ALAN G. HEVESI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 27, 2005

Mr. Charles A. Gargano
Chairman
New York Job Development Authority
633 Third Avenue
New York, NY 10017-6754

Re: Internal Controls Over Procurement and Contracting Activities and Conflict of Interest
Report 2004-S-32

Dear Mr. Gargano:

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 audited the New York Job Development Authority's system of internal controls over its procurement and contracting activities and its processes for identifying and preventing conflicts of interest. Our audit covered the period January 1, 2002 through March 31, 2004.

A. Background

The New York Job Development Authority (JDA) is a public authority created by Chapter 443 of the Laws of 1961 for the purpose of promoting economic development and employment opportunities in New York State. JDA provides loans to companies seeking to expand facilities, build new plants, and acquire machinery and equipment. JDA also administers certain special revenue funds.

Section 1802 (1) of the Public Authorities Law provides that JDA be governed by an eleven-member Board of Directors (Board). The Board is to comprise four ex-officio members (the Commissioner of Economic Development, the Commissioner of Labor, the Superintendent of Banks, and the Commissioner of Agriculture and Markets) and seven members appointed by the Governor, with the advice and consent of the Senate, for four-year terms. The Commissioner of Economic Development is to serve as Chairman.

The Board is authorized to appoint officers, staff, consultants and advisory committees to assist it in overseeing JDA, but after it was consolidated with the Urban Development Corporation (UDC) in the mid-1990s, JDA itself has no employees. Instead, UDC provides the management, administrative and support staff for JDA. UDC is a public authority that was created in 1968 for economic development and other purposes. The Commissioner of Economic Development, who

serves as Chairman of the JDA Board of Directors, also serves as Chairman of the UDC Board of Directors.

JDA went into fiscal crisis in the mid 1990s, when it had declining revenues and projected cash flow deficits. Since then, JDA has relied on recurring financial assistance from UDC. In return, UDC receives credit on loans it owes the State in amounts equal to the support it gives JDA. Both JDA and UDC currently do business under the name Empire State Development Corporation.

For the fiscal year ended March 31, 2004, JDA reported operating expenses of $4.2 million and operating revenues of $7.0 million. For the fiscal year ended March 31, 2003, JDA reported operating expenses of $5.6 million and operating revenues of $7.9 million.

B. Audit Scope, Objective and Methodology

The New York State Governmental Accountability, Audit and Internal Control Act of 1987, as revised in 1999, requires JDA management to be responsible for establishing and maintaining an effective system of internal controls and a program of internal control review. The objective of our performance audit was to assess the adequacy of JDA's system of internal controls over its procurement and contracting activities and its processes for identifying and preventing conflicts of interest. Our audit covered the period January 1, 2002 through March 31, 2004.

To accomplish our objective, we interviewed UDC officials and reviewed policies and procedures governing procurement and contracting, conflict of interest, and JDA Board oversight and governance. We interviewed UDC staff responsible for these areas and performed compliance testing to provide reasonable assurance that UDC staff and officials are following established policies and procedures.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. Such standards require that we plan and perform our audit to adequately assess those operations of JDA that are within the audit scope. Further, these standards require that we understand JDA's internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations 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 improvements are needed in Board oversight and governance. Improvements are particularly needed in the Board's oversight of an important loan servicing contract. The contractor administers JDA's loans, and even though loans of $11.9 million (10.6 percent of the aggregate principal balance of $111.9 million) were in default as of March 31, 2004, we found no evidence the Board is routinely informed about loan defaults. To properly govern the operations of JDA, it is essential that the Board members be informed about such loans on a regular recurring basis e.g., monthly meetings. We also found that the Board is not asked to approve JDA's annual budget, and is provided with no routine reports about JDA financial operations other than an independent auditor's annual certification of JDA's financial statements. Without a budget or routine financial reports, it would be difficult for Board members to monitor JDA's finances or initiate corrective action in a timely manner.

