any new buildings or alterations of existing buildings in connection with any technical center receiving funding under Title 16."[10]

In addition, the Commissioner has the authority to "manage and expend all appropriations made in each annual capital construction act to the department of buildings and general services …"[11] However, there

[10] Ibid.

[11] 29 V.S.A. §152(a(17).

appears to be no clear statutory guidance regarding the extent of BGS authority to provide specific financial oversight of the expenditure of state funds when the Legislature appropriates money directly to local planning groups, or to BGS for local planning groups.

Funds were "passed through" in a lump sum to the local organizations by BGS, or paid by BGS periodically to reimburse local organizations for project-related expenses. We found no evidence of specific grant agreements or contracts with the local organizations related to these appropriated funds. In response to a query on this subject for the Chittenden project, the Department replied that it "did not have any grant agreements or MOUs (memoranda of understanding) with the Lake Champlain Chamber of Commerce or any other organizations relating to the technical academy. BGS' role in this project was expressly limited by the various enabling acts passed by the Legislature."[12]

There was a range of organizations involved without detailed grant agreements or MOUs in place:

Individual Organizations and Funding Without Detailed, Formal Grant Agreements

North Country Education & Employment Center Planning Committee and Vermont's North Country Chamber of Commerce: $50,000

North Country Career Center: $99,500, $70,000 $950,000, $1,000,000,[13] $250,000, $200,000

Patricia A. Hannaford Center: $65,000, $318,000

Chittenden County Workforce Investment Board & Lake Champlain Regional Chamber of Commerce: $35,000, $69,405, $200,102, $340,000, $149,341

[12] Letter, R. Tasha Wallis, BGS Commissioner, to Randolph D. Brock, State Auditor, March 30, 2005.

[13] The $1 million appropriation made in 2002 and $893,758 of the $950,000 appropriation made in 2001 were reallocated by the Legislature in 2003 to other projects.

Contracts or grant documents between the granting agency and the recipient protect the interest of taxpayers by outlining in enforceable agreements the responsibilities of both the State and the organization receiving tax dollars on such issues as competitive bidding, allowable uses of funds, financial reporting, record-keeping, auditing, etc. Contracts and grant agreements permit the State to better review invoices and requests for reimbursements when required, and provide a sound basis for resolving disputes should any arise.

From interviews with BGS staff, the Auditor's Office learned that BGS considers itself first and foremost a department that offers a wide variety of design, engineering and construction expertise and services. "We are builders, not auditors," we were essentially told. Absent specific legislation on a project, BGS does not accept the responsibility to review whether or not funds passed through to community organizations are spent for their intended purposes and reported and accounted for appropriately. It was suggested by former BGS Commissioner Thomas W. Torti that the responsibility for assuring that funds delivered to local organizations are spent properly should not rest with BGS, but perhaps with other entities such as the Department of Finance & Management, the State Treasurer's Office, or the Auditor of Accounts.[14] The complexity of the Chittenden County proposal – with two existing technical education centers, multiple participants, changing timelines and design requirements, and multiple year appropriations – was also cited as a factor in the lack of ongoing financial monitoring. In addition, we note that some planning funds for these projects were appropriated to the DOE for local organizations, which on a practical level diffuses the State responsibility for oversight.

BGS' Director of Administrative Services did conduct a review of every payment made by the Lake Champlain Regional Chamber of Commerce in support of the Chittenden proposal. A memorandum to Commissioner Torti, dated January 20, 2005, noted that the examination of how $793,848 was spent was a review, not an audit, and that "without conducting a thorough audit of expenditures, all expenditures appear to be reasonable and in keeping with the enabling legislative language."[15]

[14] Interview, Thomas W. Torti, former BGS Commissioner, June 23, 2005, Waterbury, VT.
[15] Memorandum to Thomas W. Torti, BGS Commissioner, from Paul Rousseau, Director, BGS Administrative Services, January 20, 2005, p. 4.

In discussions with BGS staff and others, we heard that the State's lack of a clear, comprehensive policy on the development of new technical centers, and the renovation of existing ones, added to the difficulty in monitoring and being responsible for a project. Former Commissioner Torti, for example, noted that the State had yet to develop a clear policy about who should direct new, expensive technical education construction projects – a high school board? a supervisory union? a regional board? – and how high-cost projects could be financed fairly and sustainably given the limited resources available through the annual capital construction act.[16]

An additional general concern is the need for significant funds to be spent on program planning, site selection, preliminary design and preliminary cost estimates before local or regional voters approve the local or regional share of construction costs.

Over $2 million in State funds were spent or encumbered by the time voters in Chittenden County rejected a bond question for the project.

More than $75,000 was spent optioning and studying a property in Derby for a North Country technical center when local officials reversed course and decided to renovate and expand the existing career center at North Country Union High School in Newport. BGS estimates that $400,000 to $600,000 in State funds may be spent on the Newport expansion effort by the time a bond issue question is put before local voters.

BGS Gains from Experience

BGS management learned from these situations. After sending a $142,752 check to the Hannaford Career Center in September, 2004 to purchase property for expansion, BGS sent a follow-up letter (undated correspondence) saying the money would have to be refunded unless

[16] The Legislature took up this issue in the 2005 Capital Construction bill (Act. No. 43, Sec. 6(d)), approving language which stated, "The state board of education is directed to evaluate the method by which it assigns points to school projects and places them on a prioritized list. It shall also consider ways in which it might integrate technical education centers, including the three proposed projects for which the state is obligated to provide 100 percent state aid, into the prioritization system or ways in which it might otherwise ensure a reasonably predictable payment schedule for such centers. On or before January 15, 2006, the board shall report to the house and senate committees on institutions and on education regarding its evaluation, any changes it has made, and any recommendations it is proposing for legislation."

voters authorized construction and all required permits were in place by April 30, 2005. Fortunately, the facility had not spent the money and was able to comply with the requirements.

Release of Restricted Funds

The 2003 Capital Construction Act[17] earmarked $250,000 for the Chittenden Regional Technical Academy proposal, appropriating the money to BGS for:

> "continued planning and design of construction documents, provided that no funds shall be expended until there has been a favorable regional vote to proceed with the project."

Regional voters agreed to form a regional technical school district in March 2004. Before this election, some RTA planning committee members told the public that the election was solely to establish a formal school district and to continue planning, but not to approve a particular building project. An example of this may be found in the Vermont School Boards Association newsletter of January, 2004 where a representative from the Chamber of Commerce, Cece Wick, notes in an article on the project:

> **"On March 2nd, Town Meeting Day, region residents would be asked to cast ballots to accept or deny the formation of a regional technical school district with its own regional governance board. A second vote to approve the project itself is planned for the fall, 2004."**

The ballot language for the March, 2004 regional vote was:

> **Shall the voters of the (Town) School District vote to establish the Lake Champlain Regional Technical School District as described in the Governance Planning Committee Report approved by the State Board of Education, a copy of which is on file in the (Town) clerk's Office?**

[17] Act No. 63, Sec. 5(b)(2)(B) of the 2003 Session.

We asked BGS if the department had sought outside guidance on the question of whether or not the March regional vote met the condition for spending the $250,000 appropriation.

BGS responded by noting that:

> **BGS has no memorandums, correspondence or legal opinions which either support or contradict the "decision to spend $250,000 authorized in the 2003 legislation." As previously stated, it is, and was, BGS' position that "a favorable regional vote to proceed with the project" occurred at town meeting day, March 2004, when voters in approximately 25 towns voted to establish the regional technical school district and its governing board. This approval allowed all planning for the project to continue and satisfied the restriction that P.A. 63 placed on the funds appropriated to BGS.[18]**

According to interviews, BGS prides itself on following the specific mandates of the Legislature in the Capital Construction Act. Because the legislation did not state that the funds could be spent only when voters approved the formation of a regional school district, the interpretation that a regional vote to *form a school district* meant that a *project* was to go forward seems at odds with departmental practice.

Further, we note that the funds were expended after the November 2, 2004 regional vote *not to proceed with the project*. According to BGS accounting records, the $248,065 of the appropriation was utilized on January 6, 2005 as part of the $771,071 BGS payment to the Miller Realty Group for carrying costs on the proposed property.

Thus, two months after regional voters decided *not to proceed* with the project, BGS used the restricted appropriation. Had the department asked for guidance regarding this payment after November 2, 2004, it would have had the opportunity to better review the supporting documentation justifying the $771,071 invoice from the Miller Realty Group, as discussed in the next finding.

[18] R. Tasha Wallis, BGS Commissioner, letter to State Auditor Randolph D. Brock, March 30, 2005, p. 3.

Some Expenditures Appear to Contravene State Policy and Contracting Procedures

State policy requires that "all transactions will have sufficient documentation to provide an audit trail to support the transaction,"[19] and that Commissioners and other appointees can spend State funds only when the expenditure is "reasonable and valuable to the state and made in accordance with all applicable statutes, rules or directives from the Secretary of the Agency of Administration."[20]

Purchasing guidelines on the Department of Finance and Management's website advise that having a contract is important "to establish an agreement with a vendor to provide specific goods and/or services at specific prices."[21] Internal BGS procedures reference the importance of contracts, including such reminders to managers that "No invoice may be processed for payment by the agency until a fully executed copy of the contract supporting the invoice is on file."[22]

Further, Agency of Administration Bulletin No. 3.5, *Contracting Procedures,* defines a "contract" as:

> **any legally enforceable agreement between an agency and another legal entity to provide services and/or products. The term contract includes all such agreements whether or not characterized as a "contract," "agreement," "miscellaneous agreement," "letter of agreement," or other similar term.**

Bulletin No. 3.5 also states that "Contracts, of any amount, must be in writing. Each contract must:

[19] VISION Procedure No. 2, State of Vermont, Agency of Administration, Department of Finance & Management, June 1, 2004.
[20] Executive Order No. 3-45 (No 10-03), *Executive Code of Ethics*, Sec. II-G, September 13, 2003, referenced in Administration Bulletin No. 3.5, *Contracting Procedures*, Sec. IV-B, page 4 as Executive Order No. 8-91.
[21] Purchasing 103, Contract Management, Department of Finance and Management, October, 2002, page 53.
[22] BGS Procedures Manual, Facilities Management, Engineering & Construction Division, March 29, 1996.

- describe the scope of services to be performed or products to be delivered by the contractor, including the schedule for performance and applicable standards by which the contractor's performance will be measured;
- specify a maximum amount of money to be paid by the State under the contract;
- describe how, when and for what the contractor will be paid."[23]

The Bulletin also notes that for any contract greater than $10,000 an AA-14 Form (Contract Summary and Certification) must be completed. Further, the Bulletin declares that financial operations will not pay on any contract greater than $10,000 for which it does not have an AA-14 on file. One of the transactions we reviewed was a BGS payment of $771,071 to the Miller Realty Group LLP of Williston on January 6, 2005.

The payment was based on an invoice from the Miller Realty Group, dated November 9, 2004, for 22 months of the property owner's carrying costs for 5 and 25 New England Drive in Essex, the location that had been selected for the proposed Regional Technical Academy. (Voters on November 2, 2004 rejected a $44.2 million bond issue to build a new regional technical education center.)

In examining the basis for this payment, we found no written, fully executed lease, option, or purchase and sale contract in place to support it.

The following timeline provides more information regarding this finding:

[23] Agency of Administration Bulletin No. 3.5, *Contracting Procedures*, Sec. VII (A).

