

A REPORT BY THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**Alan G. Hevesi
COMPTROLLER**



NEW YORK RACING ASSOCIATION, INC.

**CONTRACTING AND PROCUREMENT
OPERATIONS**

2004-S-61

DIVISION OF STATE SERVICES

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Report 2004-S-61

Mr. Charles Hayward
President and Chief Executive Officer
The New York Racing Association, Inc.
P. O. Box 90
Jamaica, NY 11417

Dear Mr. Hayward:

The following is our audit report addressing the New York Racing Association's Contracting and Procurement Operations for the period January 1, 2002 through December 31, 2004.

This audit was performed pursuant to the State Comptroller's authority, as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Section 208 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law. Major contributors to this report are listed in Appendix A.

*Office of the State Comptroller
Division of State Services*

June 15, 2005

EXECUTIVE SUMMARY

NEW YORK RACING ASSOCIATION: CONTRACTING AND PROCUREMENT OPERATIONS

SCOPE OF AUDIT

The New York Racing Association, Inc. (NYRA) is a not-for-profit association with an exclusive franchise from New York State to conduct racing and pari-mutuel betting at the Aqueduct, Belmont Park and Saratoga racetracks. Section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law (Racing Law) requires NYRA to operate in a sound, economical, efficient and effective manner to produce reasonable revenue for the State. In return for this exclusive franchise, NYRA is required to pay the State a pari-mutuel tax on all on-track handle, and an annual franchise fee. NYRA is governed by a 28-member Board of Trustees. NYRA's franchise will expire on December 31, 2007, unless it is extended by the Legislature at that time.

The annual franchise fee (NYRA's adjusted net income less a designated amount of money for purses) repays capital improvement loans from the New York State Thoroughbred Racing Capital Investment Fund, which totaled \$67.8 million as of December 31, 2003. For 2002 and 2003, NYRA reported losses in its financial statements of \$6.7 million and \$19.8 million, respectively.

NYRA spends about \$115 million annually on goods and services. Section 213 (5)(a) of the Racing Law requires NYRA to award contracts for goods and services costing more than \$250,000 via a process of competitive bidding. In 1998, NYRA officials developed a procurement policy (Policy), which it updated in 2003, establishing controls over NYRA's procurement transactions. The Policy requires conformance to the Racing Law, competitive bidding for purchases over \$10,000, and provides guidelines for routine purchases.

Prior audits by the State Comptroller concluded that NYRA overstated certain expenses and underpaid its franchise fee, and a 2003 report on racing by the State Comptroller concluded NYRA needed to be reformed. A joint investigation by several government entities, including the State Attorney General's Office, uncovered extensive criminal activities at NYRA tracks. An investigation by the US Attorney's Office for the Eastern District of New York (USAO) resulted in NYRA's indictment for various Internal Revenue Code (Tax Code) violations. NYRA entered into a Deferred Prosecution Agreement with the USAO in December 2003 on the condition it would undertake reforms, including continuing

to restructure its management team to direct reform efforts. An Independent Private Sector Inspector General was appointed as a Federal Monitor on March 1, 2004 and is responsible for overseeing NYRA's reform efforts and its compliance with relevant laws, including the Tax Code and the Racing Law. The Comptroller's Division of Investigations has been working closely with the Federal Monitor on various matters, including procurement and integrity issues at NYRA. The Federal Monitor is conducting a comprehensive review of NYRA's procurement policies, practices and procedures.

Our audit addressed the following questions about NYRA's contracting and procurement operations for the period January 1, 2002 through December 31, 2004:

- Does NYRA have adequate policies and procedures in place to ensure the procurement of quality goods and services at the best possible price?
- Has NYRA complied with relevant laws and its own procurement policy in securing goods and services?
- Are NYRA contracts and procurements justified, necessary, and appropriate for the conduct of NYRA operations?

AUDIT OBSERVATIONS AND CONCLUSIONS

Neither the NYRA Policy in place for most of our audit period, nor an alternate set of procedures that NYRA claims to have used in procuring goods and services, was adequate for ensuring that NYRA purchased goods and services at the best possible price. In practice, NYRA disregarded the competitive bidding requirements set forth in the Racing Law, and in its own purchasing policies, procedures and controls. We also found that certain NYRA procurements were for goods and services that were unnecessary for NYRA operations, were not documented as being received, or were simply too expensive for a racing association operating at a continuous deficit. As a result of its deficient and poorly enforced procurement controls, NYRA spent more than it should have for goods and services and, for 2002 and 2003, overstated expenses by at least \$17,840, and for 2004, by a total of at least \$72,823. These overstated expenses will be incorporated into our franchise fee determination upon completion of our recently initiated franchise fee audit for calendar years 2002 and 2003. We also recommend that NYRA adjust its books and records for calendar year 2004.