We also identified a number of opportunities for improvement in the conduct of Board meetings, as meetings are not held as frequently (monthly) as required by JDA's by-laws, the required number of Board members is not always present when decisions are made, Board members do not always receive their informational packages seven days prior to their meetings, and Board members who attend meetings by telephone are allowed to vote even though this practice is considered by the Committee on Open Government to be contrary to provisions of the State's Open Meeting Law. We further determined that improvements may be needed in JDA's annual financial statement audit, as JDA disbursements may not receive adequate audit coverage. In addition, while JDA has a Code of Ethics that goes beyond the financial disclosure requirements and other provisions of the New York State Ethics in Government Act, additional action is needed to provide assurance all Board members are made aware of JDA's requirements.

1. Board Oversight of Contracts

The policies and procedures governing JDA procurement and contracting activities are contained in the Empire State Development Corporation's Procurement Policy (referred to as the Guidelines). For example, the need for contracted goods and services must be documented by the appropriate department head, contracts of $15,000 or more generally must be publicly advertised, and any contract of $50,000 or more must be approved by the Board.

During our audit period, JDA awarded no new contracts, but administered a total of seven existing contracts. Six of these contracts were for legal services, and the remaining contract was for loan servicing. We reviewed the contract award documentation for all seven contracts to determine whether the contracts had been awarded in accordance with requirements. We found that the contract award process for all seven contracts was in compliance with requirements.

However, the 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. According to the Public Authorities Law, any contract of $5,000 or more for services in excess of one year requires annual review by the public authority's Board of Directors. 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. We recommend

that an annual review by the Board be performed and documented for all service contracts requiring such a review.

All of JDA's outstanding loans are administered though its loan servicing contract. As of March 31, 2004, a total of 301 loans with an aggregate value of $111.9 million were administered through the contract. Since these loans are JDA's primary means of achieving its mission of promoting economic development and employment opportunities, the loan servicing contract should be closely overseen by the Board.

To determine whether the loans serviced through the contract were processed with Board approval and whether information about loans in default was adequately reported to the Board, we selected a sample of outstanding loans for review. To select our sample, we obtained a listing of the loans in default status as of January 31, 2003 and a listing of the loans in default status as of March 31, 2004. A total of 63 different loans were included on the two listings. We randomly selected 12 of these 63 loans for review.

We found that improvements are needed in the Board's oversight of the loan servicing contract. First, the loan servicing agent could not provide any of the supporting documentation (such as the loan application or loan authorization) for one of the loans in our sample. According to records provided by the loan servicing agent, the loan totaled $210,000. Documentation was provided for the remaining eleven loans in our sample, and this documentation indicated that all were submitted to and approved by the Board.

Second, the loan servicing agent provides regular loan default status reports to UDC's Portfolio Management Unit. We reviewed these status reports and determined that the information on the most current reports was outdated, because the status of many of the loans had not been updated for at least six months. We recommend that UDC's Portfolio Management Unit maintain up-to-date information about these loans in its reports. We also found no evidence the Board was informed when loans defaulted, and no evidence the Board was kept informed about the status of such loans.

According to records provided by the loan servicing agent, as of March 31, 2004, 40 of JDA's 301 loans were in default, and these 40 loans had a total value of $11.9 million (10.6 percent of the total principal balance of $111.9 million). To properly govern the operations of JDA, it is essential that the Board members be informed about such loans on a regular recurring basis e.g., monthly meetings. We recommend that the Portfolio Management Unit improve its communication with the Board, and keep Board members fully informed about the status of JDA loans in default.

2. Disbursements and Expenditures

JDA has a total of 13 different checking accounts. These checking accounts are used to make loan, procurement and other types of disbursements. The accounts are in the custody of the Department of Taxation and Finance. The UDC Treasurer and UDC Controller initiate transactions on behalf of JDA by requesting the Commissioner of Taxation and Finance to write checks from the JDA accounts. Expenditures paid from UDC checking accounts on behalf of JDA are controlled by UDC.

During our 27-month audit period January 1, 2002 through March 31, 2004, $112 million was disbursed from the 13 checking accounts (this total excludes certain investment transactions in which funds were moved to different accounts). About $61 million of this total was disbursed from the largest of the checking accounts. We randomly selected from these accounts 50 transactions, totaling $9.6 million, for verification. The documentation we reviewed indicated that all 50 transactions were valid and appropriate.