Table 2: Timeline Regarding Carrying Costs for Chittenden Project

4/23/01	The Lake Champlain Regional Chamber of Commerce advertises in Burlington Free Press (and other Chittenden County newspapers) for open sites or developed parcels suitable for a regional technical education center. (Notices appeared for several days.)
8/2/01	The Miller Realty Group writes to the Lake Champlain Chamber of Commerce and planning committee with short description of available properties on New England Drive in Essex, and the advantages of those properties for a technical education center.
11/28/01	Robert E. Miller sends follow-up letter stating *"the Miller Realty Group would be willing to sell the above listed properties for $15,522,000"* and raises the idea of entering into a 30-year Master Capital Lease.[24] Mr. Miller notes in the letter that *"land and buildings have an assessed value of $9,566,500 for the Fiscal Year 2001."*[25] (See Appendix II.)
12/5/02	Miller Realty Group and Investors Corporation of Vermont proposals are reviewed by the selection committee of the Chittenden Planning Committee, assisted by BGS staff.
2/18/03	BGS Project Manager Jay Swainbank officially notifies the Miller Realty Group by letter that its site was selected and asks for a draft capital lease. A draft lease is never submitted. (See Appendix III.)
3/5/03	Mr. Miller writes to BGS project manager Jay Swainbank and says that BGS Commissioner Torti has agreed to reimburse the Miller Realty Group *"the actual difference between the income and expenses on 5 and 25 New England Drive (The Tech Center Project)."* He attaches a statement of income and expenses for the land and buildings. The largest expense listed by Mr. Miller is an "annual expense" of $697,500, calculated as 4.25 percent interest on $15,500,000. After totaling his expenses, and reducing that amount by revenue from three tenants, the amount invoiced is $24,658.85 per month. However, the multiplication of $15,500,00 by 4.25 percent is incorrect; the result is not $697,500 but $658,750, a difference of $38,750, or $3,229 per month of additional expense. Through 17 months billed at this rate, the total rises to $54,896. The invoice error by the Miller Realty Group is not detected by BGS and is paid in full on January 6, 2005. (See Appendix IV.)

[24] A Master Capital Lease may be defined as a type of lease which is treated as a purchase on the lessee's books. Generally capital leases can be identified by one of the following characteristics: The lease term is equal to or greater than 75 percent of the estimated useful life of the leased asset; title to the asset is automatically transferred to the lessee at the end of the term; title to the asset can be obtained by the lessee for a bargain option at the end of the lease term; or the present value of the required lease payments are equal to90 percent or more of the estimated fair market value of the asset at lease inception.

[25] This statement differs slightly from later Town of Essex information which shows assessed value at $9,508,900, a number used by this Office to calculate carrying costs.

4/10/03	BGS contracts with an independent appraiser, Friihauf Appraisal Associates of Montpelier, who inspect the Miller Realty Group properties on April 14, 2003.
4/18/03	Commissioner Torti writes to Mr. Miller, saying: *"Several weeks ago my staff advised me that you have asked us to consider paying you for having to 'carry' the proposed Tech Center Buildings in Essex at a cost of about $25,000 per month. I can appreciate that these are your real costs but I have no mechanism to pay you for these costs. We don't have any legislative appropriation or any other authorization that would allow me to pay you for these 'carrying' costs."* (See Appendix V.)
4/21/03	Mr. Miller replies to Mr. Torti saying, *"Tom, to sum up this whole deal it looks like you want us to be the bad guys ... Tom, all along the way we have offered to fold the carrying costs into the final budget. I think before we go any further we had better put all the cards on the table and get a deal in writing."* (See Appendix VI.)
4/28/03	Commissioner Torti meets Mr. Miller at Mr. Miller's office in Williston and types out a letter which says, in its entirety: *"This will confirm our numerous conversations regarding this project. We agreed that the RTA will be located at your site in Essex. We have agreed that the VSC* (Vermont State Colleges) *portion of the project will proceed first with an approximate occupancy of 9/05. We have agreed that the RTA will seek a vote in November of 2004. We have agreed that we will attempt to get the Tech Center constructed as soon as feasible. Further we have agreed that the carrying costs of the building will be built into the capital lease, minus any lease arrangements that you can structure and any income still generated from the buildings. The financing of the capital lease portion of this project needs to be agreed to between you and the RTA board. Finally, we agreed that the state will reimburse you for up to 100,000 for architectural design services provided by Kilcoyne etc."* Please note that the Commissioner does not commit the State to any financing of the capital lease, but indicates that it is a responsibility of Mr. Miller and the RTA Board to negotiate the financing in the future. (See Appendix VII)
5/6/03	The Miller Realty Group submits a second invoice for carrying costs over four months, for a total of $92,802.07 (4 months x $24,658.85 per month) less additional rent of $5,833.33. This invoice is not paid.
5/7/03	Project manager Jay Swainbank receives an e-mail from Facilities Division director Jim Richardson saying, *"Has the Commissioner or someone told you how to deal with the invoices you got from Bobby Miller for his carrying costs? Have you sent the invoices back? If you haven't, you should. Make sure that no original invoices are in Accounting."*
5/13/03	Property appraisal report is submitted to BGS with market value for the Miller Realty Group

	properties estimated at $7.7 million, with reasonable marketing time at up to 2 +/- years.
1/9/04	Miller Realty Group revises monthly carrying costs upward to $56,773 per month, in part to reflect less rent being received from the properties. (See Appendix VIII.)
3/29/04	The RTA School Board, officially the Lake Champlain Regional Technical School District Board, has its first meeting and hears a report from the RTA Planning Committee on the project's "estimated operating budget and capital finance scenarios." At its third meeting, April 21, in a discussion of the timing and content of a public ballot item on the project, the Board hears that the timing of the vote is "very critical" and the consequences of delaying include *"vulnerability of the site – owner might not hold site."*
6/7/04	Miller Realty Group revises carrying costs downward to $47,399 per month to reflect policy decision by planners to begin project with one building instead of two. Mr. Miller's letter to Commissioner Torti describes the new proposal: *"You wanted to re-visit a proposal for the Champion building only, which we had offered back in March of 2002. We offered the Champion building for $8.5 million, and will let that offer stand through the November 2004 vote. We will also agree to a Right of First Refusal on the Tensolite building for Phase II Expansion ... "* (See Appendix IX.)
11/2/04	Chittenden County voters fail to pass a $44.2 million bond issue question, effectively ending a 6-year effort to create a new regional technical center.
11/9/04	The Miller Realty Group submits a "Final Billing" for $771,071 in carrying costs for 22 months. (See Appendix X.)
1/6/05	BGS pays the Miller invoice of $771,071. There is no evidence in the Master File that the invoice had signature approval. According to BGS financial reports, $369,135 of the amount is charged to the general State Buildings appropriation (Statewide Major Maintenance) of the 2004 capital bill. Such transfers by the Commissioner are permissible only when previously funded capital projects "require additional support."[26]
5/3/05	State Auditor engages BGS in an audit of three technical education center projects.
6/23/05	Auditors interview former BGS Commissioner Torti, in part to discuss issues involving the State and the Miller Realty Group. Commissioner Torti says it was his understanding from "day one" that carrying costs were to be included in the eventual financing of the property. He acknowledges risk in the approach that was taken. *"If the vote was positive, then it was going to look like a real*

[26] Act 121, Sec. 23 of 2004 Session.

	good deal; if the vote was no, then it was going to look like a lousy deal," he declares. He says he felt the carrying costs were real costs, and that he understood that if the vote failed that the State would be picking up the carrying costs one way or another.
7/6/05	Auditors interview Robert Miller of Miller Realty Group who affirms that there were no signed contracts or signed agreements relating to the State to pay $15.5 million for the property; nor were there signed contracts or agreements with the State regarding carrying costs and what could be included as carrying costs.
7/7/05	Auditor's Office requests additional property cost information from the Miller Realty Group, and receives it on 8/01/05.

State Overpaid at Least $257,855 for Property Carrying Costs

The following represents our analysis of the above timeline and the statements, documents and records to which the timeline refers:

1. There was an apparent agreement, but clearly not a formal one, to pay carrying costs for the Miller Realty Group properties. The agreement was based on a flawed informal letter agreement, typed by the former Commissioner of BGS in the vendor's office, and did not conform to State-required procedures for contract development, review and approval.

2. The agreement to pay carrying costs was conditioned upon the costs becoming a part of a subsequent capital lease, the terms of which were never negotiated.

3. There was lack of clarity as to what entity, if any, was to pay the carrying costs in the absence of a favorable vote to build the project.

4. There was a lack of definition as to what constituted "carrying costs." However, it should be noted that the property owner proposed that carrying costs be calculated as "the actual difference between the income and expenses on 5 and 25 New England Drive."[27]

5. The initial description of carrying costs which was submitted in March, 2003, included charges for opportunity costs and other cost elements that did not meet a conventional definition of carrying costs as

[27] March 5, 2003, Robert Miller to BGS project manager Jay Swainbank.

"recurring costs incident to the possession or ownership of property, usually regarded as a current expense, but occasionally added to the cost of an asset held for ultimate disposition where the market or likely disposal proceeds are judged to be sufficient to absorb the cost thus enhanced. Examples: taxes and mortgage interest on real estate; storage and insurance on merchandise; interest charged by brokers on margin accounts."[28]

The initial statement from Miller Realty also contained a multiplication error, totaling $54,896 after 17 months, which went undetected by the State. We also note that the original statement of carrying costs did not include charges for depreciation, which can be considered an allowable cost under some circumstances.

6. Although opportunity cost would, in our view, not be an allowable carrying cost, the fact that the Miller Realty Group included it in the description of proposed charges prior to the construction of the agreement letter from former Commissioner Torti, and later included opportunity costs in the final invoice which BGS paid, leads us to conclude that the parties intended to include – we believe, inappropriately – opportunity cost as an item to be reimbursed.

7. An examination of the opportunity cost portion of the invoice – $697,500 – shows that it was calculated (incorrectly) as the interest income that would result from property sales proceeds of $15.5 million (asking price for properties) invested at 4.25 percent. However, both Mr. Miller and former Commissioner Torti agree that no agreement relative to sales price was ever consummated. In fact, the State sought and received an independent appraisal, received in May, 2003, which valued the properties at $7.7 million. The Town of Essex had assessed the properties for tax purposes at $9,508,900.

8. There was perfunctory review of carrying cost invoices by BGS and no evidence that BGS attempted to verify the expenses claimed.

9. This Office undertook a review of actual income and expenses related to the properties in question as documented in accounting records of the

[28] *A Dictionary for Accountants*, 3rd Ed., Prentice-Hall, Inc., Englewood Cliffs, N.J., 1963.

Miller Realty Group. For the 22-month period involved, Miller Realty Group had net income of $53,396, not including depreciation.[29]

10. We performed a second analysis that included depreciation, which though not specifically discussed, may in some circumstances, such as tax filings, be considered a "recurring cost incident to the possession or ownership of property." We based the analysis on the following assumptions as well:

Owner had $53,396 net income from the property in the 22-month period from January, 2003, through October, 2004.

Depreciation, when considered as a carrying cost, is $317,964.

Opportunity cost of $248,648 is included as a carrying cost, but is based on:

Property sale at Town-assessed value of $9.5 million;[30]

Mortgage balance of $5.2 million;

Net proceeds of $4.2 million;

Book value of $7.7 million and capital gains of $1.7 million;

Tax on gain of $680,723;

Net proceeds less taxes of $3.5 million; and

Hypothetical proceeds invested at 4.25 percent, the Federal Facilities Capital Cost of Money Rate, as of January 2005. This approach is promulgated in the Federal Acquisitions Regulations and is reported by the U.S. Bureau of Public Debt.

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[29] The analysis did not include principal payments, management fees, depreciation, appreciation, interest on property taxes, or interest on common area expenses, figures for some of which were included by Miller Realty Group in its response received by the Auditor's Office on August 1, 2005.

[30] This assessment was appealed and reduced by the Town of Essex to $8,041,900 on July 15, 2005, but the analysis is based on the higher assessment that was in effect at the time of the payment.

This analysis indicates the following:

Total Carrying Cost Expenses	**$**	**924,691**
Depreciation[31]	**$**	**317,964**
Opportunity Cost	**$**	**248,648**
Total All Carrying Costs	**$**	**1,491,303**
Less Rental Income	**$**	**(978,087)**
Total Net Carrying Costs	**$**	**513,216**
Total Carrying Cost Reimbursed	**$**	**771,071**
Excess reimbursement	**$**	**257,855**

CONCLUSION: In our opinion, the property owner, the Miller Realty Group, received an overpayment from the State of at least $257,855, an amount which the State should seek to recover.[32]

Chittenden Project Atypical

In interviews, BGS staff indicated that the way the Chittenden project was handled, and the way that carrying costs were paid for, were not typical of their organization. BGS staff members reported that the BGS Property Management group would typically be responsible for developing options, leases or purchase-and-sale agreements to acquire property and had satisfactorily completed hundreds of such agreements over the years.

