ALAN G. HEVESI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 10, 2004

Mr. Kenneth J. Ringler, Jr.
Commissioner
New York State Office of General Services
Governor Nelson A. Rockefeller Empire State Plaza
Albany, NY 12242

Re: Breeyear General Contracting Corporation, Contract PS53747 Report 2003-R-4

Dear Mr. Ringler:

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 audited Breeyear General Contracting Corporation's (Breeyear) compliance with the terms of Contract PS53747 for temporary services, as well as the Office of General Services' (OGS) administration of this contract to ensure that Breeyear bills are accurate and supported; Breeyear performance is effective; and contract use provides cost benefit to the State. Our audit covered the period March 7, 2000 through March 6, 2002.

A. Background

The 1995 Procurement Stewardship Act authorizes OGS to award statewide temporary service contracts on behalf of multiple State agencies. In January 1998, OGS issued an invitation for bids for awarding temporary services contracts for various kinds of work, including Structural Occupations. In October 1998, Breeyear was one of four firms awarded regional contracts by OGS for Structural Occupations, a category that comprises the following 13 trades: Roofer, Carpenter, Painter, Plumber, Electrician, Mason, Laborer, Welder, Boilermaker, Power Equipment Operator, Sheetmetal Worker, General Mechanic and Asbestos Worker.

OGS divides the State into ten regions, and Breeyear's award was for region four (eight counties in the Albany area) and region six (six counties in the Utica area). The contract was originally awarded for a three-year period, and included two one-year options to renew, both of which OGS opted to exercise. The terms of the original three-year contract gave Breeyear a 34 percent mark-up on the total of the employee's hourly prevailing wage rate plus the union supplemental benefit amount. The current contract, initiated March 7, 2002, reduced this mark-up

rate to 24 percent. Although OGS is one of five State agencies that used the contract during our audit period, OGS's expenditures for temporary construction services, which totaled $10.7 million, represent more than 94 percent of total contract expenses during the period. Therefore, we concentrated our audit focus on OGS's use of this contract.

The stated objectives of the contract with Breeyear are to:

- reduce the total cost of services for State agency users of the contract;
- increase the number of vendors available to provide services;
- provide greater flexibility and choice by increasing the number of job titles available; and
- manage service levels by ensuring consistency in services; developing performance standards; ensuring service meets users' needs; and providing for contract audit.

OGS and other agencies that use this statewide contract are responsible for contacting Breeyear to establish the services to be performed, the period services are required, and the quantity and types of temporary construction services needed. User agencies are also responsible for supervising temporary employees, establishing a payment process, maintaining sufficient supporting documentation for services received and for monitoring contractor billings.

B. Audit Scope, Objectives and Methodology

For the period March 7, 2000 through March 6, 2002, we audited Breeyear's compliance with the requirements of Contract PS53747. We also audited OGS's administration of this contract. The objectives of our financial-related audit were to determine whether Breeyear's billings are adequately supported and appropriate for contract purposes; whether OGS officials effectively monitor Breeyear's operations to ensure Breeyear is conforming to contract terms and providing quality services; and whether temporary construction services are cost beneficial to the State.

To accomplish our objectives, we reviewed the terms of Contract PS53747. We also evaluated the internal controls, policies and procedures of OGS and Breeyear, as well as other internal processes related to contract operations. Our evaluation was based on meetings with OGS and Breeyear officials, on reviews of applicable laws, rules and regulations, and on relevant agency records. We also visited five rehabilitation projects on the Harriman State Campus to verify the contracted services received and tested 50 payroll transactions for accuracy.

We conducted our audit in accordance with government auditing standards generally accepted in the United States of America. Such standards require that we plan and perform our audit to adequately assess those operations which are included within our audit scope. Further, these standards require that we understand the internal control structure of OGS and Breeyear and their compliance with those laws, rules, and regulations that are relevant to the operations which 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 that 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.

