



# Public Authority Contracting Practices

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*Billions of Dollars of Public Funds Committed  
Without Adequate Oversight*

February 2006

New York State  
Office of the State Comptroller  
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Section  
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## Executive Summary

In 2004, State Comptroller Alan G. Hevesi, along with Attorney General Eliot Spitzer, proposed a comprehensive reform agenda to improve accountability and oversight of the operations of public authorities in New York State. The proposed legislation, which was reintroduced with additional support and passed the Assembly in 2005, included a provision for public authorities to submit contracts to the Office of the State Comptroller for approval before they become effective where the Comptroller determines that such oversight is necessary.

In 2004-05, the 46 public authorities and subsidiaries that submit annual procurement data to the Comptroller entered into 10,404 contracts valued at \$5.5 billion. These same entities made payments of \$4.8 billion pursuant to contracts in 2004-05.<sup>1</sup> Dozens of other entities, however, entered into contracts without reporting their procurement activities to any independent oversight body.

In general, public authorities are governed by boards of directors, intended to provide oversight of operations including procurement. Most enabling statutes require public authority boards to develop guidelines to govern authority contracting procedures.

Unfortunately, there are numerous examples where these guidelines have failed to protect the public interest and the award of contracts has been used for personal or political gain. One recent example where procurement practices did not produce a reasonable result is the project to renovate 2 Broadway, the headquarters of the Metropolitan Transportation Authority (MTA). Renovations at the building have been marred by cost overruns, construction delays and corruption. The still incomplete renovations, originally projected to cost \$130 million, have cost the MTA over \$400

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<sup>1</sup> See Appendix A.

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million with the price driven up by scandals, such as the reported payment of \$6 million for elevators that should have cost \$700,000.

A series of audits by the Office of the State Comptroller has identified weaknesses in authority procurement practices, some examples of which are listed below:

- According to New York State Urban Development Corporation (UDC) procurement guidelines, if more than \$15,000 in services is acquired from a vendor over the course of a year, the services should be acquired through a formal written contract with the vendor. Despite this requirement, UDC had no contract with three temporary personnel service vendors to whom payments of \$2.2 million were made between 2002 and 2004.
- Between February 2003 and July 2004, the New York Convention Center Operating Corporation, which runs the Javits Center, awarded individual contracts, without the benefit of a formal competitive bidding process, for consulting, architectural, legal and engineering services in connection with a proposed expansion. Except for the legal services contract, there was no documentation that other firms were considered for the contracts, prices obtained were fair and reasonable, or levels of services needed had been estimated correctly. In less than 18 months, the combined cost of these contracts increased from \$780,000 to nearly \$2.3 million.
- The Nassau County Health Care Corporation (NCHCC) did not comply with provisions of law when awarding construction projects totaling approximately \$981,000 in 2003. NCHCC pre-selected three vendors to whom it offered project specifications with a request that they submit proposals. Officials then awarded the contract to one of the three, denying other potential vendors the opportunity to compete.
- At the Buffalo and Fort Erie Public Bridge Authority, auditors found two contracts, together valued at \$1.7 million, awarded as sole source contracts without justification between 2002 and 2004. Authority officials agreed that the services provided were not unique and that most transportation engineering firms would be qualified to provide them; however, they selected the firms due to long-standing relationships.
- The Thoroughbred Racing Capital Investment Fund skirted required oversight by issuing multiple checks to a consultant attorney valued below the \$2,000 threshold, which requires signature by more than one official of the Fund. The attorney was paid \$285,267 over 17 months with 159 checks, each written for less than \$2,000. On 66 different dates between January 2003 and May 2004, multiple checks were cut

which, if combined into a single check, would have exceeded the threshold for additional review.<sup>2</sup>

- Welfare Research Inc. (WRI), under contract with the Office of Children and Family Services, is expected to hire and oversee consultants who provide training programs to case workers in local social services districts statewide. Between January 2003 and April 2005, auditors found that WRI does not ensure that consultants have appropriate qualifications, nor does it monitor the performance of the subcontractors to determine whether they are fulfilling their training objectives. Similar problems were found with WRI's approach to hiring and overseeing consultants who provide various services in support of mental health programs in New York City.
- Between 2002 and 2003, the Westchester County Health Care Corporation (WCHCC) paid \$112,000 to a credit card company for charges that were not properly itemized or documented by the corporate officials who used the cards. An examination of credit card statements disclosed payments for restaurants, hotels, airlines, florists and ground transportation services for which there was no written justification. For example, in October 2003, the former Chief Executive Officer spent \$1,393 at a yacht club in New York and another \$1,500 at local restaurants. This official also spent \$1,300 at a local restaurant the following month. He did not itemize, document or justify the charges, and did not identify the persons on whose behalf WCHCC incurred the charges.
- Audit findings showed that the Port of Oswego Authority (POA) did not utilize statewide contracts when possible. As a result, POA may be paying more for purchases than is necessary. There were about \$83,400 in discretionary purchases during the fiscal year ending in March 31, 2004 that would have been subject to statewide procurement contracts.
- In violation of its procurement guidelines, the Archives Partnership Trust awarded a \$65,000 contract between April 2003 and March 2005 for graphic design services without competition and without documenting that it met criteria allowing the authority to forego a competitive procurement process.

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<sup>2</sup> Various findings from the Comptroller's review of the Thoroughbred Racing Capital Investment Fund were shared with the New York County District Attorney's Office during the course of the D.A.'s ongoing investigation, which resulted in a guilty plea by the former Chairman of the Fund. See Office of the State Comptroller Press Release. "Former Horse Racing Capital Investment Fund Chair Pleads Guilty to Grand Larceny; Comptroller Audit Details Financial Improprieties; Chair, Executive Director Received Thousands of Dollars in Personal Expenses, Other Inappropriate Expenditures; Chair Ran Private Business from Government Office." December 5, 2005.

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The weaknesses in authority procurement practices identified through audits can best be divided into three primary categories: procurements for which rules are disregarded, poor quality procurements resulting in waste or inefficiency and examples of apparent abuse. Of the 88 public authority audits issued by the Office of the State Comptroller since 2003, 56 have addressed, in some way, procurement and contracting practices. Several audits show authority weaknesses in a variety of areas important to ensuring the integrity of the procurement process.

- Twenty-four audits demonstrate a disregard for procurement rules. For example, 12 audits exemplify a disregard for competitive bidding requirements, 10 illustrate procurements that were not approved in advance by either the board or other authorized individuals, and another demonstrates failure to comply with Executive Order 127, which requires the recording of lobbying activities intended to influence the outcome of a procurement. Some of these same audits demonstrate a lack of commitment to achieving minority- and women-owned business enterprise (M/WBE) contracting goals, inconsistent treatment of vendors and a lack of required reporting.
- Thirty-three audits demonstrate poor quality procurements resulting in waste or inefficiency. For example, 16 reveal vendor payments made with little or no supporting documentation to justify the amount and purpose of the purchase and 9 expose inadequate procurement guidelines or lack of written procedures. The remainder reveal weaknesses, such as procurements not made in an economical manner, inconsistency in vendor selection process, no documentation retained on bids received, inadequate separation of duties, lack of rules governing relationships with sub-contractors and ambiguous contract terms or errors in the original contract amount resulting in change orders.
- Nine audits demonstrate apparent abuses of procurement authority. For example, 7 describe improper use of credit cards or use of credit cards to avoid competitive bidding, and 2 show authorities adding unrelated work to existing contracts instead of re-bidding.

In State fiscal year (SFY) 2004-05, the Office of the State Comptroller reviewed 13,707 State contracts valued at nearly \$16.6 billion dollars. In addition, it reviewed 27,591 contract amendments, for a total of 41,298 transactions valued at more than \$28 billion. As part of its review, the procurement record is reviewed by the Comptroller's staff to ensure the contract is awarded fairly and applicable laws are followed, and the contract itself is reviewed to determine that the terms are reasonable. Such review by the Office of the State Comptroller dates back to at least 1913 and is intended both to ensure the State is not making a financial commitment it

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cannot meet and also to serve as a check against improvident or extravagant use of public funds.

Unlike State agency contracts, with few exceptions, public authority contracts are not subject to approval by the State Comptroller before they become effective. The two major public authorities whose contracts are subject to pre-approval are the Long Island Power Authority (LIPA) and the Thruway Authority. LIPA's enabling legislation requires all of its contracts to be subject to the provision of the State Finance Law relating to contracts made by the State. The Thruway Authority's Board, soon after the Authority was created over 50 years ago, passed a resolution which had the effect of requiring submission of the Authority's contracts for review and approval by the Comptroller.

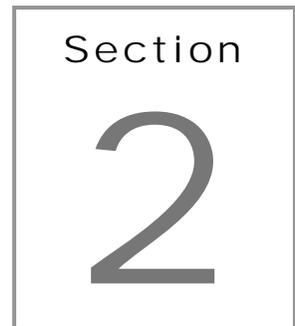
In recent years, two notable issues have arisen in connection with the State Comptroller's review of Thruway Authority contracts. In 2003, Comptroller Hevesi rescinded Office of the State Comptroller approval of a contract awarded by a subsidiary of the Authority, the Canal Corporation, granting exclusive development rights along the State canal system. The rescission was based on evidence that Canal Corporation officials made false and misleading statements to secure approval of the contract by the Office of the State Comptroller. More recently, the Office of the State Comptroller declined to approve a \$46 million Thruway Authority construction contract because the Comptroller found the contractor to be a non-responsive vendor.

Contracts of various other smaller public authorities are submitted for the Comptroller's review and approval because of the nature of the entity, nature of the contracts entered into or in response to scandals uncovered at the entity. The Attorney General opined that the Natural Heritage Trust, for example, possesses attributes of a State agency and, therefore, should be treated as a State agency. Rentals and concessions (other than for exhibition purposes) entered into by the New York Convention Center Operating Corporation (Jacob Javits Convention Center) are expressly required by law to be subject to prior approval by the State Comptroller. The Hudson River Black River Regulating District has requested approval of its contracts by the Office of the State Comptroller for some 40 years, apparently in response to a procurement-related scandal.

Given the findings of audits of public authority procurement practices, it is time for a more comprehensive approach to subjecting contracts of public authorities to pre-audit by the Office of the State Comptroller. New York should not wait for additional scandals to increase oversight of authority procurement practices. The approach proposed in the public authority reform plan advanced by Comptroller Hevesi and others provides a practical solution. It puts every authority on notice that it will be required to submit contracts for the Comptroller's review and approval if the

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Comptroller determines there is a need for such increased oversight. The reforms proposed by Comptroller Hevesi will provide for review of contracting practices at authorities where problems have been identified, and will allow for contracting experts in the Office of the State Comptroller to educate public authority staff in the conduct of fair, competitive procurements.



## Review of Contracts by the Office of the State Comptroller

**N**ew York State agencies are subject to a procurement process through which commodities and services are obtained. This procurement process, established in the State Finance Law, generally governs State agencies only. Local governments must follow procedures outlined in the General Municipal Law, but there are limited rules governing procurements by public authorities in the Public Authorities Law.<sup>3</sup>

Article V, Section 4 of the New York State Constitution designates the Comptroller as the head of the Department of Audit and Control. A 1925 constitutional amendment added the function of “pre-audit” to the Comptroller’s duties.<sup>4</sup> This constitutional amendment followed Chapter 342 of the Laws of 1913, which already required the State Comptroller to pre-audit and approve State contracts valued at more than \$1,000.

Before any contract made for or by any state charitable institution, reformatory, house of refuge, industrial school, officer, department, board or commission, shall be executed or become effective, when such contract exceeds one thousand dollars in amount, it shall first be approved by the comptroller and filed in his office.<sup>5</sup>

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<sup>3</sup> Sections 112 and 163 of the State Finance Law establish procurement procedures for State agencies. The General Municipal Law establishes procurement procedures for local governments, while the procurements conducted by public authorities are subject to various sections of law. In addition, the Public Bidding Law and other statutes prescribe the bidding process for construction contracts held by State agencies.

<sup>4</sup> Constitutionally, the New York State Comptroller is required to “audit all vouchers before payment and all official accounts....” Article V, Section 1 of the New York State Constitution.

<sup>5</sup> Chapter 342 of the Laws of 1913.

According to an opinion of New York State Attorney General Egburt E. Woodbury issued in 1915:

It would seem to be the Comptroller's duty to inspect the proposed contract and examine the prices agreed to be paid, for the purpose of satisfying himself that they are not upon the face thereof unreasonable and extravagant, and that the contract itself is executed in due form by properly constituted authority. In doing this, it would seem to be his duty, as the chief financial officer of the State, to bring to bear his general knowledge and business experience and to obtain such information as may be found readily available as respects the subject of inquiry. Having done this, if he finds that the prices specified in the contract are not apparently unreasonable and extravagant, it would be his duty to approve the same; but if, upon the other hand, the prices are so unreasonable and extravagant as to cause serious loss to the State, it would be his duty to withhold his approval.<sup>6</sup>

An opinion offered by Attorney General Nathaniel Goldstein in 1943 to State Comptroller Frank C. Moore noted:

If, before your approval is given, you receive information indicating a defect or irregularity in the proceedings leading up to the letting of the contract, or that the officer proposing to contract on behalf of the State has been unfaithful in the performance of his duties, I think it is your duty to make proper inquiry to ascertain the facts relating thereto. I do not mean that this inquiry should take the form of a formal hearing but I think that your investigation, when you are so placed on notice or when your suspicions are aroused, should be sufficiently thorough to satisfy you that there has been no unfair dealing and that the interests of the State are not prejudiced.<sup>7</sup>

The State Finance Law has been amended several times since 1913, but the requirement for pre-approval of contracts by the State Comptroller has remained an important part of the system of checks to avoid impropriety in the awarding of State contracts.

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<sup>6</sup> *Report of Attorney General New York 1915, Vol 11 Opinions.* J.B. Lyon Company, Printers. Albany. 1916: 28-32.

<sup>7</sup> *Annual Report of the Attorney-General for the Year ending December 3, 1943.* No. 29. Albany Williams Press, Inc. 1944: 133.

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The seminal case regarding the Comptroller's discretion to approve or disapprove contracts under Section 112 of the State Finance Law is *Konski Engineers, P.C. v. Levitt*.<sup>8</sup> The Court's decision in *Konski* concluded that the Comptroller had the independent power to find a vendor non-responsible and the Comptroller's refusal to approve a contract, in view of his knowledge that the vendor was under Grand Jury investigation for possible involvement with political corruption in the award of public contracts, was justified. This decision established two basic principles for future review of State contracts by the Office of the State Comptroller:

- The Comptroller's discretion to approve a contract under Section 112 of the State Finance Law is wide ranging. It is not simply limited to determining whether a contract is fair and reasonable.
- The Comptroller's decision to approve or disapprove a contract will be upheld if the Comptroller has a rational basis for his actions.

Currently, Section 112(2) of the State Finance Law requires review and approval by the Comptroller of all State contracts in excess of \$15,000.<sup>9</sup> The purposes of this requirement include protecting the public from governmental misconduct and improvidence, and ensuring that contracts are fair and reasonable.<sup>10</sup> The Comptroller's review ensures State agency compliance with a number of statutory requirements regarding contract procurement, the most comprehensive of which are set forth in Section 163 of the State Finance Law, which was added by the "Procurement Stewardship Act" (PSA) of 1995. The PSA established operating principles "to facilitate each state agency's mission, while protecting the interest of the state and its taxpayers and promoting fairness in contracting with the business community."<sup>11</sup> The Office of the State Comptroller follows the operating principles of this Act and considers various other factors in its review of State agency contracts.

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<sup>8</sup> *City of New York v. State of New York*, 87 N.Y.2d 982 (1996); *Parsa v. State of New York*, 64 N.Y.2d 143 (1984); *Konski v. Levitt*, 69 A.D.2d 940 (3d Dep't, 1979).

<sup>9</sup> Chapter 95 of the Laws of 2000 raised the threshold for the pre-approval of contracts by the State Comptroller from \$10,000 to \$15,000. This legislation also raised the threshold for discretionary purchases by the Commissioner of General Services from \$30,000 to \$50,000. This conformed to the increased discretionary purchasing authority for State agencies to buy up to \$50,000 of commodities and services from small businesses and minority- and women-owned business enterprises, and of recycled and remanufactured products. In addition, higher thresholds are established in the Education Law for contracts for SUNY and CUNY and in the Public Health Law for contracts entered into for hospitals operated by the Department of Health.

<sup>10</sup> *City of New York v. State of New York*, 87 N.Y.2d 982 (1996); *Parsa v. State of New York*, 64 N.Y.2d 143 (1984); *Konski v. Levitt*, 69 A.D.2d 940 (3d Dep't, 1979).

<sup>11</sup> Section 163(2) of the State Finance Law.

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The Bureau of Contracts within the Comptroller's Office pre-audits State contracts before they become effective to determine whether they comply with statutory and regulatory procurement requirements and whether the terms are reasonable. To determine whether a proposed contract should be approved, Bureau of Contracts staff may pose questions to the State entity that is awarding the contract. The questions are designed to ensure that the contract is in the best interest of the State and that the procurement process has been properly followed.

In State fiscal year (SFY) 2004-05, the Office of the State Comptroller reviewed 13,707 contracts valued at nearly \$16.6 billion. In addition, it reviewed 27,591 contract amendments, for a total of 41,298 transactions valued at more than \$28 billion.

These statistics include 579 public authority contracts valued at nearly \$5.3 billion and 1,747 public authority contract amendments, for a total of 2,326 transactions valued at more than \$6.0 billion. The contracts include multi-year agreements for a variety of services, including construction, architectural, engineering, real estate, financial, auditing, legal and energy transmission services. Of the 579 new public authority contracts reviewed, 482 were approved, at a value of nearly \$4.9 billion, with approximately \$3.2 billion of this amount made up of Long Island Power Authority (LIPA) contracts. The largest dollar value authority contract reviewed and approved by the Comptroller's Office in 2004-05 was a LIPA power transmission purchase agreement valued at \$1.75 billion.

As the Comptroller's Office reviews the procurement record for contracts or purchase orders exceeding \$15,000, it examines the following:

- Evidence of advertising the procurement opportunity, where applicable,
- Invitation for Bids (IFBs) or Request for Proposals (RFPs),
- Evaluation instrument and process description,
- Pre-bid conference questions and answers,
- Any additional documentation provided to bidders or proposers,
- List of bidders or proposers solicited,
- Contract,
- Bid tabulation or the record of proposal evaluation,

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- Documentation that supports the agency's determination of vendor responsibility,
- Successful proposals in addition to the unsuccessful proposals,
- Documentation that supports the selection of the contractor,
- The reasonableness of the price,
- Verification that all statutory and regulatory requirements have been met, and
- Compliance with disclosure requirements of Executive Order 127.<sup>12</sup>

Effective January 1, 2006, this review also includes the audit of materials required under the Procurement Lobbying Act passed as Chapter 1 of the Laws of 2005, where applicable. New provisions of law included in the Act are intended to limit the influence of lobbyists and vendors in determining the outcome of procurements by governmental entities.

Comptroller's Office staff verifies that a competitive process was used where the law requires such a process, and the contract was appropriately awarded on the basis of lowest price or best value to a responsive and responsible offerer. For contracts not competitively awarded, the procurement record is reviewed for restrictive specifications and the agency's justification for the method used in awarding the contract. In these cases, the Office of the State Comptroller requires justification for how the vendor was selected and for the reasonableness of the terms.

Regardless of the type of procurement method used by the agency, the pre-audit function as exercised by the Office of the State Comptroller is critical to ensure that contracts, which commit New York State to a liability, are reasonable. Office of the State Comptroller staff members work directly with State agencies in a collaborative approach to develop successful procurements that provide the best value for the State while maximizing competition.<sup>13</sup>

Section 112 of the State Finance Law allows 90 days for the Comptroller to make a final determination regarding approval of a contract. The Comptroller's average contract approval, however, generally takes fewer than ten days. In cases of complex procurements, the Office of the State Comptroller and the agency entering into the contract may agree to

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<sup>12</sup> See page 36 for a summary of Executive Order 127.

