NEW YORK STATE BRIDGE AUTHORITY

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March 21, 2005

The Honorable Alan G. Hevesi
Comptroller, State of New York
Alfred E. Smith Office Building
Albany, NY 12236

Re: New York State Bridge Authority
Internal Controls over Contracting & Procurement
Office of the State Comptroller
Report 2004-S-20

Dear Mr. Hevesi:

As required by Section 170 of Executive Law, this correspondence details what action the Bridge Authority has taken with regard to the recommendations in the above referenced report.

The Authority had, in fact, satisfied a number of the recommendations both before and during the period of the audit. To date, with one exception, that being the suggestion to publish Board meeting minutes on he Authority's public internet site, all the recommendations have been implemented. We are currently redeveloping our internet site and will provide for the printing of these minutes in our redesign.

Sincerely,

JAMES P. SPROAT
Chairman

JPS:eo

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ALAN G. HEVESI
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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 16, 2005

Mr. James Sproat
Chairman
New York State Bridge Authority
P.O. Box 1010
Highland, New York 12528

Re: Internal Controls Over Contracting and Procurement
Report 2004-S-20

Dear Mr. Sproat:

Pursuant to the State Comptroller's Authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have audited selected contracting and procurement practices at the New York State Bridge Authority for the period of January 1, 2003 through April 30, 2004.

A. Background

The New York State Bridge Authority (Authority), a public benefit corporation created by statute in 1932, operates and maintains five toll bridges, together with all incidental spans, approaches, structures, facilities, and highway connections to and from the bridges. These bridges, which cross the Hudson River and have a replacement value of approximately $889 million, are the Rip Van Winkle, near Catskill; the Kingston-Rhinecliff, near Kingston; the Franklin D. Roosevelt Mid-Hudson at Poughkeepsie; the Hamilton Fish Newburgh-Beacon, linking the cities of Newburgh and Beacon; and the Bear Mountain, located five miles north of Peekskill.

The Authority is self-sustaining; it receives no State funds and operates through the collection of bridge tolls. It is overseen by a five-member Board of Commissioners (Board), which elects a Chair and Vice-Chair and appoints an Executive Director to manage the Authority's day-to-day operations.

In 2003, the Authority received about $40 million in revenues, of which approximately $39 million came from bridge tolls. Operating expenses in that year were about $38.5 million, including more than $13.2 million for salaries and benefits for 158 employees, about $17 million in capital costs, and more than $900,000 for repairs and maintenance. During the same period, the Authority also spent nearly $1.8 million for insurance, more than $800,000 for professional services, more than $500,000 for equipment, and nearly $300,000 for supplies and materials.

In May 2003, the Authority's former Executive Director resigned amid allegations regarding his travel expenses. At the time of the resignation, the allegations were being investigated by the State Inspector General's Office, which subsequently issued a report that criticized certain of the expenses. The Executive Director was authorized by the Board to approve his own travel expenses, and while the Board was to be informed about these expenses, the Board was not routinely informed and made no formal inquiries of its own. The former Executive Director, who was appointed in September 1997, also served as the Authority's Internal Control Officer.

B. Audit Scope, Objective and Methodology

Pursuant to the New York State Governmental Accountability, Audit and Internal Control Act of 1987 (Internal Control Act), as revised in 1999, the Authority's management is responsible for establishing and maintaining an effective system of internal controls and a program of internal control review. In addition, in accordance with New York State Division of the Budget Policy and Reporting Manual Item B-350, State agencies and public authorities must annually certify their compliance with important provisions of the Internal Control Act and submit this certification of compliance to the Division of the Budget. We audited the Authority's system of internal controls over its contracting and procurement and related functions for the period January 1, 2003 through April 30, 2004. The objective of our performance audit was to assess the adequacy of the Authority's system of internal controls over contracting, procurement, and related functions.

To accomplish our objective, we reviewed Authority policies and procedures, interviewed Authority staff and management responsible for procurement and contracting, and tested transactions for compliance with established policies and procedures. Our audit tests included a review of selected contracts, confirmation of judgmentally selected items in the inventories of fixed assets at the five bridges, tests of purchases made through credit cards, and a review of disbursements.