C. Internal Control and Compliance Summary

We concluded that the internal control structure that OGS and Breeyear have established over contract operations is sufficient to capture and record relevant financial-related transactions. However, we noted that improvements are needed in contractor billing documentation and in contract monitoring. Also, as described later in this report, we determined the State could potentially realize significant cost savings if it used State workers for some jobs currently assigned to temporary workers.

D. Results of Audit

We found that OGS has developed an adequate system of internal control for ensuring Breeyear's invoices are accurate, and that OGS monitoring of contractor performance and deliverables is generally effective. However, we determined that OGS needs to improve the implementation of its established control procedures, such as verifying the completeness and accuracy of timesheet data, to ensure OGS avoids paying temporary employees for time they have not worked. We also believe OGS should develop performance standards for individual projects to adequately measure Breeyear's satisfactory completion of project work. Lastly, we used cost benefit analyses to demonstrate that OGS may be able to reduce the State's cost for construction services by using State employees, or a mix of State and temporary employees, to do jobs currently performed exclusively by temporary employees.

1. Contractor Billings

OGS and other agencies that use the statewide contract for temporary construction services are responsible for contacting Breeyear to arrange for the services needed. User agencies are also responsible for supervising the temporary employees, establishing a payment process, and maintaining sufficient supporting documentation for both services received and contractor billings. We found that OGS has developed an adequate system of internal controls for ensuring contractor invoices are accurate and adequately supported. However, when we tested employee payroll records, which serve as support for contractor invoices, we found errors, such as missing signatures and dates, on about 40 percent of the timesheets we sampled. OGS needs to improve the execution of established control procedures to make sure these procedures work as intended to prevent and detect potential overpayments.

To help ensure Breeyear billings are accurate, OGS supervisors go on-site to directly oversee temporary employees, including verifying the hours they work and the services that are provided. OGS supervisors approve all temporary employees' timesheets at the end of the pay period, retain the original timesheets, and forward copies to Breeyear. Breeyear prepares a weekly pay check for each temporary employee, forwards the paychecks to OGS for distribution, and then submits an invoice to OGS to recover these costs. OGS verifies the accuracy of Breeyear's weekly invoice by matching the applicable timesheets to the total hours billed. OGS also verifies that the correct county prevailing wage rate, Union supplemental benefit rate and mark-up rate are applied correctly prior to issuing payment. OGS maintains Breeyear's invoice on an imaging system along with the supporting timesheet documentation.

To determine the extent to which the above controls are effective in ensuring that Breeyear invoices are accurate, we examined a sample of employee timesheets. We tested 50 randomly selected payroll transactions, with a total value of $66,200, from a population of more than 9,200 payroll transactions with a value of $10.3 million. To verify that payroll amounts were accurate, we compared payroll data to employee timesheets that show hours worked. Although we did not find instances of overpayment in the sampled transactions, we did find errors in, or absences of, required documentation on employee timesheets. Without adequate documentation, OGS may be paying employees for services that were not provided.

Of the 50 timesheets we reviewed, we found that timesheets for 20 employees contained 30 errors, including missing signatures, missing dates for hours worked and timesheets that were submitted for the wrong pay period. The total value of the timesheets that contained errors, including Breeyear's mark-up and the Union supplemental benefit, was $39,483. Shown below are the errors we found, and the percentage of the total sample payroll these timesheets represent.

- 12 timesheets with a value of $14,424 (22 percent) were missing the calendar year.
- 8 timesheets with a value of $9,973 (15 percent) were for the wrong pay period.
- 6 timesheets with a value of $9,731 (15 percent) were missing employee signatures.
- 3 timesheets with a value of $4,142 (6 percent) were missing dates for days worked.
- 1 timesheet with a value of $1,212 (2 percent) had the wrong dates for the days worked.

OGS needs to maintain accurate documentation, including complete and accurate timesheets, to provide adequate support for Breeyear's invoices, and to ensure it pays for only those services that have actually been provided. We believe these errors are indicative of internal control weaknesses that, if not corrected, could result in more significant errors and irregularities occurring without detection.