<sup>13</sup> Office of the State Comptroller. *Strengthening State Procurement Practices: Producing the Best Results for New Yorkers*. April 2005.

lengthen the review period to ensure thorough consideration of the procurement process and its results. For example:

- In September 2005, the Comptroller's Office issued approval of a contract between the New York State Office for Technology and M/A-COM for the development of the Statewide Wireless Network (SWN), a Network intended to provide the infrastructure for State public safety and service entities to communicate and enhance communications capabilities for local police, fire and other emergency personnel. The assessment of the SWN contract involved months of examination of voluminous documentation by a 12-member interdivisional task force, a review of similar programs in other states, an assessment of the technology by an external consultant and an analysis of responses to specific questions the Comptroller's Office posed to the Office for Technology. During the review, the Comptroller's Office achieved a major concession that could save the State and local governments tens of millions of dollars in interest costs associated with the financing of equipment to access the Network.<sup>14</sup>
- A Department of Civil Service contract for pharmacy benefits for 1.1 million public employees was set to expire on January 1, 2006. A newly proposed contract was submitted to the Comptroller's Office in late November 2005. The proposed award to Wellpoint/Caremark was promptly disputed by another vendor who bid on the contract unsuccessfully. The critical nature of the service provided required the Comptroller's Office to develop a temporary solution to ensure the availability of prescription drugs to public employees while the dispute is resolved.

The time it takes an agency to develop the procurement prior to its receipt by the Comptroller's Office is significantly longer than the time earmarked for review by Office of the State Comptroller. The long development time, as much as nine months, can be attributed to many factors, including the complexity of a bid or RFP, an agency's lack of technical expertise or subject knowledge in the procurement subject, understaffing and limited administrative support.

If the agency does not appropriately develop a procurement record, the Comptroller's staff must return the contract to the agency for further documentation. In 2004-05, the Office of the State Comptroller returned 2,162 contracts to agencies unapproved. Of these, 1,079 were new contracts and 934 were amendments with the remainder involving purchase orders. This measure includes all transactions returned to State agencies. Many of the contracts eventually were awarded once the procurement

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<sup>14</sup> Office of the State Comptroller Press Release. "Statewide Wireless Contract Approved." September 22, 2005.

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record was complete, required signatures were acquired, necessary changes were made or adequate funding was secured. Some of the returned transactions, however, did not result in the award of a contract because the procurement process was found to be fatally flawed, the proposed contract amendment was unreasonable or an additional problem surfaced that could not be resolved.

To ensure that parties to the contract are aware that it cannot be effective until approved by the Comptroller, standard language required for all State contracts stipulates:

In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 or (the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

There are also several statutory requirements the State Comptroller must meet concerning procurement:

- Section 8(17) of the State Finance Law requires the Comptroller to report annually to the Legislature, on or before May 1, on the previous fiscal year's consulting services contract awards.
- Section 163(14) of the State Finance Law requires the Comptroller to report annually to the State Procurement Council, Governor and legislative fiscal committees on the previous fiscal year's active procurement contracts above \$15,000.
- Section 9(5) of the Public Buildings Law requires the Comptroller to report annually to the Legislature, on or before January 31, on all construction emergency contracts over \$10,000 let under that statute.

In recognition of the complexity of State contracting and the need to constantly address the changing nature of the market place, Comptroller Hevesi has proposed a procurement reform agenda that was introduced by Assembly Member RoAnn Destito in 2005 (A.8397). The reforms included in the omnibus legislation would affect more than \$28 billion in purchases

made annually by the State and billions more by local governments and would concentrate contract review resources on more costly, higher risk purchases.<sup>15</sup>

The reforms would increase the threshold in State Finance Law for State contracts requiring a formal competitive process and approval by the Comptroller's Office to \$50,000, up from \$15,000 set in statute in 2000. As a result, some 23 percent of transactions, which together account for only 1 percent of the dollars spent pursuant to contracts, would no longer be subject to formal competition and Office of the State Comptroller review. Currently, these procurements require significant expenditure of State resources despite their relatively low risk.

Additional reforms involve changes to the State's Procurement Stewardship Act, which was scheduled to sunset in 2005, but was extended until June 30, 2006. These proposals include rules to govern:

**Debriefing:** Now, unsuccessful bidders usually do not know why they lost and so cannot improve their bids in the future. The reforms would require State agencies to provide an explanation to unsuccessful bidders, if one is requested, of the reasons they did not win in an effort to improve their chances for success in the future. Encouraging more companies to compete effectively creates more opportunity and should ensure the State receives the best possible combination of price and quality.

**Program Procurements:** Currently, there is one set of rules for awarding administrative-type contracts and another for awarding grants-type contracts, such as job training to not-for-profits. If a for-profit entity joins the competition for a grant, normal contract rules apply even though they may not be appropriate for a grant procurement. This reform would create separate, more appropriate rules for awarding grants when for-profits join the competition.

**Aggregate Purchases:** Sometimes State agencies artificially split a purchase to stay below the thresholds requiring competition, thus reducing the ability of businesses to openly compete. New rules would prevent split purchasing by requiring agencies to consider all purchases of the same good or service during one year to be part of a single purchase.

**Piggybacking:** State agencies can purchase from another agency's existing contract. In the future, agencies would have to show that it is in the best interest of the State to "piggyback," rather than procure goods or services through open competition.

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<sup>15</sup> Office of the State Comptroller. *Strengthening State Procurement Practices: Producing the Best Results for New Yorkers*, April 2005.

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**Waiver of Minor Deviations:** Sometimes minor deviations in procedures hold up or stop the awarding of a contract. This reform would give the Comptroller's Office the ability to waive minor deviations and allow the award of a contract as long as no vendor is adversely affected.

**Pilot Procurements:** When situations arise that the law did not anticipate, this reform would give the Comptroller's Office the flexibility to work with State agencies to utilize different contracting methods on a pilot basis.

This procurement reform agenda will be advanced by the Comptroller again this year as he pursues increased oversight of public authority procurements.



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## Review of Public Authority Contracts by the Office of the State Comptroller

Unlike State agency contracts, with few exceptions, public authority contracts are not subject to approval by the State Comptroller before they become effective. Therefore, the primary check on public authority procurement practices by the Office of the State Comptroller occurs in the form of audits of procedures or actual contract results, and the review of annual procurement reports submitted by various public authorities pursuant to Section 2879 of the Public Authorities Law.

A review of annual procurement reports submitted to the Office of the State Comptroller by 46 public authorities and subsidiaries shows that in 2004-05, these entities entered into 10,404 contracts valued at \$5.5 billion. These same entities made payments of \$4.8 billion pursuant to contracts in 2004-05. Dozens of other entities, however, entered into contracts without reporting their procurement activities to any independent oversight body.

The two major public authorities whose contracts are subject to review and approval by the State Comptroller are the Long Island Power Authority (LIPA) and the New York State Thruway Authority, along with its subsidiary corporation, the New York State Canal Corporation.

Section 1020-cc of the Public Authorities Law provides that all contracts of LIPA shall be subject to the provisions of the State Finance Law relating to contracts made by the State. As a result, LIPA contracts exceeding the threshold found in Section 112 of the State Finance Law must be submitted

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to the Comptroller's Office for review and approval before they can become effective.<sup>16</sup>

The applicability of this law was detailed for LIPA in a 1999 legal memorandum from the Office of the State Comptroller, and a formal contract review process was established shortly thereafter. Because LIPA is one of few public authorities that must comply with Section 112 of the State Finance Law, State Comptroller review of LIPA contracts continues to be clarified through collaborative efforts of the Authority and the Office of the State Comptroller.

LIPA enters into contracts for a wide range of goods and services. These include engineering, legal, financial and accounting, real property sales, utility services, cash management services, asset valuation, power plant operation agreements, power purchase agreements, information technology, public relations, executive search services, risk management services, bond marketing and remarketing, fuel cells, and feasibility studies. During its 2004 fiscal year, LIPA entered into 29 contracts valued at more than \$2.6 billion.

Following an examination of contracts awarded prior to 1999, when the Comptroller asserted pre-approval authority over LIPA contracts, the Office of the State Comptroller has concluded that LIPA contracting practices have improved significantly. Specifically, the awarding of contracts without an end-date or Office of the State Comptroller-approved estimated contract amount has been eliminated. In addition, consistent with recommendations included in the public authority reform proposals advanced by the State Comptroller, the Attorney General and others, LIPA hired a procurement officer in 2004 to help ensure consistent application of the Authority's procurement policies.

There have, however, been instances where procurement procedures have failed. Notably, in 2002, LIPA engaged a consultant to serve as its Chief Financial Officer. Eventually, LIPA paid the consultant more than \$580,000 for 14 months of work. Had LIPA entered into this agreement with a contract submitted to the Office of the State Comptroller for review, the Office of the State Comptroller would have required the Authority to set a cap on annual costs associated with the agreement, which was based on an hourly rate of \$275 plus expenses.

Unlike LIPA, the New York State Thruway Authority was not required by its enabling legislation to comply with Section 112 of the State Finance Law and submit its contracts to the Office of the State Comptroller for pre-

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<sup>16</sup> Currently, the State Finance Law threshold for the purchase of goods and services is \$15,000.

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approval. Shortly after the Authority was established in 1950, however, its governing board adopted a Resolution (#19) requesting that the Comptroller “audit the funds of the Authority in the same manner as funds of a regular State agency are audited.” This language has consistently been interpreted by the Authority and the Office of the State Comptroller to include contract approval.

A Resolution (#757) passed by the Board in 1965 held Authority procurements to the standards set forth in its own procedures, instead of those prescribed in the State Finance Law. Although this changed the standards for Office of the State Comptroller review, the Authority continued to submit its contracts to the Comptroller for pre-audit.

During its 2004 fiscal year, the Thruway Authority reported that it had entered into a total of 179 contracts valued at more than \$11.7 million.

When the New York State Canal Corporation was established as a subsidiary of the Thruway Authority in 1992, its contracts also became subject to review and approval by the Office of the State Comptroller. In May 2002, based on the record provided by the Canal Corporation, the Office of the State Comptroller approved a contract granting exclusive development rights along the canal system to a single developer. In October 2003, following allegations of favoritism in the Canal Corporation's award process, Comptroller Hevesi rescinded that approval rendering the contract void after a thorough review revealed that false and misleading statements were made by Canal Corporation officials in order to secure such approval.

A subsequent review of this contract award by the Attorney General and the State Inspector General demonstrated that Canal Corporation officials engaged in deceptive practices throughout the procurement process. The report confirmed that the Office of the State Comptroller was misled, as were others involved in approvals—including the Authority's Board of Directors.<sup>17</sup>

More recently, in November 2005, a review by the Office of the State Comptroller determined that a vendor selected to receive a \$46 million Thruway Authority contract for construction of the interchange between

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<sup>17</sup> Attorney General Eliot Spitzer and State Inspector General Jill Konviser-Levine. *A Joint Investigation Into The Contract Between The New York State Canal Corporation and Richard A. Hutchens CC, LLC*. November 2004.

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Interstates 87 and 84 near Newburgh in Orange County was a "non-responsible" bidder.<sup>18</sup> Following an extensive review of materials supplied by the Thruway Authority, as well as independent research by Office of the State Comptroller investigators and contract auditors, the Comptroller's Office identified serious concerns about the construction firm and returned the contract unapproved. While some of the concerns identified by Office of the State Comptroller were already known to the Thruway Authority, others were not. Upon review of the information, the Authority officials agreed the contract should not be approved.

At the same time the Office of the State Comptroller and the Thruway Authority determined that the contract should not be awarded to the vendor in question, a commitment was made to work together to quickly select a responsible bidder to complete the important project.

Shortly thereafter, the vendor identified as non-responsible initiated legal action challenging the Comptroller's determination and also requesting a preliminary injunction to prevent the award of the contract to another vendor. While a final decision has not been rendered in this case, on December 21, 2005, the State Supreme Court Judge assigned to this case determined that he would not grant a preliminary injunction, thus permitting the Thruway Authority to proceed with the award of the contract to another vendor.

In addition to LIPA and the New York State Thruway Authority, the Office of the State Comptroller also reviews certain contracts of other public authorities:

**Dormitory Authority:** The Dormitory Authority of the State of New York (DASNY) has contracts with State agencies that the Office of the State Comptroller has determined provide for DASNY to enter into third-party agreements that are actually contracts "for" the State. In these cases, DASNY contracts are subject to Office of the State Comptroller approval in accordance with Section 112, which requires the Comptroller's approval of contracts by or for the State.<sup>19</sup>

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<sup>18</sup> Various statutes generally require State agencies and public authorities to determine that the vendors selected for contracts are the lowest *responsible* bidders. Last year, Comptroller Hevesi initiated a multi-phase plan to improve the quality and consistency of responsibility determinations by State agencies. Contracts submitted to the Comptroller's Office for approval now must include an affirmative declaration that the vendor has been determined to be responsible, and the Comptroller's Office has begun to ask questions about specific information used to make the determination and provide resources to assist agencies in determining vendor responsibility.

<sup>19</sup> See the Office of the State Comptroller's "Procurement and Disbursement Guidelines," Bulletin No. G-220.

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**Natural Heritage Trust:** The Attorney General has opined that this entity possesses attributes of a State agency—it is composed solely of State officials, acquires property in the name of the State and is required to be represented by the Attorney General in legal action. It appears that in response to this Opinion, the Natural Heritage Trust began voluntarily submitting its contracts to the Office of the State Comptroller for review.

**Local Government Assistance Corporation:** Similar to the Thruway Authority's Board, the Board of the Local Government Assistance Corporation, which includes the State Comptroller, adopted a resolution providing for Office of the State Comptroller review of its contracts.

**Hudson River-Black River Regulating District:** It appears that in response to a scandal, this entity asked the Office of the State Comptroller to approve all of its contracts.

**Environmental Facilities Corporation:** The Environmental Facilities Corporation (EFC) enters into contracts under the Federal Clean Vessels Act, and these contracts have been determined by the Office of the State Comptroller to be contracts for the State and, therefore, contracts which must be approved by the Comptroller under Section 112 of the State Finance Law. As a result, the Office of the State Comptroller reviews EFC contracts for these types of construction projects.

**State University Construction Fund:** Section 376, subdivision 18(d), of the Education Law provides that “the form of any contract awarded...shall be approved by the attorney general and by the comptroller.”

**Industrial Exhibit Authority:** This entity, which operates the New York State Fair, voluntarily submits its contracts to the Office of the State Comptroller for approval. The Office of the State Comptroller is not aware of the basis under which the Authority submits its contracts.

**New York Convention Center Operating Corporation:** Section 2564 of the Public Authorities Law states that in the case of rentals and concessions, other than for exhibition purposes, contracts entered into by the Javits Center are subject to prior approval of the State Comptroller.



Section  
4

## Audit Findings Demonstrating Disregard for Procurement Rules

**R**ules governing authority procurement exist to encourage the purchase of goods and services of the highest quality at the lowest possible price from responsible vendors. As audits by the Office of the State Comptroller have demonstrated, when rules are disregarded during the procurement process, these goals may not be achieved.

### **Disregarding Competitive Bidding Requirements**

Section 2879 of Public Authorities Law (PAL) requires that public authorities adopt procurement guidelines, which detail the corporations' operative policy and instructions, setting forth requirements regarding the selection of contractors. The guidelines must include provisions for the selection of such contractors on a competitive basis and provisions relating to the circumstances under which the board may by resolution waive competition. Once these guidelines are adopted by the board of a public authority, the authority is expected to adhere to the guidelines. One of the primary purposes of bidding is to foster honest competition in order to get the best possible price and avoid favoritism, fraud, collusion and extravagance. Office of the State Comptroller audits show that several public authorities are not adhering to the competitive bidding requirements set in law.

#### ***Natural Heritage Trust (2005-S-12)***

The Natural Heritage Trust (NHT) needs to improve its oversight of the vendor selection process. When competitive bidding was used, auditors found that competition for the purchases did not always meet the level required by NHT's procurement guidelines. Purchases made from three vendors that exceeded \$14,999 had not been advertised in the *Contract Reporter*, as required. Four purchases of like-kind promotional items (e.g.,

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denim shirts, sweatshirts, socks and hats) were made from the same vendor within a two- to three-week period. If properly planned, these purchases could have been coordinated and bid out collectively, at a cost that would have exceeded the \$14,999 threshold. The items from the other two vendors were classified by NHT as competitively bid; however, NHT officials did not provide any evidence of competitive bidding.<sup>20</sup>

Purchases totaling between \$5,000 and \$14,999 had been made from four other vendors without the required minimum three written quotes. NHT officials were able to provide auditors with some evidence that competition had occurred (e.g., quotes recorded on bid tabulation sheets or summarized on an email, RFPs and summary memorandum). They explained that much of the bid documentation is maintained in the regions by the various account holders. They added that the account holders may have submitted the supporting documentation at the time of initial processing, but NHT may have then returned it without retaining copies for its own files.

At the time of review, NHT's guidelines did not define or indicate when sole source contracts could be utilized or how that status should be documented. As a result of the Office of the State Comptroller audit, NHT officials revised their procurement guidelines on June 22, 2005 to include the category and definition of sole source purchases. Although no written procedures for sole source contracts were available during the review period, auditors found that NHT did use the sole source designation for classifying some contracts. As such, auditors examined a total of 11 sole source purchases to determine whether NHT's files on those vendors contained written justification for the sole source classification. Auditors found that files for five vendors did not contain such justification. NHT's Executive Director provided auditors with reasonable explanations for the decision to use the sole source selection for these purchases. Nevertheless, the reasons for the classification should be documented contemporaneously in the file. The Executive Director agreed and indicated that he would reiterate to all parties the need to properly document the reasons and justification for making such selections.

***Nassau County Health Care Corporation (2004-M-79)***

Section 3402(7) of PAL provides, generally, that contracts for public works of Nassau County Health Care Corporation (NCHCC) are subject to the competitive bidding requirements of the General Municipal Law. The General Municipal Law provides that such contracts involving expenditures

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<sup>20</sup> Natural Heritage Trust (NHT) voluntarily submits contracts to the Office of the State Comptroller for pre-approval under the premise that NHT possesses attributes of a State agency and is, therefore, subject to Section 112 of the State Finance Law. Under this law, contracts below the \$15,000 threshold are not subject to Office of the State Comptroller review.

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in excess of \$20,000 are awarded to the lowest responsible bidder after public advertisement for sealed bids. The General Municipal Law also requires that in the case of contracts for the construction of public works, separate contracts be awarded for plumbing, heating, ventilating and air conditioning, and electrical systems. NCHCC did not comply with provisions of Section 3402 when awarding contracts for various construction projects totaling approximately \$981,000 in 2003. In 2002, NCHCC publicly advertised for vendors who would be engaged to handle various unspecified future construction projects. The bid specifications were titled "Service Contract: Construction, Repairs, Alterations, and Materials" and allowed for multiple contract awards. As a result, three out of four vendors who submitted bids were chosen. After that, whenever NCHCC anticipated a new construction project, it would offer project specifications to the three chosen vendors and request that they submit proposals. The contract was then awarded to one of the three vendors based on the lowest proposal.

Auditors found no indication that NCHCC requested public bids for specified construction contracts or awarded separate prime contracts for plumbing, heating, ventilating and air conditioning, and electric. Moreover, although NCHCC publicly advertised for vendors, NCHCC, in making multiple awards, did not award to the lowest responsible bidder. NCHCC officials felt that this was a cost effective procedure. However, one of the primary purposes of bidding is to foster honest competition in order to get the best possible price and avoid favoritism, fraud, collusion and extravagance. NCHCC did not open up each construction contract to a bidding process, as anticipated by Section 3402. Using only the three pre-selected vendors, without seeking public bids, limits competition for the construction work in derogation of the underlying purposes of the bidding requirements.

NCHCC's procurement policy and relevant laws require that contracts for goods and services in excess of \$10,000 be awarded to the lowest responsible bidder. One of the purposes of bidding is to stimulate competition in order to obtain the lowest possible price and avoid the appearance of favoritism and, therefore, specifications should not be restrictive. In 2003, NCHCC spent approximately \$161,000 for upholstery services. Although NCHCC advertised for bids in the local newspaper, only one bid was received and NCHCC awarded the contract to a sole bidder. The bid specifications required the use of material from a specific manufacturer, with no substitutions allowed. Absent documentation to justify such a narrow specification, the bid requirement is needlessly restricted and precludes competition. Auditors noted that the law allows NCHCC to standardize the procurement of brand name equipment and supplies when such procurements result in efficiencies that benefit NCHCC. However, there was no indication that NCHCC had standardized the purchase of the material in question. In the absence of a standardization

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resolution, all public work contracts should be awarded to the lowest responsible bidder based on specifications that allow for substitution of equal or better products.