NYRA management is responsible for establishing and maintaining appropriate systems of internal control to help ensure NYRA complies with relevant laws, including the Racing Law, and its own policies. However, at NYRA, we found that the prior management's dismissive view of controls and their importance predictably resulted in procurements marked by routine circumvention of the

Racing Law and NYRA Policy including the establishment of checking accounts often used to bypass controls. We recommend that NYRA's new management continue to work with the Federal Monitor to establish a strong control environment that fosters ethical values and a commitment to comply with the Racing Law and NYRA policies. (See pp. 17-18)

Although NYRA is required to comply with the competitive bidding requirements of the Racing Law and its own procurement Policy, we found that NYRA's Department heads did not have copies of the Policy, and that Purchasing Department staff were not formally trained in implementing the Policy. The Purchasing Director also reported that staff actually followed different procedures that were reportedly known to certain NYRA personnel but were unwritten, and then were eventually compiled into a "narrative" form, which was eventually submitted as the revised Policy. On examination, we found that neither the Policy nor the narrative was adequate, and that neither one was consistently followed by NYRA officials and Purchasing Department staff. NYRA should address the deficiencies in its Policy, distribute a revised Policy to all NYRA employees, and monitor compliance with the Policy. (See pp. 18-21)

To assess NYRA's compliance with the Law and its own policies, we tested a sample of procurement transactions for goods and services purchased during our audit period. Of the 58 transactions sampled, totaling \$3.8 million, we found that 49 transactions, totaling \$3.5 million, contained one or more violations of the Racing Law and/or NYRA's Policy. In 22 of the 58 transactions, NYRA awarded contracts valued at over \$250,000 without utilizing a process of competitive bidding. For example, NYRA paid a vendor, who was related to NYRA's former Chairman, \$797,913 for web services in a no-bid contract. We also found instances in which NYRA paid vendors for high-cost services without a written contract; avoided purchase approvals; or lacked evidence that \$90,663 in services were received. In one instance, NYRA paid a vendor \$10,000 for media advertising services based solely on the vendor's invoice. We also found that NYRA contracted for some services, such as snow plowing, which it may be able to perform with in-house resources for less money. NYRA also used its operating funds to pay for certain costs we believe were unnecessary, unjustified or excessive, costing NYRA at least \$400,000 a year that could be easily avoided. We recommend that, to the extent not already addressed by the Federal Monitor, NYRA's new management investigate the questionable procurement activities highlighted in this report, develop additional controls needed to prevent their recurrence, and take corrective or disciplinary action, as needed. We also recommend that NYRA stop paying for unnecessary and excessive costs. (See pp. 21-30)

COMMENTS OF NYRA OFFICIALS

NYRA officials responded that, with minor exceptions, they agree in principle with our assessments and recommendations. In response to our recommendations, NYRA officials outlined a series of steps being taken to

address them. Among them are: developing an accounting and internal controls manual; revising its Code of Ethics; establishing an Ethics Committee; reducing expenses; and hiring a Contracting and Procurement Director.

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INTRODUCTION

Background

The New York Racing Association, Inc. (NYRA), organized in 1955, is a not-for-profit racing association franchised by New York State to conduct racing and pari-mutuel betting at New York State's three major thoroughbred racetracks: Aqueduct, Belmont Park and Saratoga. In return for its exclusive franchise, NYRA is required to provide the State with certain revenue in the form of a pari-mutuel tax and a franchise fee. Moreover, NYRA is required by Section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law (Racing Law) to "take such steps as are necessary to ensure that it operates in a sound, economical, efficient and effective manner so as to produce a reasonable revenue for the support of (State) government."

NYRA is governed by a Board of Trustees (Board). Section 202 of the Racing Law sets the number of NYRA trustees at 28: of this number, 8 trustees are appointed by the Governor; the remaining 20 trustees, who are elected by the Board, are involved in the racing industry as owners, trainers or breeders. Trustees are not compensated, but the Racing Law allows for the 8 trustees appointed by the Governor to be reimbursed for actual and necessary expenses incurred in the performance of their duties.