(In response to our draft report, OGS officials stated that they would work with the contractor to help prevent the noted errors from occurring in the future. However, they do not agree that such errors, if not corrected, may result in inaccurate payments considering the other documents [e.g., billing package cover sheet, contractor invoice, etc.] that exist to support contractor payments.)

Auditors' Comments: We note that the billing package cover sheet and contractor invoice are all predicated on, and supported by, the contracted employee time sheets. Thus, in our opinion, these time sheets must not have errors.

2. Contractor Monitoring

Agencies that use the Breeyear contract are responsible for monitoring contractor compliance, and for ensuring that quality services are received. Also, the "Invitation for Bids" specified that user agencies should establish performance standards to assess service quality and to identify any discrepancies in contract deliverables. We found that Breeyear generally complies with the terms of its contract, and that services provided are of satisfactory quality. However, OGS did not develop performance standards for the projects we reviewed.

We tested Breeyear's compliance with selected contract terms, specifically, the terms that require payment of supplemental benefits for employees and insurance coverage. We contacted Union halls' business agents for the six Union disciplines in our sample (painters, laborers, electricians, carpenters, masons and plumbers), and they confirmed that, for our scope period, Breeyear had paid the Union supplemental benefit due for temporary employees on OGS projects. We also determined that Breeyear has provided OGS with certificates of insurance for our scope period that show the contractor has met contract requirements for insurance coverage (liability, workers compensation and disability).

To verify that user agencies received contracted services, and to gauge the quality of those services, we observed the work done by Breeyear temporary employees at rehabilitation projects on the Harriman State Campus (Campus). We judgmentally selected 5 projects from among the 15 Campus projects that were completed during calendar year 2000 and had "before" and "after" photos available for review. Examining these photos enabled us to determine whether the problem(s) necessitating contract work had been corrected. The five projects consisted of two masonry projects (sidewalks); a grounds project (refurbishing landscape structures and tree planting); an electrical project (street lighting); and parking lot improvement (striping).

Based on our observations, we concluded that all these services were provided. OGS officials indicated that no re-work was needed on these projects, and that re-work rarely, if ever, occurs with the services provided by Breeyear. Officials also said that on-site OGS supervisors who detect poor workmanship can contact Breeyear to have the temporary employee replaced. We contacted the other four State agencies that use this statewide contract, and found that they were also satisfied with the services provided by Breeyear's temporary employees.

However, we found that OGS did not develop the required performance standards for the above projects. One of OGS's stated objectives in awarding this contract for temporary construction services is to enable user agencies to effectively manage service levels by developing performance standards for the services required. In their response to this finding, OGS officials stated they have a process to evaluate the results of projects. We believe it is essential to first develop performance standards for the project to be able to thoroughly evaluate the contractor's success in meeting those standards at the project's completion. Documenting a contractor's departures from performance standards or other discrepancies can also provide useful support in a formal contract dispute, and serve to prevent potential overbilling.

(In response to our draft report, OGS officials stated that we did not accurately cite the contract requirements regarding performance standards. They opined that the requirement of

"setting performance standards" is part of OGS' "Invitation for Bids," used to establish the contract, and for the purpose of establishing journeyman level tradespersons as the required skill level for personnel supplied under the contract, not to set performance standards. Further, they believe that the only potential overbilling that could arise would be from the incorrect reporting of either hours worked or hourly rates paid, since the quality of contractor work is supervised closely by OGS.)

Auditors' Comments: We believe contractor performance standards can only serve to complement OGS' on-site supervision. Considering the amount of monies spent by OGS and other agencies on major capital projects, it would be prudent to establish standards addressing such items as: timeframes for completion of projects and their components; and expectations as to the life expectancy of the project.

