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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 26, 2013

Ms. Denise Figueroa
Chairwoman
Capital District Transportation Authority
110 Watervliet Avenue
Albany, NY 12206

Re: Real Estate Portfolio
Report 2012-S-91

Dear Ms. Figueroa:

According to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities Law, we audited Select Aspects of the Capital District Transportation Authority's (Authority) management of its Real Estate Portfolio for the period January 1, 2010 through September 27, 2012.

Background

The Authority is a public benefit corporation created by New York State, effective August 1, 1970, under Chapters 460 and 461 of the Laws of 1970 (Law). The purpose of the Authority, as defined by this legislation, is "the continuance, further development and improvement of transportation and other services related thereto, within the Capital District Transportation District, by railroad, omnibus, marine and air, ..." in accordance with the provisions of the Law. The Law conveys broad powers to the Authority to fulfill its purpose in Albany, Schenectady, Rensselaer and Saratoga Counties in New York State, with a provision for other counties to elect to participate. The properties and income of the Authority are exempt from all Federal and State income and franchise taxes under the provisions of the enabling legislation.

The Authority's primary operating responsibility is the management of the Capital region's bus services. As of March 31, 2012, 642 people work at the Authority, transporting more than 55,000 customers each weekday. Under the Public Authorities Law, Sections 2800 and 2896, the Authority must report its real property holdings, listings of properties purchased or sold and its sale/lease procedures annually. Policy Guidance from the Authorities Budget Office requires the real property reports and procedures be maintained on the Authority's website. In disposing of property (sale or lease), the Authority must comply with Public Authorities Law Section 2897.

Generally, the Authority must follow a competitive process and obtain fair market value in exchange for release of its property rights.

The Authority has a real estate portfolio that consists of nine properties/facilities. In connection with this portfolio the Authority reported that it has entered into 23 leases that generate about \$808,000 annually.

Results of Audit

We found certain improvement opportunities exist in the Authority's management of its real estate portfolio as follows:

- To comply with the Public Authorities Law Section 2896, the Authority must annually report its real estate holdings to the Governor, the Legislative fiscal committees, the State Comptroller and the Authorities Budget Office (ABO). To comply with the ABO, the Authority must include its real estate report on its website. However, the Authority Annual Report for 2011-2012 omitted three properties (the Rotterdam cell tower, the DeFreestville Park and Ride and vacant land in Saratoga). In addition, these three properties were not disclosed on the Authority website and the report that was available on the website was not dated. Also, the Authority did not submit its report to the ABO for fiscal years 2009-2010 and 2010-2011.

(After we presented these findings to Authority officials, they informed us that they had updated the website to include all properties as required by Public Authorities Law.)

- The Authority reported it leases 23 properties resulting in annual revenues of \$807,688 for the fiscal year ended March 31, 2012. Under Public Authorities Law Section 2897 (3), the Authority is to follow a competitive process and is to obtain fair market value in exchange for the lease of property rights in excess of \$15,000. We examined a judgment sample of 10 leases with revenue totaling \$215,259 annually. Four of the leases exceeded \$15,000 of revenue annually (Advantage Travel Group \$93,300, Saratoga and North Creek Railway, Inc., \$18,469, WNYA MY4 Albany \$18,000 of advertising in lieu of rent for one year, and Time Warner \$15,000 for one year of rent and four monitors in the train station).

Authority officials provided documentation to show that fair market value was achieved for the lease with Advantage Travel Group. However, they did not provide documentation to show that any of the remaining three leases achieved fair market value or that a competitive process was not required under the statute. Of the four leases that resulted in revenues of over \$15,000, only the lease with the Advantage Travel Group was awarded through a competitive request for proposal process.

- According to the Authority's 2011-2012 Annual Report, the Authority used 29 Park and Ride lots. We sampled three of these and requested that the Authority demonstrate that it was paying a fair market value for the lots. However, the Authority was not able to provide documentation (such as appraisals or market analyses) to demonstrate this.