NYRA's franchise, which has been extended twice by the State Legislature, is scheduled to expire on December 31, 2007. Unless the franchise is further extended at that time, the New York State Thoroughbred Racing Capital Investment Fund (CIF) would be authorized to conduct racing at the tracks until a new franchisee was named. CIF was created by the State Legislature in 1983 to help NYRA maintain the physical condition of the tracks. CIF, which is financed by NYRA's franchise fee, provides secured loans to NYRA for approved capital expenditures.

NYRA generates about one-third of its revenue from wagering placed at its three racetracks on both NYRA and non-NYRA races (also referred to as the "on-track handle"). The remaining two-thirds of NYRA's revenue comprises commissions and fees it receives on NYRA races placed at non-NYRA facilities, such

as New York State/City off-track betting parlors, and out of State/Country racetracks and simulcasting facilities. NYRA's on-track handle is subject to a pari-mutuel tax, assessed by the State, which is calculated as a percentage of the handle. The tax totaled about \$8.6 million in 2002 and \$7.9 million in 2003, and accounts for most of the revenue the State receives from NYRA. NYRA revenue from fees and commissions is not subject to the pari-mutuel tax.

NYRA is also required to remit an annual franchise fee, which constitutes its entire adjusted net income, which includes both gaming and non-gaming (e.g., concessions) revenues, less \$2 million allocated to horsemen's purses and awards, to CIF to repay prior loans and to provide financing for future capital projects. CIF funds in excess of \$7 million are transferred to the State Treasury. As of December 31, 2003, NYRA owed CIF \$67.8 million for prior loans and related interest. For the year ended December 31, 2002, NYRA's financial statements reported revenues of \$152.7 million, and expenses of \$159.4 million, for a net loss of \$6.7 million. For the year ended December 31, 2003, NYRA reported revenues of \$153.5 million and expenses of \$173.3 million, for a net loss of \$19.8 million.

NYRA spends about \$115 million annually on goods and services. Section 213 (5)(a) of the Racing Law requires NYRA to award contracts for the procurement of goods and services in excess of \$250,000 by a process of competitive bidding approved by the New York State Racing and Wagering Board (Racing and Wagering). In 1998, NYRA officials developed a NYRA procurement policy that included competitive bidding requirements for purchases over \$250,000, as required by the Racing Law, competitive bidding for NYRA purchases over \$10,000, and general procurement procedures to guide all NYRA purchases. In 2003, NYRA filed an updated procurement policy with Racing and Wagering that was virtually identical to the 1998 version.

In July 2003, NYRA engaged a consultant to evaluate its financial-related practices, including the purchasing process. In March 2004, the consultant issued its evaluation, which stated that many NYRA departments did not adhere to NYRA's stated purchasing procedures. The evaluation also noted that a significant number of the procurements that were made outside of the Purchasing Department lacked supporting documentation and authorization by the appropriate levels of management. The evaluation confirmed earlier audit findings by the Office of

the State Comptroller (Comptroller). The Comptroller, who audits NYRA, as well as other gaming-related entities in the State, found (*Report 96-J-98, issued September 1997*) that some NYRA contracts were not put out to bid or were awarded under questionable circumstances; one award was made to a contractor that did not legally exist. The report also found that some awards could have been the result of favoritism. In a 2003 report entitled, *The New York Racing Association: The Case for Reform*, the Comptroller concluded there was a need to reform NYRA, and called for the appointment of an Independent Private Sector Inspector General (IPSIG).

Investigations by the United States Attorney's Office for the Eastern District of New York (USAO), the New York State Attorney General's Office, the Division of State Police, and the New York State Office of the Inspector General had uncovered extensive money laundering and other criminal activities at NYRA racetracks. On December 4, 2003, NYRA was indicted by the USAO for several crimes, including one count of conspiracy to defraud the United States in violation of the Tax Code, and three counts of aiding and abetting false tax filings in violation of the Tax Code. On December 10, 2003, NYRA entered into a Deferred Prosecution Agreement (Agreement) with the USAO on condition it would undertake reforms, including appointing an IPSIG. Pursuant to that Agreement, NYRA acknowledged its guilt with respect to charges filed against it in the indictment. Six NYRA employees were also charged with crimes in the indictment and subsequently pled guilty. Overall, 26 NYRA employees (including the aforementioned 6 employees) pled guilty in various Federal and State indictments.

On March 1, 2004, a United States District Court for the Eastern District of New York appointed an IPSIG (the law firm of Getnick & Getnick) as the Federal Monitor responsible for overseeing NYRA's reform efforts; monitoring compliance with the Agreement; monitoring NYRA's compliance with all federal, State and local laws; and suggesting structural reforms to promote compliance with these laws. The Federal Monitor's tenure will continue through July 1, 2005 unless extended by the Federal District Court. The terms of the Agreement require that the Federal Monitor report to and take direction from the Comptroller, the USAO and the Federal District Court.