3. Cost Benefit Analysis

A primary objective of the contract is to reduce the total cost of contracted construction services for all eligible users of the contract. To help ensure that it consistently obtains construction services at the most economical cost, user agencies should regularly evaluate their use of temporary services, and examine whether and when temporary services are the most cost effective choice for meeting the State's demand for these services. However, we found that OGS has not formally analyzed the cost of using contracted construction services to determine whether the State is realizing cost savings from doing so. Therefore, we analyzed the comparative costs of using contracted temporary employees and State employees who work in the same job classification. Our cost benefit analysis was based on calendar year 2001, the only full calendar year within our scope period. We found that OGS could generate a minimum potential cost savings of more than $525,000 per annum by using State employees (about 38 positions) to do work currently performed by Breeyear temporary employees.

Using Breeyear's payroll, we determined that the total gross salaries paid to 194 temporary employees during calendar year 2001 approximated $3.4 million for almost 174,900 hours of work by painters, laborers, electricians, carpenters, masons and plumbers. We decided to include only three disciplines (painters, laborers and electricians) in our analysis, since their collective work hours (138,713 hours) represent almost 80 percent of all the hours worked during the sampled period. We then determined, based on actual weeks worked, that the hours worked in these three trades throughout calendar year 2001 amounted to about 66 full-time equivalent (FTE) employees: 28 FTE painters, 22 FTE Laborers and 16 FTE Electricians. The payroll cost for the 66 FTE positions, plus Union benefits (such as health insurance) and Breeyear's mark-up, is shown in *Table A*.

Table A: Cost of Temporary Employee FTEs					
	FTEs	Payroll	Union Benefits	Mark-up (24%) *	**Totals**
Painters	28	$1,025,795	$185,935	$290,815	**$1,502,545**
Laborers	22	$818,727	$327,751	$275,155	**$1,421,633**
Electricians	16	$795,842	$395,679	$285,965	**$1,477,486**
Totals	**66**	**$2,640,364**	**$909,365**	**$851,935**	**$4,401,664**

** Breeyear's actual mark-up in 2001 was 34 percent. We used 24 percent in this analysis to be conservative in calculating the future cost of using temporary employees.*

To accurately compare the cost of using temporary employees to that of using State employees for these services, we increased the number of State employee FTEs needed to work the same hours. We did this to account for workforce additions needed to reflect State employees' usage of their leave benefits (annual, sick and personal leave). Thus, we increased the State employee FTEs by 14 percent, or about 10 employees. Using this calculation, about 76 State FTEs (32 FTE painters, 25 FTE laborers and 19 FTE electricians) would be needed to work the total hours worked by the above noted temporary employees in 2001.

We show the cost of using State construction services to work these hours in *Table B*. Since State employees in construction services are represented by the Civil Service Employees Association (CSEA), we determined the personal service cost for these positions based on the highest job rate available on the CSEA Salary Schedule, effective April 2001. We also used the State fringe benefit rate of 34.43 percent that was in effect for that year.

Table B: Cost of State Employee FTEs					
	FTEs	Payroll at Job Rate	Fringe Benefits	Mark-up	**Totals**
Painters	32	$1,156,879	$398,314	$0.00	**$1,555,193**
Laborers	25	$658,154	$226,602	$0.00	**$884,756**
Electricians	19	$676,879	$233,050	$0.00	**$909,929**
Totals	**76**	**$2,491,912**	**$857,966**	**$0.00**	**$3,349,878**

As illustrated by the cost comparison in *Tables A* and *B,* OGS paid about $4,400,000 for temporary services work in 2001 that State employees could have performed for about $3,350,000. Therefore, we conclude that OGS could potentially save more than $1,050,000 per year in personal service costs by using State employees to do the above work if these employees were used full-time.

When we discussed this issue with OGS officials, they stated that one of the primary advantages of the temporary employment contract is the flexibility it provides in managing construction services work based on the fluctuating demand for those services. To adjust for this variable, and to be conservative, we reduced the calculated FTEs by 50 percent; that is, we replaced half the contracted temporary employees with State employees. Replacing just half the contracted

workforce would allow for flexibility in meeting changing demand, but it would still produce a potential annual cost savings of $525,000.