***Archives Partnership Trust (2005-S-24)***

Archives Partnership Trust (APT) did not always follow its procurement guidelines when awarding contracts. Between April 2003 and March 2005, APT awarded a contract for graphic design, valued at \$65,000, without using competitive procurement procedures. The graphic design contract was not competitively bid and there was no documentation to support the basis for contractor selection. While APT's procurement guidelines allowed contracts to be awarded on a non-competitive basis, the guidelines require the Chair of the Board or the Executive Officer to determine that: 1) the timely procurement of goods and services involved precludes selection of a contractor pursuant to a competitive procedure, and 2) the goods and services involved require a vendor with unique or exceptionally rare qualifications or experience, specialized equipment or facilities not readily available from other sources, or patents, copyrights or proprietary data. APT lacked documentation to support that the contract was awarded because of either of the above situations.

***New York State Thoroughbred Breeding and Development Fund Corporation (2004-S-57)***

For services that exceed \$5,000, New York State Thoroughbred Breeding and Development Fund Corporation (TBDFC) procedures require that written quotes or competitive bids be obtained, that contracts be entered into and that the contracts be approved by TBDFC's Board. For 2003, auditors found two instances where payments to vendors totaled \$19,600 and \$15,200 respectively. However, competition was not solicited and contracts were not entered into and approved by the Board. Payments to these vendors were also significant in the prior year; thus, the Fund should have anticipated that contracts would be necessary.

***New York Convention Center Operating Corporation (2004-S-21)***

According to the New York Convention Center Operating Corporation's (CCOC's) Manual and Guidelines, an emergency situation is an unanticipated occurrence beyond the control of the Corporation that threatens the life, health, safety or welfare of any person or the continued use or function of the Corporation's property. They define a critical situation as one that has an impact on a significant Corporation operation and requires immediate action. Between February 2003 and July 2004, the Corporation awarded individual contracts, without the benefit of a formal competitive bidding process, for consulting, architectural, legal and engineering services in connection with a proposed expansion of the

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Convention Center. Records indicate that Corporation officials were aware of the proposed expansion as early as July 2002. Except for the legal services contract, there was no documentation that other firms were considered for the contracts, prices obtained were fair and reasonable and levels of services needed had been estimated correctly. In fewer than 18 months, the combined cost of these contracts increased from \$780,000 to nearly \$2.3 million. The Corporation needs to plan in advance to ensure that all purchases of goods and services that can be competitively bid are awarded through that process and the level of service required is properly determined. When a contract cannot be awarded through competitive bidding (e.g., an emergency or single source), steps must be taken to ensure that the contract is awarded consistent with the quality of services required, and at a fair and reasonable price.

***New York Racing Association (2004-S-61)***

The New York Racing Association (NYRA) is not bound to observe the guidelines equal to those other public authorities. The only specific procurement requirement the State imposes on NYRA is contained in Section 213(5) of the Racing Law, requiring that all NYRA contracts for the procurement of goods and services with a value of more than \$250,000 be awarded only by a process of competitive bidding approved by the State Racing and Wagering Board. The statute allows two exceptions to this competitive bidding requirement (procurement of goods or services on an emergency basis or from a documented "sole source" vendor), and states that NYRA must give Racing and Wagering written documentation to justify the need to use these exceptions in making procurements of more than \$250,000.

Auditors reviewed 58 transactions, totaling \$2.6 million. In 22 of these cases, totaling \$2.1 million, NYRA was in violation of Section 213(5) of the Racing Law. For example, NYRA paid a provider \$798,000 during the audit period for web services without soliciting a minimum of three bids, as the Racing Law requires. NYRA could not provide evidence that any bids were solicited. In addition, vendor principals are related to the individual who, at the time services were first provided, was NYRA's Chairman and Chief Executive Officer. Therefore, this transaction also violates NYRA's policy's prohibition of related-party transactions and was clearly a conflict of interest.

In another example, a vendor was awarded two consecutive revenue-based contracts (May 2002 and October 2000), valued at more than \$10 million in gross revenue per year, to provide food services for all NYRA facilities. There is no evidence that NYRA sought competitive bids for either of these two high-dollar value contract awards. Auditors note that the now-deceased Chairman of the Board for the company awarded the contract

also served as a member of the Board of Directors for the Backstretch Employees Pension Fund for Backstretch staff located at NYRA facilities. Although the Pension Fund is a separate legal entity from NYRA, NYRA remits payments to the Fund from purse monies on behalf of the Horsemen, who finance these payments. As such, the no-bid status of these contracts may give the appearance of a related-party transaction.

***State University of New York Research Foundation (2004-S-13)***

In accordance with the State University of New York Research Foundation's policies and procedures, formal bidding was required, but not conducted, for 71 of the 148 invoice payments that auditors tested. The 148 invoice payments correspond to 68 contracts. From the 68 contracts tested, 57 of the contracts complied with the Foundation's procurement policies and procedures, while the other 11 contracts (totaling about \$2.4 million) did not for various reasons. For example, six of these contracts—totaling about \$1.1 million—were awarded on a single-source basis, but there was no documentation justifying that only a single source was available. In these instances, auditors believe that since officials did not comply with procurement policies and procedures, the Foundation did not have adequate assurance that it obtained the best price consistent with quality specifications.

***Port Authority of New York and New Jersey (2004-S-7)***

Proper contracting procedures require that when additional staff is needed for a specific call-in service, the Port Authority should obtain more than one cost proposal for evaluation and should prepare in-house estimates for comparison with the proposals. Six of the contracts in the audit sample were call-in contracts for which the Port Authority had a list of firms that could provide the necessary call-in service. For five of these projects the Port Authority selected the firm to do the work after asking only one firm from the list to submit a proposal. For these five projects there was no written justification for the Port Authority's selection of these particular firms. In addition, for two of the six projects, the Port Authority did not prepare cost estimates in advance for comparison with the proposals. This further increases the uncertainty as to whether a reasonable price was obtained for these projects.

***Port of Oswego Authority (2004-Q-16)***

Contrary to Port of Oswego Authority (POA) guidelines, auditors found that discretionary purchases of items under \$5,000 were made without seeking competitive prices. The Executive Director stated that staffing limitations make it difficult to compare prices.

***Buffalo and Fort Erie Public Bridge Authority (2004-S-38)***

The Buffalo and Fort Erie Public Bridge Authority (BFEPBA) has a total of 13 contracts with a value of more than \$10.1 million that were awarded as sole source contracts from 2002 to 2004. Auditors judgmentally selected six sole source contracts with a value of about \$7.5 million. For two contracts together valued at \$1.7 million, auditors found that BFEPBA did not comply with established procedures and did not appear to have reasonable justification to award them as sole source. The services under these personal services contracts are not unique services—there was no evidence that only the awarded contractor could provide such services. Authority officials agreed that these are services that most transportation engineering firms could provide. Although these contracts were Board-approved, they were not clearly identified to the Board as sole source contracts and there was no justification provided to the Board. BFEPBA's position is that it is in its best interest to hire these contractors. Based on the review of the contract award process and discussions with BFEPBA officials, the contractors were awarded these contracts because of their long-standing relationships with the Authority and because they were the most familiar with the bridge. This approach limits the opportunity for other vendors to compete for contracts and develop similar expertise. More importantly, it leaves the assurance that best value was obtained for the State.

***Hudson River Park Trust (2004-S-37)***

Hudson River Park Trust's (HRPT's) Procurement Guidelines indicate that certain procedures should be followed when contracts are awarded. Auditors, however, found that these procedures are not always followed. In particular, HRPT does not always follow procedures that are intended to promote competition and ensure that contracts are awarded only to qualified bidders. When such procedures are not followed, contract prices may be higher than necessary and the contractor's performance may not meet the requirements of the contract. If HRPT is to be financially self-sustaining, such procedures must be followed.

The Procurement Guidelines require that, where appropriate, vendors be cleared by New York City's Vendor Information Exchange System (VENDEX) before they are awarded contracts.<sup>21</sup> To determine whether HRPT complied with the Procurement Guidelines in its awarding of contracts, auditors judgmentally selected four contracts (out of a total of 101 contracts outstanding during the third quarter of 2003), each of which

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<sup>21</sup> VENDEX is a database containing comprehensive information about vendors that have done business with New York City, including evaluations of their performance on past contracts and relevant financial and contract award information from other New York City computer systems. Vendors with a clear record are issued a certificate of approval by VENDEX.

exceeded \$1 million, and reviewed documentation of the actions taken by HRPT in awarding the contracts.

Auditors found that none of the four contractors appeared to have been cleared through VENDEX, as a VENDEX certificate of approval was not on file for any of these contracts. Auditors used VENDEX to review the four contractors' performance history and found advices of caution pertaining to three of the four contractors. The advices of caution related to business integrity, administrative charges and OSHA violations. All the matters cited on VENDEX were more than ten years old, and it is, therefore, possible that some or all of these matters were no longer relevant when the contracts were awarded by HRPT. However, a VENDEX certificate of approval was not on file for any of these contractors, and according to the Procurement Guidelines, contracts should not be awarded to vendors lacking this certificate.

***Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation (2002-Q-15)***

The Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation (ESPPACC) has policies and procedures that require verbal quotes, written quotes and formal bids based on the dollar value of the purchase. These policies provide assurance that purchases are made in an economical and efficient manner. Auditors found that ESPPACC staff did not always follow the prescribed policies, identifying purchases that were made without either obtaining the necessary quotes or providing documentation to explain why the procedures were not followed. Auditors recommended that Corporation management and staff follow the prescribed policies or document the reasons why policies are not followed.

**Procurements Not Approved in Advance by Board or Other Authorized Individuals**

Section 2879 of PAL requires that every public authority and public benefit corporation, a majority of the members of which consist of persons either appointed by the Governor or who serve as members by virtue of holding a civil office of the State, or a combination thereof, shall adopt by resolution comprehensive guidelines which detail the corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of procurement contracts. The operative policy and instructions lay out the procedures the authority is to follow when approving contracts. The guidelines are to describe when the award of procurement contracts shall require approval of the board by resolution, provided that any contract involving services to be rendered over a period in excess of one year shall require the approval of the board by resolution and an annual review of the

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contract by the board. Audits by the Office of the State Comptroller found that some public authorities are not following the board review procedures they established for themselves.

***New York Convention Center Operating Corporation  
(2004-S-21) and (2004-F-10)***

The New York Convention Center Operating Corporation (CCOC) annual report presented to its Board on July 21, 2004 reported 11 procurement contracts that had been classified as sole/single source and 8 that had been classified as emergency. According to the Guidelines, 5 of the 19 required Board approval. However, auditors found that two CCOC contracts had not been submitted to the Board, as required: a single-source, two-year contract for maintenance and service of the Corporation's radio system at an annual cost of \$49,069 and a \$114,857 contract for the purchase of an electrical switch.

***Capital District Transportation Authority (2005-Q-1)***

According to Capital District Transportation Authority's (CDTA's) purchasing manual, the Board is responsible for the approval of:

- Any contracts that exceed \$100,000,
- Single or sole source awards that exceed \$25,000,
- Contracts awarded to other than the lowest bidder that exceed \$25,000,
- Change orders on Board-awarded contracts that are more than 20 percent of the awarded contract value or \$50,000, whichever is smaller, and
- Contracts involving services to be rendered over a period in excess of one year and that exceed \$25,000 with an annual contract review by the Board.

The CDTA Board technically approves all service contracts in excess of one year by an annual ratification as required by law. The Board approval consists of an annual ratification after the contracts are executed by management, but pre-approval should occur where feasible and ratification should be presented at each monthly Board meeting so that contracts are approved or ratified as near to the execution date as possible. Under the current process, contracts may be in effect for nearly one year prior to being ratified by the Board.

During procurement testing, auditors found that one sole source contract to install heaters on six buses for \$42,700 had not been approved by the

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CDTA Board. CDTA's Purchasing Manual states Board approval is required for sole source procurements valued over \$25,000. CDTA officials stated they believed the heaters were part of a service maintenance agreement in place that had already been approved by the Board. However, since CDTA made the purchase it should have followed its procurement guidelines.

***New York Racing Association (2004-S-61)***

For 5 of the 58 transactions that auditors reviewed, totaling \$321,292, purchase orders were dated after the New York Racing Association received the invoices. Some of the items procured in this manner include a sprinkler system at Saratoga (\$265,249) and fencing at Belmont (\$26,813). This means that high-dollar value purchases were made without adequate Board oversight.

***New York State Job Development Authority (2004-S-32)***

A Job Development Authority (JDA) loan servicing contract, which was originally awarded for a three-year period in March 1997, was amended in March 2000. The amendment extended the contract through February 2005 (five years) and added \$2.3 million to the contract to cover this five-year extension. Public Authority Law requires that any contract of \$5,000 or more for services in excess of one year be reviewed by the authority's board; however, there is no documentation indicating that the loan servicing contract has been reviewed by the JDA Board of Directors since the contract amendment was approved by the Board in March 2000. Auditors recommended that an annual review by the Board be performed and documented for all service contracts requiring such a review.

***New York State Housing Finance Agency/State of New York Mortgage Agency (2004-S-9)***

According to Housing Finance Agency (HFA) guidelines, a purchase order process is to be used for the procurement of non-personal service items. According to Agency officials, written approval must be obtained from authorized individuals before a purchase order can be processed. This written approval must be documented on a formal purchase request. If a purchase request is approved, the Finance Office should ensure that budgeted funds are available for the requested item. If funds are available, an appropriate vendor should be sought through a competitive process.

To determine whether the HFA's purchase order process was, in fact, followed, auditors reviewed a sample of purchases that had been made between January 2003 and April 2004. HFA processed a total of 1,079 purchase orders totaling \$2,083,665 during this period, and auditors selected 50 of these purchase orders, totaling \$124,636, for review.

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Auditors then judgmentally selected for review additional, seven high-dollar purchase orders for advertising services and other items, making a total of 57 purchase orders.

Auditors reviewed the documentation (such as purchase request, vendor invoice and Agency voucher) relating to the 57 HFA purchases and found that three of the seven high-dollar purchases and 28 of the 50 randomly selected purchases did not fully comply with the Agency's purchase order process. In particular, prior approval was not obtained as required for many of the purchases. For example, for two of the high-dollar purchases and 21 of the other purchases, the good or service was received before the purchase request was approved. In addition, in 4 of the 57 sampled purchases, the purchase amount exceeded the amount in the budget of the department making the purchase.

***New York State Bridge Authority (2004-S-20)***

The Bridge Authority's contracting and procurement activities are overseen by its Board, which must explicitly approve all procurement transactions of \$10,000 or more. In overseeing the Authority's contracting and procurement activities, the Board is expected to ensure that the public interest is adequately protected. To determine whether Board members were adequately informed about the Authority's contracting and procurement activities, auditors reviewed the minutes of Board meetings and related records to ascertain what information was provided to Board members about these activities. Auditors found that the information provided to Board members is not specifically documented by the Authority (as is the practice at some public authorities), and the minutes of the Board meetings are not detailed enough to include descriptions of such information.

As a result, auditors could not determine whether Board members were adequately informed about Authority contracting and procurement activities. Auditors did find indications that Board members may not be adequately informed about construction contracts, which account for most of the Authority's contract expenditures. Specifically, prior to the tenure of the former Executive Director, Board members were provided with detailed monthly reports from the Authority's Chief Engineer describing the status of each ongoing construction project. However, during the audit period, these reports were no longer provided to the Board, and had not been provided since 1998, even though they continued to be prepared by the Chief Engineer. According to the Authority's Director of Finance, Board members receive verbal updates about ongoing construction projects. However, in the absence of documentation, there is no way of knowing whether this information is accurate, complete and timely. Auditors recommended that the Chief Engineer's monthly report be provided to all Board members, and

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documentation be maintained of the other information that is provided to Board members about the Authority's contracting and procurement activities. Auditors also recommended that the minutes of public Board meetings be more detailed.

In particular, auditors questioned whether cost increases on construction projects and other procurement contracts received adequate attention from Board members. For example, 28 of the 226 contracts listed in the Authority's 2003 *Procurement Contract Report* exceeded the contract budget by at least 10 percent or at least \$10,000 (an increase of \$10,000 or more would have to be approved by the Board).

Auditors judgmentally selected 13 of these 28 contracts to determine whether the cost increases had been approved by the Board (9 of the 13 were construction-related contracts). The 13 contracts were budgeted for a total of \$6.6 million, but cost increases of \$642,012 (9.7 percent) raised the total cost of the contracts to nearly \$7.3 million. Although auditors found that the cost increases on all 13 contracts were approved by the Board, in the absence of documentation describing the Board's deliberative process and the information on which the Board's approval was based, auditors could not determine whether the Board was fully informed about the nature of the increases or received sufficient advance notification about the increases.

***Hudson River Park Trust (2004-S-37)***

When auditors tested selected purchases at Hudson River Park Trust (HRPT), they found that a number of purchases did not fully comply with the Procurement Guidelines. In particular, some purchases were not properly approved in advance by authorized individuals. When purchases are not properly authorized, there is less assurance the purchases are appropriate. In one test, auditors systematically selected a sample of 16 check payments (totaling \$123,061) from the 104 check payments (totaling \$303,488) that were made to vendors in February 2004 and April 2004, and reviewed the documentation relating to the purchases. The documentation they reviewed indicated that several of the payments did not fully comply with the Procurement Guidelines. In 10 of the 16 payments (totaling \$21,282), either a purchase order was not completed (totaling \$14,381) or the purchase order was not approved before the purchase was made (totaling \$6,900).

***New York Power Authority (2001-S-64)***

When the New York Power Authority (NYPA) Board of Trustees gave its approval to proceed with the construction of a new 500-megawatt plant in Queens in late 1999, the estimated cost of construction was \$375 million. However, after 1999, the estimated cost of construction began to increase.

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These various increases raised the estimated cost of construction from \$375 million to \$475 million. NYPA did not include any of these additional costs in its various formal analyses of the project's cost-effectiveness until December 2000, when an analysis presented to NYPA's Executive Management Committee included a partially updated cost estimate of \$400 million. The fully updated cost estimate of \$475 million was not presented to the Board of Trustees until December 2001, two years after initial approval of the project.

NYPA officials stated that Trustees received monthly reports, including progress reports that showed construction cost increases and there is a log of what is included in these information packages. However, auditors were unable to determine whether NYPA's Board of Trustees was promptly and fully informed about these cost increases because NYPA does not maintain a record of the documents that are provided to the Board members at their meetings (generally, a thick binder of documents is provided to each member at each meeting), and auditors were not permitted by NYPA officials to conduct interviews with Board members. Prompt and full disclosure of such matters is crucial if NYPA—a public entity—is to maintain appropriate standards of public accountability and transparency of major decisions. Auditors, therefore, recommended that NYPA maintain a detailed record of all documents as provided to Board members at Board meetings.

### ***Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation (2002-Q-15)***

The Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation (ESPPACC) has developed policies and procedures that provide assurance that purchases are properly authorized, received and recorded. In addition, purchases are to be reviewed by the Business Manager and approved by the Executive Director and the Board. Auditors, however, found that ESPPACC policies and procedures are not always followed. Auditors identified purchases that were made without proper approvals. Auditors recommended that ESPPACC management take action to ensure all purchases are properly approved, documented and recorded.

### **Purchasing Goods or Services Without a Contract**

Purchasing goods or services without a contract, especially high-dollar goods or services, is risky. Public authorities run the risk of paying significantly higher prices than they would if they had advertised and obtained bids or proposals from several vendors. In addition, the opportunity for authority staff to purchase goods or services that are inappropriate is increased.

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In 2003, Comptroller Hevesi was requested to review polling services procured by LIPA. His review found that a political consultant was paid \$45,000 by LIPA to conduct polls, which included improper questions about politicians. The consultant was selected without using required competitive bidding and paid without a contract, which meant the payments were reviewed neither by the Authority's Board nor by the Office of the State Comptroller.