However, we noted that four outstanding checks, totaling $5,246.53, had been outstanding for several months (between 7 and 21 months). JDA does not have a written policy indicating how long checks should be allowed to remain outstanding before they are cancelled. We recommend that such a policy be established by JDA. We note that, at State agencies, checks that have been outstanding for 12 months are to be classified as abandoned property and transmitted to the State's custodian for abandoned property. While this particular policy need not be adopted by public authorities, some type of policy is needed to provide adequate control over outstanding checks.

JDA prepares annual financial statements that are certified by an independent auditor. The work of an auditor must be supported by working papers. We reviewed working papers provided to us by JDA's independent auditor for the two years ended March 31, 2004, and found no indication that the auditor had reviewed any of the financial transactions in JDA's 13 checking accounts. We made further inquiries of both the auditing firm and UDC staff, but neither the firm nor UDC provided documentation indicating that any transactions in these accounts were reviewed. The transactions in these accounts were not insignificant, as more than $99 million in checks were issued from the accounts during this two-year period. We recommend that JDA obtain an explanation from the auditor, and ensure that future audits include a review of transactions in the checking accounts.

In response to our draft audit report, JDA provided a letter from their independent auditor that explained their audit procedures regarding these checking accounts. We returned to the firm on February 7, 2005 to examine the documentation supporting the letter. The auditor indicated that the largest aggregate expenditures from the checking accounts are for new loans (about $31 million of the $61 million from this account). The auditor performed testing regarding new loan transactions. However, the balance of the expenditure transactions from this checking account, about $30 million (e.g., debt service, bond fees), was considered to be immaterial and was not reviewed. We remain concerned that these expenditures are not audited for compliance.

Each year, UDC allocates a portion of its general and administrative expenses to JDA. In the 2002-2003 fiscal year, UDC allocated $1,301,770 in such expenses to JDA, and in the 2003-2004 fiscal year, UDC allocated $1,260,544 in such expenses to JDA. To determine whether the expenses allocated by UDC actually related to JDA activities, we reviewed the documentation relating to selected expenses. We reviewed $333,722 (26 percent) of the $1,301,770 allocated in

2002-2003, and $701,299 (55 percent) of the $1,260,544 allocated in 2003-2004. We found all the expenses we reviewed were properly allocated to JDA.

3. Conflict of Interest

State employees in policymaking positions are required to file an annual financial disclosure form with the New York State Ethics Commission. We selected a sample of 50 UDC employees to determine whether the financial disclosure form had been filed as required for calendar years 2002 and 2003. Information provided by the Ethics Commission indicated that 25 of the 50 employees were required to file the form, and all 25 of these employees had filed the form.

UDC and JDA have developed a Code of Ethics that goes beyond the financial disclosure requirements and other provisions of the New York State Ethics in Government Act. According to UDC and JDA procedures, a guidebook containing the "Corporation's Ethics and Conflict of Interest Guidelines" and a "Code of Conduct for Directors" is to be given to each new UDC employee, each new UDC Board member, and each new JDA Board member. The individuals receiving the guidebook are to sign a form (the Employee Statement of Interest and Activities form) to acknowledge their receipt of the guidebook and their willingness to comply with the requirements contained therein.

To determine whether this guidebook was distributed as required, we selected a sample of employees and Board members, and determined whether a signed copy of the Employee Statement of Interest and Activities form was on file for the sampled individuals. Our sample consisted of 41 of the 368 UDC employees as of December 2003 (including the Chairman of both UDC and JDA, who is an employee of UDC), all eight of the remaining JDA Board members who were in office at that time (these eight individuals were also members of the UDC Board), and an individual who was on the UDC Board but not the JDA Board.

We found signed copies of the form on file for all 41 UDC employees (including the Chairman). However, no form was on file for the nine Board members. We were informed by a UDC official that Board members other than the Chairman are not required to sign the form. According to this official, it is sufficient to provide the guidebook to the Board members when they are appointed; no additional action is needed to provide assurance the members will comply with the code of conduct contained in the guidebook. We believe the additional assurance provided by a signed form is no less appropriate for new Board members than it is for new employees. At the very least, UDC should keep records documenting when the guidebook is provided to new Board members.

4. Board Governance

The JDA Board is responsible for overseeing JDA's operations. However, the Board is not asked to approve JDA's annual budget and is not provided with routine reports about JDA's financial operations (other than the independent auditor's annual certification of JDA's financial statements). If the Board is to provide effective oversight, it needs appropriate tools in the form of budgets and regular financial reports.