[31] The Miller Realty Group did not provide information on the net book value of the subject properties. In order to determine the net book value as of January 1, 2003 we have prepared an estimate of the accumulated depreciation ($1,159,691) based upon information provided by the property owner. We estimated net book value as $6.4 million, and adjusted the depreciation schedule to account for 5 of the 22 months where only one building was being considered. Useful life is 39.5 years.

[32] If the State chooses to view the correspondence and invoices from Miller Realty Group as an agreement that does not include depreciation as a carrying expense, then an analysis of allowable carrying costs would indicate a total of $195,252 in total net allowable carrying costs. Under this analysis, the State's overpayment to the Miller Realty Group is $575,819.

Critical to the acquisition process, naturally, is an agreement on the price to be paid for the property, whether in an immediate purchase or one in the future during an option period. BGS staff reported that the department strives to establish a fair market price for a property before negotiations.

As an example, this standard approach was used in the North Country project when the 79-acre Sherlaw property was optioned by the State as a possible site for a new career center. The State paid $2,500 on Nov. 27, 2001 for a property appraisal, and then paid $10,000 on behalf of the North Country Union High School Board to the property owner on January 28, 2002 for a 12-month option to purchase the parcel for $450,000.

On December 18, 2002 the State invoked a 6-month renewal clause in the contract for $1. The State did not acquire the property during the option period because the off-site center concept was rejected in favor of renovating and expanding the career center at the union high school in Newport.

When it came to acquiring the property for the Chittenden project, the State did not employ the services of the Property Management team. BGS Project Manager Jay Swainbank did ask the Miller Realty group on February 18, 2003 to

> "please submit a proposal including a draft capital lease, if that's possible and a proposal for the programming and design services sufficient to adequately describe the size and scale of the project."

We found no evidence that the State received a draft capital lease from the property owner.

$267,942 in Architectural Services Purchased Improperly

Title 29 V.S.A. §152(a)(26) gives BGS responsibility "for the design, construction, or purchase of any new buildings or alterations of existing buildings in connection with any technical center receiving funding under Title 16."

Title 29 V.S.A. §152(a)(8) requires the BGS Commissioner to give public notice of his or her intention to employ architects, in order to give qualified professionals the opportunity to offer their services so that the Commissioner can "employ that architect or expert whose service will be in the best interest of the state."

Additionally, Executive Order No. 15-91 requires each agency of State government to adopt and implement policies that support "a free and open bidding process that affords all businesses equal access and opportunity to compete for state contracts for goods and services."[33]

Act No. 148, Sec. 12(a) of the 2000 Session, addressing funds appropriated to BGS for support of the Chittenden County Technical Academy, also declares: "The department of buildings and general services shall provide technical oversight of the project to ensure that it is developed within space and fit-up standards developed by the commissioner of buildings and general services, based on any input provided by the commissioner of education."

BGS reported that it paid the Miller Realty Group $267,942 for architectural and engineering services on the Chittenden County proposal performed by Gardner Kilcoyne Architects of Winooski. BGS and the Miller Realty Group signed an initial contract for $120,000 of Gardner Kilcoyne services in May, 2003. Six change orders to the contract were signed during the course of the project, increasing the maximum contract amount to $269,900.

We found no evidence that the intent to enter into an architectural and engineering services contract was publicly announced, or put out to bid.

As noted previously, the Miller Realty Group made its presentation to the Chittenden selection committee in December of 2002 and was notified on February 18, 2003 that its site was selected. The previous discussion notes that the Miller Realty Group property was never formally secured by a typical State purchase and sale, option, or lease agreement. Still, without an option, lease or purchase agreement in place, BGS project manager Jay Swainbank noted in a file memo April 7, 2003 that:

[33] Executive Order No. 15-91, cited in State of Vermont, Agency of Administration Bulletin No. 3.5, Contracting Procedures, 1995, p. 4.

> "Development of the selected site is going to be done by the owner … The first thing that needs to happen is that a preliminary design must be generated from programming through schematic design so that a realistic cost estimate can be generated. The Department of Buildings & General Services has agreed (to) cover Miller Realty's costs for this design. The Architectural Firm Miller Realty has hired is Gardner Kilcoyne. The attached contract will allow the Miller Realty Group to pass those design fees along to BGS on a Time & Material basis not to exceed $120,000."[34]

On May 15, 2003 the Commissioner of BGS signed a contract, No. 05282, with the Miller Realty Group which would "subcontract with Gardner Kilcoyne Architects for design services during the initial phases of the design of the Regional Technical Center."[35]

Any contract greater than $10,000 must have an AA-14 Form (Contract Summary and Certification) completed. Further, Bulletin No. 3.5 notes that, "Every reasonable effort should be taken to promote a competitive solicitation process when selecting a contractor," but allows exceptions for negotiating with one contractor. These are called "Sole Source Exceptions" and include factors such as emergencies, critical time-sensitive situations, or occasions when only one contractor is capable of providing the needed services. For sole source contracts with a value of more than $75,000, the Secretary of Administration "must approve the contract prior to its execution by the supervisor."[36] We found that an AA-14 was executed for this contract,[37] with approval from an Assistant Attorney General, May 9, 2003, but it had no signed approval by the Secretary of Administration. From discussion with BGS staff, we learned that this contract was not viewed as a "sole source" contract, that it was part of the proposal from Miller Realty Group, and thus did not require the Secretary's approval, in the department's view.

[34] Memo to File, by Jay Swainbank, April 7, 2003.

[35] Contract description, State of Vermont & Miller Realty Group LLP of Williston, VT, May 15, 2003, p. 1.

[36] State of Vermont, Agency of Administration Bulletin No. 3.5, Contracting Procedures, 1995, p. 8.

[37] The BGS Contraction Plan contains exemptions from certain provisions of the Agency of Administration's Bulletin No. 3.5 on Contracting Procedures, and was approved by Sec. of Administration Secretary Michael Smith on October 6, 2004. The BGS Plan allows certain generic contracts, including generic Architectural and Engineering Services contracts, to be signed without the Attorney General's review, but does not exempt the department from having an AA-14 form as part of the contract.

The State's decision to hire the Miller Realty Group's architects can be found in a short note, dated April 28, 2003, which was typed out by then-BGS Commissioner Tom Torti at the offices of Robert Miller of the Miller Realty Group LLP. The note, as printed in full in the previous finding (page 17), said:

> ... *Finally, we agreed that the state will reimburse you for up to 100,000 for architectural design services provided by Kilcoyne etc.*

Hiring the architects this way and agreeing to pay them $100,000 appears contrary to statutes and policies of the State of Vermont.

We note two concerns with the first contract amendment, signed July 22, 2003 by Commissioner Torti, which increased the contract by an amount not to exceed $4,000, to a maximum of $124,000:

1. the additional consulting work to be done – "cost estimating services" – appears to be included in the scope of work to be performed as part of the original contract – "Work with Miller Realty Group to develop detailed construction budget";[38]

2. the subcontractor for Gardner Kilcoyne proposed a "not-to-exceed price of $2,150" for cost estimating services, [39] but Gardner Kilcoyne proposed possible additional consulting hours by the subcontractor "to assist the Design Committee with some value engineering services." These services were not specified and perhaps may have been part of the services to be provided for in the original $120,000 contract.

The architects underestimated their request for $72,900 in the fifth change order, noting just a month later that "the additional redesign work was much more extensive than we predicted and today we must request additional funds,"[40] totaling $61,000. This sixth change order was approved on Sept. 26, 2004.

[38] Contract 5282 Attachment B, Project Scope of Work, Gardner Kilcoyne Architects, March 2003.
[39] BGS Master Contract File, Contract No. 05282, Change Order No. 1.
[40] Letter, Bill Gardner and Liza Kilcoyne to Miller Realty Group, August 18, 2004.

Table 3: Contract Between State of Vermont (BGS) and Miller Realty Group for Architecture and Design Services

Contract No. 05282	Approved by State	Contract Dates	Amount	Contract Max.
Original Contract	05/15/2003	01/01/2003 to 01/01/2004	$120,000	$120,000
Change Orders:			*Increase:*	*New Contract Max:*
No. 1	07/22/2003	Same	4,000	124,000
No. 2	08/18/2003	Same	10,000	134,000
No. 3	11/25/2003	Same	2,000	136,000
No. 4	06/21/2004	01/01/2003 to 08/01/2004	0	136,000
No. 5	07/09/2004	01/01/2003 to 11/30/2004	72.900	208,900
No. 6	09/26/2004	Same	61,000	269,900
Source: BGS Master File				

A stated purpose of Bulletin No. 3.5 on Contracting Procedures is:

"to minimize contract amendments, especially as they relate to significant changes in the scope of services and/or contract price amount. It is generally desirable to avoid contract amendments because they emphasize negotiations between an agency and a contractor and thus can diminish the advantages of the competitive bidding process. Also, extensive contract amendments may indicate that an agency did not define and develop a thorough scope of services for the work."

Bulletin No. 3.5 also requires that amendments to a contract must be *approved in advance* by the Attorney General and the Secretary of Administration when:

- The amendment is the third or more to the contract[41]; and/or
- The cumulative effect of the amendment and all prior amendments increases the contract price above the following threshold:
- For contracts between $75,000 and $250,000, 25 percent of the original contract amount or $40,000, whichever is less.[42]

The third, fourth, fifth, and sixth contract amendments met these criteria, and after reviewing the Master Contract file at BGS, we found that the department was in compliance with Bulletin No. 3.5 guidelines regarding approval requirements of amendments.

However, it appears that because the original contract ended on January 1, 2004, there was no fully executed contract in place from that date until June 21, 2004 when a contract amendment extending the contract period was signed by the State. In the period where there was no contract in place, three invoices totaling $12,449 were paid.[43]

Expenditures by Community Organizations Generally Relate to Legislative Goals

We reviewed selected expenditure records through May 2005 from local organizations that received State funds for the three selected technical education projects.

The LCRCC and the Hannaford Career Center were able to produce summary expenditure records quickly upon request. On May 31, 2005 we requested a summary of expenditures to date for the North Country expansion project and after calls, e-mails and one visit to Newport, this summary has not been produced. Different organizations and accounting systems were involved in the first few years of this project, and no single organization or finance office had complete spending records on the

[41] The BGS Contracting Plan exemptions to Bulletin No. 3.5 allow an exemption in this regard for contracts related to construction and renovation, and commodities, but not to architectural and engineering services contracts.
[42] Bulletin No. 3.5, op. cit., p. 12-13.
[43] BGS Master File and BGS accounting records.

project. Our request for a schedule of all State funds spent on the North Country project is still pending as of this report.

Planning is a wide-ranging process that can involve many approaches to information gathering, analysis, concept-generation, community discussion and consensus-building.

Given this view, expenses for planning could also be wide-ranging. Under this broad outlook on the planning function, it appears that most planning expenditures were related to legislated goals and directives.

Some Costs Questioned

Below are some expenses that initially appeared to be inappropriate and clarifying comments by management. Some concerns were adequately addressed, while other expenses are questioned costs or are awaiting further clarification.

North Country Career Center project

June 5, 2000 $2,160 Graduation for Career Center
Eastside Restaurant (180 served)
Issue: Appears unrelated to project planning. Management replied that the dinner was to promote the Career Center and to add to public relations efforts on behalf of the expansion project.

April 1, 2000 $1,859 Architectural Services
Black River Design
Issue: Includes $1,745 charge for subcontracted civil consultant but no specific dates of consultant service, hours worked, rate, contract or report, or name of consultant was found with invoice records.