***New York State Thoroughbred Racing Capital Investment Fund  
(2004-S-71)***

The New York State Thoroughbred Racing Capital Investment Fund's (TRCIF's) procurement guidelines require that the Fund enter into a written agreement for goods or service expenditures estimated to exceed \$5,000. The Fund shares office space with the New York State Thoroughbred and Breeding Development Fund (TBDF). TBDF pays the full rent to the landlord and the Fund pays TBDF for its share of office space—\$7,500 each calendar quarter. The Fund does not have a contract with TBDF for this arrangement.

TRCIF paid its attorney \$150 per hour (at an average of 25 hours weekly) for more than \$200,000 in 2003. The Board approved this contract in 1990 for the period December 5, 1990 through December 4, 1991. There is no renewal clause in the contract and no new contract for legal services by the outside attorney had been presented to the Board for approval during the audit review period. There is similarly no valid contract between TRCIF and its accountant, who is paid \$24,000 per year.

***Nassau County Health Care Corporation (2004-M-79)***

Prior to September 27, 1999, the Nassau County Health Care Corporation (NCHCC) and Nassau County contracted with a vendor for telecommunication cabling and maintenance services. After September 27, 1999, NCHCC had the authority to continue obtaining this type of service under the County contract, which expired in April 2000. Between May 2000 and December 2003, NCHCC obtained the service from the same vendor at a cost of approximately \$1.6 million—apparently under the expired contract. The Corporation did not make use of current State or county contracts or advertise for bids, as required. Auditors did not find any evidence that NCHCC officials had taken any action to determine if better options were available.

The failure of NCHCC officials to obtain cabling and maintenance services under State or county contracts or under a contract competitively bid may have resulted in the payment of higher prices than necessary for these services. Since telecommunications costs have dropped significantly over the past few years, auditors believe NCHCC may have paid significantly

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higher prices than it would have if it had advertised and obtained bids or proposals from several vendors. After auditors brought the contract's expiration to the attention of the Corporation's Purchasing Director, the Board of Directors, on July 20, 2004, adopted a resolution to extend the use of the expired contract for 120 days, pending the solicitation of competitive bids. On November 18, 2004, the Board awarded a contract for telecommunication cabling and maintenance services after soliciting competitive bids.

***New York Racing Association (2004-S-61)***

Of the 58 New York Racing Association (NYRA) transactions that auditors sampled, 22 of them, totaling \$1.1 million, did not have written contracts, even though they met the criteria (long-term relationship/significant dollar value) stated in NYRA's policy requiring written contracts. For example, a vendor that had provided promotional services to NYRA for at least six years, at a cost of \$1.6 million during the audit period alone, did not have a written contract with NYRA until January 2004. Another vendor had provided public relations services for at least three years during the audit period, at a cost of \$207,226, also without a written contract.

***Urban Development Corporation (2004-S-30)***

According to Urban Development Corporation (UDC) procurement guidelines, if more than \$15,000 in services is acquired from a vendor over the course of a year, the services should be acquired through a formal contract with the vendor. Despite this requirement, UDC had no contract with three vendors to which payments of \$2.2 million were made between 2002 and 2004.

Auditors also note that, according to UDC procurement guidelines, contracts of more than \$50,000 must be formally approved by the Board. If the temporary personal services obtained from these three vendors mentioned above had been covered by contracts, the contracts would have required the Board's approval. Since the services were not covered by contracts, Board approval was not obtained. Auditors recommended that the acquisition of temporary personal services be monitored more closely and contracts for such services be established as required.

***New York State Agriculture and Horse Breeding Development Fund (2004-S-56)***

The New York State Agriculture and Horse Breeding Development Fund (AHBDF) has policies and procedures for procurement contracts that were approved by its Board of Directors in 1992. The policies provide that there must be a written contract for purchases of goods or services that exceed \$5,000. Auditors identified three instances where AHBDF did not adhere to

its procurement guidelines. For 2003, AHBDF paid a veterinarian a total of \$33,200 to draw blood samples from horses, which participated in sire stake races, and to test for illegal substances. AHBDF did not solicit competitive bids for this service and there was no formal contract. Similarly, there was no contract for consultant services paid to the former Executive Director, who had retired and agreed to continue as a consultant, until his replacement, hired in March 2003, was fully trained. AHBDF pays this individual one bi-weekly salary payment per quarter. As of April of 2004, he had received four such payments, totaling \$13,500, without a formal contract to document the terms and conditions of this agreement. Fund guidelines allow waiver of price competition if State contracts are used. For 2004, the Fund selected its public accounting firm through a State contract. However, the Fund paid this same firm \$7,400 in 2003 for its services without benefitting from the terms of a State contract or even entering into a formal contract with this company. Proper procedures in this instance would have been to solicit competition and enter into a formal contract with this company.

### ***Central New York Regional Market Authority (2002-Q-13)***

The Central New York Regional Market Authority (CNYRMA) has established dollar level thresholds for requiring bids and for buying goods and services off State contracts. The procedures provide assurances that purchases are made in an economical and efficient manner. Auditor testing indicated the policies generally are followed. However, auditors noted one instance in which the Authority paid a building trades professional an hourly rate for various construction projects without the benefit of a contract. This practice placed CNYRMA at risk if the contractor did not perform according to standards. Auditors recommended the Authority prepare written contracts when purchasing any services from building trades professionals. Policies and procedures should also be in writing to clarify bidding and approval requirements.

### **Noncompliance with Executive Order 127**

In June 2003, Governor Pataki issued Executive Order (EO) 127, requiring State agencies, public benefit corporations, public authorities and commissions to collect and record certain information from contractors seeking procurements in excess of \$15,000, and to make the information available to the public. Certain types of contracts, however, are exempt from EO 127. Procurement contracts that by law must be awarded to the lowest responsible bidder or on the basis of lowest price subsequent to a competitive bid process, as well as back-drop contracts where vendors are pre-qualified, remain exempt.

All State agencies, and public benefit corporations, public authorities or commissions with at least one gubernatorial appointee, the State University of New York and the City University of New York are subject to EO 127. EO 127 also requires the public entity to consider whether a contractor has intentionally provided false or incomplete information under this Order within the last five years as the entity makes its determination of vendor responsibility. Unlike a statute, however, an executive order directs the action of State agencies and authorities without the force and effect of law. While an action of good intention, there has been no reporting of compliance with EO 127.

### ***New York Convention Center Operating Corporation (2004-S-21)***

Executive Order 127 requires the New York Convention Center Operating Corporation (CCOC) to ensure that bid or proposal documents include a disclosure statement identifying all persons or organizations retained, employed or designated by or on behalf of a contractor to attempt to influence the procurement process. A procurement contract is defined by the Order as a contract, agreement or subsequent amendment that involves an annualized expenditure in excess of \$15,000, except for contracts that must be awarded to the lowest responsible bidder or based on the lowest price. Since the Order became effective on August 14, 2003, the CCOC Procurement Department has required vendors to submit Order disclosure forms with their bid packages. However, auditors found a disclosure form had not been obtained for an engineering services contract or amendments to three consultant, architect and legal services contracts. CCOC officials agreed that, in several instances, vendors should have been required to submit disclosure forms, but were not. They added that all vendors would be required to do so in the future.

### **Failure to Meet Minority- and Women-Owned Business Enterprise Contracting Goals**

Article 15-A of the Executive Law (Article 15-A) was enacted in 1988 to promote equality of economic opportunity for minority- and women-owned business enterprises (M/WBEs) and to eradicate barriers to their participation in State contracts. The Division of Minority and Women's Business Development (Division), originally part of the Governor's Office, has been part of the Department of Economic Development (DED) since 1992. Agencies must report their level of M/WBE expenditures in quarterly reports to the Division. Since 2002, agencies have been required to file these reports with DED electronically. Legislation to extend Article 15-A beyond December 31, 2003 to December 31, 2018 was passed by the State Legislature. Under this statute, the term "State agency" is broadly defined to include a wide variety of State agencies, public authorities and

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other State entities. Such State agencies are charged with establishing employment and business participation goals for M/WBEs, for making a “good faith” effort to achieve the goals and for reporting quarterly to the Division on M/WBE participation in their contracts. The Division is responsible for certifying firms as M/WBEs for State contract business and for monitoring State agencies’ compliance with Article 15-A.

Additionally, Section 2879 of PAL requires public authority procurement guidelines to include an identification of those areas or types of contracts for which M/WBEs may best bid so as to promote and assist participation by such enterprises and facilitate a fair share of the awarding of contracts to such enterprises. Several recent audit reports issued by the Comptroller’s Office show that public authorities have not involved M/WBEs in their procurements as much as Article 15-A of the Executive Law intended.

***Natural Heritage Trust (2005-S-12)***

It was the goal of Natural Heritage Trust (NHT) for fiscal years 2004 and 2005 to spend 5 percent of its contract dollars with women-owned businesses and another 5 percent with minority-owned enterprises. However, according to the agency’s own records for calendar year 2004, its actual women business enterprise participation level was just 1.38 percent—totaling \$87,045 out of \$6.3 million in total contractor expenditures—and the records showed no minority business enterprise participation at all. Auditors also found that NHT has not been submitting the quarterly participation reports electronically to DED, as required. As a result, DED’s records report NHT’s M/WBE participation level as 0 percent. NHT officials told auditors they have since obtained the software needed for electronic filing and plan to submit future reports electronically.

***Archives Partnership Trust (2005-S-24)***

There is no evidence in the awarding of contracts to indicate that Archives Partnership Trust (APT) gave comparable consideration to minority- and women-owned firms, as well as firms owned by individuals with disabilities. There is no documentation in contract files that would indicate that APT consulted with the Governor’s Office of Minority and Women Business Development for assistance in identifying certified enterprises as stated in their procurement guidelines.

***New York Convention Center Operating Corporation (2004-F-10)***

This follow-up audit revealed that the New York Convention Center Operating Corporation (CCOC) has not implemented a recommendation made in a previous audit (2000-S-48) advising that CCOC’s procurement guidelines be amended to require that all upcoming bids be advertised in publications directed at the owners of M/WBEs.

***New York City School Construction Authority (2002-F-11)***

This follow-up audit revealed that the New York City School Construction Authority (SCA) has not implemented a recommendation made in a previous audit (1998-N-5) advising SCA to invite a greater number of qualified minority-, women- and/or locally owned firms to bid on program projects. SCA informed auditors that they invite a limited number of qualified minority-, women- and/or locally owned firms to bid on projects, just as they did at the time of the original audit. They state that their protocol of soliciting bids from five to eight firms provides a better overall opportunity for smaller firms to obtain contracts. Auditors stressed the value to SCA of fostering maximum competition, while at the same time giving more minority-, women- and/or locally owned firms the opportunity to experience the bidding and award process.

**Failure to Submit Accurate Annual Procurement Report**

Section 2879 of PAL requires public authorities to prepare and approve an annual report summarizing procurement activity for the fiscal year that just ended. This annual report is to include a listing of all procurement contracts that were valued at \$5,000 or more. It is to describe the subject matter and value of each agreement, the method used to select the contractor, and the status of existing contracts. Furthermore, the report should indicate whether the contractor is a New York or foreign business enterprise, and indication and reason if a contract was exempt from publication in the *Procurement Opportunity Newsletter*.<sup>22</sup> Following board approval, the report is to be submitted to five State entities: the Division of the Budget (DOB), the Office of the State Comptroller, the Department of Economic Development (DED), the Senate Finance Committee, and the Assembly Ways and Means Committee. Several audits conducted by the Comptroller's Office revealed that many public authorities were not in compliance with this section of law.

***Natural Heritage Trust (2005-S-12)***

Natural Heritage Trust's (NHT's) annual procurement report for the fiscal year ended March 31, 2004 was incomplete. It included information only on contracts valued at \$15,000 or more, not \$5,000 or more as required. The report also did not reflect the method used for selecting the contractor, and there was no evidence that the Board had approved it. Further, NHT distributed the report only to the Office of the State Comptroller and not to any of the other four State entities that were supposed to receive it.

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<sup>22</sup> Publication requirements related to the *Procurement Opportunity Newsletter* are found in Article 4-C of the Economic Development Law.

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However, NHT officials provided documentation that the 2005 report was submitted, as required.

The Comptroller's Regulation on Accounting and Reporting for Public Authorities (2 NYCRR Part 201) requires public authorities to submit an Annual Data Request with various reports, including an annual procurement report and guidelines, to the Office of the State Comptroller no later than 90 days following the end of each fiscal year. To submit this report on a timely basis, NHT's Board needs to meet before June 30th each year (i.e., within 90 days of March 31). However, during calendar year 2004, the Board met just once, on July 20th.

***New York Convention Center Operating Corporation (2004-S-21)***

The New York Convention Center Operating Corporation's (CCOC's) Procurement Contract Guidelines require that, within 90 days after the close of each fiscal year, CCOC personnel prepare and submit for approval by the Board of Directors an annual report on procurement contracts in accordance with Section 2879 of PAL. The annual report for fiscal year ending March 31, 2004 was presented to the Board on July 21, 2004. An examination of the documentation provided to auditors by CCOC officials to verify this report's accuracy found that the report was incomplete. When auditors compared the details on CCOC's computerized list of procurement activities for the reporting period with the information in the annual report the Board received, significant differences were noted. A CCOC official explained that these discrepancies were the result of deficiencies in the data conversion process that occurred when CCOC updated its computer system. The Director of Purchasing informed auditors that CCOC staff was working on correcting the problems and would submit a revised annual report to the Board that would include all required information. With the exception of the State Comptroller's Office, CCOC acknowledges that it did not submit the annual report to the additional State entities as required. CCOC committed itself to fulfilling the requirement to distribute future reports to the four other State entities.

***New York State Bridge Authority (2004-S-20)***

An examination of the *Procurement Contract Report* submitted by the New York State Bridge Authority for 2003 found that the report, which listed a total of 226 contracts, was not complete because seven active contracts were not included. These included contracts for security services and bridge inspection services. Auditors believe the seven contracts were omitted from the report because the reporting requirements were not clear to the staff responsible for collecting data for the report. This data is collected from different departments in the Authority, and the responsible staff members in each department have different understandings of what is to be reported. Auditors recommended that either the reporting

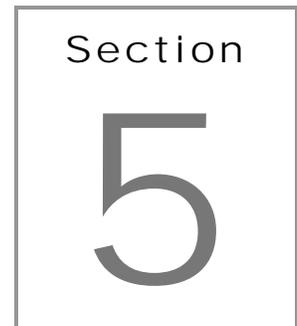
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requirements be clarified for the responsible staff or a single individual be made responsible for collecting the data. Auditors also determined that the Authority's *Procurement Contract Report* for 2003 was not complete because the original contract amounts were not always included in the report. Specifically, if a contract was increased through amendments, as often happens with design and construction contracts, these changes were not included in the report. In the interest of full accountability, such changes should be included.

***Rochester-Genesee Regional Transportation Authority (2002-S-37)***

Rochester-Genesee Regional Transportation Authority (RGRTA) guidelines require that the Board approve all contracts over \$15,000 and that vendors provide a certificate of insurance. Auditor's compared RGRTA's report for the year ended March 31, 2002 to Board meeting minutes for the period January 1, 2000 through March 31, 2002 to determine whether all approved contracts were reported, and whether all reported contracts were properly approved by the Board. Auditor's found the Board approved 23 contracts, valued at about \$1.7 million, which were inappropriately omitted from the 2002 report. Of these 23 contracts, 16 were inadvertently omitted because RGRTA did not effectively track contracts. RGRTA has since implemented a contract tracking system, and officials stated they would report all future procurement contracts worth \$5,000 or more in the report. The remaining seven contracts, valued at \$399,000, were intentionally omitted because they related to another entity, the Genesee Transportation Council (Council). According to RGRTA officials, these are Council contracts unrelated to RGRTA operations, and should not have to be reported. Auditors disagreed, stating that RGRTA's Board approves contracts on behalf of the Council, processes Council contract payments and includes the related contract expenditures in its consolidated financial statements. Accordingly, these contracts should be disclosed in RGRTA's Report. Officials said they would prepare and submit a separate report listing contracts related to the Council.





## Audit Findings Demonstrating Poor Quality Procurements Resulting in Waste or Inefficiency

### **Inadequate Procurement Guidelines or Lack of Written Procedures**

**S**ection 2879 of the Public Authorities Law (PAL) requires public authorities to adopt comprehensive guidelines detailing the policies and procedures for the awarding, monitoring and reporting of procurement contracts. The guidelines must establish the circumstances in which board approval of contract awards is necessary, and should specifically require board approval of any contract for services that will be rendered over a period longer than one year. The guidelines are also to be reviewed and approved annually by the board. A number of audits issued by the Comptroller's Office found that public authority procurement guidelines are insufficient.

#### ***Natural Heritage Trust (2005-S-12)***

A review of Natural Heritage Trust's (NHT's) procurement guidelines found them to be incomplete and outdated. Auditors noted that NHT's procurement guidelines:

- Do not reflect the Board's duty to annually review and approve the procurement guidelines or the annual procurement contract report.

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- Do not establish the Board's responsibility for approving service contracts that cover more than one year or exceed a specific dollar value.
- State that a "formal bid process" must be followed for contracts valued at \$15,000 or more, but does not define the process or the minimum number of bids or quotes that must be obtained for contracts valued at \$15,000 or more.
- Do not specify the documentation to be maintained in support of the Authority's bid and award process.
- Do not establish a record retention policy.
- Do not define the various selection processes that may be used in selecting a contractor (competitive bid, sole source, grant awards, State contract, preferred source vendor, personal service and reasonable price).
- Have not been updated to incorporate requirements of Executive Order 127. The Order, which became effective on August 14, 2003, requires NHT to obtain a disclosure statement identifying all persons or organizations that have been retained, employed or designated by or on behalf of a contractor to attempt to influence the procurement process. NHT has not implemented the Order.

During the audit, NHT's Executive Director sought to update, revise and expand the Authority's procurement guidelines by addressing many of the recommendations made in the auditors' preliminary findings document dated June 15, 2005. At its June 22, 2005 meeting, the NHT Board adopted more comprehensive guidelines that addressed many of the concerns noted above.

***New York State Thoroughbred Breeding and Development Fund Corporation (2004-S-57)***

The New York State Thoroughbred Breeding and Development Fund Corporation (TBDFC) Board does not review/approve procurement guidelines annually, as required.

***New York State Thruway Authority (2004-S-36)***

Auditors found that the Thruway Authority Board has passed resolutions that authorize the Executive Director to execute personal service contracts for more than one year for amounts up to \$150,000, and contract increases

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up to \$150,000 for any previously approved contract without Board approval. While the Board approves such contracts collectively when it ratifies the *Annual Contract Procurement Report*, auditors believe the Board should pre-approve these service contracts, where feasible, and formally ratify contracts quarterly to exert more control over the costs of personal service contracts.

***New York State Convention Center Operating Corporation (2004-F-10)***

This follow-up audit revealed that the Convention Center Operating Corporation (CCOC) had not implemented a recommendation made in a previous audit (2000-S-48), advising that CCOC amend its Procurement Guidelines to require advertisements in local newspapers and trade journals. Although CCOC had met with several local newspapers about placing advertisements with them, no advertisements had been placed in these newspapers as of July 30, 2004. CCOC officials feel that they receive a sufficient number of bids to their solicitations published in the *State Contract Reporter*.

***New York Racing Association (2004-S-61)***

While the New York Racing Association (NYRA) is not bound to observe the guidelines set for most public authorities, it still must establish controls that will enable NYRA officials to operate in an economical manner so NYRA can comply with the directive stated in Section 208 of the Racing Law, which requires NYRA to produce "a reasonable revenue" for the State.<sup>23</sup> To carry out this directive, NYRA developed a Contracting and Procurement Policy (Policy) that addresses competitive bidding requirements for purchases over \$10,000 and states general purchasing procedures to be followed for all NYRA purchases, including purchases of less than \$5,000 in value. NYRA submitted this Policy to Racing and Wagering in 1998, and submitted an updated Policy in October 2003. Racing and Wagering deemed the updated document virtually identical to the Policy submitted in 1998.

However, auditors were informed by NYRA officials that NYRA's Policy, as filed with the Racing and Wagering Board, was not the policy they followed during the audit scope period. Furthermore, the Policy was not distributed to any Department heads outside of Purchasing. The Purchasing Director

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<sup>23</sup> Section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law establishes thoroughbred racing and pari-mutuel betting in New York State "on such a footing that it will command the interest, as well as the confidence and favorable opinion, of the public and so that these activities will provide reasonable revenue for the support of government in accordance with the provisions of section nine of article one of the State Constitution."