OGS officials also stated that our cost benefit analysis, which focused on calendar year 2001, may not provide an accurate gauge of the use of this contract and its benefits to the State because contract usage in 2001 was at its highest level. Officials contend they saved significant funds in the first six months of 2003-04 fiscal year, a period marked by budget constraints, because they did not hire temporary workers from the contract at all. If OGS had hired State employees to meet high workload usage in 2001, when the State had funds to undertake many projects, those staff would still be on the payroll two years later.

According to OGS calculations, if they had staffed half the FTEs needed in 2001 with State employees, as we suggested, they would still have higher staffing levels than they actually used in contract labor in 2003. Officials state they avoided more than $600,000 in payroll costs in the first 6 months of 2003 by not hiring State employees. OGS officials also stated that using temporary employees allows them to avoid administrative costs (human resources, payroll, etc.) associated with State employees, but officials could not readily quantify such costs. However, we believe any administrative costs would be minimal, since OGS already has an administrative structure in place to perform these activities.

OGS officials said they recognize that the cost of using contract employees is significant, and that their goal is to reduce the cost of services to the State. Our objective in providing the analyses of the comparative costs of using State and temporary employees was to demonstrate the value of doing this kind of formal evaluation to determine whether contract use is, in fact, reducing costs. However, OGS officials have not routinely performed such cost benefit analyses to verify that using the Breeyear contract is the most economical choice in meeting demand for construction services. We believe formal cost benefit analyses are an important tool for determining how OGS can consistently meet service demands, at the lowest cost, in every budgetary climate.

At the conclusion of our audit fieldwork, OGS officials indicated they are working with CSEA representatives to develop a plan that would allow OGS to hire hourly workers through CSEA. According to OGS officials, this plan could provide work for CSEA members who are laid off or otherwise available to work. It could also save money for OGS, since these workers would be hourly employees, and not entitled to benefits. We encourage OGS officials to continue to develop this plan, and to pursue other means of reducing the cost of State services.

(In response to our draft report, OGS officials reiterated the above noted points and provided the details of their analysis. Their analysis covers the six-month period April 1, 2003 through September 30, 2003 when OGS had limited funds available for capital projects and, thus, did not greatly utilize the Breeyear contract.)

Auditors' Comments: We recognize that the potential for cost savings through the use of full-time State employees will vary based on factors such as available funds. The point of our analysis, and one which OGS agrees to, is that such periodic cost benefit analyses can identify savings opportunities. In fact, OGS indicated, in its response, that it plans to refine such analyses to better compare contract use to projected workload.

Recommendations

1. *Ensure that established controls over contractor billing are functioning as intended to prevent inaccurate payment. For example, randomly verify the completion and accuracy of employee timesheets and billable rates.*

2. *Develop performance standards for each contract service project and measure contractor performance according to these standards. Document any discrepancies or departures from standards at project completion.*

3. *Perform formal cost benefit analyses at regular intervals to identify the types of construction services workers (State employees, temporary contract employees, or a mix of both types) that can deliver the most economical services. Include both direct and indirect employment costs in these analyses.*

We provided a draft copy of this report to Department officials for their review and comment. Their comments have been considered in preparing this report, and are included as Appendix A. While Department officials did not agree with some of our findings and conclusions, they did agree with Recommendation 1 and Recommendation 3. They disagree with Recommendation 2. Excerpts from the response and our related comments are included parenthetically, as appropriate, in the body of the report.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of General Services shall report to the Governor, the State Comptroller and 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.

Major contributors to the report include Frank Patone, Barry Mordowitz, Bob Mainello, Roseline David, Jean-Renel Estime, Jessie Wright and Nancy Varley.