Feb. 28, 2000 $800 Dinner Charges
North Country Union High School Culinary Arts Program
Issue: Appears unrelated to project planning. Management replied that the meal was a "Recognition Dinner" for the regional advisory board and local workforce development committee. Management reported

that the previous Career Center director "made the choice to spend money on food for meetings because it was not written that she couldn't."[44]

Feb. 17, 2000 $660 CPR training
Newport Ambulance Service

Issue: Appears unrelated to project planning. Management replied that cost was for certification for the Health Careers Class of 16 students and included an extra set of books.

Feb. 7, 2000 $5,760 Write progress report
Charles Kezar

Issue: No invoice found in records. Upon further review, the invoice and contract for two consultants working a total of 192 hours at $30/hour were located and appear to justify the expense.

Sept. 9, 1999 $814 Airfare to San Diego
Vt. Travel Service

Issue: Appears unrelated to project planning. Management replied that the airfare was for two staff members of the Career Center to attend an annual conference. No details available showing a link, if any, to project planning.

Aug. 24, 1999 $328 Meals for Faculty Inservice
Jack Smith (Restaurant)

Issue: Appeared unrelated to project planning; management replied that the food was for a First Day in-service workshop with the Snelling Group. No documentation available showing a link, if any, to project planning.

Aug. 14, 1999 $904 Atlantic City Conference
Lucie DelaBruere

Issue: Appears unrelated to project planning; invoice labeled as facility design but not included in partial summary provided by Career Center. Supporting information not available.

no date given $265 Staff Development
CORD Class @VTC

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[44] Cindy Trahan, NCCC, Letter, September 19, 2005.

Issue: Appears unrelated to facility design. Management cannot locate supporting documentation.

Patricia A. Hannaford Career Center project

Dec. 4, 2004 $18,251 Design Services
Northern Architects

Issue: Invoice included services not related to legislative authorization which stated that funds were to be used for "the planning and preparation of construction documents for a power mechanics program at the Patricia A. Hannaford Career Center, as the first phase in the development of an agricultural workforce development center project."[45] This invoice cited work on Hannaford Center renovations and a sprinkler system for the existing center, in addition to the proposed new power mechanics building. Hannaford management responded that the invoice submitted mistakenly included reference to work on other projects, and that the entire $18,251 of services was related to the power mechanics building project.

July 18, 2003 $1,763 Laptop Computer
Best Buy

Issue: Purchase order did not indicate how the computer would be used to meet goals of planning grant outlined in the 2001 capital construction act. Hannaford Center responded that the computer was purchased for the Adult Program Coordinator who was responsible for working on agreements with Vermont Technical College and for fundraising and helping to procure equipment for the new center, all uses permitted by the legislation. Expense appears justified.

Chittenden Regional project

Nov. 16, 2004 $7,500 Stipends of $500 each
Members of RTA School District Board

Issue: The RTA Board, officially the "Lake Champlain Regional Technical School District Board," was formed in March, 2004, and held its first organizational District Meeting on May 13. Ten Board members and about 15 members of the public voted to approve an annual stipend of

[45] Act. 121, Sec. 55. Sec. 5(d)(2) of the 2003 Session.

$500 for each Board member. The meeting and the ballot article were publicly warned. The November payment was made with funds transferred to the Board from the LCRCC but designated in Act 63 Sec. 5 of the 2003 Session for other purposes. The question relates not to stipends per se, but to the fact that funds used were not raised by the district, and appear to have been restricted.

Aug. 24, 2004 $1,057 Liability insurance for L. Amsden
Hickok & Boardman, Inc.

Issue: LCRCC expense initially appeared unrelated to purposes of appropriation in Act No. 63, Sec. 5 of 2003 Session. LCRCC replied that "When the Lake Champlain Technical School District Board's Executive Committee approached Mr. Amsden as a consultant and provider of educational services, they agreed to Mr. Amsden's request to pay for insurance to protect him against any personal liability. Legal counsel advised the Board that liability insurance should be in place. 16 V.S.A. §1756 requires school districts to provide liability insurance and protection to its employees. Since Mr. Amsden was acting in the stead of a superintendent or district administrator, the Board felt it was an appropriate expense." Support for the payment could be seen in the above-mentioned Act No. 63 which allowed LCRCC expenditures for "implementation of a governance transition plan." However, we note that the contract signed by the School District and Mr. Amsden specifically states that Mr. Amsden "will furnish his services as an individual contractor and consultant and not as an employee or agent of the District."

June 3, 1999 $1,006 Air travel
Spouses of Conference Attendees

Issue: Air fare was paid for two spouses who accompanied a group of nine to Colorado for a conference under Pilot Project grant funds from the DOE; fares of $503 each were not reimbursed to the LCRCC. The LCRCC reimbursed the State and the Department of Education $1,006 on August 8, 2005 immediately after having been informed of the finding.

North Country Accounting Needs Improvement

North Country records supporting approximately $30,000 in expenses could not be produced, after having been requested on May 31, 2005. The inability to produce records was aggravated by several factors, including changes in personnel and accounting system. Records may have been moved or discarded when the North Country Career Center business office was shifted to the Orleans-Essex North Supervisory Union (OENSU) in February, 2004. Current staff relied on memory to answer some of the questions we posed about expenditures early in the planning process that appeared questionable. During a site visit, and while reviewing general ledger reports, we observed that the OENSU accounting system employed a confusing set of general ledger codes. This lack of internal consistency in the accounting system was also observed by federal auditors reviewing financial and performance issues with the "Enhancement and Expansion of Jobs in the North East Kingdom" federal Earmark Grant of $1.9 million which was awarded to the North Country Career Center on May 17, 2002.

Auditors from the U.S. Department of Labor's Employment & Training Administration also faulted the North County accounting system for inadequate internal controls related to segregation of duties and a lack of access controls. [46]

Copies of that report are available from the Career Center or from this Office.

BGS Performed Limited Review Before Paying Invoices

BGS' monitoring of state funds for the three projects under review has been limited. For example, our initial review of the LCRCC general ledger noted that the Chittenden project had potentially $38,655 in unexpended funds while BGS considered the appropriation fully spent. The Chamber has determined a balance of $10,424 in unspent funds.

[46] "Compliance Assistance Review Report," North Country Career Center's Earmark Grant AF-11955-02-60, Enhancement and Expansion of Jobs in the North East Kingdom, Sept. 29, 2005.

Some invoices from outside contractors that lacked supporting detail appear to have been approved by BGS with limited review. Local planning groups did not always carefully review invoices which lacked detail.

BGS Can Improve Financial Monitoring of Granted Capital Funds

BGS is a very busy department. It has extensive responsibilities and experience in providing a variety of technical services related to state-owned buildings – including acquisition, maintenance, repair, design, construction, and renovation services. It also manages other important State functions such as commodity purchasing, fleet services, risk management, contract management, public records storage, surplus property, information centers, printing and postal services.

The department has estimated Fiscal Year 2005 expenditures of approximately $38 million, not including funds appropriated to it in the annual capital construction act.

The State Treasurer is authorized to issue general obligation bonds in the amount of $45 million to fund the appropriations of the capital construction bill.[47] Some of these funds are passed through directly in a lump sum to other agencies of government, such as the Agency of Natural Resources, the University of Vermont, or the Vermont State Colleges. Some of the funds are spent directly by BGS on designated projects, as is currently happening with the North Country Career Center expansion, and in some cases, such as the Patricia A. Hannaford project, BGS will reimburse a school up to the appropriation amount for a given project.

The Commissioner of BGS also has the authority to:

> "manage and expend all appropriations made in each annual capital construction act to the department of buildings and general services."[48]

We view this as a broad mandate that includes in the definition of "manage" the notion that financial accounting and reporting should meet generally accepted accounting standards.

[47] Act No. 43, Sec. 22 of the 2005 Session.
[48] 29 V.S.A. §152(a)(17).

The need for accurate accounting of capital funds, such as those passed through BGS or reimbursed by BGS to outside organizations is further evidenced by the fact that the Commissioner of BGS has the authority to:

> "transfer any unexpended project balances between projects that are authorized within the same section of the act."[49]

Thus, care must be taken to fully account for capital construction funds so that in the event a project does not require the full appropriation, tax dollars can be applied to another project.

However, we noted earlier that BGS has not adequately addressed the responsibility for financial monitoring of State funds passed through to local organizations, directly, or indirectly. We previously noted that former BGS Commissioner Torti declared in an interview that the responsibility for assuring that funds delivered to local organizations are spent properly should not rest with BGS but perhaps with other entities, such as the Department of Finance & Management, the State Treasurer's Office, or the Auditor of Accounts.[50]

Monitoring could be improved. For example, we found that, while BGS considered the appropriations to and for the LCRCC and WIB to be fully expended, a review of general ledger reports at the LCRCC in July, 2005 initially indicated a potential unspent balance of $38,655 in capital construction funds, and a potential unspent balance of $15,007 in Department of Education funds, for a total of $53,661 in unspent funds due back to the State.

[49] 29 V.S.A. §152(a)(19).

[50] Interview, Thomas W. Torti, former BGS Commissioner, June 23, 2005, Waterbury, VT.

SAO Initial Summary of LCRCC General Ledger

LCRCC/WIB Funds	Total Expended	Total Received from State	Potential Unexpended Balance
DOE funds	$ 457,144	$ 472,151	$15,007
BGS funds	$ 730,053	$ 768,708	$38,655
	$ 1,187,197	$ 1,240,859	$53,662

As is typical in the audit process, this initial finding prompted further review. The LCRCC engaged the services of a certified public accountant who had previously helped the group to review the project's financial records early in 2005, after the review of expenditures by BGS. The certified public accountant's review and backup documentation indicated a balance of $10,424 in unspent funds from capital construction appropriations (BGS),[51] and raised further questions relating to how the LCRCC allocated salaries and other expenses to the project. We received explanations from the LCRCC on these queries, but the responses did not obviate all of our concerns.

We believe that absent a detailed audit of payroll and overhead allocations, it is not possible to firmly establish the correct total of any unspent BGS or DOE grant funds related to the Chittenden project.

Contributing to this situation is the fact that the LCRCC did not have the benefit of a formal grant agreement with the State which would have outlined grant accounting procedures, along with information on allowable costs and labor and overhead allocations. Further, there are continuing differences between project summary spreadsheets produced by LCRCC and the organization's general ledger, which must be reviewed more closely to conclusively identify unspent funds.

This is not to suggest any financial improprieties. We thoroughly acknowledge the difficulties involved in a complex undertaking, financed through different revenue sources, over a period of years.

[51] LCRCC report, August 29, 2005.

Consequently, this Office will send a memorandum to BGS and the DOE at the conclusion of this audit that reviews our concerns. These agencies can determine whether or not to continue the review of revenues and expenditures at a deeper level.

BGS Paid Invoice with $54,896 Math Error

Projects typically have a BGS engineer assigned to it as manager. The project managers may have a range of technical responsibilities in moving a project forward, and will also be responsible for approving invoices from outside consultants, engineers, architects and contractors related to their project.

From interviews with BGS staff and a review of records, including a limited number of the invoices paid by BGS, we note several points.

BGS engineers do not have adequate written policies and procedures about reviewing and approving invoices. We requested to review BGS guidance on this issue. As part of its response, BGS provided relevant portions of a procedural manual, including Section 6.6, a March 29, 1996 memo related to faster processing of payments by the Agency of Transportation in BGS projects using AOT funds. The first step is:

> "Buildings Department project manager reviews the invoice submitted by the contractor; resolves any discrepancies or questionable charges directly with the contractor. Project manager approves invoice payment."
>
> Step 2 mentions that "No invoice may be processed for payment by the agency until a fully executed copy of the contract supporting the invoice is on file."

We found no specific procedures for managers to follow if invoices are incomplete, lack adequate support, are presented after a contract has lapsed or is otherwise not in force, include unnamed consultants without subcontracting information, etc.