According to Section 1802 (8) of the Public Authorities Law, which refers explicitly to the JDA Board of Directors, "Six members of the authority [Board of Directors] shall constitute a

quorum for the transaction of any business or the exercise of any power of function of the authority." However, when we reviewed the minutes of the Board meetings held between February 2002 and February 2004, we found that, on one occasion, JDA business was transacted when fewer than six Board members were in attendance. Specifically, at the Board meeting held on May 23, 2002, when only five Board members were in attendance (including three who were attending by telephone), loan agreements in excess of $1.8 million were approved by the Board. We recommend that the Board comply with the quorum requirement contained in the Public Authorities Law. (After we brought this matter to the attention of UDC officials in September 2004, we received a copy of a Board resolution from a meeting in October 2004, when a quorum of Board members was present, approving the $1.8 million in loan agreements.)

New York State's Committee on Open Government, which is based in the Department of State, is responsible for providing advice and opinions to individuals and public bodies regarding interpretations and provisions of the State's Open Meeting Law. The Committee issues advisory opinions on the meeting practices of public entities. According to these opinions, Board members attending Board of Director meetings by telephone should not be allowed to vote on the matters that are decided at the meetings. Rather, they should be allowed to vote only when they are in actual physical attendance or are participating by video conference.

However, when we reviewed the minutes of the 16 JDA Board meetings held between February 2002 and February 2004, we found that, in all 16 meetings, Board members (or their representatives) voted while attending by telephone. In these meetings, between two and six of the voting Board members were attending by telephone. We recommend that the Committee on Open Government's guidance be followed, and Board members attending by telephone not be allowed to vote.

JDA by-laws require that the Board's annual meeting be held the third Tuesday in March, and regular Board meetings be held the third Tuesday of every month. To determine whether this meeting requirement was met, we reviewed a record listing all the JDA Board meetings held between February 2002 and September 2004. Since the period we reviewed covered a total of 33 months, a total of 33 Board meetings should have been held. However, we found that only 21 Board meetings were held. We also determined that none of these 21 meetings were held on the dates specified in the JDA by-laws.

When we brought this matter to the attention of UDC officials, we were informed that the Board does not meet on the dates specified in the by-laws if there is no JDA business to conduct on those dates. We asked if documentation was available confirming that there was no JDA business to conduct on the meeting dates specified in the by-laws. However, we were provided with no such documentation. We recommend that such documentation be maintained whenever Board meetings are not held on the required dates.

According to UDC officials, a week before each JDA Board meeting, Board members receive an informational package on the topics to be discussed at the meeting. To determine whether these informational packages were mailed to Board members in a timely manner, we requested the documentation for our 27-month audit period (January 1, 2002 through March 31, 2004), but were informed that the documentation was maintained only for the most recent three-month period. At the time of our review, the most recent three-month period was June, July and August of 2004.

Three Board meetings were held during June, July and August of 2004. We reviewed the documentation relating to the informational packages mailed to six Board members for these three meetings. According to the documentation, none of the informational packages were mailed in time to arrive at least seven days before the meetings. Rather, the packages arrived between six and two days before the meetings. We recommend that action be taken to ensure that informational packages are mailed to Board members in time to arrive at least seven days before Board meetings. We further recommend that documentation of the mailings be maintained for at least a full year.

In response to our draft report, UDC officials advised that the information packages should be delivered five days before the meeting. We note that neither this requirement nor the seven day requirement were documented. In addition, two packages arrived only two days before the meetings. UDC officials should formally document the requirement.

We also note that 2 of the Board's 11 positions have been vacant since August 2001. Both of the vacant positions are appointive. To enhance the Board's public accountability and strengthen the oversight provided by the Board, we recommend JDA request that its Board vacancies be filled.

