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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 18, 2000

Mr. Joseph H. Boardman
Commissioner
Department of Transportation
State Office Building Campus - Building #5
Albany, NY 12232

Re: Report 2000-F-6

Dear Mr. Boardman:

According 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 reviewed the actions taken by officials of the Department of Transportation (Department) as of March 21, 2000, to implement the recommendations contained in our prior audit report, *Nighttime Construction Program* (Report 98-S-50). Our report, which was issued April 29, 1999, examined the Department's compliance with both legislative and internal guidance regarding nighttime construction.

Background

In August 1995, the Governor signed into law Section 20 of the State Transportation Law (Section 20), which requires the Department to consider using nighttime construction for every major limited access highway, expressway and parkway project costing more than \$2 million in Long Island (Region 10) and costing more than \$5 million in New York City (Region 11) for projects beginning after April 1, 1996. In areas other than Long Island and New York City, the Department may continue to use nighttime construction at its discretion.

To determine the feasibility of nighttime construction, Section 20 specifies that the Department should review a number of factors and consider input from outside sources. Engineering Instruction (EI) 96-027, issued by the Department in April 1996, provides guidance and sets Department policy for the selection of projects for nighttime construction.

Section 20 also requires the Department to report on the status of nighttime construction projects to the Governor and legislative leaders. According to Section 20, the first report was to

be issued on January 31, 1997, and subsequent reports are to be prepared every two years thereafter. As of March 10, 2000, the Department reported that it had 170 active construction projects, costing nearly \$1.7 billion, that involved nighttime construction.

Summary Conclusions

In our prior audit, we found that the Department generally complied with Section 20 regarding nighttime construction. We did not find any projects in Regions 10 or 11 that met the criteria specified in Section 20 for which the Department did not consider the use of nighttime construction. The Department also provided a report on the status of nighttime construction to the Governor and legislative leaders, as required. However, this report was issued over a year late and contained information which was not adequately supported. We concluded that additional analyses of the cost and benefits of nighttime construction, and improved documentation of decisions to use it, would enable the Department to report more effectively to elected officials and the public.

In our follow-up review, we found that the Department has taken action to address the matters identified in our prior report.

Summary of Status of Prior Audit Recommendations

Of the seven prior audit recommendations, we found that the Department has implemented six recommendations and has partially implemented one recommendation.

Follow-up Observations

Recommendation 1

Assign responsibility for producing the biennial Report on the status of nighttime construction, and establish procedures and controls to ensure its timely issuance.

Status - Implemented

Agency Action - The Department has assigned responsibility for producing the biennial Report to the Construction Division. The Construction Division issued the second biennial Report in July 1999, seven months late but only four months after the information was received from the regional offices. Department officials have indicated that future reports will be issued every two years starting in January 2001, as required by Section 20.

Recommendation 2

Establish controls and procedures to ensure there is adequate documentation for the costs/benefits of nighttime construction as reported in the biennial Report.

Status - Implemented

Agency Action - The Construction Division issued memos in February and March 1999 to the regional offices outlining the information needed to prepare the biennial Report. Department manuals are being revised to reflect the new requirements for selecting projects and documenting nighttime construction costs and other guidance for the regional offices. This process is expected to take at least a year. The 1998 biennial Report was prepared following these guidelines, and all future reports will also be prepared according to these guidelines. We believe that these requirements should result in adequate documentation of costs/benefits of nighttime construction.

Recommendation 3

Design and implement systems to accumulate pertinent cost information for nighttime construction. To the extent possible, obtain assistance from Federally-funded transportation-research centers to help identify any cost differences between daytime and nighttime construction.

Status - Implemented

Agency Action - The Department's Design Division conducted a study of all construction projects let between January 1, 1997 and December 31, 1998. Based on their analysis, the median contract cost for nighttime construction is about 2 to 3 percent higher than daytime construction for this two-year period. The methodology used for this report will be used for future analyses done in response to Recommendation 5 (see below).

Recommendation 4

Develop performance indicators, such as accident rates for vehicles and workers, to help evaluate the comparative safety of daytime and nighttime work zones.

Status - Implemented

Agency Action - The Department uses traffic accident rates, construction accident rates, and construction worker accident rates as safety performance indicators. For each type of accident, the Department monitors the number and the severity of injury (fatal, hospitalization required, minor). The Department has included an analysis of daytime and nighttime accident rates in both its 1998 annual safety report and the most recent biennial Report to the Governor and Legislature.

Recommendation 5

Develop a system that can be used to identify and track those projects that have used nighttime construction. Modify existing systems to identify the portion of construction costs which are attributable to nighttime construction.

Status - Implemented

Agency Action - The Department uses the line item “Lighting for Nighttime Construction” on its project tracking system to identify those projects that have a nighttime construction component. The costs are being analyzed using the methodology developed for the study done in response to Recommendation 3 (*see above*). This approach appears reasonable for tracking projects that have used nighttime construction.

Recommendation 6

Ensure that regional office staff comply with the Department’s Engineering Instruction (96-027) on nighttime construction. On a periodic test basis, verify that the decision to use (or not use) nighttime construction is properly documented.

Status - Partially Implemented

Agency Action - The Department will randomly select two daytime and two nighttime construction projects from each region and review the documentation. However, the first round of reviews has not yet begun, though the Department indicated that they expect to have the reviews completed by the end of the year.

Auditors’ Comments - Without adequate documentation to support decisions to use nighttime construction, Department management does not have adequate assurance that regional offices consistently make the best choices to use (or not use) nighttime construction for specific projects. By performing periodic reviews of the supporting documentation for random projects, the Department could better ensure that regional offices do in fact follow the proper procedures for documenting the selection of projects for nighttime construction.

Recommendation 7

Maximize the use of nighttime construction, where feasible and cost beneficial, in areas of the State outside Regions 10 and 11.

Status - Implemented

Agency Action - Department officials indicated that the Department is committed to nighttime construction throughout the State as a means of reducing traffic congestion caused by road construction. The Department provided a list of all active construction projects by region, including nighttime construction projects. Every region has at least one nighttime construction project underway, with more projects underway in areas of high traffic.

Major contributors to this report were Gerald Tysiak, Mark Ren, Jennifer Paperman, and Carmen Vega.

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

Very truly yours,

A handwritten signature in cursive script that reads "Carmen Maldonado".

Carmen Maldonado
Audit Director

cc: J. Samaniuk
C. Conaway