

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

**Alan G. Hevesi
COMPTROLLER**



***NATURAL HERITAGE TRUST
INTERNAL CONTROLS OVER PROCUREMENT***

2005-S-12

DIVISION OF STATE SERVICES

OSC Management Audit reports can be accessed via the OSC Web Page:

<http://www.osc.state.ny.us>

If you wish your name to be deleted from our mailing list or if your address has

changed,

contact the State Audit Bureau at (518) 474-3271

or at the

Office of the State Comptroller

110 State Street

11th Floor

Albany, NY 12236



Alan G. Hevesi
COMPTROLLER

Report 2005-S-12

Mr. Kevin Carey
Executive Director
Natural Heritage Trust
NYS Office of Parks, Recreation & Historic Preservation
Agency Building #1 - Empire State Plaza
Albany, NY 12238

Dear Mr. Carey:

The following is our audit report addressing the Natural Heritage Trust's oversight of contracting and procurement practices for the period January 1, 2004 through June 29, 2005.

We performed this audit pursuant to the State Comptroller's authority, as set forth in Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

February 7, 2006

EXECUTIVE SUMMARY

NATURAL HERITAGE TRUST

INTERNAL CONTROLS OVER PROCUREMENT

SCOPE OF AUDIT

The Natural Heritage Trust (NHT), a public benefit corporation, was created in 1968 under Article 55 of the New York State Arts and Cultural Affairs Law (Law) to receive and administer gifts, grants and contributions to further public programs of parks, recreation, conservation and historic preservation. NHT is directed by a four-person Board of Directors consisting of the Chairperson of the State Council of Parks, the Commissioner of the Office of Parks, Recreation and Historic Preservation (OPRHP), the Commissioner of the Department of Environmental Conservation (DEC), and the Secretary of State.

Pursuant to the Law, NHT works with other public and private organizations (organizations) having common interests and purposes. These organizations establish grants and programs for specific purposes, called private-purpose trust funds (trust funds). NHT's involvement with the trust funds is custodial in nature. Funds received from a trust fund are deposited into NHT's general fund and invested until they are disbursed by NHT at the direction of the organization. Interest earned by these funds is retained by NHT. As of March 31, 2005, NHT had custody of trust fund accounts from 163 different organizations, totaling over \$18 million.

NHT had 32 full-time and 10 seasonal employees at the end of calendar year 2004. NHT's administrative staff consists of an Executive Director and a bookkeeper. OPRHP provides NHT with some office and administrative services. NHT has also adopted OPRHP's guidelines for the awarding of procurement contracts. Most of NHT's procurement efforts concern trust fund accounts. Certain employees of NHT, OPRHP, and DEC, called authorized account holders, who are familiar with the trust fund programs, are authorized to make purchases for these programs. For the calendar year 2004, NHT's contracting and other procurement disbursements totaled \$6.3 million.

Our audit addressed the following questions about NHT's oversight of contracting and procurement functions for the period of January 1, 2004 through June 29, 2005:

- Has NHT established policies and procedures that provide an appropriate level of internal control over its contracting and procurement practices?
- Do NHT staff and authorized account holders follow these policies and procedures?

AUDIT OBSERVATIONS AND CONCLUSIONS

Our audit found that several aspects of NHT's internal controls over its procurement and contracting practices need improvement. At 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 executive staff. Internal controls would be strengthened if additional employees were involved in the procurement process. By separating key tasks, management can reduce the risk that error, waste, or wrongful acts will occur or go undetected. (See pp. 12-13)

NHT also needs to improve its oversight of the vendor selection process. When competitive bidding is used, we found that the level of competition does not always meet NHT's procurement guidelines requirements, and purchases that exceed \$15,000 are not always advertised in the Contract Reporter, as required. We also found that NHT officials do not always retain the bid documents and bid tabulation sheets to support the selection process. (See pp. 13-17)

We also found that NHT's annual procurement report and procurement guidelines do not comply with the requirements of Section 2879 of the Public Authorities Law and the State Comptroller's Regulation on Accounting and Reporting for Public Authorities. For example, the procurement responsibilities of NHT's Board are not established. They do not reflect the Board's duty to annually review and approve the procurement guidelines or the annual procurement contract report, and there is no evidence that these items had been reviewed and approved by NHT's Board. They do not establish the Board's responsibility for approving service contracts that cover more than one year or exceed a specific dollar value, nor do they incorporate requirements of the Governor's Executive Order #127, entitled Providing for Additional State Procurement Disclosure. (See pp. 19-21)

During our audit, NHT's Executive Director revised and expanded the agency's procurement guidelines by addressing many of the recommendations we made to him and that are contained in this report. At its June 22, 2005 meeting, the NHT Board adopted comprehensive guidelines that addressed many of our concerns, including its obligation to review and approve both the procurement guidelines and the annual procurement contract report.