Recommendations

1. *Ensure that all service contracts requiring an annual Board review are submitted to the Board for such a review, and maintain documentation of all such reviews.*

2. *Improve the administration of the loan servicing contract by ensuring that adequate documentation is maintained for all loans and up-to-date information is included on the loan default status reports.*

3. *Formally notify the Board when loans are defaulted, and provide regular written reports to keep the Board fully informed about the status of loans in default.*

4. *Establish a policy indicating how long checks should be allowed to remain outstanding before they are cancelled or otherwise resolved.*

   (UDC officials agree with recommendations 1 through 4 and indicate they were implemented or will be in the future. They also provided new information about updating the loan status report. Our report was revised to reflect this change.)

5. *Require that the independent auditor explain why checking account transactions were not included in prior financial statement certifications, and ensure that these transactions are included in future financial statement certifications.*

(In response to our draft report, JDA officials provided a letter from their independent auditor stating the audit work that was done regarding these checking accounts.)

Auditor's Comments: We remain concerned that expenditures other than those paying out loan principal are not audited. Our report was revised to reflect the new information provided in JDA's response and obtained from our review of the documents provided.

6. *Ask new Board members to sign a form acknowledging receipt when they receive the guidebook containing information about ethics and conflict of interest. If a signed form is not obtained, keep records documenting when the guidebook is provided to new Board members.*

(UDC officials agree with this recommendation.)

7. *Require Board approval for JDA's annual budget, and provide Board members with routine reports about JDA's financial operations.*

(UDC officials disagree with this recommendation. They indicated that JDA expenses are in the aggregate so *de minimus* that an annual budget is not warranted.)

Auditor's Comments: We disagree. We believe that annual budgets and routine reports about JDA's financial operations are an integral part of the Board oversight of JDA.

8. *Comply with the requirement in the Public Authorities Law that defines a quorum for Board meetings.*

(UDC officials agree with this recommendation.)

9. *Allow Board members to vote at Board meetings only when they are in actual physical attendance at the meetings or are participating by video conference.*

(UDC officials replied to our draft report that they disagree with the opinions of the Committee on Open Government with regard to this issue and do not have to follow such opinions. They added that the Board members are uncompensated and attendance by phone is done to ensure maximum participation. UDC officials gave us a copy of Business Corporation Law section used to support their response.)

Auditor's Comments: Based on the responses from the UDC officials, we recommend that JDA refrain from the practice of allowing Board Members who attend by telephone to vote until either the courts have clarified this issue or the statutes applicable to public bodies have been amended to specifically authorize voting by telephone.

10. *When Board meetings are not held in accordance with the schedule specified in JDA's by-laws, maintain documentation explaining why the by-laws were not followed.*

(UDC officials replied that the request for agenda items is handled via emails from the JDA Corporate Secretary to the Board members. However, those emails are not retained. They added that they will assess the value of preserving such exchanges, and will take the

appropriate action.)

Auditor's Comments: The decision not to conduct required Board meetings should be formally documented and the records maintained by the Corporate Secretary. As noted in the report, 12 of 33 (36 percent) meetings were not held.

11. Ensure that informational packages are mailed to Board members in time to arrive at least seven days before Board meetings, and maintain documentation of the mailings for at least one year.

(In their response, UDC officials said "…maintaining records of this nature for three months is sufficient…." adding that the materials are delivered to board members at least five days before the scheduled board meetings.)

Auditor's Comments: We recommend that UDC formally document the procedures to avoid future misunderstandings.

12. Request the appointment of new members to fill the vacancies on the Board.

(UDC officials agree with this recommendation.)

A draft copy of this report was provided to UDC officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix A.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Job Development 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 Robert Mehrhoff, Santo Rendon, Marianne Boyer, Claude Volcy and Maple Dong.

We wish to thank Urban Development Corporation officials for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado
Audit Director

cc: A. Laremont
R. Barnes, Division of the Budget
G. Ryan

Anita W. Laremont
Senior Vice President - Legal
and General Counsel

January 26, 2005

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

Re: Internal Controls Over Procurement
And Contracting Activities and Report
2004-S-32

Dear Carmen:

Attached is ESDC's response to the recommendations contained in the above-referenced report. Please feel free to contact me if you have any questions.