The Agreement required NYRA to continue to restructure its senior management by March 31, 2004. NYRA had begun the

restructuring process before its indictment in response to earlier criticism by various entities, including the Comptroller. New senior managers were brought in to correct and improve NYRA operations and, ultimately, to complete the reform agenda required by the Agreement. Between April 2002 and June 2004, NYRA hired new managers for a number of positions, including the following: Chief Financial Officer and Senior Vice President; Controller; Assistant Controller; Vice President for Mutual Operations; Senior Vice President and General Counsel; Vice President of Human Resources and Labor Relations; and Vice President of Regulatory Compliance. NYRA's Internal Audit Department was dissolved on March 31, 2004 and an external accounting firm has performed NYRA's internal audit functions since that time. A new President/Chief Executive Officer was hired on November 4, 2004, and two Board members began serving elected terms as Co-Chairmen of the Board on January 1, 2005. NYRA hired a Director of Internal Audit and plans to hire staff in the near future. We note, however, that the majority of NYRA's current Board, (16 of 28, including NYRA's former Chairman of the Board/Chief Executive Officer), the body that sets overall direction for NYRA, approves its annual budgets and oversees NYRA's audit (external and internal) function, was in place during the period when NYRA activities resulted in the federal indictment and the appointment of the Federal Monitor to oversee its operations.

The Comptroller's Division of Investigations (OSC Investigations) has been working closely with the Federal Monitor since March 2004 on various matters, including procurement and integrity issues at NYRA. The Federal Monitor is conducting a continuing review of NYRA's policies, practices and procedures in the area of goods and services procurement. This review includes, but is not limited to, inquiry in the areas of procurement policy development and implementation; past and present procedures and practices; and compliance with procurement requirements required by statute and regulation. The Federal Monitor's work includes policy review and analysis; interviews of NYRA personnel, current vendors, prospective vendors and others; monitoring the competitive bidding process including request for proposal development; facility site inspections; bid-openings and bid responses; contract awards; contract review and analysis; and financial review and analysis. The Federal Monitor is working with members of NYRA's new management, and has obtained a commitment that NYRA will now follow the competitive bidding requirements stated in the Racing Law.

In addition to working with the Federal Monitor, the Comptroller is conducting a series of consecutive audits of NYRA operations. This audit assessed NYRA's contracting and procurement operations. We are currently auditing NYRA's franchise fee calculation for 2002 and 2003, and plan to audit NYRA's backstretch operations. A recently released audit (*Report 2004-S-40, issued January 11, 2005*) examined NYRA's travel and entertainment expenses.

Audit Scope, Objectives and Methodology

We examined NYRA's contracting and procurement operations for the period January 1, 2002 to December 31, 2004. The objectives of this audit were to determine whether NYRA has adequate policies and procedures in place to procure quality goods and services at the best possible price; whether NYRA complied with relevant laws, including Section 208 and Section 213(5)(a) of the Racing Law and its own procurement policy, in securing goods and services; and whether NYRA contracts and procurements are justified and necessary for the conduct of NYRA operations.

To accomplish these objectives, we reviewed all NYRA policies and procedures and related documentation pertaining to procurement as well as relevant sections of the Racing Law. We interviewed relevant NYRA personnel and Racing and Wagering officials, and worked with OSC Investigations personnel. In addition, we met throughout the audit with officials from the Federal Monitor. It should be noted that the Federal Monitor was appointed on March 1, 2004, ten months before the end of our audit scope period, but virtually all the procurements we analyzed were made before March 1, 2004 and four were agreed to by NYRA in or around early March 2004, before the Federal Monitor began its extensive work to oversee and overhaul NYRA operations. We also analyzed NYRA's general ledger and supporting records and interviewed selected vendor personnel from our review of sampled transactions.

For our expenditure review, we divided NYRA's cash disbursements into two groups. The first group contained procurement transactions made during calendar years 2002 and 2003. The population for 2002 consisted of 13,568 general ledger transactions totaling \$113,489,985. The population for 2003 consisted of 13,233 general ledger transactions totaling \$109,770,007. We selected samples of 12 items totaling

\$695,651 for 2002, and 13 items totaling \$992,649 for 2003. The second group contained procurement transactions from January 1, 2004 through September 30, 2004. The population for this group was 9,791 transactions totaling \$89,508,278. We sampled 25 items from this group with a total value of \$2,124,152. We chose high-dollar transactions that appeared to have the highest risk of being inappropriate or excessive based on the items' descriptions and amounts. Our sample also included several items based on recommendations from the Federal Monitor.

