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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

June 15, 2007

Ms. M. Patricia Smith  
Commissioner  
New York State Department of Labor  
Building 12 - State Office Campus  
Albany, NY 12240

Dear Commissioner Smith:

Re: Report 2007-F-10

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, we have followed up on the actions taken by the Department of Labor (Department) officials to implement the recommendations contained in our audit report addressing the *Administration of the Public Work Enforcement Fund* (2004-S-22).

**Background, Scope and Objective**

The Department is responsible for enforcing the Public Work Law, which requires contractors on public work projects to pay the prevailing rate of wages and supplements to all covered employees. Public work projects are construction and construction-related contracts undertaken by public entities for public benefit. The Department conducts investigations to ensure contractors comply with the Public Work Law. Each year, more than 9,000 public work projects are started, and the Department initiates an average of 765 new complaint investigations. Chapter 511 of the Laws of 1995 as amended by Chapter 376 of the Laws of 2003 (Law) established the Public Work Enforcement Fund (Fund). This Law requires each State agency or public benefit corporation (e.g., public authority) that enters into a public work contract to pay one tenth (.10) of one percent of the total cost of the contract to this Fund. The Department was to use these additional resources for training, labor and related costs for investigators, hearing officers and administrative staff, to ensure that staffing levels for such personnel are maintained at an appropriate level to reduce the backlog of active complaint investigations. This backlog totaled 981 cases as of May 17, 2007.

The Department bills public entities for assessments they owe to the Fund, and entities remit payments to the Department. A total of \$19.3 million (assessment revenues plus interest income) has been deposited into the Fund since its inception. Of this amount, \$9.4 million was expended by the Department and \$2 million was transferred to the State's General Fund. The Fund had a cash balance of \$5.5 million as of March 30, 2007.

Our initial audit report, which was issued November 1, 2005, determined whether the Department:

- Identified, collected, and properly account for all monies due the Fund
- Used Fund monies to enforce the Law according to legislative intent

We found that the Department has not identified or collected significant amounts of revenues due the Fund. The Department does not use all available information to identify assessable contracts, and has not developed regulations to clearly state that all assessable entities must pay the Fund fee on every assessable project. In addition, the Department does not collect all payments due to the Fund and controls over Fund monies and data need improvement. We found that if the Department collected all the Fund revenue it should, then the Department would be able to hire additional staff which may improve the timeliness of complaint resolution, and reduce its significantly increased backlog of cases, in accordance with legislative intent. We recommended that the Department improve controls over several operations. We further recommended the Department use in-house data and other resources, as necessary, to identify all assessable contracts; develop regulations to help enforce compliance with the Law; invoice public authorities for assessments due; strengthen controls over Fund revenues; and improve controls over the access to, and protection of, Fund data.

The Legislature's intent in creating the Fund was to provide for new public work investigator positions that would help the Department reduce its backlog of cases. However, we found that, while Fund resources do pay for 26 investigator positions, 14 of these positions existed before 1995, when they were funded by other Department resources. Had Fund monies been used to hire additional new investigators, the Department may have made progress in reducing its case backlog, which has actually grown worse since the Fund was created. As of May 17, 2007, the backlog of active investigations totaled 981 cases. To enforce the Law in accordance with legislative intent, we recommended the Department use available Fund revenues to hire new public work investigators.

The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of May 17, 2007, of the 10 recommendations included in our initial report.

### **Summary Conclusion and Status of Audit Recommendations**

We determined Labor officials have made progress in correcting some of the problems we identified. Of the 10 audit recommendations, 6 recommendations have been implemented, 2 recommendations have been partially implemented and 2 recommendations have not been implemented.

## **Follow-up Observations**

### **Recommendation 1**

*Determine a means of sharing the Bureau of Public Work's (Bureau) data with the Department's Finance Office so the Department can produce complete and accurate billings of all assessable entities, including public authorities.*

Status - Not Implemented

Agency Action - The Department's 90-day response to our report stated that sharing the data contained in the Bureau's file will not help produce complete and accurate billings. The response further states that the data is often incomplete and untimely and therefore only used by the Bureau for limited purposes. Department officials continue to maintain this position.

### **Recommendation 2**

*Work with the Office of the State Comptroller (OSC) to obtain available data to assist the Department in developing a complete list of entities and assessable contracts.*

Status- Partially Implemented

Agency Action- In response to our audit, Department staff worked with OSC staff to obtain available data, and with OSC staff, created the CMS0001 report which includes a complete list of entities and assessable contracts. All New York State agencies are included on this report; however, authorities and other entities not maintained in OSC's contract system are not included. The Department provided us with a hard copy of the CMS0001 report. The CMS0001 report lists all billable contracts with amendments by agency as well as totals for those agencies. Copies of correspondence between OSC staff and Department staff during creation of the report were also reviewed.

### **Recommendation 3**

*Use in-house data and OSC data, as necessary, to identify all State entities' assessable contracts, as well as approved contract amendments/change orders, so the Department can bill entities for all fee revenues due the Fund.*

Status - Implemented

Agency Action - In response to our audit, Department staff worked with OSC staff to create the CMS0001 report which identifies all State entities' assessable contracts, as well as approved amendments/change orders. The Department provided us with a hard copy of the CMS0001 report.