COMMENTS OF NHT OFFICIALS

A draft copy of this report was provided to NHT officials for their review and comment. NHT officials generally agreed with our recommendations and have taken actions to implement them.

CONTENTS

Introduction

Background	9
Audit Scope, Objectives and Methodology	10
Response of NHT Officials to the Audit	11

Procurement and Contracting Practices

Internal Controls	12
Procurement and Contract Selection	13
Payment Process Examination	17
Recommendations	17

Other Matters

Procurement Contract Reporting	19
Procurement Contract Guidelines	20
Minority and Women Business Enterprise (MWBE) Participation	22
Payment to Sub-Contractor	22
Recommendations	23

Appendix A

Major Contributors to This Report	25
-----------------------------------	----

Appendix B

Response of NHT Officials to the Audit	27
--	----

INTRODUCTION

Background

The Natural Heritage Trust (NHT), a public benefit corporation, was created in 1968 under Article 55 of the New York State Arts and Cultural Affairs Law (Law) to receive and administer gifts, grants and contributions to further public programs of parks, recreation, conservation and historic preservation. NHT is directed by a four-person Board of Directors consisting of the Chairperson of the State Council of Parks, the Commissioner of the Office of Parks, Recreation and Historic Preservation (OPRHP), the Commissioner of the Department of Environmental Conservation (DEC), and the Secretary of State.

Pursuant to the Law, NHT works with other public and private organizations (organizations) having common interests and purposes. These organizations establish grants and programs for specific purposes, called private-purpose trust funds (trust funds). NHT's involvement with the trust funds is custodial in nature. Funds received from a trust fund are deposited into NHT's general fund and invested until they are disbursed by NHT at the direction of the organization. Interest earned by these funds is retained by NHT. As of March 31, 2005, NHT had custody of trust fund accounts from 163 different organizations, totaling over \$18 million.

NHT had 32 full-time and 10 seasonal employees at the end of calendar year 2004. NHT's administrative staff consists of an Executive Director and a bookkeeper. OPRHP provides NHT with some office and administrative services. NHT has adopted OPRHP's guidelines for the awarding of procurement contracts. Most of NHT's procurement efforts concern trust fund accounts. Certain employees of NHT, OPRHP, and DEC, called authorized account holders, who are familiar with the trust fund programs, are authorized to make purchases for these programs. For the calendar year 2004, NHT's contracting and other procurement disbursements totaled \$6.3 million.

Audit Scope, Objectives and Methodology

The objectives of our performance audit were to determine whether NHT has established policies and procedures that provide an appropriate level of internal control over its procurement and contracting practices and to determine whether NHT staff and authorized account holders follow those policies and procedures. Our examination covered the period January 1, 2004 through June 29, 2005.

To accomplish our objectives, we interviewed appropriate NHT officials and reviewed and analyzed NHT's records and reports pertaining to procurement contracts. We evaluated the adequacy of NHT procurement guidelines, as well as the extent to which NHT has achieved its stated goals for purchases from minority- and women-owned businesses. We received an account detail run of all NHT expenditures for the year ended December 31, 2004. There was a total expenditure of \$6.7 million made to 1,541 vendors. We stratified our sample to those vendors that received payments exceeding \$4,999 for the year. This reduced our population to 207 vendors with expenditures of \$5.8 million. The \$5,000 level is the contract amount required to be reported to the State each year. We further reduced our sample population to exclude grant contracts and fringe-related benefits. Thereby, leaving us with a sample population of 131 vendors, totaling \$4.4 million of expenditures. From this sample population we conducted limited compliance testing on procurements from 35 vendors (23 selected randomly and 12 selected judgmentally, utilizing the highest-dollar value) to provide reasonable assurance that NHT staff and authorized account holders complied with established policies and procedures. We also reviewed and analyzed pertinent laws, policies, bulletins, and procedures.