For our review of subsidiary (petty cash) checking account transactions, we reviewed 12 of the highest petty cash reimbursements from each of the 2 facility petty cash accounts (one at Aqueduct and one at Saratoga) in existence during the audit period. The total amounts reimbursed to the Aqueduct and Saratoga accounts for the audit period were \$56,114 and \$40,550, respectively. Our samples for these two accounts amounted to \$12,361 and \$13,232 respectively.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and do our audit to adequately assess those procedures and operations included within our audit scope. Further, these standards require that we understand NYRA's internal control systems and compliance with those laws, rules and regulations that are relevant to NYRA's procedures and operations that 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 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.

Response of NYRA Officials to Audit

We provided NYRA officials with a draft copy of this report for review and comment. Their comments were considered in preparing this report, and are included as Appendix B. NYRA officials responded that, with minor exceptions, they agree in principle with our assessments and recommendations. In response to our recommendations, NYRA officials outlined a series of steps being taken to address them. Among them are: developing an accounting and internal controls manual; revising its Code of Ethics; establishing an Ethics Committee; reducing expenses; and hiring a Contracting and Procurement Director.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman and Chief Executive Officer of the New York Racing Association 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.

CONTROL ENVIRONMENT AT NYRA

As a not-for-profit entity with an exclusive franchise to conduct racing and betting at the State's major racetracks, NYRA must comply with the Racing Law's requirements for sound and economical operation, and NYRA policies that promote compliance with the Racing Law and the Tax Code. NYRA management is responsible for establishing and maintaining an appropriate system of internal controls to help ensure that compliance. However, since NYRA's controls over contracting and procurement expenses were either deficient or unenforced, NYRA paid for and improperly deducted unsupported and unnecessary costs. As a result, NYRA paid \$90,663 for undocumented services during the audit period. The effect of these unsupported costs will be incorporated into our franchise fee determination upon completion of our recently initiated franchise fee audit for calendar years 2002 and 2003. We also recommend that NYRA adjust its books and records for calendar year 2004.

We conclude that NYRA's higher than necessary costs are the result of a systemic problem that has produced indictments of former NYRA officials, the appointment of a Federal Monitor to oversee operations, and a blemish on the State's racing industry. That systemic problem was a chronically poor control environment at NYRA. The control environment sums up management's attitude about internal controls, and sets the tone for the way an organization works. It includes the integrity, ethical values and competence of the organization's people, and management's philosophy and operating style. When the control environment is strong, there is an expectation that everyone, including top management, will conform to established controls and avoid violating the public trust. At NYRA, however, the prior management's seemingly dismissive view of controls undermined, rather than supported, compliance with the Racing Laws and existing NYRA policies and procedures. Although NYRA's new management has been working with the Federal Monitor and improvements have been made, more needs to be done. For example, although NYRA updated its Code of Ethics in 2004, we determined that this document is vague about specific requirements; furthermore, not all NYRA employees have signed the Code because they are not required to do so.

We directed the Federal Monitor to work with NYRA officials to develop an enhanced Code of Ethics.

There are also real costs associated with a poor control environment. In some cases, these are costs for services the organization would not otherwise need, and often cannot afford. At NYRA, prior management's disregard for controls has resulted in significant additional expenses, such as the cost of NYRA's legal defense against federal charges. In other cases, the costs are related to overspending and inefficiencies that result from an ineffective internal control structure. The control environment is the foundation of this structure. When this foundation is weak, other components of the internal control structure (risk assessment, control activities, communication and monitoring) tend to be weak, too, which puts all aspects of the organization's fiscal and operational performance at risk. In this audit, we found that a weak control environment predictably resulted in deficient procurement controls.

For example, a weak control environment was responsible for the existence of two subsidiary checking accounts used by NYRA officials to obtain goods and services without going through NYRA's Purchasing Department. Facility managers ordered goods directly from vendors, made direct payments to vendors, and then submitted vouchers for reimbursement from NYRA's Accounts Payable Department. Using these accounts, managers were able to circumvent the control activities required by NYRA's official policy (Purchasing Department review to ensure that purchases are of good quality, reasonably priced and necessary) and related monitoring activities. Thus, managers treated these subsidiary checking accounts like petty cash funds - absent a petty cash fund's specified payment ceiling – to pay for purchases totaling almost \$97,000 during our audit period. NYRA's weak control environment permitted the creation of these accounts, and allowed for their continued use until closed by NYRA's current management.