Section 6.4 of the Procedures Manual, regarding "Payments," simply notes: "If you receive an original bill that you want paid, <u>please</u> go ahead and <u>approve the original.</u> Maybe this will speed up payment." (Emphasis in original.)

Because Vermont is a small state, there are a limited number of design, engineering and construction firms qualified for State projects. Over time, BGS project managers may develop close and ongoing working relationships with the people in these firms. For example, the architectural firm Black River Design of Montpelier has been working on the North Country Career Center Project since 1999. A sense of confidence and trust in the firms can develop, and this can make it difficult for a project manager to question invoices or to ask for backup detail when necessary.

BGS project managers appear to have approved invoices without questioning apparent lack of adequate support. A few recent examples include:

- June 1, 2004 invoice from Black River Design, re: North Country Career Center, $4,620.97. Issue: No dates of service listed, only monthly total of hours; limited description of services performed: "provide site evaluation and preliminary programming & meetings"; mileage due amount shows no trip dates, destinations, total miles or rate charged.[52]
- April 1, 2004 invoice from Black River Design, re: North Country Career Center, $3,130.31. Issue: work of two consultants being billed to BGS contract without names of consultants or their invoices. This would help determine if contractor was adding a markup or not. Mileage due amount does not show dates or destinations, purpose of travel, distance or rate charged.
- Nov. 9, 2004 invoice from Miller Realty Group, re: Chittenden Regional Technical Academy project, $771,071. Issue: a multiplication error by the contractor went unnoticed by BGS, resulting in an overpayment of $54,896.[53]
- Dec. 4, 2004 invoice from Northern Architects, re: Hannaford Career Center, $18,251. Issue: some of the services listed as performed appear unrelated to the project authorized in statute and were not questioned. (See page 31 for further discussion.)

[52] Orleans-Essex North Supervisory Union's guidelines note that for mileage to be reimbursed "proper mileage forms for mileage with the rate clearly stated and mileage from point A to B, along with a description of the event and agenda," must be included with the invoice.

[53] The annual calculation of opportunity costs was incorrect. Multiplying $15,500,000 by 4.25 percent is not $697,500 (as calculated by the Miller Realty Group), but is $658,750, a difference of $38,750, or $3,229 per month.

BGS project managers could certainly be well aware of information that supports an invoice – such as a consulting engineer's report; however, because the invoices do not include this detail, and the Master File may not contain it, review of an invoice by a supervisor or disinterested party is made more difficult. Standard State contract provisions do include a clause requiring the vendor to maintain records that justify payments for at least three years, so the State does have the ability seek more information about a payment after the fact if necessary. Clearly, however, it is preferable to have full support for payments available for review at the time of invoice approval.

Note: We did not formally review the adequacy of the Department of Education's monitoring of the Chittenden Pilot Project three-year grant, and the DOE planning grants to North Country and Hannaford. However, from discussions with DOE officials, and a review of reports by local grantees, it appears that the Department of Education did not review or approve individual expenditures related to the Pilot Project funding for Chittenden and the planning grant funding for Newport and Hannaford. It did receive general budget requests and periodic reports on programmatic achievements.

Recommendations

1. The General Assembly should consider adopting a *"Vermont Single Audit Act"* to provide for monitoring of all recipients and subrecipients of funds from the Capital Construction Act and the State's General Fund.[54] The Legislature should also clarify the authority of the Commissioner of BGS to provide fiscal oversight of

[54] *The State Auditor's Annual Report*, issued March 31, 2005, noted that State government in general needs to improve procedures that relate to ensuring the appropriate use and accounting of State funds that are granted to other entities. Entities that receive federal funds from State agencies are subject to federal Single Audit requirements contained in OMB Circular A-133, and in the Secretary of Administration's Bulletin No. 5, "Single Audit Policy for Sub-grants – Compliance with OMB Circular A-133," issued by the Secretary of Administration. The *Annual Report*, page 12, noted that "sound fiscal management would indicate that policies, procedures and controls should be in place to ensure [that] the expenditure of State funds is in accordance with State laws and regulations." Adapting Bulletin No. 5 for entities receiving State General Fund support would be a positive step. James Reardon, Commissioner of Finance and Management, noted in a response to the *Annual Report* that the Administration agreed to "establish policies, procedures and controls for State-funded grants. The Commissioner of Finance and Management will establish statewide guidelines for granting State funds by June 30, 2006."

planning and construction funds to community organizations and non-governmental organizations. The authority should authorize BGS to develop grant agreements with receiving organizations, municipalities or school districts that provide greater accountability of public funds without becoming burdensome to receiving organizations.

2. BGS should establish procedures to review the use of capital construction funds that may be specifically restricted in Legislation and seek appropriate guidance when it may be unclear whether limiting conditions have been satisfied. Such requests and responses should be in writing and maintained in the project Master File.

3. BGS, in consultation with the Attorney General, should seek a refund from the Miller Realty Group of at least $257,855 due to overpayment of carrying costs and a calculation error on an invoice.

4. BGS should adhere to statutory and administrative guidelines regarding contracts for architectural and engineering services.

5. BGS should review the first contract amendment to determine if a refund of $2,150 is in order from Miller Realty Group/Gardner Kilcoyne, due to the fact that the cost estimating work to be performed appears to be required as part of the original $120,000 contract.

6. The State should clearly outline allowable uses for planning grants to local organizations. The State, through the granting or monitoring departments, should assist local organizations if necessary in developing or refining procedures for:

   - the open, competitive bidding of major cost items;
   - the submission, approval and payment of invoices from professionals, suppliers and other vendors; and
   - the reporting of grant revenues and expenses based on generally accepted accounting principles.

7. On behalf of the State, BGS and the Department of Education should review questioned expenses of local organizations and seek refunds to the State for inappropriate expenses if necessary.

8. BGS and the Department of Education should seek refunds of unspent grant funds where necessary.

9. BGS should improve written policies and procedures related to reviewing and approving invoices from consultants, contractors and other vendors to assure that payments are supported by adequate detail regarding services performed, dates of service, reimbursable expenses, etc., at the time of invoice approval.

10. Grant agreements with local organizations sending invoices to BGS for reimbursement should specify the extent of supporting information that should accompany invoices.

11. Grant agreements should also specify project accounting and close-out steps so that any unexpended funds can be returned to the State.

12. BGS contracts with vendors should require invoices to be fully detailed and supported to allow a thorough and efficient review before payment and after, if necessary.

Agency Comments and Our Evaluation

The Secretary of Administration and the current Commissioner of the Department of Buildings and General Services provided written comments, which are reproduced in Appendix I, on a draft of this report.

The Secretary, responding on behalf of BGS, expressed general agreement with the spirit of our report, recognizing that "technical compliance in this situation was insufficient to protect the public interest." The response pledged concrete steps to implement several of our recommendations "designed to strengthen financial control and contract management in state government."

While we applaud these measures, on balance, we believe the State's response is disappointing and falls far short of what is required.

For example, the response acknowledges the flaws in the process that resulted in payment of $771,071 of "carrying costs" relating to the Chittenden project, but dismisses the finding that $257,855 of this amount was an overcharge, claiming that it believes it "paid a fair and reasonable amount." The response provides no support to arrive at that conclusion.

The Secretary pledged to seek a refund for a $54,896 overpayment, made as a result of a calculation error on the invoice for carrying costs. We have amended our draft report to note this error and the State's intentions to seek a refund.

We believe that BGS' argument that it "adhered to applicable statutory and administrative guidelines in contracting for architectural and engineering services," is flawed. What the department did, by its own admission, was to contract with the Miller Realty Group to provide the necessary architectural services, knowing full well that Miller Realty, in turn, would immediately subcontract with an architectural firm to perform the work – work which the department itself asked for and was required to oversee. The department thus constructed an artifice which allowed it to circumvent the applicable statutes, cited above, in violation of Vermont laws and contracting rules.

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Any questions or comments about this draft report can be directed to the State Auditor's Office at 802-828-2281 or via e-mail at auditor@sao.state.vt.us.

This audit was performed under the direction and supervision of Thomas G. Gorman, CPA, Deputy State Auditor, with assistance from George Thabault, Chief of Special Audits & Reviews, and Denise Sullivan, CPA, Accounting and Audit Analyst.

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PAVILION OFFICE BUILDING
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CHARLES P. SMITH, SECRETARY

STATE OF VERMONT

AGENCY OF ADMINISTRATION

RECEIVED
VERMONT STATE AUDITOR

November 2, 2005

Randolph D. Brock, State Auditor
Office of the State Auditor
132 State Street
Montpelier, Vermont 05633-5101

Dear Randy:

Thank you for the audit of the Regional Technical Academy Development Projects which will advance the cause of continuous process improvement and accountability in the management of state funds. Attached please find the formal and detailed response by the Commissioner of Buildings and General Services.

We agree with the spirit of your report: that technical compliance, in this situation, was insufficient to properly protect the public interest. The Department could and should have identified financial control issues, given the unusual and cloudy directives of the various applicable statutes. With the Chittenden County project, in particular, the Department could and should have established a more complete agreement, with clearer understandings about how the payment would be calculated.

Governor Douglas has established a clear expectation that this administration will conduct its business with transparency and accountability, and in accordance with the policies of the state. In recent months we have initiated three processes, designed to strengthen financial control and contract management in state government. The three processes are:

- A detailed assessment and benchmarking of financial control procedures within each department, with improvement steps to follow;
- A working group to respond to your single audit finding that sub-recipient monitoring of state grants needs to be strengthened;
- A thorough review and rewrite of Bulletin 3.5 to strengthen contract issuance and contract management procedures.

Again, we appreciate your work on the important issues of financial accountability.

Sincerely,

Charles P. Smith
Secretary of Administration

CPS/hj
enclosure

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VERMONT

Office of the Commissioner

Department of Buildings & General Services
Agency of Administration

Two Governor Aiken Avenue
Montpelier, VT 05633-5801
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BGS Home Page: www.bgs.state.vt.us

RESPONSE OF THE DEPARTMENT OF BUILDINGS AND GENERAL SERVICES TO OCTOBER 17, 2005 REPORT OF THE VERMONT STATE AUDITOR ON REGIONAL TECHNICAL ACADEMY DEVELOPMENT PROJECTS

INTRODUCTION

The Auditor's Report concerning the three regional technical academy development projects contains several recommendations. The response of the Department of Buildings and General Services (hereinafter the Department or BGS) is set forth below. The report refers to many provisions of law and various capital construction acts pertaining to technical centers generally, and to the three projects specifically, that were reviewed by the Auditor. The Department agrees that each of these projects must be considered within this specific legislative framework, but also within the broader context of the public policy and intent that formed the basis for Legislative action.

In 1998, the Vermont legislature found that the State's planning and processes for creating regional technical centers were fragmented and reactionary and that the creation of well-planned technical centers was vital to afford all students in Vermont quality education opportunities, including vocational education. With this goal in mind, the general assembly passed Act No.138, "An Act Relating to Vermont's Technical Education System" that became effective on April 27, 1998 (hereinafter Act 138).

Act 138 tasked the State Board of Education with establishing statewide minimum standards for the operation and performance of technical centers and designed a framework within which the State of Vermont would work collaboratively with local entities to develop, fund, and ultimately construct regional technical education facilities. Technical center projects were specifically designed to be owned and governed by regional entities, thereby removing them from the traditional scope of authority maintained by the Department of Buildings and General Services over "state-owned" buildings.

Act 138 authorized the development of projects and the three reviewed by the Auditor of Accounts received appropriations in subsequent capital construction acts. Each project was unique, developed with different governing structures, and authorized through specific enabling legislation. Funds were sometimes appropriated to the Department for use "by" the regional governing entity—other funds were appropriated to the Department for its use "on" a particular project.

BGS

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The Department's role and authority varied from project to project and was often limited. Of particular relevance to the report's findings, and by way of example, is the 2001 Capital Construction act (Act No. 61, §6(c)(1) (2001)), in which money was appropriated for use by the Lake Champlain Regional Chamber of Commerce to complete preliminary work on a Chittenden County center including making a final recommendation of a site location "in consultation with the department..." In the 2003 Capital Construction Act, the department was authorized "to secure" the site for the Chittenden County project, yet was prohibited from securing the site in the name of the State (Act No 63, §5(b)(1)(A)).