Sincerely yours,

Anita W. Laremont

Enclosure

cc: Eileen Mildenberger
Garry Ryan
Susanna Stein
Frances Walton

Empire State Development Corporation
633 Third Avenue New York, New York 10017-6754 Tel 212 803 3750 Fax 212 803 3775

Appendix A

EMPIRE STATE DEVELOPMENT RESPONSE TO DRAFT AUDIT REPORT REGARDING NEW YORK JOB DEVELOPMENT AUTHORITY INTERNAL CONTROLS OVER PROCUREMENT AND CONTRACTING ACTIVITIES AND CONFLICT OF INTEREST (2004-S-32)

The following constitutes ESDC's response to the Office of the State Comptroller's (OSC) draft audit of the New York Job Development Authority Internal Controls Over Procurement and Contracting Activities and Conflict of Interest Report (2004-S-32) (the "Report").

ESDC is proud of its extensive system of internal controls over procurement and contracting activities and conflict of interest. ESDC agrees that improvement is always possible (and, in fact, constantly seeks ways to better perform its functions), but must point out that the areas identified for improvement represent mainly either minor non-conformity with existing policies and procedures, or a difference of opinion about what is required either by law or as a best practice. Following are our responses to the recommendations contained in the draft audit.

Recommendation 1:
ESDC agrees to submit all service contracts requiring annual Authority Member review to the Members for such review. The board materials will serve as documentation of such reviews being completed. Note, however, that the loan servicing contract which was the focus of this recommendation will not be renewed when it expires.

Recommendation 2:
ESDC agrees with this recommendation. A copy of the missing loan file was located in the possession of outside counsel working on the foreclosure. The draft audit indicates that the update of information on the loan default status report was not current, and implied that this was the fault of the loan servicing agent. Please not, however, that it is the responsibility of ESDC staff to update this information. All comments have been updated and will be maintained on a current basis in the future.

Recommendation 3:
Virtually all of the JDA defaulted loans have been in that status for a number of years. In years prior to the audit, when JDA had a much higher volume of new loan generation, JDA's Members were more regularly advised of defaults. During the past few years, the loan default list has remained rather stagnant, with few new loans going into default. Portfolio management continues to actively work to resolve the outstanding defaulted loans, and consults with management on a regular basis as it pursues a variety of strategies to maximize JDA's return on these loans. However, JDA agrees that the Authority Members should be regularly apprised of the status of these defaulted loans, and agrees to provide an annual report on defaulted loans to the Authority Members.

Recommendation 4:
ESDC has established a policy to cancel or otherwise resolve outstanding checks six months after the date of original issue.

Recommendation 5:
JDA's independent auditor has explained, by letter from John Wolfgang to Garry Ryan dated January 18, 2005 (a copy of which is attached as Exhibit A to this response), that it in fact reviewed JDA's thirteen (13) checking accounts.

Recommendation 6:
The OSC recommends that we require Authority Members to sign copies of a Statement of Interest and Activities form to acknowledge their receipt of the Directors Code of Conduct when they begin their board service, pointing out that we require employees to execute an Employee Statement of Interest and Activities form when they begin their employ. ESDC has distinguished between Authority Member and employees with respect to this requirement due to the small number of Authority Members (11) compared to the large number of employees (approx. 370). The General Counsel and Corporate Secretary meet with each Authority Member when he or she appointed to JDA's board, and personally provide them with these materials as part of a board member's briefing book, along with a verbal summary of the material contained therein. Heretofore, we have felt this sufficient to ensure each director's awareness of his or her ethical requirements. We do not believe that executing an acknowledgement provides any "additional assurance" that directors will comply with JDA's Code of Conduct beyond the verbal commitment received when the materials are provided. However, for the sake of record keeping, we will endeavor to secure such an acknowledgement from new directors in the future.

Recommendation 7:
JDA has very minimal expenses. There are no employees on JDA's payroll, and ESDC does not charge JDA rent. Consequently, the only expenses JDA has relate to its payment of loan servicing fees and other costs related to servicing its portfolio. These expenses are in the aggregate so *de minimus* that an annual budget is not warranted.

Recommendation 8:
JDA agrees that it should comply with the requirement that a quorum be present at all meetings. JDA acknowledged to OSC auditors that a board meeting held on May 23, 2002, was held in error without a quorum present. Upon learning of this error, the Authority Members immediately ratified the action taken at that meeting by approving the $1.8 million in loan guarantees that had been erroneously approved at the earlier meeting.