#### **Recommendation 4**

*Develop regulations that provide for the implementation and enforcement of the Law and distribute the guidelines to covered entities. These regulations should:*

- *define assessable contracts;*
- *explain how assessments are calculated;*
- *state when and how Fund payments should be made;*
- *indicate the data entities should provide to the Department and timeframes for data submission; and*
- *identify Department contacts just in case entities require further information or have questions.*

Status - Implemented

Agency Action - The Department worked with the State Division of the Budget to amend the Budget Policy and Reporting Manual to add item B-610 which describes the roles of covered entities with respect to the Fund. We reviewed a copy of B-610 and found it adequately provided guidance for the implementation and enforcement of the Law.

#### **Recommendation 5**

*Invoice public authorities for all public work contracts, including authorities' pass through contracts that are awarded by State agencies.*

Status - Not Implemented

Agency Action - In response to our audit, Department staff worked with OSC staff to create the CMS0001 report which identifies all State entities' assessable contracts, as well as approved amendments/change orders. All New York State agencies are included on this report; however, authorities and other entities not maintained in OSC's contract system are not included. Payments received from these entities are treated as a "cash sale" and are based on information provided by the entities in accordance with guidelines set forth in the Budget Policy and Reporting Manual B-610 (B-610). The Department has not yet developed a system to invoice these authorities.

#### **Recommendation 6**

*Verify the validity of exemptions claimed by State entities by regularly reviewing randomly selected contracts on which exemptions are claimed.*

Status- Partially Implemented

Agency Action - Department staff does not randomly select contracts to review exemptions claimed. However, Department officials state they review all adjusted invoices using the information provided on them and the requirements set forth in the B-610, which we were provided a copy of. Officials state that if there is an exemption that does not appear to fall under the B-610 then staff calls the agency. While Department officials had no written documentation to

support this process, they provided our auditors with a written statement indicating compliance with Bulletin B-610.

### **Recommendation 7**

*Take steps to maintain accurate accounts receivable records and promptly collect receivables due by:*

- *updating the Department's accounting records to include the outstanding accounts receivables previously lost and not reflected in the Department's accounting records;*
- *developing written Department collection procedures; and*
- *developing controls to assure compliance with Department policy.*

Status - Implemented

Agency Action - In response to our audit, the Department has taken adequate steps to maintain accurate account receivable records. Unpaid invoices generated from Peachtree software have been recorded in an excel spreadsheet that tracks collection efforts. Aged receivable reports are generated on a regular basis and written collection procedures have been developed and incorporated into the revenue collection section of Fund procedures. We reviewed copies of the most recent aged receivables report, the excel spreadsheet used to maintain the transferred unpaid invoices, and the recently developed revenue collection procedures.

### **Recommendation 8**

*Establish adequate internal controls over the Fund's cash receipts. Such controls should include, but not be limited to:*

- *immediately recording each receipt into the revenue receipt log;*
- *limiting access to receipts to authorized persons, and securing unprocessed receipts in a locked safe;*
- *reconciling the revenue receipts log to the accounting records; and*
- *separating revenue receipt and revenue recording responsibilities.*

Status - Implemented

Agency Action - In response to our audit, the Department has made efforts to strengthen controls over cash receipts. Procedures have been issued for the collection of cash receipts and distributed to staff. Back-up staff has been assigned to log checks to ensure they are recorded timely and a key pad has been installed on the safe holding cash receipts securing it when the safe is not in use. Payments are initially received and recorded in a journal by employees

in the Financial Accounting Reporting System Tech Unit (FARS Tech). After receipt of payment is recorded in the journal, a member from another unit in the accounting office initials the journal and takes custody of the payment. This staff then posts the payment to the appropriate account and closes that account (if the payment is the full amount due). We reviewed a copy of the cash receipt procedures and copies of back-up staff's expected duties and performance measures regarding collection of receipts. Auditors observed that a key pad was installed on the safe holding cash receipts, the safe was locked during observation, and receipt of cash and posting of payment duties were separated.

### **Recommendation 9**

*Develop and implement controls to ensure only authorized persons have access to Fund data files.*

Status - Implemented

Agency Action - In response to our audit, the Department has added security over the access to the computer containing Fund data files. There is only one computer at the Department that has the Fund's data on it. Only two employees are authorized to access the data. Each employee has a unique user name and password. While any employee can log onto the computer, without one of the two employees' user names and passwords, the data files cannot be accessed. Department officials demonstrated these controls for our auditors by having an unauthorized user attempt to access the Fund data files. This user was unable to gain access to the Fund data files.

### **Recommendation 10**

*Work with the Division of the Budget to enable the Department to use Fund revenues to, in part, provide it with the resources needed to fund new public work investigator positions.*

Status - Implemented

Agency Action - In response to our audit, the Department has worked with the Division of Budget to fund new public work investigator positions. In fiscal year 2006-2007 ten public work investigator positions were approved by the Division of Budget and have since been filled. Department officials stated that there are an additional ten items that were approved for fiscal year 2007-2008 but they have yet to be filled. Department officials provided us with copies of the approved items for both the 2006-2007 and 2007-2008 fiscal years as well as documentation supporting that the ten positions for the 2006-2007 fiscal year had been filled.

Major contributors to this report were Todd Seeberger and Heather Pratt.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Richard K. Sturm  
Audit Manager

cc: Donald Filkins (DOL)  
Lisa Ng (Division of Budget)