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told us that, rather than follow the Policy, NYRA Purchasing Department staff followed certain procedures that had become common practice over the years, but were not codified. During the summer of 2003, the Director compiled these practices into an unofficial “narrative,” which NYRA filed with Racing and Wagering a year later in September 2004 as its official Policy. During the review of procurement operations, auditors also noted that neither NYRA’s official Policy, as submitted to Racing and Wagering in 1998 and 2003, nor the Purchasing Director’s narrative, submitted in September 2004, provide for certain essential control activities.

***United Nations Development Corporation (2004-S-88)***

The United Nations Development Corporation (UNDC) adopted procurement guidelines in 1990 that call for UNDC to use competitive procurement methods for securing outside contracts valued at over \$5,000. These guidelines also specify that written bids are needed if the contract is over \$10,000. An exception to the competitive procurement method is allowed under certain circumstances, such as time limitations, unique services, the need to obtain high quality goods or services or if the Board determines that competitive procurement would be inappropriate. Auditors found that UNDC’s guidelines do not specify suggested or maximum contract lengths, consequently allowing contracts to run for long periods without benefit of renewed competition. For example, the current building management contract has not been subjected to a competitive procurement in eight years and is operating on a month-to-month basis. The procurement guidelines should specify the procedure and documentation requirements for extending contract duration.

***New York State Housing Finance Agency/State of New York Mortgage Agency (2004-S-9)***

The New York State Housing Finance Agency’s (HFA’s) purchase order process, if followed, provides an appropriate system of internal control. However, the process is not described in detailed written procedures that can be provided to staff who are responsible for following the process. In the absence of such detailed written procedures, there is less assurance the process will be followed. Such procedures should be developed and distributed to HFA’s staff.

***New York State Agriculture and Horse Breeding Development Fund (2004-S-56)***

State law requires that the Board annually review and approve the New York State Agriculture and Horse Breeding Development Fund’s (AHBDF’s) procurement policies and procedures. There was no indication in the Board

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minutes that the Board reviewed and approved AHBDF's procurement policies and procedures annually. Additionally, AHBDF does not have written purchasing policies and procedures.

***New York Wine and Grape Foundation (2003-Q-5)***

The New York Wine and Grape Foundation (WGF) does not set written dollar levels for quotes and bids. Consequently, it cannot provide assurance that purchases are made in an economical and efficient manner. Although auditor testing did not reveal any discrepancies, WGF should adopt a policy that specifies particular levels of purchases for which quotes and bids are needed.

**Procurements Not Handled in an Economical Manner**

Executive Order 127 states that the State of New York and its public authorities have an obligation to carry out their responsibilities in the most efficient and effective manner possible. Consistent with this goal, goods or services procured on behalf of the State should be procured with the dual objective of getting the best quality goods or services for the lowest possible price. Contrary to this model, audits by the Office of the State Comptroller have found that several public authorities have failed to make purchases in an economical manner.

***New York State Thoroughbred Racing Capital Investment Fund (2004-S-71)***

Travel vouchers of the Executive Director of the New York State Thoroughbred Racing Capital Investment Fund (TRCIF) showed that he was paid between \$250 and \$350 each week—a total of \$6,261—during the five-month audit period for what appeared to be entertainment expenses. The documentation always indicated that the expense was for a married couple, such as Mr. and Mrs. Jones. The supporting documentation for these expenses was inadequate; it was only a handwritten statement on a standard petty cash form. There were no invoices (e.g., restaurant bills) to support the nature of these expenditures. Auditors asked TRCIF's Chairman to identify the couples and the nature of the expenses. The Chairman told auditors that he assumed the people were associated with racing, but did not know whether the expenses claimed were for meals or some other type of entertainment. Auditors concluded that these are not Fund-related expenses and that the TRCIF should not have paid for these expenses because TRCIF has only one customer—NYRA.

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Additionally, TRCIF paid \$3,483 for car transportation services during the 14 months ended May 4, 2004. Auditors reviewed all of these transportation payments. TRCIF was not able to furnish supporting documentation for five payments totaling \$1,029. TRCIF paid \$997 for a total of 17 trips made by three non-Fund personnel. In another example, TRCIF paid \$1,221 for 12 trips, generally to LaGuardia Airport, made by the Fund's Administrative Director. Auditors were advised that the purpose of these trips was to arrange to have documents flown to the Chairman for his review while at his Florida residence. It would have been less costly if the documents were simply mailed from TRCIF's Manhattan office. The invoices for the transportation services did not document any business-related purpose for these trips.<sup>24</sup>

***Nassau County Health Care Corporation (2004-M-79)***

The Nassau County Health Care Corporation (NCHCC) did not have sufficient management oversight to ensure that in all instances goods and services of the desired quality were obtained at the lowest possible price. During 2003, NCHCC contracted with two vendors to provide pharmacy management and pharmaceuticals. As purchasing agents of NCHCC, the vendors could have taken advantage of Section 340B savings in providing pharmaceuticals to the outpatient clinics in the Medical Center and local clinics.<sup>25</sup> The audit found no evidence that NCHCC had required its agents to take advantage of Section 340B. At the time of the audit, NCHCC officials could not give any reason for not using this program at an earlier time. At the end of 2003, NCHCC enrolled in the Section 340B program and began using Section 340B pricing in March 2004. The Comptroller's Office estimated potential savings of approximately \$1.1 million could have been realized if NCHCC had purchased drugs in accordance with Section 340B pricing during 2003.

To fulfill its mission of providing continued medical services, NCHCC officials routinely contract with employment agencies for the hiring of temporary doctors and nurses. NCHCC did not have a written policy establishing procedures for the hiring of temporary professional staff. There was no procedure to prepare a cost justification analysis to determine whether the use of temporary employees (temps) is a cost effective method

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<sup>24</sup> Office of the State Comptroller Press Release. "Former Horse Racing Capital Investment Fund Chair Pleads Guilty to Grand Larceny; Comptroller Audit Details Financial Improprieties, Chair, Executive Director Received Thousands of Dollars in Personal Expenses, Other Inappropriate Expenditures, Chair Ran Private Business from Government Office." December 5, 2005.

<sup>25</sup> Section 340B of the Veterans Health Care Act of 1992 requires drug manufacturers participating in the Medicaid program to provide discounts on covered outpatient drugs purchased by specific hospitals and other entities, such as the Nassau County Health Care Corporation, serving the uninsured or vulnerable patient groups.

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for acquiring these services. During 2003, NCHCC paid approximately \$8 million for temporary doctors and nurses hired through employment agencies. The employment agencies bill NCHCC for these expenses after the employee submits the documentation. NCHCC can opt to hire temps as permanent employees after paying an employment agency a finder's fee. NCHCC could have saved between approximately \$47,000 and \$93,000 in 2003 had it hired a doctor as a permanent employee six months sooner.

Certain temporary doctors did not reside in the Long Island region and, therefore, incurred daily expenses for lodging, car rentals, airfare, food per diems and mileage reimbursements. Auditors compared some of the rates paid for car rentals and hotel rooms with State contracts and government hotel rates. Their examination of invoices submitted for 15 temporary doctors in 2003 showed that NCHCC did not use government rates, State contracts and tax exemption certificates for hotel stays and car rentals. In many instances, these rates were higher than the State and government rates and many of these bills included taxes. During 2003, NCHCC paid approximately \$65,000 for hotel rooms and car rentals for these 15 temporary doctors. Had NCHCC required the use of State contracts, government hotel rates and tax exemption certificates, it could have saved approximately \$10,000.

In 2001, Nassau County awarded a contract to a vendor for janitorial supplies. Throughout 2003, NCHCC issued purchase orders with reference to this contract and paid approximately \$221,000 to the vendor. Although NCHCC had access to the listing of supplies and prices under the contract, department heads still purchased other supplies that were not under the contract. As a result of NCHCC's failure to compare claims to the contract to verify that the items purchased and the prices paid were in accordance with the contract, NCHCC may have received items of a lower quality and may have paid higher prices than necessary. In addition, purchases outside of the contract were not in accordance with NCHCC procurement policies or procedures that purchases in excess of \$10,000 be made under authorized contracts or be competitively bid.

***New York Racing Association (2004-S-61)***

The New York Racing Association (NYRA) demonstrated that it can save significant amounts by using NYRA, rather than contractor personnel, to perform certain routine functions. For example, NYRA paid an outside firm \$282,947 between 2002 and 2004 for snow removal. Yet, on December 28, 2004, auditors observed NYRA's own staff plowing snow at the Aqueduct facility with equipment exhibiting the NYRA logo. NYRA officials

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said that they have, in fact, already begun to utilize in-house staff for this purpose and have reduced NYRA's snow removal costs to \$25,000 during 2004. Auditors also noted that NYRA reportedly saved \$1.25 million on security services during the first nine months of 2004 when it converted this previously contracted service to an in-house function. NYRA should also compare the cost of operating its customer bus shuttle service with in-house staff and vehicles to contracting the service out. During the audit period, NYRA paid a contractor \$1.1 million to operate four to six buses each day to transport customers between facility entrances and property exits.

As part of the \$2.5 million NYRA spent on trophies between 2002 and 2004, NYRA spent over \$1.1 million for the 470 trophies issued to the owners of winning horses. The costs of the individual trophies—some of which are made of sterling silver—range from \$300 to approximately \$13,500, and average \$2,388 each. Trophies are purchased with NYRA's operating funds, thereby decreasing the Association's net revenue and, consequently, its franchise fee payments to the State. It is clear that, with greater attention to cost, NYRA could reduce trophy expenses significantly. In fact, if NYRA were to split the costs of trophies between purses and operating funds—even at the trophies' current costs—NYRA could reduce its operating costs by more than \$400,000 annually and increase its franchise fee payments by the same amount. To the extent that NYRA also reduced the average cost of trophies, additional savings would be realized.

In 2 of 58 transactions reviewed by auditors, NYRA paid for contracted services it had no obligation to provide. Services from these two vendors cost NYRA about \$384,244 during the audit period. NYRA paid one vendor \$314,244 to transport horses between its tracks, even though this cost should be borne by the horses' owners. NYRA also paid for the insurance required to transport these horses, with the premiums approximating an additional \$70,000 during the audit period. In response to this issue, NYRA officials stated that they charge a stall fee of \$5 per day at Saratoga (except during racing meets), which they assert defray these costs. NYRA officials also stated that they intend to increase the stall fee to \$8.00 in 2005.

***Port of Oswego Authority (2004-Q-16)***

Audit findings showed that the Port of Oswego Authority (POA) did not utilize statewide contracts when possible. As a result, POA may be paying more for purchases than is necessary. There were about \$83,400 in discretionary purchases during the fiscal year ending on March 31, 2004 that would be subject to statewide procurement contracts.

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***New York Racing Association (2004-S-40)***

The New York Racing Association's (NYRA's) formal Contracting and Procurement Policy sets no dollar limits on meals or lodging. To gauge the reasonableness of NYRA employees' lodging and meal costs, auditors compared the costs to General Services Administration (GSA) guidelines, which specify the rates at which government employees can be reimbursed for lodging and meal expenses. These rates are determined by both the geographical region and time of the year. The rates also provide guidance to private industry to determine the reasonableness of employees' expenses for lodging and meals. Auditors determined that NYRA employees spent \$53,476 in excess of the GSA-recommended amount for lodging and meals on 24 occasions. For example:

- On May 17 and May 18, 2002, NYRA officials incurred a \$2,546 charge for three hotel rooms in Baltimore. This charge was incurred during the Preakness, one of the industry's triple-crown races. The \$2,546 cost exceeded the federal per-diem limit by \$1,712.
- An employee traveled to Fort Lauderdale in September 2002 to attend a work-related conference. The cost of meals for the three days was \$313, or \$172 over the federal limit (\$47 per day) for that location.

While auditors recognize that NYRA may be justified in paying for one or two of its top officials to attend major racing events (such as the Preakness and the Kentucky Derby) for business purposes, reimbursement should be made only for reasonable lodging costs and only for the duration required for the business purpose. When NYRA pays for top officials to go to such events, the persons who attend should be identified and the business reason for their attendance should be documented, as required by NYRA Policy.

Auditors also noted that NYRA had a practice of providing management with luxury automobiles. In one instance, auditors found NYRA had paid more than \$600 a month (over \$7,000 a year) on a leased luxury car for the former NYRA President. The leasing of luxury automobiles is not in keeping with economical operation, as required by the Racing Law. Unnecessary and frivolous travel-related expenses are clearly barred; such costs also reduce the franchise fee revenue NYRA can pay the State. When presented with this information, NYRA officials contended they do not follow GSA guidelines, since NYRA is not a government agency. Auditors acknowledge that NYRA is not specifically bound by GSA guidelines. However, the fact is that NYRA is quasi-governmental in nature and is required by the Racing Law to operate in an economical manner. Although

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guidelines setting reasonable limits for meal and lodging reimbursement are surely needed to achieve the goal of economic operation, NYRA Policy contains no guidelines at all for employees to follow. Furthermore, GSA guidelines are a widely consulted standard in the private sector because they set recognized benchmarks for employee travel costs and reasonable travel and entertainment deduction limits.

***Health Research, Inc. (2002-S-14)***

According to Health Research, Inc. (HRI) management, discretionary funds should be spent in pursuit of HRI's mission to assist the Department of Health in its efforts toward protecting and promoting the health of New York State residents through prevention, science and the assurance of quality health care delivery. In the sample of disbursements for the HRI Buffalo Division, auditors identified several disbursements that did not appear to be directly related to HRI's mission. For example, HRI paid \$50,000 for Roswell Park legal costs related to labor disputes involving Roswell Park employees. According to Roswell Park's legal counsel, these employees were in nonscientific positions and the legal disputes were not related to scientific research. Auditors also found that HRI paid \$17,600 for the preparation of Roswell Park's Financial Business Plan, which was not directly related to scientific research. In addition, HRI paid for several Roswell Park employee functions, including an executive employee luncheon. In another example, HRI reimbursed a construction contractor for two parking tickets worth \$35 each. Due to rising recruiting costs and decreases in investment earnings, the Buffalo Division withdrew over \$2.2 million in reserved funds to cover its expenses during fiscal years 2001 and 2002. By using discretionary funds for Roswell Park's operating expenses and employee programs, HRI management is creating the risk that funds will not be available to fulfill HRI's mission. HRI should clearly define and communicate the criteria for dispersing discretionary funds to ensure they are spent as intended.<sup>26</sup>

Domestic travel expenses include transportation, lodging and meals for HRI employees who are required to travel for business. HRI management stated that reimbursements to employees traveling for business are limited to New York State's allowable rates at the time of the travel, and to the allowable federal rates for out-of-State travel. Auditors found that HRI management does not always enforce this policy. As a result, there were significant variances in the reimbursement of employee travel expenses. Auditors evaluated the expenses of four Roswell Park employees and a

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<sup>26</sup> A follow-up audit (2005-F-14) shows that Health Research, Inc. (HRI) has not implemented the recommendation to define the types of expenditures that are consistent with the mission of HRI and communicate such guidance to employees responsible for reviewing and approving disbursements.

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person who was in recruitment status who attended the same business conference in New Orleans. While one employee limited his lodging expenses to the allowable government rate, the other employees exceeded the rate and were reimbursed. In addition, one employee was reimbursed for more nights than the conference lasted, and three employees were reimbursed for additional hotel, food and taxi expenses incurred by them and their guests. HRI also reimbursed two of the employees for meals on a per-diem basis; the two other employees and the person in recruitment status were reimbursed based on receipts. The person in recruitment status was reimbursed a total of \$626, based on receipts that included a room service charge, a lunch meeting and two dinner meetings, all of which were incurred on the same day, as well as extra charges including movie rentals and a miscellaneous room charge.

Auditors also found that HRI reimbursed one employee for a duplicate room service charge. One employee did not submit a detailed hotel bill and, therefore, may have been reimbursed for additional expenses above the per-diem rate or for other inappropriate charges. At the Albany Division, auditors reviewed a lodging transaction involving two employees who attended a meeting in New York City. Lodging for the employees cost \$279 and \$321 per night, respectively, significantly more than the \$198 State rate for New York City at that time. If the employees had used the State rate, they would have saved a total of \$204. Although HRI does not require claimants to include itemized receipts for their lodging expenses, some vouchers contained receipts for additional charges, such as telephone calls, parking, gratuities and room service. Although Albany Division officials rejected all but one request for additional expenses in our sample, there is a risk that, by not requiring itemized receipts, HRI may pay unnecessarily high prices for lodging and related hotel expenses.<sup>27</sup>

### **Payments Made with Little or No Supporting Documentation to Justify the Amount and Purpose of the Purchase**

Section 2880 of PAL defines a "proper invoice" as a written request for a contract payment that is submitted by a contractor setting forth the description, price and quantity of goods, property or services delivered or rendered, in such form and supported by such other substantiating documentation as the corporation may reasonably require. The guidelines of each public authority should define the required level of supporting

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<sup>27</sup> A follow-up audit (2005-F-14) shows that Health Research, Inc. (HRI) has partially implemented the recommendation to enforce existing policies and procedures relating to the reimbursement of employee domestic travel costs and define the circumstance under which it may be appropriate to deviate from standard practices.

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documentation required for the authority to make payment on a purchase. An essential aspect of the supporting documentation is proof that the goods or services were, in fact, received. A number of audits issued by the Comptroller's Office show that authorities are making payments to vendors with little or no supporting documentation to justify the amount and purpose of the purchase.

***State University of New York Research Foundation (2004-S-13)***

At the Foundation's central office, two contracts were not properly procured. Both contracts were entered into with the same vendor, for two different years, without formal bids. This vendor provided lobbying services for the Foundation in support of the University. For the first year, the contract payment was \$600,000. The contract payment increased the second year to \$720,000. Auditors found that the contracts were vague regarding the specific deliverables to be provided to the Foundation, and that the Foundation's billing process did not require adequate documentation before invoice payments were made. In fact, auditors determined that from the 31 invoice payments already made to this vendor, 14 of the payments (for amounts ranging from \$50,000 to \$60,000) were made without documentation as to specific services rendered and incidental expenses (such as travel, phone calls and food) incurred.

***Nassau County Health Care Corporation (2004-M-79)***

The Nassau County Health Care Corporation (NCHCC) did not have appropriate internal controls over claims processing and as a result paid claims, approved by department heads, which were not supported by sufficiently itemized invoices and did not agree with the terms set forth in contracts. This resulted in overpayments of approximately \$87,000. For example, NCHCC contracted to pay a collection agency a fee of 10 percent of receivables collected in 2003, up to a maximum of \$150,000. However, the contract was amended in February 2004, after the end of the contract period, to increase the authorized maximum amount to \$350,000. The Corporation paid approximately \$294,000 in fees to this agency, which collected approximately \$2.2 million in claims for NCHCC. Auditor calculations show the collection agency should have been paid approximately \$221,000 based on the contractual collection fee of 10 percent. As a result, NCHCC overpaid approximately \$73,000.

An examination of invoices paid during 2003 disclosed that 2 of 15 invoices tested were not sufficiently itemized. To illustrate, NCHCC paid an invoice totaling \$3,850 for painting services and an invoice totaling \$19,965 for the furnishing and installation of a door. Although the contracts for these

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services were based on hourly labor rates and material cost, the invoices did not indicate the number of hours worked or the cost of materials.

***Westchester County Health Care Corporation (2005-M-53)***

Between November 2002 and September 2004, the Westchester County Health Care Corporation (WCHCC) paid five consulting firms \$15 million to diagnose WCHCC's financial and operational problems, and develop solutions. Supporting documentation for these services was often not itemized or documented to permit a proper audit of the charges. About \$945,000 in reimbursed expenses were not properly itemized, documented or supported by paid bills or invoices that would have permitted a proper audit of the charges. Officials at WCHCC did not determine whether they received all of the services paid for or whether the consultants' expenses were WCHCC related.