We wish to thank the management and staff of the Office of General Services for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

William P. Challice
Audit Director

cc: Robert Barnes

KENNETH J. RINGLER, JR.
COMMISSIONER

ROBERT J. FLEURY
FIRST DEPUTY COMMISSIONER

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES
MAYOR ERASTUS CORNING 2ND TOWER
THE GOVERNOR NELSON A. ROCKEFELLER EMPIRE STATE PLAZA
ALBANY, NEW YORK 12242

NEIL J. DAVIDOFF
DEPUTY COMMISSIONER

FRANKLIN A. HECHT
DIRECTOR OF ADMINISTRATION

April 1, 2004

Mr. William P. Challice
Audit Director
Office of the State Comptroller
110 State Street
Albany, New York 12236-0001

Dear Mr. Challice:

In accordance with Section 170 of the Executive Law, the Office of General Services (OGS) has prepared its comments regarding the State Comptroller's Audit Report 2003-R-4, "Breeyear General Contracting Corporation, Contract PS53747."

We are pleased that the audit recognizes the value of the contract as a tool to meet labor needs in an era of fluctuating workloads and the value of the quality of work performed by the contract tradespersons under OGS's supervision. We agree with two of the three recommendations, but believe the presentation of the findings in the report inaccurately addresses the potential savings and impact of the findings. Further, we disagree that we do not have adequate contract monitoring. Our specific comments with respect to the audit recommendations follow:

Recommendation 1.
Ensure that established controls over contractor billing are functioning as intended to prevent inaccurate payment. For example, randomly verify the completion and accuracy of employee timesheets and billable rates.

We do not believe that the errors found and reported by the auditors would result in the payment for time not worked as stated in Section D of the draft report. The examples listed must be considered in the context of all the documents in the billing package and the timeframe of the review. A billing package contains a coversheet listing the period the billing covers, an invoice that lists the last day of the week worked, and a group of timesheets for the relevant period. If a timesheet in the package of documentation only has the month and day worked but not the year, it might appear that the period worked is not known, but within context of the entire billing package there is no question regarding the time period worked. Further, when an invoice and timesheets are reviewed, usually

recycled paper

during the subsequent month, the timeframe is clear to the reviewer. In the example where timesheets were dated incorrectly, when we reviewed the timesheets again, we noted that:

- The employees all recorded taking the Thursday of Thanksgiving week off even though it was not dated correctly.
- One timecard in the group had been changed to show the correct dates.
- The invoice and coversheet that the timesheets were attached to list the correct period worked.
- Many of the timesheets were dated on 11/23/01, the last day of the actual week worked.

The invoice and timesheets document the work performed for the week, and as noted in the audit, although imperfect, all invoices reviewed indicated no instance of overpayments.

However, despite a difference of opinion regarding the presentation of the findings, OGS strives to prevent or to detect and correct such errors. We will share the nature of the errors found with supervisors and advise them to share the data with the employees and contractors they supervise to reduce errors when timesheets are prepared. This should also improve our supervisors' ability to spot and correct errors in the future. Further, OGS is considering requiring the use of our electronic time and attendance tracking system by our contractors' employees. Clerical errors would be eliminated by the use of the system, and data would be available in an electronic format for the cost benefit analyses recommended in this report.

Recommendation 2.
Develop performance standards for each contract service project and measure contractor performance according to these standards. Document any discrepancies or departures from standards at project completion.

We do not believe that Section D.2 of the report correctly cites the terms of the Breeyear contract nor draws a valid conclusion. We believe that the section of the contract cited has been misinterpreted. The statement, "The contract specifies that user agencies should establish performance standards" comes from Section I.4. of the Invitation for Bids (IFB) used to establish the contract. It is actually one of the OGS Procurement Services Group's objectives for issuing the IFB and putting the contract in place.