We conducted our audit according to Generally Accepted Government Auditing Standards. Such standards require that we plan and do our audit to adequately assess those procedures and operations included within the audit scope. Further, these standards require that we understand the Authority's internal control systems and compliance with those laws, rules, and regulations that are relevant to the Authority's procedures and operations that are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions, and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under Generally

Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

We found that the Authority has established detailed policies and procedures for contracting and procurement, and generally follows these policies and procedures. However, the Authority sometimes avoids competitive procurement requirements by adding unrelated work to existing contracts. In addition, Authority construction contracts may not be adequately overseen by the Board, as Board members do not receive routine written reports on the status of each ongoing project and there is no documentation indicating that Board members are fully informed about cost increases or other important project developments, even when projects significantly exceed their budgets. We recommend improvements that would enhance the Board's oversight of Authority construction projects.

We also found that, since the departure of the former Executive Director, the Board has initiated a number of corrective actions to address control weaknesses that were exploited by that individual. For example, the Board has established an Internal Audit Committee, introduced important organizational changes, and strengthened certain critical control procedures.

1. Corrective Actions

The inappropriate travel expenses of the former Executive Director were not detected promptly because of various weaknesses in the Authority's internal controls. Following the resignation of the former Executive Director in May 2003, the Board took corrective actions to address these weaknesses. In particular, the Board appointed a new Internal Control Officer and formed an Internal Audit Committee to examine the need for changes in internal control policies.

The new Internal Control Officer completed a vulnerability assessment of the Authority, the first that had been performed at the Authority since January 1998. Such assessments are used to evaluate the adequacy of an organization's internal controls, and to identify controls that need to be strengthened. The results of the assessment were submitted to the Board in September 2003. According to the assessment, many of the Authority's controls were good; however, the assessment also identified controls that needed to be strengthened. The new Internal Control Officer also performed audits of various Authority operations, including its contracting operations.

The new Internal Audit Committee reviewed the report prepared by the State Inspector General's Office and performed its own examination of Authority controls. The Committee recommended various changes in these controls, and at the November 2003 Board meeting, the Board approved these changes, which related to controls over expenses incurred by the Executive Director, out-of-State travel by the Executive Director, and other matters. In addition, the Board approved a new policies and procedures manual, as recommended by the Committee.

We conclude that, as a result of the actions taken by the Internal Control Officer and the implementation of changes recommended by the Internal Audit Committee, the Authority's internal

controls have been strengthened. In particular, the Board has been given stronger oversight powers over spending, especially for travel and entertainment.

However, we also note that the responsibilities of the new Internal Control Officer need to be modified, because this individual also serves as the Authority's Internal Auditor. As is explained in detail in the State Comptroller's Internal Control Guidelines, the same individual should not perform the functions of both Internal Control Officer and Internal Auditor, because of the potential conflict of interest. Specifically, since the Internal Control Officer often helps to establish the particular internal control practices that are in effect at an agency, this individual cannot independently evaluate the appropriateness and effectiveness of these practices, as the Internal Auditor must.

We also note that, while improvements have been made in the Authority's internal controls, further improvements are needed in the controls over contracting and procurement activities. The particular areas needing improvement are addressed in the remaining sections of this report.

2. Board Oversight

The Authority's contracting and procurement activities are overseen by the 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. The individual members of the Board are appointed by the Governor, with the advice and consent of the Senate, and the Authority itself is a public entity. Because of this public status, the operations of the Authority must serve the public interest and be accountable to the public.

If the Board is to ensure that the Authority's contracting and procurement activities are in the public interest, Board members must be adequately informed about these activities. Moreover, if an appropriate level of accountability is to be maintained, the contracting and procurement decisions made by the Board and Authority management should be adequately documented and this documentation should be made available for public review.

To determine whether Board members were adequately informed about the Authority's contracting and procurement activities, we reviewed the minutes of Board meetings and related records to find out what information was provided to Board members about these activities. We 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, we could not determine whether Board members were adequately informed about Authority contracting and procurement activities.

We 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, we found that, 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, these reports are no longer provided to the Board, and have not been provided since 1998, even though they continue 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. We recommend that the Chief Engineer's monthly report be provided to all Board members, and documentation be maintained of the other information that is provided to Board members about the Authority's contracting and procurement activities.