We conducted our audit in accordance with 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 NHT's internal control structure and compliance with those laws, rules, and regulations that are relevant to NHT'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.

Response of NHT Officials to the Audit

A draft copy of this report was provided to NHT officials for their review and comment. Their comments have been considered in preparing this report, and are included as Appendix B. NHT officials generally agreed with our recommendations and have taken steps to improve NHT's internal control procedures.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Executive Director of the Natural Heritage Trust shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein and where recommendations were not implemented, the reasons therefor.

PROCUREMENT AND CONTRACTING PRACTICES

Internal Controls

A key element of strong internal controls is the separation of duties, requiring key tasks and responsibilities to be assigned to various employees of an organization so that no one individual can control every aspect of a transaction or event. By separating key tasks such as purchasing, receiving, payment and inventory, management can reduce the risk that error, waste, or wrongful acts will occur or go undetected. Although NHT's involvement with the trust fund accounts is custodial in nature, NHT has a fiduciary responsibility to subject the disbursement of those funds to proper internal controls. We found that internal controls over trust fund purchases need strengthening.

At 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 those 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 (i.e., 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 OPRHP employees working in OPRHP Regional Offices, the central receiving location for the region could function as the independent receiver/verifier of goods.

In addition, NHT’s policy is to send monthly account statements to its account holders for verification of account transactions. Only, if a stated balance is incorrect, does the account holder have to notify NHT. This process does not adequately provide for the positive verification of monthly account statements by each account holder. To make sure the account statements are correct, NHT should periodically confirm all account balances with the account holders.

Procurement and Contract Selection

NHT has adopted OPRHP’s dollar threshold levels for determining the method of acquiring goods and services. NHT and its related account holders must comply with the following purchasing guidelines for purchases of \$5,000 or more.

Procurement Threshold Value	Method
\$5,000-\$14,999	Requires at least three written quotes. Quotes must be submitted to the NHT office with the requisition. Confirming procurements require submission of a requisition by the Executive Director or Treasurer before procurement is made.
\$15,000 & above*	Requires formal bid process and advertisement in the New York State Contract Reporter (unless an emergency situation or other extenuating circumstances allow for a waiver from this requirement). Waiver requests are submitted directly to the NHT Executive Director for consideration and approval.

* *Printing thresholds are different (\$5,000) and must be inserted in the Contract Reporter.*

We tested NHT's compliance with the above guidelines by examining disbursements made to a total of 35 vendors that had received payments exceeding \$4,999 from one or more

accounts in calendar year 2004. During that year, the 23 randomly-selected vendors had received 69 payments totaling \$362,857; while the remaining judgmentally-selected 12 vendors had received 79 payments totaling \$620,770.

We found that the methods used by NHT to select these 35 vendors varied: competitively bid (16), sole source (11), State contract (2), barn grant award (5), and preferred source vendor (2). (One vendor was selected both competitively and as a sole source.) Generally, sole source procurement occurs when the goods/services required are unique in nature and it is determined that there is only one known vendor able to meet the need and the cost is deemed reasonable. Preferred source procurement occurs when there are two or more vendors who can supply the goods or services but, one vendor is preferred over others for reasons such as expertise or previous experience with similar contracts (also referred to by NHT as single source procurement).

NHT needs to improve its oversight of the vendor selection process. When competitive bidding was used, we found that competition for the purchases did not always meet the level required by NHT's procurement guidelines. We also found that NHT officials did not always follow their practice of retaining the bid documents and bid tabulation sheets to support the selection process. NHT's files for the sole source purchases and barn grant awards do not contain the type of documentation that would substantiate the agency's vendor selections. We did not note any reportable exceptions for the State contracts and preferred source vendors we reviewed.

Competitive Bid

We found that 7 of the 16 competitively bid purchases we reviewed did not comply fully with NHT's procurement guidelines, and that selection documentation had not been retained in NHT's vendor files. While we did find some evidence of competition, it was not sufficient to achieve the required level when the appropriate threshold was applied.