***New York Convention Center Operating Corporation (2004-S-21)***

Auditors identified significant deficiencies in the New York Convention Center Operating Corporation's (CCOC's) receiving function: receiving and storing activities are not separated, goods are delivered to the person making the initial request, goods are not promptly counted or inspected for damage, notations are not made on the vendor's bill of lading or shipping document, receiving reports are not created, and shipping documents and bills of lading are not forwarded promptly to Accounts Payable. Auditors noted that CCOC paid for garbage liners it contracted for, but instead had received items of a lesser quality because the goods were not inspected or checked adequately against a copy of the purchase order. Auditors also noted that the same vendor substituted products despite a "no substitution" stipulation.

***Capital District Transportation Authority (2005-Q-1)***

Auditors reviewed 17 invoices, totaling \$62,462 for one contract, to procure engineering services for two separate projects. They found that some of the hourly rates and some of the job titles paid for were not included in the contract. In addition, the contract terms require that the engineering firm submit a proposal with a cost estimate and hours for each project. If the Capital District Transportation Authority (CDTA) agrees with the proposal, a Scope of Work letter should be approved by both parties and become part of the contract, and CDTA should prepare a purchase order to control the amount paid to the vendor. However, neither the Scope of Work letters nor purchase orders were prepared for these two projects. As of February 2005, CDTA had spent about \$79,933 on these two projects. CDTA

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officials told auditors the project manager responsible for the projects left the organization and they are not able to locate all of the documents.

***New York Racing Association (2004-S-61)***

Of 58 transactions tested, 25 purchases, totaling \$2,148,973, were missing supporting documents, such as the purchase requisition, purchase order and/or vendor invoice. Thus, auditors have no assurance that these procurements were properly justified and approved prior to purchase. Some of the items purchased in this manner include \$25,699 for racing program-related services and \$132,787 for security services. In addition, the New York Racing Association (NYRA) had insufficient paper work to show it had received the goods or services paid for in 25 of the sampled transactions, totaling \$1.1 million. For 6 of the 58 transactions, totaling about \$78,000, there was no evidence that the products or services paid for by NYRA were actually received; more than half of this amount, \$34,885, was paid to law firms. Although these firms submitted bills that stated the hours charged and the associated hourly rates, the firms did not provide detail (e.g., original staff time reports and project assignments) to support the charges. In another case, NYRA paid a vendor \$10,000 for media advertising services based solely on the vendor's invoice. No documentation was supplied to support the services were ordered via the appropriate channels or actually provided.

***United Nations Development Corporation (2004-S-88)***

The United Nations Development Corporation (UNDC) has not established written policies for verifying that goods and services have been received. The managing agent procures certain goods and services on behalf of UNDC, but UNDC staff need to independently verify that goods and services have been received.

***Olympic Regional Development Authority (2004-S-78)***

Auditors found that purchase orders at the Olympic Regional Development Authority (ORDA) are only used if requested by the vendor and are not pre-numbered. (During the review, auditors identified no instances where purchase orders were used.) Also, the Finance Office does not always review or maintain receiving documentation.

***New York Racing Association (2004-S-40)***

The New York Racing Association's (NYRA's) Contracting and Procurement Policy, in effect since October 2000, requires that, in order to be reimbursed for travel and entertainment expenses, the employee must include the

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following in supporting documentation: the names of the individuals present, their titles and companies, the name and location of the site of the meal or event, the exact amount and date of the expense, and the specific business topic discussed. In addition to the above, Internal Revenue Service guidelines require that, in order for entertainment expenses to be deductible, it must be shown that the main purpose of the combined business and entertainment was the active conduct of business, business was actually engaged in during the entertainment period, and there was more than a general expectation of getting income or some other specific business benefit at some future time. However, auditors found that NYRA did not make efforts to enforce its own Policy, or even applicable Tax Code rules. Of the 234 sampled transactions examined, auditors found 106 expenses, with a value of \$214,695, had either no or insufficient documentation to support or justify the business nature of the expenditure. For example:

- On April 26, 2002, \$1,190 was paid to the Garden City Country Club for various expenses incurred in the name of a NYRA executive. One charge in the amount of \$802 was billed as “golfing wives.” Although no business purpose was identified for this expense, the voucher reimbursing this expense was approved by NYRA’s former President and submitted by the former Chief Financial Officer.
- On June 17, 2002, NYRA paid American Express \$3,930. NYRA provided no invoices for the amounts shown on the American Express statement and did not provide a business reason for any of these purchases.
- NYRA paid a vendor \$4,220 on August 1, 2003. This charge was mainly for travel costs, but NYRA provided no contract indicating an obligation to pay these travel expenses.
- NYRA’s food concessionaire billed NYRA \$13,175 on June 8, 2002. NYRA provided no business purpose for this expense. NYRA should not have reimbursed or deducted these expenses as business-related costs, since there was no documentation to show they were legitimate business expenses.

***Hudson River Park Trust (2004-S-37)***

When auditors tested selected purchases at Hudson River Park Trust (HRPT), they found that a number of purchases did not fully comply with the Procurement Guidelines. In particular, the receipt of some goods or services was not verified before payment was made. When payment is

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made before delivery is verified, there is less assurance the authority actually receives what it pays for. In one of the tests, auditors systematically selected a sample of 16 check payments (totaling \$123,061) from the 104 check payments (totaling \$303,488) that were made to vendors in February 2004 and April 2004, and reviewed the documentation relating to the purchases. In 3 of the 16 payments (totaling \$4,785), the vendors were paid without any indication on the packing slips and/or vendor invoices that the goods or services had been received.

***Hudson River-Black River Regulating District (2004-S-58)***

In an audit of the Hudson River-Black River Regulating District (HRBRRD), auditors found three instances in their sample of purchases over \$250, including the purchase of a \$21,000 vehicle, which lacked the supporting documentation (purchase receipts, purchase justification, and/or expenditure requisite justification forms).

***New York State Energy Research and Development Authority (2004-S-55)***

At the New York State Energy Research and Development Authority, auditors found a partial payment on a contract was not supported by documentation of the related labor and material costs, as required by the contract. Such payments should not be made unless the payment requests are supported by appropriate documentation.

***Battery Park City Authority (2004-S-8)***

The Battery Park City Authority's (BPCA's) guidelines for payment of business-related travel and entertainment expenditures are outlined in an employee handbook issued in August 1993. For the calendar year ended December 31, 2003, BPCA records indicate that expenditures for travel and entertainment totaled \$72,465. From the population of 427 travel and entertainment vouchers paid in that year, auditors selected 17 for review. Review of this sample identified paid vouchers that, at the time of review, lacked proper supporting documentation.

When BPCA employees submit travel and entertainment vouchers for payment, they are required by their employee handbook to provide documentation, including detailed bills, the nature of the business discussions and the names of the participants. BPCA's accounting department should review all employee expense submissions for mathematical accuracy and for compliance with the employee handbook, including reimbursement limits. Auditors found that 4 of the 17 vouchers examined did not have all the required supporting documentation and detail

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attached to the voucher. For example, six restaurant charges on two vouchers did not include the number of participants. Therefore, auditors could not determine whether the charges exceeded the dollar limits allowed according to the employee handbook. Supporting documentation should have been included with the vouchers, as required, so the accounting department could determine whether the vouchers were in compliance with the employee handbook.

***Rochester-Genesee Regional Transportation Authority (2002-S-37)***

To ensure that only legitimate expenses are paid, Rochester-Genesee Regional Transportation Authority (RGRTA) guidelines require staff to approve invoices to verify that goods and services have been received and that invoice amounts are in agreement with contract terms. Auditors selected three discrete samples of RGRTA disbursements to assess RGRTA compliance with these guidelines, and the guidelines' overall effectiveness in controlling expenditures. For the sampled expenses, auditors determined whether payments were adequately supported, in agreement with contract terms, properly authorized and charged against appropriate funds. The first sample comprised 26 disbursements made between April 1, 2000 and October 31, 2002 that totaled \$255,500. The 26 disbursements were judgmentally selected from 12 different procurement contracts that aggregated more than \$7.7 million and covered both day-to-day operational costs and capital projects. The review of these disbursements found exceptions totaling almost \$64,500 for seven invoices. The exceptions were as follows:

- One invoice for engineering design services, worth about \$32,000, lacked support for the hours billed,
- One invoice for construction management services for the Rochester Central Station project, totaling about \$22,500, indicated the percentage of work completed, but not the actual tasks performed, as required by the contract terms,
- Three invoices for engineering services, totaling more than \$9,500, had no retainage withheld, as required by RGRTA contracts with these vendors, and
- Two invoices inappropriately assessed delivery charges; one of the invoices also included inaccurate item prices.

RGRTA may have overpaid for the professional services noted above because it paid the invoices without having proper documentation to

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support the costs. In addition, the Chief Financial Officer (CFO) was the project manager in all the above instances, and his was the only signature on the claim vouchers. The CFO stated that he knows whether deliverables have been received, and that his approval alone, given his project manager status, complies with Authority guidelines. However, additional assurances would be provided if RGRTA required that two persons review and approve all invoices over \$10,000. RGRTA should also make sure it requires retainage to help ensure contractor performance, and reviews invoices thoroughly before paying them to detect any billing errors.

In a second sample, auditors reviewed 25 invoices, totaling about \$1.1 million, for Rochester Central Station project expenditures, finding that:

- 14 of the 25 invoices had either no documentation or insufficient documentation to substantiate the total hours worked, and
- Only 5 of the 25 invoices were approved by a department head other than the CFO; the other 20 invoices were approved only by the CFO, acting in either a department head or CFO capacity.

RGRTA should require adequate documentation of billed goods and services, and review invoices for billing accuracy, both to comply with RGRTA guidelines and to avoid paying for services it did not receive.

A third sample tested RGRTA expenditures for legal fees. RGRTA's contracted legal counsel provides and bills for legal services for a variety of RGRTA matters, including the Rochester Central Station Project (Project). The attorney's invoices include billings for both Project and non-Project costs. However, only the RGRTA's Project-related legal costs are reimbursable by Federal Transit Administration (FTA) grant funds, which are targeted specifically for Project expenses. Therefore, the third sample of invoices tested to determine that RGRTA charged only Project-related legal costs against the FTA funds. To do this, auditors identified 70 invoices for legal services, totaling more than \$722,000, that had been included in grant reimbursement claims between January 2000 and May 2003. Of this number, auditors judgmentally selected and reviewed 52 invoices, totaling about \$456,000, determining that:

- 17 of these invoices, with a total value of about \$28,000, were for legal services unrelated to the Project. Exceptions included almost \$21,000 in fees for the Fast Ferry Project and about \$600 in fees for lobbying, neither of which is chargeable against the FTA grant.

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- RGRTA's contract with the attorney had a range of payment rates by job title (e.g., attorney, law clerk, paralegal), but none of the attorney's bills reviewed identified the job titles for hours billed.
- For the sampled invoices, RGRTA failed to take advantage of a 2 percent discount the attorney offered for payments made within ten days.

RGRTA also needs to review the exceptions auditors identified and make the necessary accounting adjustments to FTA grants. RGRTA officials concurred with auditor findings and agreed to refund the related grant funds. They also said they have instructed their legal counsel to submit separate invoices for charges related to the Project. RGRTA should also require the attorney to identify job titles in future bills and should pay attorney invoices within ten days.

***Health Research, Inc. (2002-S-14)<sup>28</sup>***

Health Research, Inc. (HRI) policy requires that vouchers submitted for payment be supported with documentation that attests to the accuracy and legitimacy of the claimed expenses. Supporting documentation should provide enough evidence to justify the amount and purpose of the purchase. Typical supporting documentation includes items such as purchase orders, requisitions, meeting agendas, seminar notices, restaurant receipts and original vendor invoices with the appropriate authorizations. In addition, staff members should not approve disbursements without thoroughly reviewing supporting documentation. Auditors found that HRI frequently paid vouchers for meal reimbursement that did not include sufficient documentation to justify the expense. For example, HRI paid for a meal voucher that did not include a receipt and one that included a receipt for an amount different than what was claimed. In addition, based on the review of 133 vouchers, auditors found that HRI paid for 63 meal vouchers worth \$8,421 that did not include an itinerary or similar documentation showing how long the guests stayed in Albany. Auditors also identified a claim for reimbursement of speaker costs that did not include a copy of the seminar notice to evidence that the person was scheduled to speak. Such documentation is important to enable HRI staff responsible for reviewing vouchers to determine whether the guest was

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<sup>28</sup> A follow-up audit (2005-F-14) shows that officials send emails and memos to staff who review voucher documentation, reminding them of significant issues, including the requirement of sufficient documentation, such as itemized receipts, the required exclusion of sales tax and the need to take advantage of purchase discounts. However, there are still no formal procedures regarding voucher processing.

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eligible for reimbursement or how many meals the guest should reasonably claim for that period of time.

The Buffalo Division of HRI paid a \$2,000 voucher for consulting fees, which did not include a consultant invoice or meeting agenda, and three invoices totaling \$589 for help wanted ads that did not have sufficient supporting documentation attached. Auditors also noted the lack of documentation related to vouchers paid by the Buffalo Division for Roswell Park functions. For example, the Buffalo Division paid \$275 to a local restaurant for a Roswell Park executive luncheon with only a copy of a take-out menu as supporting documentation. Buffalo Division officials also paid a \$3,803 voucher for the Roswell Park Alumni Luncheon Reception held during the American Association for Cancer Research annual meeting that did not include any registration lists or official attendance records.

Auditors also found several instances where HRI staff did not review vouchers and supporting documentation closely enough to identify errors before they paid them. For example, Buffalo Division staff members made a \$6,346 duplicate payment because they based the disbursement on the vendor's monthly account statement, rather than an original invoice. In addition, HRI and Roswell Park are tax-exempt corporations and, as such, are not required to pay sales tax on purchases. However, auditors found that Buffalo Division staff paid \$1,512 in sales tax on one service agreement due to the lack of proper review of this disbursement. Auditors noted other instances where HRI reimbursed vouchers containing sales tax and vouchers that included documentation that was either erroneous or did not support the amount claimed. This resulted in two duplicate payments worth \$141 and \$570, respectively, and two overpayments to vendors totaling \$242.

In reviewing the sampled documentation, auditors also identified multiple vouchers at the Buffalo Division that were signed by only one individual. These vouchers were for payments to this employee's family members worth \$180 and for services that exceeded the original contracted amount worth \$750. The lack of a secondary authorization on these vouchers creates the risk of potential improprieties. HRI needs to establish policies and procedures that instruct staff to require sufficient documentation and carefully review it before they pay vouchers. Without adequate documentation, HRI management has no assurance that the voucher amounts are accurate or justifiable. In addition, they have no assurance that they actually received the services for which they paid. In addition, some vendors offer purchase discounts to encourage customers to pay their bills quickly. HRI management has not established policies and procedures that require HRI staff to take advantage of purchase discounts.

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During the review of sampled transactions, auditors identified 31 instances (involving an advertising firm, a moving company and a scientific journal advertisement) where HRI officials did not take advantage of purchase discounts. If staff had taken advantage of these discounts, they could have saved \$1,712.

***Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation (2002-Q-15)***

The Nelson A. Rockefeller Empire State Plaza Performing Arts Center Corporation (ESPPACC) has developed policies and procedures that provide assurance that purchases are properly authorized, received and recorded. All purchases are reviewed by the Business Manager and approved by the Executive Director and the Board. However, auditors found that ESPPACC policies and procedures are not always followed. Auditors identified purchases that were made without proper approvals and purchases that were paid for without evidence the goods and/or services had been received. Auditors recommended that ESPPACC management take action to ensure all purchases are properly approved, documented and recorded.

## **Inconsistency in Vendor Selection Process**

Information provided to vendors must be clearly written so that all vendors understand: 1) the requirements of a responsive bid or proposal, 2) how their bid or proposal will be evaluated, and 3) the general method the agency will use to select a successful vendor.

Each competing vendor must be provided consistent information throughout the procurement process. Additionally, all vendor proposals must be considered and awards must be made in accordance with a rational, pre-determined process. The process may use price as the sole determinant or may consider a variety of factors such as quality, cost and the efficiency of the proposed solution. Proper contracting procedures require controls and consistency in the bid evaluation process to ensure that all applicants have an equal chance at receiving the contract.

***Natural Heritage Trust (2005-S-12)***

The purpose of the State-funded Barn Grant program is to provide for the restoration and preservation of barns and related agricultural buildings in New York State. In addition to being symbols of the cultural lifestyles of earlier generations, these structures tell a unique story of agricultural history and heritage. The program, which began in 2001, awards grants as high as

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\$25,000 to individual barn owners throughout the State who want to preserve and rehabilitate their buildings. Funding allocated to the program from State appropriations from inception through calendar year 2004 totals \$4.7 million. Auditors limited their examination of the barn grant awards to five recipients, finding that three of the five barn grants reviewed did not appear to have been granted to the applicant with the highest cumulative grade. In fact, one of the five did not appear on the list provided by National Heritage Trust (NHT). This one grant appears to have been awarded to a recipient that was not subject to the review process. For the entire group, NHT officials did not provide auditors with contemporaneous evidence justifying the selections; they said such documentation does not exist. However, they said they would meet with the review committee and request that minutes be taken at future meetings and that the reasons for future selections would be documented.

***Port Authority of New York and New Jersey (2004-S-7)***

Proper contracting procedures require controls over the opening of bids. However, auditors found proposals at the Port Authority were opened as they arrived, rather than all at one time on the deadline date. This creates an opportunity for proposals to be shared with firms that have not yet submitted proposals, thereby enabling them to adjust their terms to better their chances of receiving a contract. (In response to the draft report, Port Authority management stated that it centralized, in June/July 2004, the receipt of all bids and proposals and established uniform procedures for the receipt and opening of bids and proposals across Procurement Divisions.)

According to Port Authority guidelines, the evaluation methodology (such as the weighting of criteria, the use of evaluation techniques and the selection method) should be established in a memo by the appropriate Project Manager and evaluation committee before Requests for Proposals (RFPs) are sent to the firms. For 11 of the 23 contracts auditors reviewed, there was no documentation of the evaluation methodology used to evaluate the proposals. For 6 of the 11 contracts, Port Authority management explained the evaluation methodology memo was destroyed on September 11, 2001. However, while the Port Authority's response to the draft report stated it is current practice to prepare the evaluation methodology before an RFP is released, Port Authority staff did not do so in advance of releasing the RFPs for the other five contracts.

Proper contracting procedures require the Port Authority to evaluate proposals in a consistent manner. A firm's multiplier is one of the criteria that may be used to evaluate firms. Auditors found inconsistencies in the scoring of proposals on the final summary evaluations for six sampled

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contracts when the committee evaluated firms on their proposed multiplier. In response to preliminary findings, Port Authority management stated there is no inconsistency in the evaluation process; rather, the instances auditors found were errors that did not affect the outcome. However, Port Authority management was not able to provide auditors with documentation proving the evaluation process was fair and accurate in regard to this issue.

Port Authority guidelines allow for contract negotiations both before and after the evaluation committee makes its recommendation for an award. However, auditors noted that for six contracts where multipliers were part of the evaluation process, the evaluation committee changed certain firms' multipliers and rankings after negotiations with these firms. There was no documentation as to why the negotiations were undertaken or why they were not undertaken with all firms. Instead, the evaluation committee merely changed the multiplier on the final summary evaluations, crossing out the old multiplier and inserting the new one. By having the opportunity to lower the multiplier, a firm is able to reduce its proposed cost, thereby receiving a higher score and increasing the chances of receiving a contract. In response to preliminary findings, Port Authority management explained the practice is to negotiate with any highly rated firm that also has a relatively high multiplier and to offer any firm with the same technical rating the same opportunity to lower its multiplier. However, auditors found no documentation that all firms received the opportunity to lower their multipliers. The Port Authority needs to document such negotiations and provide all affected firms with an equal opportunity to negotiate. (In its response to the draft report, Port Authority management stated documentation has been improved as recommended.)

***Roosevelt Island Operating Corporation (2003-Q-4)***

Auditors found that receipt times at the Roosevelt Island Operating Corporation (RIOCI) had not been noted on any of the three bids auditors reviewed that had not arrived via fax machine. In addition, RIOCI does not summarize all of the bids it receives for each bid proposal. Therefore, RIOCI cannot ensure the integrity of the bidding process by demonstrating that all bids were received prior to established deadlines. Auditors recommended RIOCI stamp the date and time of receipt on each bid and summarize all bids received.