Recommendation 9:
JDA does not believe state law requires Authority Members to be physically present to vote at JDA meetings. We disagree with the opinions of the Committee on Open Government with respect to this issue, can find no case law to support them, and are not bound to follow such opinions. In the current era of vastly improved communication technology, it is standard practice among corporate boards throughout the world to permit participation at board meetings telephonically – in fact, the state's Business Corporation Law permits such provisions in by-laws. In recognition of the many demands placed upon the availability of the Authority's Members – all uncompensated, and virtually all of whom have full time employment, JDA determined that in order to ensure maximum participation in meetings, it was advisable to permit telephonic participation at our publicly held meetings.

Recommendation 10:
ESDC staff explained to OSC that JDA's Corporate Secretary inquires of staff monthly, via e-mail, whether there are items for JDA's meeting agenda. If she received affirmative responses, she sets up a meeting. Otherwise, a meeting is not scheduled. Staff explained that these e-mail exchanges have not been preserved. JDA will assess the value of the preservation of such exchanges, and if it determines there to be a value, will preserve them.

Recommendation 11:
The draft audit recommends that the Corporate Secretary monitor the delivery of board materials to Authority Members to ensure that they are timely, and keep records of these deliveries. The Corporate Secretary prepares the packages and delivers them to the Administrative Services department for delivery to individual board members. Administrative Services notifies the Corporate Secretary when all packages are delivered, and in keeping with ESDC practice, maintains records of all deliveries for three months. ESDC believes the practice of maintaining records for three months is sufficient. With respect to timeliness, the Corporate Secretary endeavors to deliver materials to board members at least five (5) days prior to a board meeting, and sets a schedule at the outset of each month to ensure the achievement of this goal. However, because of the fluid nature of our business, with new items sometimes needing to be added to board agendas close to the meeting date, and other changes beyond staff's control, it is on occasion not possible to meet this goal. The Authority Members have expressed appreciation for the fact that we regularly provide them with materials in a timely fashion, which is not always their experience with other boards on which they sit.

Recommendation 12:
The draft audit recommends that JDA request that its board vacancies be filled. JDA's Chairman and staff work very closely with the Governor's office in seeking candidates to fill vacant board positions, and will continue to do so.

EXHIBIT A

UHY LLP
Certified Public Accountants

19 West 44th Street, 12th Floor
New York, NY 10036-6101

Phone 212-381-4800
Fax 212-381-4811
Web www.uhy-us.com

January 18, 2005

Mr. Garry Ryan
Controller
Empire State Development Corporation
633 Third Avenue
New York, New York 10017

Dear Garry:

We understand that the New York State Office of the State Comptroller ("Comptroller") has recently conducted an audit of both New York State Urban Development Corporation ("UDC") and New York Job Development Authority ("JDA"). We further understand that the Comptroller's Office has made certain comments related to our audits in connection with certain of the cash accounts maintained by the JDA Special Revenue Fund and Special Purpose Fund. We would like to provide you with our comments.

The cash accounts are maintained by the New York State Department of Taxation and Finance ("NYSDT&F") on behalf of JDA for both the Special Purpose Fund and the Special Revenue Fund. As part of our audit procedures, we requested and obtained directly from the NYSDT&F a confirmation of the year end balance and the complete year's detail check register for each account. We independently review the bank reconciliations for the most significant accounts.

Further, we performed certain cutoff procedures related to cash transfers at year end. As indicated in the Comptroller's report, the significant disbursements from these accounts are related to loan disbursements from JDA to the borrower. The balance of the disbursements from these accounts are not significant. Six of the 13 accounts have no transactions other than interest income which is recorded monthly. The remaining accounts are primarily used to disburse loan proceeds to borrowers.

Our audit approach in connection with loan disbursements included a complete testing of a sample of the new loans disbursed in the fiscal year which included verification that the loan proceeds were disbursed from the proper cash account in compliance with JDA procedures. As an additional audit procedure we confirm, directly with the borrower, the year end balance for all new loans issued in the fiscal year.

The documentation of these procedures are contained in the cash and loan receivable sections of our workpapers.

The procedures that we have outlined above have been consistently performed in each of our audits for JDA.

If you have any further questions, please contact us.

Very truly yours,

John E. Wolfgang, CPA
Partner