We also recommend that the minutes of public Board meetings be more detailed. We note that, prior to the tenure of the former Executive Director, these minutes were detailed and very descriptive. However, since 1998, the minutes have become less detailed and much less descriptive. For example, the minutes of the more recent meetings do not include details about the matters discussed and do not even identify all the topics that are discussed. Any formal resolutions adopted by the Board are documented, but decisions and discussions not resulting in formal resolutions are seldom documented and the deliberative process leading to a formal resolution generally is not documented. In comparison, meeting minutes prior to 1998 did document the Board's deliberative process.

We further note that the Board meetings themselves have become much shorter, dropping from an average of nearly three hours in 1998 to less than 1.5 hours in 2003. Both these shorter meetings and the absence of documentation describing the Board's deliberative process and the information on which Board decisions are based cause us to question whether the Authority's contracting and procurement activities are adequately overseen by the Board. In particular, we question whether cost increases on construction projects and other procurement contracts receive 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). We judgmentally selected 13 of these 28 contracts to determine whether the cost increases had been approved by the Board (9 of the 13 selected contracts 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) increased the total cost of the contracts to nearly $7.3 million. Following are two examples of these cost increases:

- In one of the 13 contracts, the reconstruction of a toll plaza at the Rip Van Winkle Bridge, the contract was budgeted for $210,000 but increased by 85 percent to $388,237.

- In another contract, the design of an access road at the Kingston-Rhinecliff Bridge, the contract was budgeted for $29,000 but increased by 274 percent to $108,442.

We found that the cost increases on all 13 contracts were approved by the Board, but in the absence of documentation describing the Board's deliberative process and the information on which the Board's approval was based, we could not determine whether the Board was fully informed about the nature of the increases or received sufficient advance notification about the increases. The Board should be kept informed about likely changes in contract cost on an ongoing basis, and not be informed only after the additional costs have been incurred and must be paid for.

To provide better assurance the Board is being fully informed about increases in contract cost and is receiving sufficient advance notification about such increases, we recommend the Board's deliberative process be described in the Board meeting minutes. Moreover, to promote public accountability for the Authority, we recommend that the minutes be published on the Authority's public Internet site.

(In response to our draft report, Authority officials state that in the above two examples there were extenuating circumstances and that extending the contract or adding supplemental work, as approved by the Board, was appropriate and in the Authority's best interest. However, we note that such justification was not included in the Board's minutes. Furthermore, we still conclude that the work was sufficiently different from existing contracts and that they should have been separately awarded.)

3. Contracting and Procurement Practices

The Authority has established detailed policies and procedures for contracting and procurement. To determine whether the Authority follows these policies and procedures, we performed various tests. For example, we evaluated the contract award process for selected contracts, determined whether selected disbursements met competitive and other requirements, examined whether selected credit card purchases were appropriately authorized and documented, and verified the existence of certain fixed assets. We found that, generally, the transactions we tested were in compliance with the Authority's policies and procedures for contracting and procurement.

However, we also found that, contrary to these 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 that we 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. We 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. We strongly recommend that additional work be designated as supplemental work only when the work is in fact related to the scope of the original contract. We also strongly recommend 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.

According to Section 2879 of the Public Authorities Law, each year the Authority must submit to various State oversight agencies a report listing all its active contracts (the annual Procurement Contract Report). We reviewed the Procurement Contract Report submitted by the Authority for 2003. We found that the report, which listed a total of 226 contracts, was not complete, because seven active contracts were not included. For example, contracts for security services and bridge inspection services were not included in the report.

We believe the seven contracts were omitted from the report because the reporting requirements were not clear to the staff who were responsible for collecting data for the report. This data is collected from different departments in the Authority, and the responsible staff in each department have different understandings of what is to be reported. We recommend that either the reporting requirements be clarified for the responsible staff or a single individual be made responsible for collecting the data.

We 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, we recommend that such changes be included in the Authority's Procurement Contract Report.

4. Access to Computer Systems

The Authority relies on a number of computer applications for the operation of its financial systems. Access to such systems should be restricted to authorized users only. Access can be restricted through various means, including user passwords. To provide optimal protection against unauthorized access, such passwords should be changed fairly frequently. However, we found that, while Authority toll collectors are required to change their passwords every 90 days, other individuals with access to the Authority's computer systems are not required to change their passwords, and most of these individuals do not do so. We recommend that all individuals with access to the Authority's computer systems be required to change their passwords regularly.