* Note 1

I.4 - Objectives
"The Office of General Services has several objectives in issuing this Invitation for Bid. These are:
- *Reduce the total costs of services for all eligible users of the contract;*
- *Increase the access and content of service to all eligible users of the contract by increasing the number of vendors available to provide service;*

*** State Comptroller's Note:**

1. We modified our report to reflect this information.

- *Provide greater flexibility and choice by increasing the number of job titles available to all eligible users of the contract, and the existence of the auto add provision to offer job titles in the future;*
- *Manage service levels by: ensuring consistency of service,* ***developing performance standards****, ensuring that the level of service meets users needs, and providing for contract audit; and,*
- *Provide a comprehensive menu of available temporary personnel job titles to all eligible users of the contract."*

For the construction trades, "setting performance standards" refers to establishing the Journeyman level tradespersons as the required skill level of the personnel supplied under this contract. The Procurement Instructions of the contract do not call on agencies to set performance standards.

The remainder of our response to Recommendation 2 focuses on OGS as a user of the Breeyear contract and our monitoring efforts. This contract is used to obtain skilled labor to supplement our work force. The contractor's tradespersons work on projects that are designed by OGS staff in consultation with a client agency. OGS employees develop the project specifications and select the materials. For each project, we develop estimates of the work required by trade. Project cost estimates are developed based on the estimated time required, and projects are measured against the actual costs versus the budgeted costs. OGS supervises and directs the work done by the contractor's tradespersons. During a project, if a supervisor notices work not being completed in a timely manner or with sufficient quality, the supervisor will determine the cause. Inadequate work progress could be the result of factors beyond the tradesperson's control. If the supervisor believes an individual tradesperson's skills or work ethic are lacking, OGS will have the contractor replace the tradesperson as the contract provides. We believe this is appropriate monitoring of the work done under the contract.

The report says that performance standards and evaluation of the contractor's compliance with the standard could be useful in the event of a formal contract dispute and serve to prevent potential over billing. We do not believe this to be true in this instance. OGS supervises the staff for satisfactory on-the-job performance, therefore, there are only two components that factor into the amount billed: the number of hours worked and the hourly rate. Our supervision of the contractor's staff already provides us with documentation of the hours worked. The hourly rate is calculated by multiplying the prevailing wage rate established by the New York State Department of Labor by the percentage markup bid by the contractor. We verify these rates when the contractor requests a change in the rates as allowed by the contract. Further, this is not a case where a project is assigned to a contractor and they are responsible for its completion in conformance with specifications. Due to our control of all aspects of the projects, there will not be issues beyond the number of hours worked and the rate billed. If OGS had provided painters with an inferior paint and it did not weather well, the condition of the

project would not reflect on the quality of the work performed by the contractor. If the design for one of the masonry contracts had been for 2 inches of concrete but the amount and type of traffic on the masonry should have called for 4 inches of concrete, the failure of the material after the completion of the project again would not reflect on the contractor. Neither of these situations would be cause for a contract dispute.

After consideration of this recommendation, we were unable to identify a scenario where supervision of the contractor's staff during the project is not the best way to address the quality and quantity of the work done by the tradespersons.

Recommendation 3.
Perform formal cost benefit analyses at regular intervals to identify the types of construction services workers (State employees, temporary contract employees, or a mix of both types) that can deliver the most economical services. Include both direct and indirect employment costs in these analyses.

During the audit, OGS conducted a cost benefit analysis of using contract labor versus hiring State employees. Our analysis indicates the use of the contract saves the State money due to the fluctuation of our workload and our ability to obtain and pay tradespersons only when our workload exceeds the level we can perform with our own employees. The audit team's analysis needs improvement in two respects:

First, it is based on a year with high usage and projects savings based on peak workload. By not using the constant work level, a baseline, it suggests hiring staff that would be underutilized during subsequent lower workload periods. We are again presenting our cost analysis such that a reader can see that we followed the same methodology to compute the cost avoided.