- Purchases made from three vendors that exceeded \$14,999 (Vendor A - \$24,805; Vendor B - \$20,924; and Vendor C - \$18,830) had not been advertised in the Contract Reporter, as required. Four purchases of like-kind promotional items (e.g., denim shirts, sweatshirts, socks, and hats) were made from Vendor B within two to

three weeks of each other. If properly planned, these purchases could have been coordinated and bid out collectively, at a cost that would have exceeded the \$14,999 threshold. NHT officials disagree. They indicated that the items fell into two categories - "promotional" and "resale" - each requiring a different quality material and, therefore, were different orders. We believe that with the proper specifications, such items could still have been bid out collectively. 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.

- Purchases totaling between \$5,000 and \$14,999 had been made from four other vendors without the required minimum three written quotes (Vendor D - \$14,078; Vendor E - \$11,144; Vendor F - \$11,000; and Vendor G - \$7,774). NHT officials were able to provide us with some evidence that competition had occurred (e.g., quotes recorded on bid tabulation sheets or summarized on an e-mail, Requests for Proposals, summary memorandum, etc.). 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 to them without retaining copies for its own files.

Sole Source

At the time of our review (March 2005), NHT's guidelines did not define or indicate when sole source contracts can be utilized or how that status should be documented. As a result of our review, 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 our review period (2004), we found that NHT did use the sole source designation for classifying some contracts. As such, we 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. We found that files for five vendors did not contain such justification. NHT's Executive Director provided us 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.

Barn Grants

The purpose of the State-funded Barn Grant program (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 \$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.

The NHT account holder for the program provided us with a detailed memorandum describing the selection process in addition to the procedures outlined in the actual barn application. A barn owner submits an application to the grant representative serving the region in which the barn is located. Each application is reviewed in the applicable region. Approximately 15 percent of the applications are advanced to a review committee of career professionals in Albany. Each member of the review committee gives each barn an individual grade. The memorandum further indicates that a group peer review session is held after each review, at which time the applications are discussed and consensus reached on which applications to recommend for a grant. Certain factors other than grades are considered in the decision, including the uniqueness of the barn, etc. NHT provided us with an aggregate listing of the grades given by the individual members of the committee during our audit period.

We limited our examination of the barn grant awards to five recipients. We found that three of the five barn grants we 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 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 us 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.

Payment Process Examination

We examined NHT's payment files to determine whether they were supported properly by invoices, Letter Order and Payment Request forms, authorized approvals, and cancelled checks. Our sample of 35 vendors consisted of 148 payments totaling \$983,627; of these, we reviewed 54 payments valued at \$688,347 and found that invoices or adequate supplemental documentation was not provided for five payments totaling \$56,125 that had been made to two barn grant recipients and one sole source vendor.

Recommendations

1. Assign 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 to as many responsible individuals as practical.

(NHT officials indicate there are more responsible individuals involved in the purchase process than is demonstrated by the file documentation. However, they agree that further separation of such functions can only serve to improve accountability and, therefore, will continue to review and revise their procurement functions to further distribute them among more staff.)

2. Require account holders to make positive confirmation of the monthly account statements.

(NHT officials indicate they have already implemented procedures requiring account holders to affirmatively verify the accuracy of their account statements and provide written confirmation to the NHT Administrative Office.)

Recommendations (Cont'd)

3. Ensure that all purchases comply with NHT's procurement guidelines, and that all required bid documents are obtained and retained in NHT's files.

(NHT officials indicate that new comprehensive Procurement Guidelines adopted on June 22, 2005 have been distributed to account holders and individuals involved in the procurement process. Officials further indicate that they have created a staff position for a Contract Coordinator who is responsible for coordinating purchases with account holders and ensuring that all documentation relative to the bidding process is forwarded to NHT's main offices.)

4. Document the justification for sole source purchases and barn grant award selections.

(NHT officials indicate the revised Procurement Guidelines require that specific details of sole source purchases be documented contemporaneously with the bidding/ordering process. NHT officials further indicate that in the current barn grant application cycle, NHT is requiring that the minutes of the committee peer review sessions be memorialized to demonstrate how the consensus was reached on final recommendations for grant awards.)

5. Ensure that invoices or adequate supplemental documentation is obtained before payment is made and those documents are kept on file.

(NHT officials indicate that account holders have been advised that they are responsible for collecting and maintaining adequate documentation of all procurements and contracts. Such documentation must be provided to the NHT Administrative Office and no payment will be processed prior to receiving such documentation.)