5. Ethics Policy

An organization needs a written ethics policy to give employees a clear understanding of what is allowed and what is not allowed in connection with the performance of their work. Such a policy also gives outside observers and those doing business with the organization a clearer understanding of the organization's expectations, and enhances the organization's public accountability and transparency.

We found that some ethical issues are addressed by some of the Authority's operating policies. However, a distinct written ethics policy has not been developed by the Authority. We recommend that such a policy be developed and distributed to Authority staff, Authority management and Board members.

Recommendations

1. *Assign the responsibilities of the Internal Control Officer and the Internal Auditor to different individuals.*

2. *Distribute the Chief Engineer's monthly report to all Board members.*

3. *Maintain records documenting the information provided to Board members about the Authority's contracting and procurement activities.*

4. *Evaluate Board meeting practices and take any actions that are necessary to ensure that Board members are fully informed about the Authority's contracting and procurement activities. In particular, take any actions that are necessary to ensure that Board members are fully informed about increases in Authority contracts and receive sufficient advance notification regarding such increases.*

5. *Prepare Board meeting minutes that identify all the topics discussed at each meeting, provide useful details about each topic, and clearly describe the Board's deliberative process in making decisions.*

6. *Publish Board meeting minutes on the Authority's public Internet site.*

7. *Designate additional design and construction contract work as supplemental work only when the work is in fact related to the scope of the original contract. If the additional work is not related to the scope of the original contract, use a competitive process to select a contractor for the work.*

8. *Do not allow work to begin on a contract or contract amendment until the contract or contract amendment has been approved by the Board.*

9. *Improve the completeness of the annual Procurement Contract Report by including all active contracts and all changes in contract amounts for contracts that are amended or otherwise revised. To facilitate this improvement, either clarify the reporting requirements for the various staff responsible for collecting the report data or make a single individual responsible for collecting the data.*

10. *Require that all individuals with access to the Authority's computer systems have to change their passwords regularly.*

11. *Develop a written ethics policy and distribute the policy to Authority staff, Authority management and Board members.*

A draft copy of this report was provided to the New York State Bridge Authority officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix A. Authority officials generally agree with our recommendations and state they have or will implement them. However, Authority officials note that the two examples cited in

the report related to contract extensions were justified and in the Authority's best interest. However, such justification was not documented in the Board's deliberative process.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Bridge Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Gerald Tysiak, Roger C. Mazula, Richard Moriarty, Bruce Brimmer, Christopher Morris, and Marticia Madory.

We wish to express our appreciation to the management and staff of the New York State Bridge Authority for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado

Carmen Maldonado
Audit Director

cc: Robert Barnes, Division of the Budget

NEW YORK STATE BRIDGE AUTHORITY

December 6, 2004

Mr. Carmen Maldonado
Office of the State Comptroller
Division of State Services
123 William Street – 21st Floor
New York, NY 10038

Re: Draft Audit Report 2004-S-20
New York State Bridge Authority Selected
Contracting and Procurement Practices

Dear Mr. Maldonado:

Thank you for the opportunity to comment on the above referenced draft report and for your generally positive comments on our contracting and procurement practices.

The results of your audit cited specific topics, two of which we would like to comment on. With regard to "Board Oversight", we believe that the Board was adequately informed of the Authority's contracting and procurement activities, although we agree the minutes of the Board meetings could have provided more documentation and detailed the Board's deliberative process in overseeing these activities.

In the section entitled "Contracting and Procurement Practices", you indicated the Authority sometimes avoids its competitive procurement requirements by adding unrelated work to existing contracts. This is rarely done, but in the two incidents you found, we feel there were extenuating circumstances and that extending a contract or adding supplemental work, as approved by the Board, was appropriate and in the Authority's best interest.

The Bridge Authority welcomes the Comptroller's recommendations and, in fact, new procedures brought us into compliance with a number of them before, or at the same time during which, the audit was conducted. Other recommendations are in the process of being implemented and we expect to be fully compliant in the near future.

We would like to thank you and your staff for your direction and the positive framework within which the report recommendations were offered.

Sincerely,

JAMES P. SPROAT
Chairman

GEORGE C. SINNOTT
Executive Director

JPS:lr
cc: Board Members
G. Sinnott

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Appendix A