**No Documentation Retained on Bids Received**

It is important for organizations to document critical decisions and significant events. These decisions and events often result in the use, commitment or transfer of resources. By recording and retaining

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information related to these decisions and events, management creates a history that can serve as justification for its actions. Public authorities need to retain procurement documentation long enough that in the event the award process is questioned, it can adequately support its decisions. A truly competitive procurement process should include an analysis of all bids received.

***State University Construction Fund (2005-S-1)***

The State University Construction Fund (SUCF) guidelines do not require selection committee members to document the specific justification(s) for the elimination of certain consultants from the initial list of qualified applicants or for those firms that make the short list. Because this type of information is not contained in the contract procurement files, auditors were unable to determine the specific reasons for the consultants selected for the short list and why other consultants were not included on that list. Therefore, auditors concluded that the addition and retention of documentation that substantiates the addition or removal of certain consultants to/from the short list would help strengthen controls over the overall consultant selection process.

***Dormitory Authority of the State of New York (2004-S-72)***

Auditors concluded that, based on an analysis of underwriters selected for the 141 bonds issued during the scope period and discussions with Dormitory Authority (DASNY) staff, DASNY did comply with its procedures for selecting underwriters. However, DASNY was unable to provide auditors with documentation of the decisions made by its staff, including any specific analysis and/or justification used to select lead underwriters. Auditors believe that better documentation to support DASNY's selections of lead underwriters will provide further assurance that DASNY has followed its underwriter selection process. DASNY was able to provide auditors with documentation describing criteria, analysis and justification for the underwriter selected for the one bond sale that was issued on a competitive basis. Auditors found that the documentation provided by DASNY in this instance was adequate to justify the selection of the underwriter.

DASNY's bond issuance guidelines require DASNY to issue RFPs to solicit bond underwriters on a periodic basis; once every year for judicial and educational projects and every three years for all other projects. Periodically issuing RFPs helps ensure the widest possible field of qualified firms has the opportunity to serve as lead underwriters of DASNY bond issuances. Furthermore, this process helps ensure that new underwriting firms or those waiting for the opportunity to work as a DASNY bond underwriter will not have to wait an extensive period of time and will know

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when to expect the next RFP. Auditors found that although DASNY has regularly issued RFPs for underwriting services, DASNY has not regularly issued RFPs to develop a list of pre-qualified bond counsels. According to DASNY officials, the last RFP for bond counsel services was conducted in 1995. In DASNY's 90-day response, Authority officials informed the Comptroller's Office that they will procure the services of bond counsel at least every five years in accordance with the Authority's Procurement Guidelines.

***New York State Thruway Authority (2004-S-36)***

The Thruway Authority's guidelines do not describe the process the Authority should use to select and hire specific underwriters and bond counsel from the pre-qualified pools to market individual debt sales, or identify the documentation the Authority should keep to support these selection decisions. Auditors found that a relatively small number of firms manages the majority of the Authority debt sales and, therefore, earns larger fees. For example, one underwriter served as the book-runner on bond and note sales representing 39 percent and 78 percent, respectively, of the face amount of the bonds and notes sold during the audit period. The Authority should document how it selects the firms it hires to sell debt, both to demonstrate that it obtained debt sale services at the most reasonable cost, and to avoid the appearance of favoritism in its hiring decisions.

***State University of New York Research Foundation (2004-S-13)***

Foundation officials stated that they considered three firms in their search for a vendor to provide lobbying services for the Foundation in support of the University. Two of the firms made presentations to Foundation officials. The third firm, based on past experience, was unacceptable since Foundation officials were unsatisfied with prior service provided. Foundation officials were unable to provide auditors with documentation related to one of the presentations or with cost proposals from either firm. Foundation officials were also unable to provide auditors with an analysis, prior to the selection and approval of the contract, documenting that a review was performed which compared the specific services to be provided in relationship to the desired goals and the dollar amount of the contract.

***Port Authority of New York and New Jersey (2004-S-7)***

Proper contracting procedures require the Port Authority to maintain adequate records to account for all proposals received. Without such records, proposals received could be discarded, either intentionally or unintentionally, thereby affecting the outcome of the award process. The

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Port Authority did not have adequate controls over the receipt of proposals. Procurement Department staff provided auditors with a document they said contained the names of firms that submitted proposals. However, this record was not adequate because it did not include sufficient information, such as the date each proposal was received, the signature of staff who opened it or the signature of a witness.

Proper contracting procedures require proposals not selected be retained for a reasonable period. This is important so that the Port Authority has documentation that the evaluation of firms was done accurately and fairly, in the event of a lawsuit by a losing firm. For all of the sampled contracts, the Port Authority did not retain the proposals of firms not chosen. (In response to the audit draft report, Port Authority management stated it has implemented the recommendation to retain these records for a reasonable period.)

***New York State Housing Finance Agency/State of New York Mortgage Agency (2004-S-9)***

Auditors were unable to determine whether eight sample contracts met the contractor selection requirements contained in the Procurement Guidelines because the documentation provided by HFA was incomplete, irrelevant or contained insufficient information for such a determination. Two of these eight contracts were sole source contracts (i.e., in these two instances, there was no competition, because the HFA believed only one vendor was capable of providing the services it required); however, no contemporaneous documentation was provided that justified the sole source method of selection. As of October 31, 2003, HFA had spent a total of \$1.4 million on these eight contracts, which provided legal services, financial services, recovery services, security services and various types of consulting services. In the absence of adequate supporting documentation, there is less assurance contracts are awarded in accordance with requirements. Auditors noted that contract award documentation is not maintained in a central location; rather, different types of documentation are maintained in different HFA departments.

## **Inadequate Separation of Duties**

The Office of the State Comptroller publishes *Standards for Internal Control in New York State Government* on its website.<sup>29</sup> These standards define separation of duties as the “division of key tasks and responsibilities among

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<sup>29</sup> Office of the State Comptroller. *Standards for Internal Control in New York State Government*. <<http://nysosc3.osc.state.ny.us/audits/audits/controls/standards.htm>>.

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the various employees and subunits of an organization. No one individual should control all the key aspects of a transaction or event. By separating key tasks and responsibilities—such as receiving, recording, depositing, securing and reconciling assets—management can reduce the risk of error, waste, or wrongful acts occurring or going undetected. The purchasing cycle is a key area where the separation of duties can minimize the risk of inappropriate, unauthorized or fraudulent activities. Specifically, the various activities related to a purchase (initiation, authorization, approval, ordering, receipt, payment and record keeping) should be done by different employees or subunits of an organization.” Several audits issued by the Comptroller’s Office have shown that public authorities, contrary to the standards, do not have adequate separation of duties.

***Natural Heritage Trust (2005-S-12)***

At Natural Heritage Trust (NHT), the functions of initiating a purchase request, preparing purchasing specifications, receiving responses to proposals and evaluating them, authorizing the purchase, and receiving the purchased goods or services are generally performed by one person, the account holder of that specific trust fund account. It is only after the goods/services are received that the account holder seeks approval for payment from NHT administrative staff by completing and signing a Letter Order form that provides descriptive explanations of what was purchased, as well as a Payment Request form certifying that the vendor’s invoice is correct and the goods or services have been received. Upon receiving these forms, NHT’s bookkeeper prepares a check for the Executive Director’s approval and Treasurer/Controller’s signature. Internal controls would be strengthened if additional employees were involved in this process, rather than assigning so many duties to the authorized account holder alone. Although NHT officials recognize the need for separating the purchasing duties, they cite staff limitations as an obstacle. At a minimum, the goods should be delivered to someone other than the person making the purchase (e.g., the account holder), who prepares a receiving report and forwards it to the NHT bookkeeper as an independent verification that the goods or services were received. For example, since most account holders are the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) employees working in OPRHP Regional Offices, the central receiving location for the region could function as the independent receiver/verifier of goods.

***New York State Thoroughbred Breeding and Development Fund Corporation (2004-S-57)***

Auditors determined that the New York State Thoroughbred Breeding and Development Fund’s (TBDFC’s) Comptroller has too much responsibility in

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the purchasing area. The purchasing, receiving and payment functions should be separated.

***Port of Oswego Authority (2004-Q-16)***

Key Port of Oswego Authority (POA) personnel are responsible for initiating a purchase requisition, which is reviewed and approved by the Executive Director prior to contacting a vendor. Upon approval, the account clerk is responsible for contacting a vendor, maintaining the accounting records and processing disbursements. Receipt of all goods is managed by administrative staff. Auditors found that the account clerk maintains the accounting records and writes checks for all disbursements. Maintaining the accounting records and writing checks is an inadequate separation of duties. Furthermore, pre-signed checks left in an unlocked space add to this weakness. However, the Executive Director reviews the bank statement, including all canceled checks, each month and is in a position to recognize unauthorized purchases.

***New York State Agriculture and Horse Breeding Development Fund (2004-S-56)***

Auditors were advised that the New York State Agriculture and Horse Breeding Development Fund's (AHBDF's) bookkeeper is responsible for ordering goods and services and reporting that they have been received. The bookkeeper prepares the check and furnishes the Executive Director with all supporting documentation. The Executive Director is supposed to review all of the supporting documentation before authorizing payment and signing the check. The Fund should have written procurement policies for each individual's responsibility in the purchasing process. This includes who initiates, approves, orders, receives and records a purchase. Although written policies will further ensure accountability, all of the purchasing transactions auditors examined were properly authorized and documented.

***Hudson River-Black River Regulating District (2004-S-58)***

Hudson River-Black River Regulating District (HRBRRD) policies require the Executive Director to approve all purchases over \$250. The office supervisors in the Hudson River Area Office, Sacandaga Field Office and Black River Area Office can approve purchases up to \$250. The examination found that one employee in the Hudson River Area Office and one employee in the Black River Area Office have the authority to create a purchase order, verify delivery, generate a payment check, and record and maintain the accounting records. The former Executive Director did not consistently review purchase orders over \$250.

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***New York State Energy Research and Development Authority  
(2004-S-55)***

Auditors recommended improvements to the New York State Energy Research and Development Authority's controls over procurement and contracting. Duties are not adequately separated among different employees because the person who places orders also confirms that the goods were received.

***New York Wine and Grape Foundation (2003-Q-5)***

The New York Wine and Grape Foundation's (WGF's) policies and procedures do not provide adequate assurance that purchases are authorized, received and recorded properly. The Foundation lacks separation of duties, as the accounts payable clerk can request, receive, record and make the disbursements for goods and services. Although testing did not reveal any errors, auditors recommended that WGF separate the duties related to purchasing.

**Lack of Rules Governing Relationships with  
Sub-Contractors**

Contracts are entered into with a prime vendor, who may then subcontract to another vendor to perform the work. It is essential that public authorities clarify the role, responsibilities, payments and limitations with sub-contractors that are employed by prime contractors.

***Natural Heritage Trust (2005-S-12)***

During the review, auditors noted that Natural Heritage Trust (NHT) had made a direct payment of \$7,000 to a sub-contractor for security services provided at an annual event on Long Island—even though NHT had no contract with the firm. NHT officials explained that its contract with the promoter, who was responsible for obtaining security for the event, did not stipulate how the security firm would be paid. Therefore, NHT paid the firm directly. NHT needs to clarify its role, responsibilities, payments and limitations with sub-contractors that are employed by prime contractors.

***Welfare Research, Inc. (2005-S-23)***

In an ongoing contract with the Office of Children and Family Services (OCFS), Welfare Research, Inc. (WRI) is expected to hire and oversee consultants who provide training programs to case workers in local social services districts statewide. The consultants are to be hired as subcontractors to the Child Welfare and Training Technical Assistance

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contract. Auditors examined the actions taken by WRI in hiring and overseeing these subcontractors, finding that WRI hired the subcontractors as expected. However, when selecting subcontractors, auditors noted that WRI generally accepts at face value recommendations made by OCFS. WRI does not attempt to assess the qualifications of the recommended consultants and does not seek competitive proposals to determine whether the services can be obtained at a lower cost. As a result, auditors questioned whether WRI has reasonable assurance the subcontractors are adequately qualified and their prices are the best available.

Auditors also found that WRI does not monitor the performance of the subcontractors to determine whether they are fulfilling their training objectives. The attendees at the training sessions complete evaluations of the sessions, and these evaluations are collected by WRI. However, WRI does not review the evaluations. Rather, WRI passes the evaluations on to OCFS.

OCFS officials told auditors that they hold WRI responsible for the outcome of the consultant services. Auditors recommended WRI take a more active role in this contract. Specifically, WRI should seek competitive proposals for the training services required under the contract, assess both the quality and the cost of the proposals, and select the proposals that are the best combinations of quality and cost. WRI should then monitor the performance of the subcontractors and take corrective action if it appears that contract objectives are not being adequately met.

In its ongoing contract with the Department of Health and Mental Hygiene (DOHMH), the Reinvestment Fund Project contract, WRI is expected to hire and oversee consultants who provide various services in support of mental health programs in New York City. For example, one consultant was hired to provide planning services relating to homeless mentally ill individuals, assist in the application of outcome measures to mental health services, and work with the New York City Police Department to ensure that mentally ill individuals in custody receive appropriate care. The consultants are to be hired as subcontractors to the Reinvestment Fund Project contract. Auditors found that WRI hired the subcontractors as expected. However, as was the case with the OCFS contract, WRI generally hired the consultants recommended by DOHMH without assessing their qualifications or seeking competitive proposals. Also, WRI does not monitor the consultants' services to determine whether they are provided in accordance with expectations. Auditors recommended WRI take the same active role in this contract as they recommended for the OCFS contract.

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***Health Research, Inc. (2002-S-39)***

For grant expenses incurred by Health Research, Inc. (HRI) the Department of Health and Roswell Park, HRI disburses funds directly to the vendor that provided the goods or services. However, subcontractors are responsible for paying vendor invoices directly and then submitting a voucher to HRI to receive reimbursement for grant expenses incurred. The subcontractor submits a voucher to the principal investigator or program manager that shows the total expenses incurred by budgetary line item for the invoice period. This is usually done on a monthly or quarterly basis. HRI requires subcontractors to retain, but not submit, all supporting documentation (vendor invoices, sales receipts and time cards) for claimed expenses for a minimum of three years.

Auditors found Albany Division of HRI officials do not require subcontractors to actually submit the detailed supporting documentation (such as purchase requisitions, vendor invoices or receipts) along with the reimbursement voucher. The vouchers submitted by subcontractors are a summary of expenses and do not detail costs by transaction. As a result, there is an increased risk of overpayments and disallowances, and an increased potential for fraud and abuse. Albany HRI could improve controls and monitoring practices relating to reimbursement vouchers by requiring subcontractors to submit the supporting documentation the Authority already requires the subcontractor to retain.<sup>30</sup>

**Ambiguous Contract Terms or Errors in Contract Estimates**

It is essential that contracts for services describe the type of services to be performed and the basis for compensation. Providing only for a lump maximum sum to be paid is insufficient and may result in payments for unperformed services. Moreover, properly itemized invoices help to verify that prices and services are in accordance with the contract.

***Nassau County Health Care Corporation (2004-M-79)***

Due to the lack of proper contracts and invoices, the Nassau County Health Care Corporation Accounts Payable Department could not determine if payments were proper. Auditors found 4 of 27 personal service and consulting contracts that did not indicate the specific amounts or rates to be

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<sup>30</sup> A follow-up audit (2005-F-15) shows that Health Research Inc. has implemented the recommendation to recover from subcontractors all claimed expenses that cannot be supported by adequate documentation or that are unallowable under the terms of the grant agreement, and to evaluate current practices relating to the submission of supporting documentation by subcontractors.

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paid for the services provided. Instead, these documents only included a maximum amount to be paid during the contract period.

***Metropolitan Transportation Authority (2003-S-58)***

In the contract award process, Metropolitan Transportation Authority (MTA) Bridges & Tunnels (B&Ts) relies on the Engineer's Final Estimate when it assesses bids to determine whether they appear to be unreasonably high or unreasonably low. If the Engineer's Final Estimate is not reliable, B&T's bid assessments may not be reliable. For each project in the sample, auditors compared the Engineer's Final Estimate to: 1) the construction contract awarded for the project, and 2) the actual cost of the project.

Auditors found that relatively few of the Engineer's Final Estimates in the sample were within 10 percent of either the contract award amount or the actual project cost. Specifically, only 11 of the 41 cost estimates were within 10 percent of the contract award amount, and only 8 of the 41 cost estimates were within 10 percent of the actual cost. In the aggregate, the cost of these larger projects was neither underestimated nor overestimated to a significant degree because the low estimates were generally offset by the high estimates. As a result, B&T's overall project cost was not significantly affected by the inaccurate estimates in the sample. The underestimated amounts were largely covered by the overestimated amounts. However, B&T may not always be as fortunate in the future. Its significantly low estimates may not be offset by significantly high estimates. Auditors, therefore, recommended that B&T develop a plan for improving the accuracy of its cost estimates. Other weaknesses in planning practices included:

- Change orders resulted from deficiencies in defining the scope of the project or surveying the work site,
- Change orders resulted from errors in the design consultants' cost estimates or project designs,
- Change orders resulted from differences between B&T's "as-built" drawings (such as blueprints) and the actual work site conditions, and
- Change orders resulted from other types of planning weaknesses, such as a significant variance between the bid specifications and the project plans.

The B&T Engineering and Construction Manual (Manual) contains detailed written procedures that are to be followed by B&T staff and design

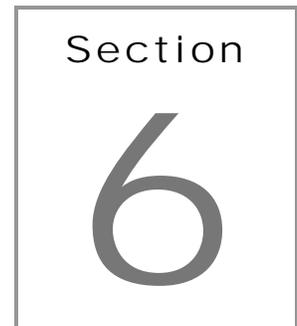
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consultants in their planning and management of capital projects. Auditors examined these procedures and found that, if followed, the procedures provide adequate assurance capital projects will be planned in an appropriate manner. Procedures for the design consultants' estimates were clearly not followed in some cases.

***New York Power Authority (2001-S-64)***

The New York Power Authority's (NYPA's) poor planning and use of unreliable cost estimates in constructing the new Poletti Power Plant in New York City increased the projected cost of the plant by \$275 million, or 73 percent. NYPA decided to build the plant using a cost estimate of \$375 million and a projected \$5/megawatt hour profit. If NYPA had used the more accurate \$650 million cost estimate, its projections would have shown a \$2/megawatt hour loss. If NYPA's projections had been more accurate, it might have decided not to build the plant itself, but rather pursue other more cost effective options.





# Apparent Abuses of Procurement Authority

## Misuse of Authority Resources

**T**he procurement guidelines and procedures required by Section 2879 of the Public Authorities Law (PAL) are meant to create a system of checks and balances, allowing potential procurements to go through the proper chain of command before being approved for payment. Misusing resources by circumventing procedures puts the authority at risk.

### ***New York State Thoroughbred Racing Capital Investment Fund (2004-S-71)***

The New York State Thoroughbred Racing Capital Investment Fund's (TRCIF's) internal control procedures require that the Chairman must sign/approve all checks of \$2,000 or less; checks exceeding \$2,000 must be co-signed by the Fund's Vice-Chairman (who is also the Chairman of the New York State Racing and Wagering Board). TRCIF's by-laws require that payments exceeding \$10,000 be approved by at least four Board members. During the 17-month review period, TRCIF issued 159 checks to its outside attorney totaling \$285,267. None of the checks exceeded \$2,000. On 66 different dates, two to four checks were prepared on the same day to this attorney, but each check was for less than \$2,000. If only one check had been prepared for each of these dates, each check would have exceeded the \$2,000 limitation and, according to TRCIF's by-laws, two signatures would have been required. It appears that TRCIF is circumventing the requirement that the Vice Chairman co-sign checks exceeding \$2,000.

Preliminary audit findings were shared with the New York County District Attorney's office, leading to the former Chairman of TRCIF pleading guilty in December 2005 to one count of Grand Larceny in the third degree.

## **Improper Use of Credit Cards or Use of Credit Cards to Avoid Competitive Bidding**

Effective internal controls are the first line of defense against credit card abuse. A sound credit card policy establishes the parameters for card usage and enumerates the internal controls required to minimize the risk of error or fraud. It also assigns duties and responsibilities among different people for the approval, authorization, verification, reconciliation and production of relevant records and documentation required to support credit card transactions. Organizations should have credit card policies that: require prior higher authorization for credit card charges; specify and enumerate the types of charges that can be incurred; require the submission of sufficient documentation, explanation and itemization of the charges; and require that charges for travel and conference expenses for lodging, meals, airfares and ground transportation costs be reconciled to an expense report, which a supervisor reviews and approves. Several audits conducted by the Comptroller's Office revealed that public authority credit card policies were either nonexistent, incomplete or being disregarded by authority officials and staff.