Although the Department is generally charged with managing the capital construction bill and the acquisition, construction and maintenance of state buildings and facilities, 29 V.S.A. §152, that general authority is oftentimes modified by later, more specific legislative enactments, such as the annual capital construction bill. The technical center projects that are the subject of the Auditor's report exemplify this phenomenon and underscore the need for clarity and specificity in both enabling legislation and the State's dealings with entities funded through the capital bill for projects that are not "state-owned," but which nonetheless require sound management and stewardship of state funds.

RESPONSE TO RECOMMENDATIONS

1. **RECOMMENDATION**: *The General Assembly should consider adopting a "Vermont Single Audit Act" to provide for monitoring of all recipients and sub-recipients of funds from the Capital Construction Act and the State's General Fund. The Legislature should also clarify the authority of the Commissioner of BGS to provide fiscal oversight of planning and construction funds to community organizations and non-governmental organizations. The authority should authorize BGS to develop grant agreements with receiving organizations, municipalities or school districts that provide greater accountability of public funds without becoming burdensome to receiving organizations.*

    RESPONSE: The Department fully supports this recommendation and looks forward to developing and implementing reasonable accounting oversight policies and procedures that will not be overly burdensome or expensive to the average, small non-profit or community that is typically the recipient of these appropriations. As noted below, the administration has already begun developing a statewide policy for monitoring state grants.

    STATUS: A focus group comprised of state employees and representatives from the Vermont Alliance of Nonprofit Organizations (VANPO) has been organized and has been asked to make recommendations to the Commissioner of Finance and Management for statewide policies, procedures and controls for state grants that are administratively feasible, but effective and efficient. Their preliminary recommendations are expected on or before January 1, 2006. Pending finalization of a statewide plan, we will work with the Legislature this session to ensure the capital bill clearly establishes the Commissioner's authority to provide oversight

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of planning and construction appropriations that are passed through, or granted to, community and non-State organizations.

2. **RECOMMENDATION**: *BGS should establish procedures to review the use of capital construction funds that may be specifically restricted in Legislation and seek appropriate guidance when it may be unclear whether limiting conditions have been satisfied. Such requests and responses should be in writing and maintained in the project Master File.*

RESPONSE: The Department does seek guidance, and will continue to do so, when the legislative intent for a particular appropriation is unclear. Typically, the Department will draft a "letter of intent" to the appropriate committees outlining its interpretation of the legislation so that any ambiguities can be clarified in a timely fashion.

In the case of the use of funds legislatively earmarked for expenditure when the Chittenden County Regional Technical Center (CCRTC) project was approved, the Department did not provide an interpretation letter. The Department considered the appropriation in the context of the legislative intent reflected in the appropriation language and the Department's involvement in the legislative process leading up to the enactment. That, coupled with the context, timing, and reality of the planning process put in place by the Legislature, supported its interpretation that the expenditure could appropriately be made after the district voted to approve the formation of the governing body for the project. An informed final vote by the electorate to proceed with actual construction could not be held absent a determination and presentation of the final size, scope and cost of the school to be approved. It was the Department's assessment that the money was specifically appropriated for the purpose of getting the project ready for a final vote.

STATUS: As outlined in the Department's response to Recommendation #1, we will continue to work with the Legislature to ensure the capital bill language is clear and will seek guidance when it is not.

3. **RECOMMENDATION**: *BGS, in consultation with the Attorney General, should seek a refund from the Miller Realty Group of at least $257,855 due to overpayment of carrying costs.*

RESPONSE: The relevant legislative enactments delegated selection of a site for the CCRTC to the Lake Champlain Regional Chamber of Commerce, which chose the Miller property after open and competitive bidding. The Department was charged by the legislature with securing the site for the project and entered into an agreement with Miller Realty Group that obligated the State to pay Miller Realty Group "carrying costs" for the period of time that their property and buildings were held for that purpose. Although the responsibility to "secure" the selected site was placed with the Department, the Department was specifically precluded from holding any option in the name of the State. Execution of a written contract was hampered by this restrictive language and the Department intended to formalize the agreement in a contract between the governing body and Miller following final approval of the project. The Department acted in good faith within this atypical statutory structure in carrying out the legislative intent that it secure the site for the project.

The Department agrees that formalization of this agreement was lacking and, as a result, there are now reasonable disagreements about the appropriate method of calculation of the carrying costs. With respect to the amount of the payment, the report concludes there was an overpayment. Many factors bear on the determination of value and the Department believes it paid a fair and reasonable amount. The key point is that an agreed upon calculation of carrying costs should have been memorialized in a written contract outlining its terms and conditions.

STATUS: The Department will continue to follow all required administrative procedures for state-owned projects over which the State has control. In future capital bills, it will work with the Legislature to clarify lines of authority and responsibility when collaborative projects, such as the technical academy projects, result in either multiple entities sharing the decision-making and implementation or a division of authority and responsibility among entities. The Department will encourage non-state organizations that receive state funds and are not technically subject to Bulletin 3.5 to comply with its spirit and intent by putting projects out to bid and establishing sound monitoring practices when public dollars are being spent. Guidance on these recommendations will be considered for inclusion in Bulletin 3.5, which is currently being reviewed and updated.

4. **RECOMMENDATION:** *BGS should adhere to statutory and administrative guidelines regarding contracts for architectural and engineering services.*

See comment 1.

RESPONSE: The Department does adhere to all applicable statutory and administrative guidelines in contracting for architectural and engineering services. In this case, the Lake Champlain Regional Chamber of Commerce selected the Miller property and approved plans for the property owner to "redevelop" the existing buildings to meet the needs of the project. Under the enabling legislation, the Department's role was to reimburse Miller for the necessary and related architectural services that were going to be required to continue the planning and construction services necessary to meet the project's needs, as determined by the Chamber of Commerce. The Department proactively sought to maintain oversight and accountability for design and development of this project by contracting with the Miller Realty Group for provision of these services. In this way, the Department would maintain responsibility and control over the project's design consistent with the Department's mandate by the legislature. The disagreement over whether the contract had all necessary approvals again underscores the need for clarity and specificity in both enabling legislation and the State's dealings with entities funded through the capital bill for projects that

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are not "state-owned," but which nonetheless require sound management and stewardship of state funds.

STATUS: See response to Recommendation #3 above.

5. **RECOMMENDATION:** *BGS should review the first contract amendment to determine if a refund of $2,150 is in order from Miller Realty Group/Gardner Kilcoyne, due to the fact that the cost estimating work to be performed appears to be required as part of the original $120,000 contract.*

RESPONSE: The Department conducted an internal review of the first contract amendment and determined that the amendment properly reflected additional cost estimating work not part of the original contract due to changing program requirements of the CCRTC project. Changes to a project are common and this one was no exception. For example, the size of the project was reduced from two buildings to one. The exact nature of future modifications to a project cannot always be predicted and contract amendments reflect additional work necessitated by these changes.

STATUS: N/A

6. **RECOMMENDATION:** *The State should clearly outline allowable uses for planning grants to local organizations. The State, through the granting or monitoring departments, should assist local organizations if necessary in developing or refining procedures for:*

the open, competitive bidding of major cost items;
the submission, approval and payment of invoices from professionals, suppliers and other vendors; and
the reporting of grant revenues and expenses based on generally accepted accounting principles.

RESPONSE: The Department agrees with this recommendation and these considerations will be reflected in the development of a statewide sub-recipient grant monitoring process and anticipated revisions to Bulletin 3.5.

STATUS: See response to Recommendations #1 and #3, above.

7. **RECOMMENDATION:** *On behalf of the State, BGS and the Department of Education should review questioned expenses of local organizations and seek refunds to the State for inappropriate expenses if necessary.*

RESPONSE: The Department agrees with this recommendation and may need to seek specific legislative authority and guidance in order to establish a standard of review to determine the appropriateness of expenditures.

STATUS: The Department will begin this process forthwith.

8. **RECOMMENDATION**: *BGS and the Department of Education should seek refunds of unspent grant funds where necessary.*

RESPONSE: The Department agrees that any unspent appropriations should be returned to the State and will identify unspent appropriations and seek refunds.

STATUS: The Department will begin this process forthwith.

9. **RECOMMENDATION**: *BGS should improve written policies and procedures related to reviewing and approving invoices from consultants, contractors and other vendors to assure that payments are supported by adequate detail regarding services performed, dates of service, reimbursable expenses, etc., at the time of invoice approval.*

RESPONSE: The Department periodically reviews its internal policies and procedures and agrees to undertake a review to improve the written policies and procedures in light of the Auditor's recommendations as well as anticipated revisions to Bulletin 3.5 and the Administration's recently completed "Control Self Assessment Moving Forward…Strengthening Internal Controls in Vermont State Government."

STATUS: This review will begin forthwith.

10. **RECOMMENDATION**: *Grant agreements with local organizations sending invoices to BGS for reimbursement should specify the extent of supporting information that should accompany invoices.*

RESPONSE: The Department supports this recommendation. Although the report concludes that expenditures by the local and regional organizations were generally within legislative goals, specifying the limitations on expenditures when money is disbursed and demanding accountability as to how it was spent will further insure that public money is spent within any limitations imposed by the Legislature.

STATUS: See Response to Recommendation #1.

11. **RECOMMENDATION**: *Grant agreements should also specify project accounting and close-out steps so that any unexpended funds can be returned to the State.*

RESPONSE: The Department supports this recommendation.

STATUS: See Response to Recommendation #1.

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12. **RECOMMENDATION**: *BGS contracts with vendors should require invoices to be fully detailed and supported to allow a thorough and efficient review before payment and after, if necessary.*

RESPONSE: As noted in the report, the Department's contracts do require vendor invoices to be fully detailed and supported. The project manager reviews invoices and supporting documentation before payment. If the project manager has questions about a specific invoice or charge on an invoice, the project manager has the authority, and the duty, to request additional information before making payment.

STATUS: As part of its review and revisions of Bulletin 3.5, the Administration will consider whether clarification of these requirements for all state contracts is warranted.

R. Tasha Wallis, Commissioner
Department of Buildings and General Services

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PAVILION OFFICE BUILDING
MONTPELIER, VERMONT 05609-0201

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CHARLES P. SMITH, SECRETARY

STATE OF VERMONT

AGENCY OF ADMINISTRATION

RECEIVED
VERMONT STATE AUDITOR

November 8, 2005

Randolph D. Brock, State Auditor
Office of the State Auditor
132 State Street
Montpelier, Vermont 05633-5101

Dear Randy:

Per our conversations of Monday, November 7th and today, I am writing to address two issues that you have raised with regard to the Department of Buildings and General Services' November 2, 2005 response to your Report on the Regional Technical Academy Development Projects. I would ask that this letter and addendum be attached to and incorporated into the Department's November 2nd response.

First, you advised me that your audit had uncovered an error that was not included in your written report. The error was made in the Miller Realty Group's (MRG's) tabulation of invoices, and accounts for $54,895.00 of the $257,855.00 that you identified in Recommendation #3. I asked the Departments of Finance and Management and Buildings and General Services (BGS) to review the invoices and they concur with your finding that there appears to be an error. Pending an opportunity for MRG to shed different light on the situation, BGS will seek a refund of the amount paid in error.

Second, you advised that the Department's response to your recommendations would be improved by identifying, where appropriate, a contact person and a timeline for completing a recommended action. Attached is an addendum summarizing actions, dates for completion and the contact person for each project.

Please feel free to contact me if you have further questions.