OTHER MATTERS

Procurement Contract Reporting

Section 2879 of the Public Authorities Law (PAL) requires public authorities, including NHT, 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 with New York State business enterprises 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. 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 (OSC), the Department of Economic Development (DED), the Senate Finance Committee, and the Assembly Ways and Means Committee.

We found that NHT's annual 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 OSC and not to any of the other four State entities that were supposed to receive it.

In reporting our preliminary findings to NHT officials on June 15, 2005, we recommended that NHT comply with PAL Section 2879, issuing annual reports that describe all contracts valued at \$5,000 or more and the vendor-selection process used. Subsequently, the report NHT submitted for the period that ended on March 31, 2005 listed such contracts, as well as descriptions of the contractor-selection methods employed. The NHT Board approved this report at its June 22, 2005 meeting. In addition, NHT officials provided documentation that the 2005 report has been submitted, as required, to all five State entities.

Procurement Contract Guidelines

Section 2879 also requires public authorities, such as NHT, to adopt comprehensive guidelines detailing the policies and procedures for the awarding, monitoring, and reporting of procurement contracts. The guidelines must also establish the circumstances in which Board approval of contract awards is necessary. They should specifically require Board approval of any contract for services that will be rendered over a period longer than one year. Lastly, the guidelines are to be reviewed and approved annually by the Board.

Our review of NHT's procurement guidelines, which were last amended in June 2001, found them to be incomplete and outdated. We noted the following:

- The procurement responsibilities of NHT's Board are not established. They do not reflect the Board's duty to annually review and approve the procurement guidelines or the annual procurement contract report, and there is no evidence that these items had been reviewed and approved by NHT's Board during the year ended March 31, 2004. They do not establish the Board's responsibility for approving service contracts that cover more than one year or exceed a specific dollar value.
- As previously described, NHT's requirements state that a "formal bid process" must be followed for contracts valued at \$15,000 or more. This description is too general and needs to be better defined. The guidelines do not state the minimum number of bids or quotes that must be obtained for contracts valued at \$15,000 or more.
- Documentation to be maintained in support of the agency's bid and award process is not specified. Nor has a policy regarding the retention of relevant records been established.
- 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) are not defined. Nor are the conditions appropriate for each process described. The use, awarding, monitoring, and reporting of procurement contracts should be detailed, along with

the documentation that must be obtained and retained to substantiate each process. The consideration and use of State contracts should be encouraged when applicable; and all account holders should be made aware of goods and services available through State contracts administered by the New York State Office of General Services.

- Updates should be made to incorporate requirements of the Governor's Executive Order #127 (Order), entitled Providing for Additional State Procurement Disclosure. 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.
- OSC's Regulation on Accounting and Reporting for Public Authorities (2NYCRR, Part 201) requires public authorities to submit an Annual Data Request with various reports, including an annual procurement report and guidelines, to OSC 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 31st). However, during calendar year 2004, the Board met just once, on July 20th.

During our audit, NHT's Executive Director has sought to update, revise, and expand the agency's procurement guidelines by addressing many of the recommendations we made to him in our preliminary findings document dated June 15, 2005. At its June 22, 2005, meeting, the NHT Board adopted more-comprehensive guidelines that addressed many of our concerns, covering its own obligation to review and approve both the guidelines and the annual report; Board involvement in contracts with a minimum value or duration; compliance with provisions of the Order; and the use of State contracts, where available. The revised guidelines now include a definition of sole source items, and will require justification in the future.

Minority and Women Business Enterprise (MWBE) Participation

Article 15-A of the Executive Law (Article 15-A) requires all State agencies, including NHT, to set participation goals regarding the percentage of contract expenditures to be made to minority- and women-owned businesses. Agencies must report their level of MWBE expenditures in quarterly reports to the Department of Economic Development's (DED) Division of Minority and Women's Business Development. Since 2002, agencies have been required to file these reports with DED electronically.

It was NHT's goal 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 no minority business enterprise participation level at all. We 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 minority- and women-owned business participation level as zero percent. NHT officials told us they have since obtained the software needed for electronic filing, and plan to submit future reports electronically.

Payment to Sub-Contractor

During our audit, we noted that 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 their 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.

Recommendations

6. Ensure that the annual procurement report and NHT procurement guidelines comply with PAL Section 2879 and OSC's Regulation on Accounting and Reporting for Public Authorities.

