
**Thomas P. DiNapoli
COMPTROLLER**



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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**NEW YORK STATE
FOUNDATION FOR
SCIENCE, TECHNOLOGY
AND INNOVATION**

**INTERNAL CONTROLS
OVER FINANCIAL
OPERATIONS**

Report 2006-S-121

AUDIT OBJECTIVES

Our objectives were to determine whether the New York State Foundation for Science, Technology and Innovation (Foundation) has completed its transition from a State agency into a public benefit corporation (public authority) and whether the Foundation has established appropriate internal controls over its basic financial operations.

AUDIT RESULTS - SUMMARY

Generally, we found that the Foundation's Board of Directors is making steady progress towards taking on most of the roles and duties of a public authority, as outlined in its enabling legislation. However, we found three exceptions:

- The Foundation has not established regional partnerships to promote emerging and existing technologies;
- The Foundation has not submitted its initial annual report, due February 1, 2007; and
- The Foundation lacks a permanent investment policy for its Small Business Technology and Innovation Fund, currently valued at over \$10 million.

We also reviewed basic areas of financial operations since the Foundation became a

public authority. Overall, we found the Foundation has adequate internal controls in place to ensure that transactions are properly authorized, executed, monitored and recorded. However, we noted a control weakness relating to the use of the Foundation's employer-provided vehicle. Although the vehicle may be used by any Foundation employee for business purposes, we found it is generally used by the Executive Director for daily commuting and to attend business-related functions throughout the State. Contrary to IRS regulations, the Foundation does not report the value of the personal use of the vehicle as a taxable fringe benefit to the Executive Director.

Our audit report contains four recommendations to implement the legislated transition to a public authority and to comply with IRS regulations related to vehicle usage. Foundation officials generally agreed with our recommendations and indicated that they have already taken steps to implement them.

This report, dated June 26, 2007, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

Formed in 1999 as part of the “Jobs 2000” legislation, the New York State Office of Science, Technology, and Academic Research (NYSTAR) was created to provide a mechanism through which the State and its regional partners could develop regional economic development strategies. These strategies were intended to further job creation, economic growth, and advances in the fields of science and technology. The legislation provided NYSTAR with over \$120 million in new funds to implement a number of programs and initiatives. These initiatives included the construction and development of new and existing research centers, grants for colleges and universities to commercialize high technology initiatives, and grants to attract and retain quality research faculty.

In enacting the 2005-06 New York State budget, the Legislature created the Foundation as a new public benefit corporation to replace NYSTAR by assuming all of its rights, powers, duties and obligations. The Foundation has a staff of 28 employees and an annual operating budget of slightly more than \$3 million.

The Foundation continues to administer the same programs and initiatives that were created under NYSTAR. As part of its mission, the Foundation is also responsible for administering the newly created Capital Investments Innovation Fund (Fund). The Fund was established to provide grants and loans through a system of regional partnerships for projects that enhance innovation and competition in emerging and existing industries. Additionally, the Foundation has been charged with managing the Small Business Technology Investment Fund (SBTIF) - investments which were previously managed by the Empire State

Development Corporation (ESDC) - to promote investments in emerging technologies developed and marketed by small companies within New York State.

One key difference in the Foundation’s organizational structure as a public authority is that its operations are overseen by a Board of Directors (Board). The enabling legislation requires the Foundation to be governed by 13 Board members, whose expertise should be broadly representative of various business sectors across the State. Some of these sectors include technology research and development, venture capital industries, small business high technology, and minority- and women-owned business enterprises. As of the most recent Board meeting (January 27, 2007), the Board had 12 members and one vacancy. Filling this vacancy is the responsibility of the State Assembly.

AUDIT FINDINGS AND RECOMMENDATIONS

Transition Activities

Although Article 10-A of the Public Authorities Law (Law) created the Foundation effective April 12, 2005, the first Board meeting was not held until May 31, 2006. The Foundation has implemented most aspects of the legislation. However, the following provisions were not completed as of February 20, 2007:

- Section 3154 of the Law states that the Foundation shall certify and re-certify up to ten regional partnerships. The Law specifies that the duration of the partnerships should be five years, beginning no later than March 31, 2006. The Foundation held a Board meeting in June 2006 during which the Board discussed draft criteria and created a

Regional Partnership Committee to review the criteria. On November 22, 2006, the Foundation issued a Request for Proposal for the Regional Partnership Program with a submission date of May 7, 2007. The Law gives the Foundation 90 days to review all proposals before selecting and certifying regional partnerships. Therefore, the partnerships may not be certified until August 2007, more than 16 months after the intended date. Foundation officials stated that the lack of funding for the partnerships was a major factor in the delay.

- Section 3155 of the Law states that the Foundation must submit a report on its operations and accomplishments annually beginning February 1, 2007. This report must be submitted to the Governor, the Speaker of the Assembly and the Temporary President of the Senate. As of February 20, 2007, the Foundation had not submitted its annual report. A draft report was available, but it had not yet been finalized.
- Section 3165 of the Law transferred the SBTIF from ESDC to the Foundation. As of January 11, 2007, the SBTIF held publicly traded investments valued at about \$10.7 million, in addition to numerous private investments. According to Section 2925 of the Law, as well as Section 201.3 of the Comptroller's Regulations, the Foundation is required to have an investment policy to ensure that investments are consistent with the Board's objectives for the SBTIF and the appropriate provisions of laws relating to the Foundation. As of February 20, 2007, the Foundation does not have a permanent investment policy for the SBTIF. In November 2006, it

assembled an Investment Review Committee, which issued an interim investment policy until it can develop a comprehensive permanent policy.