Sincerely,

Charles P. Smith
Secretary of Administration

CPS/hj

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ADDENDUM
Contacts and Timelines

Recommendation#1
Action: Establish statewide guidelines for sub-recipient monitoring of state funded grants.
Status: Underway since mid-year 2005.
Scheduled Completion: July 1, 2006
Contact Person: Jim Reardon, Commissioner of the Department of Finance and Management, (802) 828-2376

Recommendation #2
Action: Department of Buildings and General Services (BGS) to review, confirm and, as necessary, establish written procedures to review the use of capital construction funds.
Scheduled Completion: December 31, 2005
Contact Person: Tasha Wallis, Commissioner of the Department of Buildings and General Services, (802) 828-3519

Recommendation #3
Action: Revision of Bulletin 3.5 to include guidance to departments for extending the principles of Bulletin 3.5 to non-state organizations that enter contracts using state appropriated funds.
Status: Underway since mid-year 2005.
Scheduled Completion: March 1, 2006
Contact Person: Steve Gold, Deputy Secretary of the Agency of Administration, (802) 828-3322

Recommendation #4: See Response to Recommendation #3, above.

Recommendation #5: No further action required.

Recommendation #6: See Responses to Recommendations #1 and #3, above.

Recommendation #7: See Response to Recommendation #1, above.

Recommendation #8:
Action: BGS to identify unspent appropriations and seek refunds.
Scheduled Completion: January 1, 2006
Contact Person: Tasha Wallis, Commissioner of the Department of Buildings and General Services, (802) 828-3519

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Agency Comments and Our Evaluation

Recommendation #9:	
Action:	Undertake review and, as necessary, improvement of BGS' internal, written policies and procedures for the review and approval of invoices.
Scheduled Completion:	July 1, 2006
Contact Person:	Tasha Wallis, Commissioner of the Department of Buildings and General Services, (802) 828-3519
Recommendation #10:	See Response to Recommendation #1.
Recommendation #11:	See Response to Recommendation #1.
Recommendation #12:	See Response to Recommendation #3.

Appendix I:

Agency Comments and Our Evaluation

In addition to our evaluation of agency comments in the body of the report, the following responds to specific technical issues raised in the Secretary of Administration's written response.

1. We could find no support to indicate that it was solely the Chamber of Commerce which selected the property and made the decision to have the property owner renovate the site. The State's February 18, 2003 letter to the property owner begins, "The Commissioner of Buildings & General Services in conjunction with the Site Selection Committee for the Lake Champlain Regional Technical Center has selected your property … as the location for the proposed Regional Technical Center."

Appendix II

Letter from Miller Realty Group Offering to Sell the New England Drive Properties

The
Miller Realty
Group, LLP

REAL ESTATE PLANNERS
PROPERTY MANAGEMENT

November 28, 2001

Melissa Hersh
Director of Education and Training
Lake Champlain Regional Chamber of Commerce
60 Main Street
Burlington, VT 05401

Re: Regional Technical Academy Project

Dear Melissa:

We are in receipt of the site selection committee's letter dated November 15, 2001 requesting additional information regarding our property for further consideration.

PURCHASE OF PROPERTY

a.) As stated in our original proposal dated August 2, 2001, our proposed site consists of 22.4 acres with two (2) buildings.

Building #1 – 5 New England Drive, Essex Junction, which we will call the Champion building has a footprint of 130,000 S.F. with a second floor in the office area, bringing the total square footage to 140,000 square feet.

Building #2 – 25 New England Drive, Essex Junction, which we will call the Tensolite building has a footprint of 113,750 square feet.

The total existing square footage of both buildings is 253,750 square feet. A second floor of 120,000 S.F. could be easily added to the Champion building, which would increase the total square footage to 373,750 square feet.

The Miller Realty Group would be willing to sell the above listed properties for $15,522,000.00

b.) Land and buildings have an assessed value of $9,566,500.00 for the fiscal year 2001.

c.) We believe that if in fact the committee were to choose our site we could offer a very interesting scenario.

599 Avenue D • Williston, VT 05495 • (802) 864-5830 • FAX: (802) 864-4172
milergroup@aol.com

Appendix II

Letter from Miller Realty Group Offering to Sell the New England Drive Properties

Page 2

FIRST A LITTLE HISTORY OF THE BUILDINGS:

Building #1 – 5 New England Drive

In late summer of 1996 it appeared that Jogbra Inc. who had been merged with Champion would be moved out of Vermont taking 150 jobs with the move.

Governor Howard Dean along with the Vermont Development Agency, G.B.I.C., The Chamber and The Miller Realty Group, as the Developer, and a tax incentive plan from the Town of Essex convinced Champion to remain in Vermont. Champion moved into the new facility on May 1, 1997. This was a high risk deal for The Miller Realty Group as the Lease was a 10 year Lease with an eleven months out clause notice.

On April 3, 2001 Champion notified The Miller Realty Group that it would be exercising its option to terminate its Lease with The Miller Realty Group effective March 3, 2002.

Building #2 – 25 New England Drive

The original building was built in 1995 as an indoor soccer facility with a clear span of 110"in width which fell on financial hard times in late 1998.

In the same time frame we had an existing tenant (Vermont Electro Magnectics) who had been a tenant of ours for 10 years, was in an expansion mode and needed to double there size to up to 60,000 S.F. We added an addition in 1999 bringing the total size of the building to 114,000 S.F.

As negotiations were going on with Vermont Electro, Tensolite entered the picture and purchased Vermont Electro. Again they were convinced to stay in Vermont as there were 250 jobs at stake. This was accomplished, but did not last long, i.e.; a year and one half. However, the Base Lease runs through April 2004. One of the main reasons for Tensolite leaving was finding qualified people.

WE ARE NOW SITTING WITH TWO PERFECTLY SOUND BUILDINGS, WHICH CAN BE RECYCLED FOR USE AS THE NEW TECH CENTER.

REASONS:

1.) Motivated Developer.
2.) Building footprint works with Tech Center programs.
3.) All permits in place.
    i.e.; Act 250, Stormwater Discharge, Town, etc., which would allow work to begin immediately.
4.) Earlier occupancy date for classes.
5.) Occupancy could be phased in.
6.) Substantial cost savings by working with this Developer.

Appendix II

Letter from Miller Realty Group Offering to Sell the New England Drive Properties

Page 3

FINANCIAL PACKAGE

We would suggest entering into a 30 year Master Capital Lease. This would do a couple of things:

1.) It would require no capital outlay for approximately two years as the rent from the existing tenants would pay the Lease payments.
2.) The Developer would act as the entity's agent and Lease additional space, which would give additional income for planning, etc., if so desired.
3.) There are other incentives that could be discussed at further length should you wish to discuss these ideas in further detail.

The Miller Realty Group is willing to act as the Developer to complete the fitup at very favorable rates and also factor the costs into the Lease.

We would discuss further involvement during an interview.

There is the normal bank indebtedness, and all real estate taxes are current. There are no restrictions, conservation or other easements which would effect the sale of the property.

ACCESS AND INFRASTRUCTURE

Please see August 22, 2001 proposal for additional information.

THIS LETTER OF INTEREST SPEAKS TO GENERAL TERMS AND CONDITIONS. WE WOULD BE HAPPY TO MEET WITH YOUR GROUP TO GIVE MORE SPECIFIC DETAILS.

Yours truly,

Robert E. Miller

REM/lb

P.S. We are enclosing a copy of a letter of support from the Town of Essex supporting this project in the Town of Essex.

Appendix III

BGS Letter Notifying Miller Realty Group That Its Sites Were Selected and Requesting a Draft Capital Lease

State of Vermont

MASTER FILE

DEPARTMENT OF BUILDINGS & GENERAL SERVICES
AGENCY OF ADMINISTRATION

Facilities Division
Two Governor Aiken Avenue, Drawer 33
Montpelier, VT 05633-5801

Telephone: 802-828-5697
FAX: 802-828-3533

www.bgs.state.vt.us

February 18, 2003

Mr. Robert Miller
The Miller Realty Group
599 Avenue D
Williston, VT 05495

Re: Lake Champlain Regional Technical Center

Dear Bobby:

The Commissioner of Buildings & General Services in conjunction with the Site Selection Committee for the Lake Champlain Regional Technical Center has selected your property, the Tensolite/Champion Jogbra site, as the location for the proposed Regional Technical Center.

The next phases of the project are to develop a capital lease contract for the development of the center and an estimated cost for the project. The estimated cost is needed by early August because the voters of Chittenden County will be voting on the governance and financing of the Technical Center during the fall of 2004. We will need to allow time to prepare for the vote.

Would you please submit a proposal including a draft capital lease, if that's possible and a proposal for the programming and design services sufficient to adequately describe the size and scale of the project. The services should also include a cost estimate in sufficient detail to determine the project cost within a reasonable degree of accuracy for public presentation. If the proposed design services are on a time & material basis please include information on the individuals proposed to do the work, the hourly rates being proposed and an upset limit for the cost of this phase of the design.

Sincerely

Jay Swainbank
Project Manager

cc: Thomas W. Torti, Commissioner
Wanda Minoli, Principal Assistant to the Commissioner
David Burley, Chief of Engineering

Appendix IV

Letter from Miller Realty Group Requesting to be Paid the Difference Between Its Income and Expenses

The Miller Realty Group, LLP

REAL ESTATE PLANNERS
PROPERTY MANAGEMENT

March 5, 2003

Jay Swainbank
State of Vermont
Dept. of Buildings & General Services
Two Governor Aiken Ave., Bldg. 33
Montpelier, VT 05633-5801

Re: Lake Champlain Regional Technical Center

Dear Jay:

On February 6, 2003 a meeting was held at the Lake Champlain Chamber of Commerce conference room in Burlington to discuss action steps and time lines along with other issues concerning the proposed Tech Center.

The following persons were in attendance: Thomas Torti, Commissioner of State Buildings; Wanda Minoli, Principal Assistant to the Commissioner; Wayne Roberts, President and Melissa Hersh, Director of Education & Training both at the Lake Champlain Chamber of Commerce; Bob Miller, representing The Miller Realty Group, LLP.

A discussion took place concerning issues that could cause this project to be abandoned:
1. Failure of the legislature to approve capital funding in the 2003 session.
2. Failure of the legislature to approve governance issues in the 2003 session.
3. Failure of a majority of voters in sending towns to approve the project at the November 2003 elections.

The Miller Realty Group requested that the State of Vermont reimburse the actual difference between the income and expenses on 5 and 25 New England Drive (The Tech Center Project). Commissioner Torti agreed that The Miller Realty Group be reimbursed. With the commencement date reimbursement, would begin as of January 1, 2003.

The state would be invoiced at the end of each month for the month.

This arrangement would run through the end of November unless sooner terminated due to lack of legislative approval, it is assume that once voter approval is received these carrying costs would become part of the capital lease.

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milergroup@aol.com

Appendix IV

Letter from Miller Realty Group Requesting to be Paid the Difference Between Its Income and Expenses

Page 2

The Miller Realty Group agrees that if additional space in the buildings is leased on a short term basis, the total gross rent from these rentals will go directly against the monthly payments made by the state.

Please provide The Miller Realty Group with the proper documents for the monthly billings.

Enclosed is the monthly expense and income statement for two (2) buildings, 5 & 25 New England Drive, Essex Junction.

Sincerely,

Robert E. Miller

REM/lb

Encl.