- The Authority has arrangements for 250 bus shelters located on public property. In addition, the Authority has 20 bus shelters located on private property. For 17 of the 20 shelters located on private property, the Authority has written agreement with the property owners to specify who is responsible for site maintenance including snow and garbage removal. However, for the remaining three shelters, no agreements are in place. Written agreements may be in the best interests of the Authority in order to expressly define and document the terms and conditions between the parties relating to such shelters.

Recommendations

1. Maintain an accurate and complete Annual Report reflecting the real estate portfolio, post the report to the website and distribute it as required.
2. Document that leases of Authority property achieve fair market value and ensure that competition is used when required.
3. Obtain written lease agreement for all bus shelters located on private property.

Audit Scope, Objective and Methodology

Our objective was to determine whether the Authority properly accounted for and reported all its real estate and disposed of or leased real property on terms beneficial to the State. The audit covered from January 1, 2010 through September 27, 2012.

To accomplish our audit objective, we interviewed Authority officials, and reviewed Authority Board and Committee meeting minutes, Authority Guidelines for the Acquisition and Disposition of Real Property, and relevant laws. We reviewed county tax assessment records from Albany, Rensselaer, Saratoga, and Schenectady and visited selected Authority properties. We reviewed requests for proposals, real property appraisals, and a judgmental sample of 10 leases and 3 Park and Ride lot leases to determine whether the Authority established fair market value for these leases.

We conducted our audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform our audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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. 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 functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to Authority officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chair of the Capital District Transportation Authority 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 why.

Major contributors to this report include Robert Mehrhoff, Christine Chu, Michele Turmel, and Jeffrey Dormond.

We wish to thank Authority management and staff for the courtesies and cooperation extended to our examiners during this audit.

Sincerely,

Carmen Maldonado
Audit Director

cc: Mr. Carm Basile, CDTA, Chief Executive Officer
Mr. Michael P. Collins, CDTA, Vice President of Administration
Mr. Mark Wos, CDTA, Director of Facilities
Mr. Thomas Lukacs, NYS Division of the Budget

Agency Comments



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April 08, 2013

Ms. Carmen Maldonado, Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Dear Ms. Maldonado:

I am responding to your draft audit of the Capital District Transportation Authority's real estate portfolio. I am happy to see that we are in compliance with the areas reviewed, with only a few recommendations identified. Regarding the three recommendations contained in the audit, we provide the following responses:

- **Posting and distribution of the annual real estate report** - During the audit, it was brought to our attention that the real estate listing posted on our website was not complete. This included a cell tower, a park & ride lot and a piece of vacant land. This was corrected immediately.

In our annual report, we have been submitting only acquisitions or dispositions of real estate through the PARIS system. We will file the complete portfolio as shown in our annual report to the respective groups mentioned in the audit.

- **Document fair market value and ensure competition** - Our staff was under the assumption that our process for leasing available space, which follows general Real Estate Industry Standards, was acceptable. We will use the approach provided to insure fair market value.
- **Obtain written agreements for bus shelters on private property** - We have written agreements for 17 of the 20 bus shelters that are located on private property. We will work on written agreements for the remaining 3 sites.

Your audit staff was cooperative and professional, and we appreciate the opportunity to respond to the recommendations. Thank you.

Cordially,

A handwritten signature in black ink that reads "Denise A. Figueroa". The signature is fluid and cursive, with the first name "Denise" being more prominent.

Denise A. Figueroa
Chairwoman

Copy: Carm Basile, Chief Executive Officer
Amanda Avery, General Counsel
Chris Desany, VP of Technology & Facilities
Mike Collins, VP of Finance & Administration
Mark Wos, Director of Facilities

Denise A. Figueroa
Chairwoman
Albany County

Joseph M. Spairana
Vice Chairman
Rensselaer County

Norman L. Miller
Secretary
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Arthur F. Young, Jr.
Treasurer
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Lisa A. Ballout
Saratoga County

Mark G. Gerling
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Georgeanna N. Lussier
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