### ***New York State Thoroughbred Racing Capital Investment Fund (2004-S-71)***

The New York State Thoroughbred Racing Capital Investment Fund (TRCIF) used two oil company credit cards, one of which was used exclusively by the Chairman. Auditors found that the Chairman did not submit any documents to account for his travel. The Chairman and the Executive Director shared the other credit card. The Fund paid \$8,689 for fuel during the review period, but there was no documentation to justify this cost and the Chairman could not tell auditors who incurred these fuel charges. If these charges were incurred by the Chairman, he should have submitted documentation to show that the travel which required the fuel was Fund related. If these charges were incurred by the former Executive Director, the expense was inappropriate because he was already reimbursed for fuel in the standard 32-cent mileage rate claimed on his travel vouchers during the period. The shared credit card also included "non-fuel" purchases totaling \$2,558, but there was no documentation to show the nature of these charges.<sup>31</sup>

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<sup>31</sup> Office of the State Comptroller Press Release. "Former Horse Racing Capital Investment Fund Chair Pleads Guilty to Grand Larceny; Comptroller Audit Details Financial Improprieties, Chair, Executive Director Received Thousands of Dollars in Personal Expenses, Other Inappropriate Expenditures, Chair Ran Private Business from Government Office." December 5, 2005.

***New York State Thoroughbred Breeding and Development Fund Corporation (2004-S-57)***

The New York State Thoroughbred Breeding and Development Fund Corporation (TBDFC) staff use the Fund's corporate credit card to make purchases that should be handled through the normal procurement and payment process. Examples include \$8,450 for computer consultant fees and \$14,230 for accounting services. According to the Authority's guidelines, the computer consultant fees require evidence of competition and Board approval.

Additionally, the way the Executive Director handles travel expense reimbursement—through credit card payments—is contrary to the established process for all other TBDFC employees who have to prepare detailed travel expense vouchers, and it may conceal the nature and actual amounts of his travel. TBDFC pays the Executive Director's commuting cost to work from the Albany area to the Fund's main office in New York City. There is a complete lack of travel documentation in the form of original sales receipts for credit card sales. Also, TBDFC allows the Executive Director to use the Fund credit card for personal use. The Fund leaves it up to this official to accurately report all personal credit card use. Auditors were unable to determine whether all of the credit card charges that the Fund paid were for legitimate business purposes.

***Westchester County Health Care Corporation (2005-M-53)***

Internal controls over credit card use at the Westchester County Health Care Corporation (WCHCC) were almost non-existent. This was due in part to the absence of formal policies and procedures governing corporate credit card usage, further compounded by a lack of internal controls over credit card bill audit and payment. The accounts payable unit based its processing of credit card bills solely on monthly statements from the credit card company. There was no third-party vendor documentation, which is essential to determine the nature and propriety of the charges. Between January 1, 2002 and December 31, 2003, WCHCC paid \$112,000 to a credit card company for charges that were not properly itemized or documented by the 11 corporate officials who used the cards. An examination of credit card statements disclosed payments for restaurants, hotels, airlines, florists and ground transportation services for which there was no written justification. For example, \$20,000 of the payments covered local restaurant charges that lacked itemized bills. Several other payments totaling \$54,000 were not itemized or documented to establish the nature or propriety of the charges. In October 2003, the former Chief Executive Officer spent \$1,393 at a yacht club in New York and another \$1,500 at local restaurants. This official also spent \$1,300 at a local restaurant the following month. He did not itemize, document or justify the charges, and did not identify the persons on whose behalf WCHCC incurred the charges.

Furthermore, a former Executive Vice President of the transplant unit spent \$9,980 on air fares in November and December 2003 without documentation or explanation. It is possible this expense was related to organ transplant transportation services for which WCHCC would be entitled to reimbursement. However, this payment was unlike other organ transport costs because it lacked the necessary invoice and purchase order documentation that would have clearly linked it to WCHCC patient-related expenditures. Because this official did not link the charges to a specific procedure or patient, auditors could not establish whether WCHCC was reimbursed for the costs.

Section 103 of the General Municipal Law requires the WCHCC to request competitive bidding when awarding public work contracts that exceed \$20,000 during the fiscal year. Auditors examined claim vouchers totaling \$118,000 and \$137,000 for payments made to two vendors in 2003 and 2004, respectively, for transporting organs and personnel for organ transplant purposes. Officials used their credit cards to circumvent this process for transporting organs. For example, the total amount WCHCC spent for these air transportation services exceeded the public bidding threshold. However, WCHCC did not solicit public bids for these services, nor did it enter into a contract with the vendors that would have detailed the terms and conditions of providing the services. Given that WCHCC had prior knowledge of a routine need for air transportation services, officials should have advertised for competitive bids. Because WCHCC did not solicit public bids, there is no assurance that the best prices were paid for the service.

***Olympic Regional Development Authority (2004-S-78)***

The Olympic Regional Development Authority's (ORDA's) credit card policy specifies that statements will be submitted to the Finance Office for payment in a timely manner, so as to not incur finance charges. If finance charges are incurred, the employee will be responsible for their payment. During the review, auditors identified instances where late fees were incurred by high-ranking ORDA officials and were paid by the Authority. ORDA should take the necessary steps to enforce the credit card policy.

***Hudson River Park Trust (2004-S-37)***

Auditors reviewed all seven credit card payments (totaling \$3,041) made by Hudson River Park Trust (HRPT) in a recent representative month (February 2004), finding that the payments did not comply with the Procurement Guidelines in a number of respects, as follows:

- In five of the seven payments, receipts were not available for some of the items purchased. In the absence of this documentation, there was no assurance that the purchases were reasonable or necessary.
- In four of the seven payments, either the purchase was made without prior supervisory approval or the purchase was approved after the date noted on the receipt or vendor invoice.
- In three of the seven payments, purchases made by HRPT's President were approved by a subordinate to the President. Sound business practice and internal controls suggest that such purchases should be approved by a member of the Board of Directors.

***Hudson River-Black River Regulating District (2004-S-58)***

The Hudson River-Black River Regulating District (HRBRRD) uses General Municipal Law and State Finance Law for setting its limits for bids and the bidding procedures it follows. All purchases over \$250 need a justification form as well as approval by the Executive Director. All purchases under \$250 are approved by the office supervisors. The District also has credit cards that are used for purchases. Authority to use the credit cards is generally limited to a few employees at most sites. However, the Sacandaga Field Office issued several store credit cards to all employees. The audit examination found that all credit cards have a maximum credit line but do not have a per-purchase limit. The maximum limits per credit card ranged from \$1,000 to \$10,000. In the Sacandaga Field Office, employees use the credit cards for purchases under \$250 prior to obtaining approval. The purchases are authorized afterwards.

***Battery Park City Authority (2004-S-8)***

According to the Battery Park City Authority (BPCA) Employee Handbook, Authority credit cards should be used only for emergency or unforeseen situations. Auditors found that four officials had credit cards, and they were being used for more than emergency or unforeseen situations. Many travel and entertainment expenditures were included in the \$74,948 reported by BPCA in 2003 for credit card charges. Credit cards were also used for everyday expenses, such as food for BPCA staff meetings, hotel rooms in New York City and dinners without a stated business purpose. Supporting documentation and detail were also lacking for a credit card payment auditors examined that was not part of the travel and entertainment sample. Auditors found that \$1,000 was charged to the miscellaneous account for four tickets to a Central Park concert on September 24, 2003. No business reason was indicated for the charge, and the names of the attendees were not included.

Auditors believe that BPCA needs to revise its Employee Handbook to reflect the number of credit cards in use and the types of purchases that are authorized. BPCA officials agreed with the need to modify the employee handbook to include more affirmative wording regarding the approval of additional credit cards and their use for non-emergency expenditures. In addition, when BPCA revises its Employee Handbook, it should establish and implement internal controls relative to all vouchers, including credit card usage. The instances auditors identified where BPCA did not comply with existing guidelines show the need for improved internal controls in this area. Thus, BPCA officials should ensure that all vouchers for travel and entertainment expenses comply with BPCA's handbook.

### **Adding Unrelated Work to Existing Contracts Instead of Re-Bidding**

Contracts may be amended when it becomes necessary to adjust the scope of work, the period of the contract, or certain specifications that may not have been foreseen or anticipated at the time the initial contract was entered into. While auditors understand the potential benefits of using the same contractor through various phases of a project or for similar projects, they are concerned about the use of amendments over a period of years for scope changes or substantial increases in the contract price. Such practices do not promote a competitive process or provide the opportunity for other vendors to compete for work

#### ***New York State Bridge Authority (2004-S-20)***

Contrary to the Bridge Authority's policies and procedures, the Authority sometimes avoids its competitive procurement requirements by adding unrelated work to existing design and construction contracts. For example, the repair of a garage door at the Rip Van Winkle Bridge was added to an existing contract for structural steel repairs at the Mid-Hudson Bridge. Since this new work (the door repair at the Rip Van Winkle Bridge) was not included in the scope of the existing contract (which covered structural repairs at the Mid-Hudson Bridge), it should have been awarded to a contractor in a separate competitive process. In adding the work to an existing contract and avoiding a separate competitive process, the Authority has no assurance that the work was obtained for the lowest available price. A total of \$23,000 was charged for the door repair.

Similarly, an existing contract for an engineering study of a drainage issue at all five bridges was expanded to include unrelated design work on an access road at one of the bridges. This additional unrelated work added \$79,000 to the cost of the original contract, and in the absence of

competition, there is no assurance that this was the best available price for this design work.

In the instances identified, the unrelated work that was added to existing design and construction contracts was designated as supplemental work. According to the terms of these contracts, "supplemental work" is subject to no restrictions in cost or amount. Auditors also note that, according to the minutes of Board meetings and related records, the Board was not asked to approve the contract amendments authorizing this additional work until the work was already underway or completed. Auditors strongly recommended that additional work be designated as supplemental work only when the work is in fact related to the scope of the original contract. Auditors also strongly recommended that the Authority allow only authorized contract work to be performed and not allow work to begin before it has been approved by the Board.

***New York City School Construction Authority (2002-F-11)***

This follow-up revealed that the New York City School Construction Authority (SCA) had not implemented a recommendation made in a previous audit (1998-N-5) advising that the Authority obtain additional construction management services through an RFP process whenever possible. If, in certain circumstances, supplemental agreements or other less competitive processes are used instead, the Authority should quantify and document the benefits that are to be realized from these processes. SCA officials explained that these supplemental agreements were really amendments to requirements contracts, in which firms are contracted for a certain period of time to perform a specific type of work as it arises and, therefore, the RFP process was not required. However, SCA officials did not justify that this process of working with the same vendor was more cost effective than the preferred method of bidding out for such work.



Section  
7

## Audit Findings Demonstrating Acceptable Contracting Practices

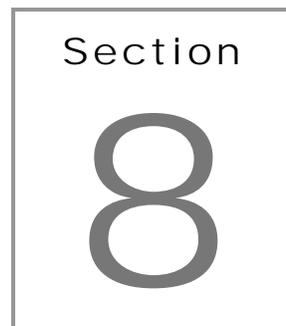
Of the 56 procurement-related public authority audits issued by the Comptroller's Office since 2003, 14 found that, to the degree reviewed, the authority in question was generally demonstrating acceptable procurement practices.<sup>32</sup>

- Central New York Regional Transportation Authority (2004-S-69),
- Homeless Housing Assistance Corporation (2004-S-19),
- Niagara Frontier Transportation Authority (2004-s-24),
- Thousand Island Bridge Authority (2004-S-50),
- New York State Thruway Authority (2003-R-6),
- Port Authority of New York & New Jersey (2004-S-44),
- Environmental Facilities Corporation (2004-S-4),
- Bernard M. Baruch College Auxiliary Enterprises Corporation, John Jay College of Criminal Justice Auxiliary Services Corporation, Inc. (2003-F-29),
- Housing Trust Fund Corporation (2003-Q-7),
- Capital District Transportation Authority (2003-F-51),
- State University Construction Fund (2003-F-10),
- New York State Theater Institute Corporation (2002-Q-16),
- Industrial Exhibit Authority (2002-Q-12), and
- Genesee Valley Regional Market Authority (2002-Q-14).

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<sup>32</sup> It is important to note that in some cases the review of procurement practices was only cursory as part of a broader review of internal controls. These reviews are designed to identify issues that may pose risks or that are otherwise worthy of further review.





## Public Authority Contract Oversight Proposal

In 2004, State Comptroller Alan G. Hevesi, along with Attorney General Eliot Spitzer, proposed a comprehensive reform agenda to improve accountability and oversight of the operations of public authorities in New York State. The proposed legislation, re-introduced with broader support, was passed by the Assembly in 2005. Assembly Bill 5626 included a provision for public authorities to submit contracts to the Office of the State Comptroller for approval before they could become effective. Specifically, the legislation proposed:

The procurement, public work, construction, and revenue contracts of a Class A or Class B [defined as Authorities of statewide or regional significance or entities that would not exist but for their relationship with the State] public authority shall be subject to prior review and approval by the comptroller, if the comptroller, in his or her discretion, determines that such review and approval shall be required. If the comptroller determines that any contract or category of contracts of a Class A or Class B public authority or category of Class A or Class B public authorities requires direct supervision in the form of pre-approval of contracts and the comptroller so notifies any Class A or Class B public authority of such determination, then no such contract or agreement by such Class A or Class B public authority shall be a valid enforceable contract unless such contract shall first be approved by the comptroller. In the event that the comptroller notifies any Class A or Class B public authority that approval shall be required then the Class A or Class B public authority shall include in all such contracts a provision informing the other parties to such contracts that the same are not valid and

enforceable without the comptroller's approval. Nothing in this paragraph shall be deemed to limit the comptroller's existing authority to supervise the accounts of public authorities.

This approach provides a practical solution to the problems uncovered in audits of public authority procurement practices. It puts every authority on notice that its contracts might be subject to pre-approval if the Comptroller determines there is a need for such increased oversight.

These reforms will provide for review of contracting practices at authorities where problems have been identified, and will allow for contracting experts in the Office of the State Comptroller to educate authority staff in the conduct of fair, competitive procurements. In other words, where the Comptroller determines that such review is necessary, the Office of the State Comptroller will review public authority contracts in the same manner it now reviews State agency contracts. This will dramatically improve competition, encourage more private business/vendor involvement, reduce costs, and deter potential mismanagement and corruption.

The proposed reform agenda also:

- Improves corporate governance of public authorities by requiring that each public authority board establish a Procurement Committee. The Committee will be responsible for issuing appropriate guidelines for oversight of all contracting matters in accordance with guidelines adopted by the authority pursuant to Section 2879 of the Public Authorities Law.
- Strengthens public authority contracting practices by requiring public authorities to designate a contracting officer responsible for compliance with procurement guidelines.
- Requires the development and adoption of procurement guidelines that are, at a minimum, equal to the statutory procurement requirements governing State agency contracts. All contracts for goods, services, construction and revenue contracts will be subject to the mandatory guidelines. Additionally, the legislation permits no-bid contracts only when such contracts would be permitted for a State agency and only if approved by two-thirds of the public authority's board.
- Requires each public authority to publish its procurement guidelines, annual procurement report and prompt payment policies on an Internet website.



**Public Authority Procurements for Fiscal Year Cycle  
Ending March 31, 2005  
Public Authorities Subject to Comptroller's Regulation (2 NYCRR, Part 201)**

<b>Authority</b>	<b>Contracts Awarded</b>	<b>Value of Contracts Awarded</b>	<b>All Contracts Total Payments</b>
1 Long Island Power Authority	29	2,636,960,652	832,712,339
2 NYCTA & MBSTOA (MTA)	1,932	940,926,580	1,205,740,552
3 NYS Energy Research & Development Authority	1,091	351,721,610	173,460,112
4 Dormitory Authority of the State of New York	981	335,459,275	986,932,053
5 State University Construction Fund	406	262,837,900	n/a
6 Power Authority of the State of New York	1,258	178,451,373	612,746,916
7 Long Island Rail Road Company (MTA)	1,068	142,509,923	314,761,258
8 Metro-North Commuter Rail Road (MTA)	671	118,402,386	104,644,133
9 Urban Development Corporation (ESDC)	97	104,013,721	n/a
10 Metropolitan Transportation Authority	205	68,767,634	76,019,792
11 Triborough Bridge & Tunnel Authority (MTA)	126	58,291,400	103,505,980
12 Niagara Frontier Transportation Authority	482	50,851,195	n/a
13 Battery Park City Authority	114	33,314,769	26,009,413
14 United Nations Development Corporation	32	29,069,194	8,007,430
15 Roswell Park Cancer Institute Corporation	54	26,955,043	62,983,486
16 NYS Bridge Authority	105	26,327,377	19,171,984
17 New York Convention Center Operating Corporation	947	22,561,608	n/a
18 Metropolitan Suburban Bus Authority (MTA)	80	21,776,620	29,480,595
19 Rochester-Genesee Regional Transportation Authority	42	12,958,228	18,425,718
20 NYS Thruway Authority	179	11,700,063	112,731,459
21 NYS Olympic Regional Development Authority	209	7,516,204	n/a
22 Capital District Transportation Authority	102	6,411,195	21,176,549
23 Homeless Housing Assistance Corporation	3	4,609,900	1,520,157
24 NYS Housing Finance Agency	53	4,359,240	8,037,717
25 Housing Trust Fund Corporation	17	1,066,106	15,381,885
26 Roosevelt Island Operating Corporation	5	1,014,768	3,364,460
27 State of New York Mortgage Agency	9	968,967	1,945,640
28 Albany Port District Commission	11	895,280	895,280
29 Staten Island Rapid transit Operating Authority (MTA)	11	709,979	331,314
30 Port of Oswego Authority	14	355,039	355,039
31 NYS Thoroughbred Breeding and Development Fund Corp.	15	305,255	305,255
32 Agriculture & NYS Horse Breeding Development Fund	1	155,000	155,000
33 Municipal Assistance Corporation for the City of New York	3	134,219	1,132,030
34 Ogdensburg Bridge and Port Authority	2	95,878	144,190
35 Environmental Facilities Corporation	2	90,660	1,175,587
36 NYS Theatre Institute Corp.	7	66,988	68,794
37 NYS Local Government Assistance Corporation	1	63,340	42,319,983
38 Tobacco Settlement Financing Corporation (MBBA)	1	35,000	901,218
39 State of New York Municipal Bond Bank Agency	2	21,752	27,433
40 NYS Project Finance Agency	1	15,654	15,654

APPENDIX A

<b>Authority</b>	<b>Contracts Awarded</b>	<b>Value of Contracts Awarded</b>	<b>All Contracts Total Payments</b>
41 Hudson River-Black River Regulating District	2	11,025	n/a
42 NAR Empire State Plaza Perf. Arts Ctr. Oper. Corp.	1	8,900	8,900
43 Central New York Regional Transportation Authority	32	n/a	26,599,797
44 NYS Affordable Housing Corporation	1	n/a	24,411
45 Natural Heritage Trust	n/a	n/a	4,768,875
46 Industrial Exhibit Authority	0	0	n/a
<b>2004-05 TOTAL</b>	<b>10,404</b>	<b>5,462,766,899</b>	<b>4,817,988,388</b>

***Authorities subject to Office of the State Comptroller regulation, but otherwise covered or omitted:***

	<b><i>Reason</i></b>
47 NYS Quarterhorse Breeding & Development Fund Corporation	Inactive
48 NYS Science & Technology Foundation	Inactive
49 Community Facilities Project Guarantee Fund	No activity
50 Buffalo & Fort Erie Public Bridge Authority	No report filed
51 Port Authority of New York & New Jersey	No report filed
52 NYS Thoroughbred Racing Capital Investment Fund	Report pending
53 Facilities Development Corporation (DASNY)	Reports w/DASNY
54 NYS Medical Care Facilities Finance Agency (DASNY)	Reports w/DASNY
55 New York Convention Center Development Corporation	Reports w/UDC
56 NYS Job Development Authority (ESDC)	Reports w/UDC

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