(NHT officials indicate that this has been completed as noted in the body of the report.)

7. Report MWBE expenditures to DED as required by Section 15-A.

(NHT officials indicate that they have acquired the software necessary to affect electronic filing with DED and is now in compliance with this requirement.)

8. Re-emphasize the need to utilize minority- and women-owned business contractors when possible.

(NHT officials agree with this recommendation and have provided all account holders with MWBE guidelines and the website to locate approved MWBE contractors. NHT officials further indicate that they will investigate ways to increase participation of MWBE contractors going forward.)

9. Clarify the role, responsibilities, payments, and limitations with sub-contractors that are employed by prime contractors.

(NHT officials concur and indicate that if such an arrangement is made in the future, it shall be set forth in the contract.)

MAJOR CONTRIBUTORS TO THIS REPORT

Frank Houston
Cindi Frieder
Myron Goldmeer
David Louie
Arthur Lebowitz
Jeny Varghese
Marticia Madory



December 15, 2005

Mr. Frank Houston
Office of the State Comptroller
Division State Services
State Audit Bureau
123 William Street – 21st Floor
New York, N.Y. 10038-3804

RE: Natural Heritage Trust (“NHT”) Audit Response;
OSC Audit Report No. 2005-S-12

Dear Mr. Houston:

Thank you for forwarding the State Comptroller’s draft audit report (“Report”) with respect to the NHT’s procurement and contracting practices. The NHT strives continually to improve its internal processes and strengthen its ability to ensure it succeeds in its vital mission to further conservation, outdoor recreation and historic preservation.

The Report concludes that certain aspects of NHT’s internal control procedures concerning procurement and contracting practices need improvement and provides nine recommendations to accomplish these goals. Although many of the Report’s recommendations had been implemented or were in the process of implementation during the course of the audit, in certain instances, the Report’s Executive Summary indicates that such actions are yet to be taken. The NHT requests that you amend the Executive Summary – Audit Observations and Conclusions in the final Audit Report to portray more accurately the NHT’s procedures as of the Closing Meeting between NHT staff and the audit team, which took place on July 20, 2005. This, in our view, will prevent any potential misunderstanding of the Report’s ultimate conclusion -- that the NHT has already taken significant steps to improve its procedures, including:

- Retention of all procurement and contracting documents at the NHT main office, as well as at the location of each account holder;
- Barn Grant program procedures revised to ensure that each step of award process, including minutes of committee peer review sessions, is documented;

The Governor Nelson A. Rockefeller Empire State Plaza • Agency Building 1 • Albany, New York 12238
(518) 474-2997 FAX: (518) 486-1805

- Procurement Guidelines revised to define and document justification for sole source and single source procurements;
- Board of Directors formed an Audit Committee charged with approving every contract over \$100,000 or that will remain in effect for more than one year;
- Board of Directors approval required for any contract whose value exceeds \$250,000.

The NHT will respond to each recommendation made in the Report in the order that it is presented. The first responses relate to the recommendations regarding the Payment Process Examination.

- 1. Assign 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 to as many responsible individuals as practical.**

Response:

The NHT notes that there are more responsible individuals involved in the purchase process than is demonstrated by the file documentation. For example, in most instances, program staff initiates a procurement transaction as the “originator” on NHT letter orders and confirms receipt of the goods and services procured. Moreover, no account holder has the singular ability to initiate payment of invoices, without first submitting verification to the NHT administrative office, which must then approve payment and forward to the treasurer for final approval. Therefore, under the process in place at the time the audit commenced, there were several layers of oversight for all purchases. However, NHT agrees that further separation of such functions can only serve to improve accountability and therefore, we will continue to review and revise our procedures and corresponding documentation to further distribute procurement functions among more staff. The NHT will strive to further separate the functions of ordering and receiving goods to reduce the risk of error, waste or wrongful acts, where possible.

- 2. Require account holders to make positive confirmation of the monthly account statements.**

Response:

The NHT has already implemented procedures requiring account holders to affirmatively verify the accuracy of their account statements and provide written confirmation to the NHT Administrative Office.

3. Ensure that all purchases comply with NHT's procurement guidelines and that all required bid documents are obtained and retained in NHT's files.