Cost Avoided April 1, 2003 to September 30, 2003 by not having hired Full Time Staff for Peak Workload							
	FTEs	Actual FTEs 4/1/2003 - 9/30/2003	Excess FTEs if OGS had Hired Permanent Employees	Salaries 2002	Indirect & Fringe Rate	1/2 Year of Salary with Benefits	Cost Avoided (Salaries & Benefits times FTEs Avoided)
painters	31.93	0.31	31.62	$ 37,500.00	35.94%	$25,488.75	$ 806,013.10
laborers	25.14	5.57	19.57	$ 27,102.00	35.94%	$18,421.23	$ 360,544.20
electrician	18.68	5.96	12.72	$ 37,500.00	35.94%	$25,488.75	$ 324,220.58
	75.75	**11.84**					**$ 1,490,777.87**

Even using the Draft Report's logic presented on Page 7, of only staffing to half of 2001 contract labor, FTEs would have resulted in higher staffing levels than we actually used in contract laborers. By not hiring full time staff instead of hiring half the contractors, the State avoided about $614,000 during the period April 1, to September 30, 2003.

Cost Avoided April 1, 2003 to September 30, 2003 using reduced FTEs like Draft Report Page 7							
	FTEs	Actual FTEs 4/1/2003 - 9/30/2003	Excess FTEs if OGS had Hired Permanent Employees	Salaries 2002	Indirect & Fringe Rate	1/2 Year of Salary with Benefits	Cost Avoided (Salaries & Benefits times FTEs Avoided)
painters	15.97	0.31	15.66	$ 37,500.00	35.94%	$25,488.75	$ 399,085.20
laborers	12.57	5.57	7.00	$ 27,102.00	35.94%	$18,421.23	$ 128,989.35
electrician	9.34	5.96	3.38	$ 37,500.00	35.94%	$25,488.75	$ 86,155.65
	37.88	**11.84**					**$ 614,230.20**

Our analysis shows that during the first six months of fiscal year 2003-04, using either scenario, we avoided more employee costs than projected by the annual audit analysis savings of $1,050,000 or $525,000 by being able to reduce the use of contract tradespersons.

Second, using full time equivalents (FTEs) might simplify the analysis, but it does not present a true picture. The ability to obtain and use skilled tradespersons on an as-needed basis was not captured in OSC's analysis. Hiring four painters for one week is not comparable to hiring one painter for four weeks, nor is it cost effective to have permanent staff of several trades (electricians, painters, laborers) when trades may be required intermittently. We discussed these issues with the audit team and they discounted this argument saying we could compensate by scheduling projects such that tradespersons are rolled from project to project instead of having projects progress concurrently. This is an oversimplified view. State agencies are our customers and they receive their funding and approval to spend appropriations at the same time. When agencies have their funding in place, they want their projects started and completed before the end of the fiscal year when their appropriations will lapse. The use of the contract allows us to ramp up and complete work in bursts when the funding is available.

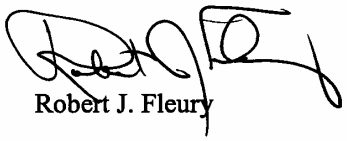
For example, our analysis showed the following for painters in the first 6 months of fiscal year 2003-04: 312 hours in April, no hours in May, no hours in June, no hours in July, no hours in August and only 8 hours in September.

Regardless of the limitations of the analysis, we agree that periodic cost benefit analysis of the usage of the contract could identify savings opportunities. If we are successful in getting our contractor's staff to use our time and attendance tracking system, we will have the electronic data necessary to perform a detailed cost benefit analysis of the use of the contract compared to projected workload and be able to include factors like fluctuations in usage during the year in our analysis.

We wish to thank the audit team for their efforts. We value their work to help identify opportunity for savings and the professional manner in which they undertook the audit. While we do not agree with the presentation of some of the findings, we understand their

use to frame the intent of the recommendations and will work to implement the two recommendations with which we agree. With regard to setting performance standards, we believe our efforts in regard to supervising the work of the tradespersons provided by the contractor is adequate to ensure quality of the services provided.

Sincerely,



Robert J. Fleury