Recommendations

1. Establish the regional partnerships, ensuring that the review period for any proposals does not exceed 90 days.
2. Finalize and submit the annual report, and ensure that future reports are submitted timely.
3. Adopt a permanent and comprehensive investment policy, consistent with the SBTIF's objectives.

(Foundation officials indicate the annual report has been finalized and submitted, and actions are underway to implement the regional partnerships and investment policy.)

Vehicle Usage

Internal Revenue Service (IRS) regulations require employers to report the value of the personal use of employer-provided vehicles as taxable fringe benefits. The Foundation does not report the taxable value of the vehicle provided to the Executive Director, who uses it to commute to work daily, as well as to attend business-related functions throughout the State.

Recommendation

4. Comply with IRS regulations for reporting the taxable value of employer-provided vehicles.

(Foundation officials indicate that they are taking steps to implement this recommendation.)

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited the Foundation's internal controls over financial operations for the period April 1, 2005 through February 23, 2007. We reviewed the following:

- board governance,
- revenue billing and collection,
- cash and investments,
- payroll transactions, including time and attendance records,
- procurement and contracting,
- equipment and asset management,
- budgeting and expenditure control, and
- accounting and information systems.

We also audited the Foundation's transition to a public benefit corporation for the period April 12, 2005 through February 23, 2007.

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 Office of Operations. 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.

AUTHORITY

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 and Article X, Section 5 of the State Constitution, and Section 6278 of McKinney's Unconsolidated Laws of New York.

REPORTING REQUIREMENTS

Draft copies of this report were provided to Foundation officials for their review and comments. Their comments were considered in preparing this report, and are included as Appendix A. Appendix B contains State Comptroller's comment which addresses certain matters included in the Foundation's response.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Foundation 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.

CONTRIBUTORS TO THE REPORT

Major contributors to this report were Frank Houston, John Buyce, Joel Biederman, Sarah Purcell, and Kelly Engel.

APPENDIX A - AUDITEE RESPONSE



MICHAEL J. RELYEA
EXECUTIVE DIRECTOR

New York State Foundation for
Science, Technology & Innovation
(NYSTAR)

30 SOUTH PEARL STREET, 11th FLOOR
ALBANY, NEW YORK 12207

May 18, 2007

Mr. Frank J. Houston, Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 William Street -21st Floor
Albany, New York 10038

Dear Mr. Houston:

This letter responds to Draft Audit Report 2006-S-121 concerning the Internal Controls over Financial Operations at the New York State Foundation for Science, Technology and Innovation (the Foundation).

The responses below follow the audit results as they appear in the Draft Audit Report. The audit recommendations are summarized, with the Foundation's response following each respectively.

An important point of clarification regarding the creation date of the Foundation is needed. The effective date was not April 12, 2005, as is reported in the Draft Audit Report. The statute called for a January 2006 transition date, but provided for a later transition if impractical to meet the January 2006 timeframe. The transfer date coincided with the first Foundation Board meeting, which occurred on May 21, 2006.

*
Comment

- OSC Audit Recommendation: Establish Regional Partnerships.
- Response: There were numerous issues, including questions of funding mentioned in the audit, which delayed certification of the Regional Partnerships that were beyond NYSTAR's control. Proposals for the ten Regional Partnerships were submitted on May 7, 2007, and certification by the Foundation Board is expected in the required timeframe. The additional time taken to develop the partnership criteria should help establish successful partnerships that will foster and coalesce each regions technology commercialization efforts and insure that regional efforts are coordinated between local and state efforts.

P: 518.292.5700 • F: 518.292.5798
www.nystar.state.ny.us

* See State Comptroller's Comment, page 8

- OSC Audit Recommendation: Finalize and submit the annual report, and ensure future reports are submitted timely.
- Response: The Annual Report has been submitted to its required recipients and has been posted to the Foundation Website. The Foundation will make every effort to ensure future reports are submitted timely.

- OSC Audit Recommendation: Adopt a permanent and comprehensive investment policy.
- Response: A comprehensive investment policy is nearing completion and is expected to be adopted by the Foundation Board in the near future.

- OSC Audit Recommendation: Comply with IRS regulations for vehicle reporting
- Response: The Foundation has reviewed IRS regulations for reporting the value of personal vehicle usage and will apply the regulations whenever applicable. Additionally, per discussion with auditors, the lone vehicle of the Foundation has been supplied with a travel log, and utilization will be reviewed monthly by Finance staff. This review will ensure compliance with Internal Revenue Service reporting regulations.

Given the stated objectives of the Audit to determine that the Foundation has transitioned to a public authority, within less than a year, and whether the Foundation has established appropriate internal controls over its basic financial operations; the determination from the Office of the State Comptroller (OSC) that existing internal controls are adequate to ensure that transactions are properly authorized, executed, monitored and recorded affirmed the Foundation's commitment to strong internal controls.

Thank you for the opportunity to respond to this Draft Audit Report.

Sincerely,



Edward J. Hamilton
Director of Finance

CC: Foundation Board Members

APPENDIX B - STATE COMPTROLLER'S COMMENT

The Foundation was created as part of the 2005-2006 New York State budget (Chapter 59 of the Laws of 2005, which was effective on April 12, 2005). Among other things, the statute called for the Foundation to absorb all of the functions of the New York State Office of Science, Technology and Academic Research (NYSTAR) no later than January 31, 2006. Although assumption of these duties and responsibilities was central to the Foundation's mission, the Foundation itself existed independent of NYSTAR in the

interim. When this transition did not occur by the statutory deadline, the Legislature amended the law as part of the 2006-2007 budget (Chapter 59 of the Laws of 2006, effective May 21, 2006) to, among other things, remove reference to the January 2006 deadline. According to Board minutes, the first Foundation Board meeting occurred ten days after the effective date of the amendment, on May 31, 2006.