Response:

On June 22, 2005, the NHT's Board of Directors voted to adopt revised comprehensive Procurement Guidelines. The new Procurement Guidelines have been distributed to account holders and individuals involved in the procurement process. The NHT has also created a staff position for a "Contract Coordinator," who is responsible for coordinating purchases with account holders and ensure that purchases comply with NHT guidelines, are properly documented, and that all documentation relative to the bidding process is forwarded to the NHT's main offices, instead of maintaining the documentation at the account holders location, as was the practice in the past.

4. Document the justification for sole source and barn grant award selections.

Response:

As noted earlier, the revised Procurement Guidelines require specific details of "sole source" purchases to be documented contemporaneously with the bidding/ordering process. In addition, such documentation is a pre-requisite to processing any payment request and the Treasurer will not sign any checks absent such documentation. With respect to the Barn Grant program, the NHT reiterates that all barn grants are awarded after a rigorous review process, which includes extensive peer review by a committee of at least five historic preservation professionals. In the current barn grant application cycle, the NHT is requiring that the minutes of the committee peer review sessions be memorialized to demonstrate how consensus is reached on final recommendations for grant awards.

5. Ensure that invoices or adequate supplemental documentation is obtained before payment is made and those documents are kept on file.

Response:

The NHT's account holders have been again advised that they are responsible for collecting and maintaining adequate documentation of all procurements and contracts. All such documentation must be provided to the NHT administrative office prior to submitting a payment request and no payment will be processed prior to receiving such documentation. As noted in Response No. 3, the NHT has hired an additional staff member to assist in the review, processing and filing of all documentation in the administrative office.

6. Ensure that the annual procurement report and NHT procurement guidelines comply with PAL Section 2879 and OSC's Regulation on Accounting and Reporting for Public Authorities.

Response:

This has already been completed, as noted in the Report. The Board of Directors of the NHT adopted updated, comprehensive guidelines for the procurement of goods and services at its board meeting held June 22, 2005. These Procurement Guidelines include a formalized multi-level approval process, which includes Audit Committee and/or full Board of Directors approval for contracts totaling over \$100,000 or \$250,000, respectively. They define sole and single source procurements and formalize the steps necessary to justify such procurements. The revised Guidelines also identify all reporting requirements and the methods by which the NHT will ensure compliance. Finally, the revised Guidelines incorporate the provisions of Executive Order #127, the Executive branch's procurement disclosure guidelines .

To date, the NHT has timely submitted the required annual reporting on the procurement of goods and services each year. The NHT notes however, that the annual Public Authorities Data Request does not identify the minimum dollar amount of procurement contracts that must be reported. Therefore, the NHT previously included procurements of \$15,000 and higher in its reports, based upon the New York State Procurement Council's Guidelines, which identify purchases up to \$15,000 as "discretionary," consistent with the State Finance Law. The NHT has revised its Procurement Guidelines to report purchases of \$5,000 and above on future Data Requests and now requires copies of the filing to be supplied to all appropriate agencies.

7. Report MWBE expenditures to DED as required by Section 15-A.

Response:

Each quarter, the NHT timely filed MWBE expenditures reports to DED, as required, via mail. The NHT was unaware of the requirement of filing the reports in electronic format only. The NHT acquired the software necessary to effect electronic filing and is now in compliance with this requirement.

8. Re-emphasize the need to utilize minority and women owned business contractors when possible.

Response:

The NHT agrees with this recommendation and has provided all account holders with MWBE guidelines and the website to locate approved MWBE contractors in an effort to achieve better results with this important program. We will continue to investigate ways to increase the participation of MWBE contractors going forward.

9. Clarify the roles, responsibilities, payments and limitations with sub-contractors that are employed by prime contractors.

Response:

There was a single program where the NHT paid a sub-contractor directly. Such payment did not violate the contract with the prime contractor. However, NHT concurs with the finding and if such an arrangement is made in the future, it shall be set forth in the contract.

The NHT appreciates the efforts of the audit team, and views this audit as an opportunity to assist NHT staff and account holders in their efforts to improve practices and procedures with respect to procurement, reporting and documentation. While the NHT agrees with many of the recommendations set forth in the Report, it looks forward to reviewing the clarifications in the final Audit Report.

Again, thank you for this opportunity to respond. Please feel free to contact me with any questions.

Very truly yours,



Kevin A. Carey
Executive Director