Appendix IV

Letter from Miller Realty Group Requesting to be Paid the Difference Between Its Income and Expenses

Income and Expenses Existing Land & Buildings
Proposed Lake Champlain Regional Tech Center

			Monthly
Annual Expense $15,500,000.00 x 4.25% interest	=	$ 697,500.00	
Real Estate Taxes (5 & 25 N.E. Dr.)	=	271,545.86	
Gas Heat	=	5,645.44	
Electric	=	18,991.65	
Lawn & Snow Removal	=	24,200.92	
HVAC Service, Alarm test, misc.	=	2,400.00	
Estimate Annual Carrying Cost		$1,020,283.87	
Estimate Monthly Carrying Cost			$85,023.66

Monthly Income	Base Rent	Real Estate Taxes	CAMS	Totals
30 Gauthier Dr., Tensolite	30,893.10	6,206.92	1,111.75	$38,211.77
21 N.E. Dr., CCSU	3,832.50	663.98	379.69	4,876.17
25 N.E. Dr., VSAC	13,816.04	2,360.83	1,111.00	17,276.87
		Total Monthly Income		$60,364.81
		Monthly Charge		($24,658.85)

Appendix V

Letter From Former Commissioner Torti Stating That BGS Has No Legislative Authority to Pay Carrying Costs

MASTER FILE

State of Vermont

DEPARTMENT OF BUILDINGS & GENERAL SERVICES
AGENCY OF ADMINISTRATION

Commissioner's Office
Two Governor Aiken Avenue, Drawer 33
Montpelier, VT 05633-5801

Telephone: 802 828-3314
Fax: 802 828-3533
Web Site Address: http://www.bgs.state.vt.us

April 18, 2003

Mr. Robert Miller
Miller Realty Group
599 Avenue D
Williston, Vermont 05495

Dear Mr. Miller:

Several weeks ago my staff advised me that you have asked us to consider paying you for having to "carry" the proposed Tech Center Buildings in Essex at a cost of about $25,000 per month. I can appreciate that these are your real costs but I have no mechanism to pay you for these costs. We don't have any legislative appropriation or any other authorization that would allow me to pay you for these "carrying" costs.

We don't expect you to hold those buildings vacant until we proceed with construction because we recognized the timeframe realities of this project. Following our meeting a couple of weeks ago, I assumed that you would be looking for some type of occupants so that you can recover these carrying costs.

Give me a call if we need to discuss this further.

Sincerely,

THOMAS W. TORTI
Commissioner

TWT:DEB:cml

Appendix VI

Letter From Miller Realty Group Providing Its Position Relative to the Chittenden Project and Proposing a Written Agreement

The
Miller Realty
Group, LLP

REAL ESTATE PLANNERS
PROPERTY MANAGEMENT

April 21, 2003

State of Vermont
Dept. of Buildings and General Services
Commissioner's Office
Two Governor Aiken Avenue, Drawer 33
Montpelier, VT 05633

Attention: Thomas W. Torti, Commissioner
Buildings and General Services

Re: Regional Technical Center – Essex Junction, VT

Dear Mr. Torti:

Thank you for your letter of April 18, 2003. It took a minute for your comments at the end of Friday's meeting at the Chamber to sink in.

Tom, I have known you for approximately fifteen years. Sometimes I believe your comments are to send up a trial balloon and wait for the fallout.

In saying this I want you to clearly understand our position relative to the Tech Center project and the time line of events.

1. July 2001 original walk-through buildings with you, me, Mike Quinn, and Charlie Smith. At that time you indicated you would like to have the Tech Center open in Fall 2003.

2. August 2, 2001 The Miller Realty Group responded to the Chamber's RFP and memo from Melissa Hersh. In the RFP we offered to enter into a Lease, do a turn-key project or sell and walk away.

3. On November 15, 2001 we received an inquiry from Michael Quinn, Chair of Site Selection Committee requesting additional information; i.e. purchase price of property and any financial packages that we could provide, access and infrastructure and community interest. We responded to November 15, 2001 letter on November 28, 2001.

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Appendix VI

Letter From Miller Realty Group Providing Its Position Relative to the Chittenden Project and Proposing a Written Agreement

Page 2

4. On December 28, 2001 we were advised that our site was recommended to be one of three finalists and forwarded on to your office.

5. On April 4, 2002 I attended a meeting at the Chamber office to talk about the possibility of the Tech Center being located in our buildings. Attendees: Thomas Torti, Bob Miller, Wayne Roberts and the state's financial consultant, Deri Mier. We discussed a 1-year Lease with a one year extension, the legislature would approve project in that session, would go to special vote May 2003, school on line 2004.

6. Up to this point in time there was no commitment by either side. We had other space available so we were in a position to accommodate the RTC.

7. The project did not totally make it through the legislature in the 2002 session, but the legislature did agree to a $750,000 funding mechanism to allow RTC to enter into a Purchase and Sale Agreement and/or a Lease and continue with the design.

8. On September 26, 2002 your office notified The Miller Realty Group that it was one of two finalists for the RTC. The letter stated that the State would consider the direct purchase of the property or possibly a 30-year Capital Lease, which would give the state options of no capital outlay for two years and developer would act as entity's agent and lease space. At the time of the September 26, 2002 letter, the occupancy date was still September 2004.

9. On November 26, 2002 additional information for the RTC was provided to us and we were requested to make a presentation on December 5, 2002.

10. Our presentation December 5, 2002 followed the proto call established by you in your letters of September 26, 2002 and November 26, 2002. Again, we offered to sell at $15,522,000.00.

11. You advised me by telephone on the afternoon of December 6, 2002 that we were selected by the RTC site committee as the preferred site. I asked you to please forward a Letter of Intent stating your intentions i.e. Lease, payments, etc.
By the way the project was still on course to make it through the 2003 legislature with a special election in possibly May 2003, construction start 2003, occupancy 2004.

12. Action steps and time line offered by RTC. (vote slips to Oct/Nov 2003)

13. February letter from Jay Swainbank offers next phases of work, but slips in the fact that it has been decided that vote should not occur until Fall of 2004, thus construction and occupancy will now be 2006 latest date.

Tom, to sum up this whole deal it looks like you want us to be the bad guys.

Appendix VI

Letter From Miller Realty Group Providing Its Position Relative to the Chittenden Project and Proposing a Written Agreement

Page 3

I don't know how you can say with the dates changing weekly how we can in all honesty do justice to the timing of the project, make you whole, and at the same time make us whole.

In closing,
a.) You guys have never given us a firm time line.
b.) A commitment as to your intentions; to lease, purchase or engage us in further discussions on the financial aspects of this project.

Is the timing of your April 18, 2003 letter in response to the legislature's in ability to pass revisions to Act 60. So you don't have anyone to go to the dance with?

Tom, all along the way we have offered to fold the carrying costs into the final budget.

I think before we go any further we had better put all the cards on the table and get a deal in writing.

Please advise me at your earliest convenience when we can get together.

Sincerely,

Robert E. Miller

REM/lb

Appendix VII

Letter From Former Commissioner Torti to Miller Realty Group Regarding State Commitments

4-21-03

Dear Bob:

This will confirm our numerous conversations regarding this project. We agreed that the RTA will be located at your site in Essex. We have agreed that the VSC portion of the project will proceed first with an approximate occupancy of 9/05. We have agreed that the RTA will seek a vote in November of 2004. We have agreed that we will attempt to get the Tech Center constructed as soon as feasible. Further we have agreed that the carrying costs of the building will be built into the capital lease, minus any lease arrangements that you can structure and any income still generated from the buildings. The financing of the capital lease portion of this project needs to be agreed to between you and the RTA board Finally, we agreed that the state will reimburse you for up to 100,000 fir architectural design services provided by Kilcoyne etc.

Please advise if this does not conform to your understandings.

Sincerely,

Tom Torti
Commissioner

Appendix VIII

January 2004 Invoice From Miller Realty Group

The
Miller Realty
Group, LLP

REAL ESTATE PLANNERS
PROPERTY MANAGEMENT

STATEMENT

January 9, 2004

State of Vermont
Dept. of Buildings & General Services
Two Governor Aiken Ave., Bldg. 33
Montpelier, VT 05633-5801

Attention: Jay Swainbank

Re: Lake Champlain Regional Technical Center

Per Agreement Carry Cost for 5 & 25 New England Dr., Essex Jct. Locations

Balance Carried Forward	$243,998.69
December 2003	56,773.00 (see attached revised cost)
Additional Cost due to Power Outage	751.40 (see attached backup)
TOTAL DUE	**$301,523.09**

Please Remit To: **The Miller Realty Group, LLP**
599 Avenue D
Williston, VT 05495

FOR DOCUMENTATION ONLY

599 Avenue D • Williston, VT 05495 • (802) 864-5830 • FAX: (802) 864-4172
milergroup@aol.com

Appendix VIII

January 2004 Invoice From Miller Realty Group

Income and Expenses Existing Land & Buildings
Proposed Lake Champlain Regional Tech Center
Revised January 9, 2004

Annual Expense				Monthly
$15,500,000.00 x 4.25% Interest	=	$	697,500.00	
Real Estate Taxes (5 & 25 N.E. Dr.)	=	$	284,294.04	
Gas Heat	=	$	15,359.40	
Electric	=	$	35,129.01	
Water/Sewer	=	$	4,007.42	
Lawn & Snow Removal	=	$	22,124.50	
HVAC Service, Alarm Test, misc.	=	$	7,913.07	
Estimate Annual Carrying Cost	=	$	1,066,327.44	
Estimate Monthly Carrying Cost				$ 88,860.62

Monthly Income	Base Rent	Real Estate Taxes	CAMS	Totals
5 N.E. Dr., Drake Beam Morin	$ 9,166.66	$ -	$ -	$ 9,166.66
21 N. E. Dr., CCSU	$ 3,905.32	$ 695.16	$ 379.69	$ 4,980.17
25 N. E. Dr., VSAC	$ 14,285.79	$ 2,471.67	$ 1,183.33	$ 17,940.79
		Total Monthly Income		$ 32,087.62
		Monthly Charge		$ (56,773.00)

Appendix IX

Letter From Miller Realty Group Revising the Monthly Carrying Cost

The
Miller Realty
Group, LLP

REAL ESTATE PLANNERS
PROPERTY MANAGEMENT

June 7, 2004

State of Vermont
Dept. of Buildings & General Services
Two Governor Aiken Ave., Bldg. 33
Montpelier, VT 05633-5801

Attention: Thomas Torti
Commissioner

Re: Proposed Regional Technical Academy

Dear Tom:

On May 27, 2004 you requested that I attend a meeting to be held at 10:30 A.M. at the Chamber of Commerce office to meet with you, Wayne Roberts and myself to discuss the current status of the RTA.

You wanted to re-visit a proposal for the Champion building only, which we had offered back in March of 2002.

We offered the Champion building for $8,500,000 million, and will let that offer stand through the November 2004 vote.

We will also agree to a Right of First Refusal on the Tensolite building for Phase II Expansion.

Tom, we agree to take the Tensolite building as you requested as of June 1, 2004.

This will reduce the State's monthly carrying costs (see enclosed),

The State will loose the offsetting income from the Tensolite building.

The Miller Realty Group will be free to lease the Tensolite building for a period of at least five (5) years.

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Appendix IX

Letter From Miller Realty Group Revising the Monthly Carrying Cost

Page 2

The following will be the revised monthly carrying costs beginning June 1, 2004:

Building $8,500,000 @ 4.25% interest rate	$361,250.00
Real Estate Taxes	161,856.00
Common Area Fees	45,676.66
Total Annual Carrying Cost	$568,782.66
Revised Monthly Carrying Cost Beginning 6/1/04 which equates to a monthly savings of $18,540.66.	$ 47,399.00

Tom, if you need clarification to any of this please feel free to call.

Sincerely,

Robert E. Miller

REM/lb

✓ cc: Jay Swainbank

Appendix X

Final Invoice From Miller Realty Group

The
Miller Realty
Group, LLP

COMMERCIAL AND INDUSTRIAL LEASING AND DEVELOPMENT

STATEMENT

November 9, 2004

State of Vermont
Dept. of Buildings & General Services
Two Governor Aiken Ave., Bldg. 33
Montpelier, VT 05633-5801

Attention: Tom Torti

Re: Lake Champlain Regional Technical Academy

Per Agreement Carry Cost for 5 & 25 New England Dr., Essex Jct. Locations

Balance Carried Forward	**$752,549.00**
October 2004	**47,399.00**
Less: Taxation Agreement – Town of Essex	(28,877.00)
TOTAL DUE	**$771,071.00** **Final Billing**

Please Remit To:

The Miller Realty Group, LLP
599 Avenue D
Williston, VT 05495

Terms – Due Upon Receipt

599 Avenue D • Williston, VT 05495 • (802) 864-5830 • FAX: (802) 864-4172
www.rem-development.com