NYRA Procurement Policies and Procedures

In accordance with the State Finance Law, the State Comptroller and the Office of General Services (OGS) have each established comprehensive requirements that State agencies must follow in contracting for and procuring goods and services. The objective of these requirements is to help ensure that State agencies establish systems of internal control that help them obtain quality goods and services at the best possible

price. For example, guidelines established by the State Procurement Council, as well as, the State Comptroller and OGS require that agencies' procurement policies and procedures address the justification, approval, vendor selection, receiving and payment processes to procure goods and services, and the documentation necessary for each.

Since NYRA is not a State agency, it is not bound to observe the above guidelines. The only specific procurement requirement the State imposes on NYRA is contained in Section 213(5) of the Racing Law. This statute requires that all NYRA contracts for the procurement of goods and services with a value of more than \$250,000 be awarded only by a process of competitive bidding approved by Racing and Wagering. The statute allows two exceptions to this competitive bidding requirement (procurement of goods or services on an emergency basis or from a documented "sole source" vendor), and states that NYRA must give Racing and Wagering written documentation to justify the need to use these exceptions in making procurements of more than \$250,000.

While NYRA is not required to follow the guidelines set by the Procurement Council, State Comptroller and OGS, it still must establish controls that will enable NYRA officials to operate in an economical manner so NYRA can comply with the directive stated in Section 208 of the Racing Law, which requires NYRA to produce "a reasonable revenue" for the State. To carry out this directive, NYRA developed a Contracting and Procurement Policy (Policy) that addresses competitive bidding requirements for purchases over \$10,000 and states general purchasing procedures to be followed for all NYRA purchases, including those costing less than \$5,000. NYRA submitted this Policy to Racing and Wagering in 1998, and submitted an updated Policy in October 2003. Racing and Wagering deemed the updated document virtually identical to the Policy submitted in 1998.

However, during our audit survey, we were informed by NYRA officials that NYRA's Policy, as filed with Racing and Wagering, was not the policy they followed during the audit scope period. Furthermore, the Policy was not distributed to any Department heads outside of Purchasing. The Purchasing Director told us that, rather than follow the Policy, NYRA Purchasing Department staff followed certain procedures that had become common practice over the years, but were not codified. During the summer of 2003, the Director compiled these practices into an unofficial "narrative," which NYRA filed with Racing and

Wagering a year later in September 2004 as its official Policy. According to NYRA officials, NYRA followed the practices described in this narrative, rather than the official Policy, for about half the audit scope period. In reviewing this narrative, we found the practices it contained did not address the procurement of items costing less than \$10,000, and were not consistent in their application to both goods and services. Some references stated “for goods and services,” while other references stated “for goods” only. Further, as was the case with the October 2003 Policy (which served as NYRA’s effective Policy until September 2004 when the Purchasing Director’s narrative was submitted to Racing and Wagering), the narrative was not distributed to NYRA Department heads or to other NYRA personnel authorized to make purchases.

During our review of procurement operations, we also noted that neither NYRA’s official Policy, as submitted to Racing and Wagering in 1998 and 2003, nor the Purchasing Director’s narrative, submitted in September 2004, provide for certain essential control activities. For example, neither the Policy nor the narrative requires the independent verification of the receipt of goods and services prior to payment. This is a fundamental control feature that ensures an entity has actually received goods before it pays for them. However, NYRA practices require that the employee who initiated the purchase (rather than a Receiving Department employee) informs the Purchasing Department when he or she receives the goods. The Purchasing Department then generates a “receiving ticket” (although there is no documentation of receipt), which it forwards to Accounts Payable to authorize payment.

Our tests of transactions, which are discussed in the following section of this report, also found that Purchasing Department employees, who are responsible for purchasing goods and services according to the Policy, do not comply with either the Policy or the narrative. In fact, we found that neither NYRA Purchasing Department staff nor Department heads were informed about the terms of the Policy, or the narrative’s alternative procedures that are reportedly followed on a day-to-day basis. This is not surprising, given that these individuals do not have copies of the Policy, or the narrative, to refer to. Furthermore, we found that NYRA officials did not provide Purchasing Department employees with training in implementing the Policy, or monitor conformance with the Policy to identify and correct deficiencies.

We believe NYRA's lack of adequate, consistently applied procurement policies and procedures was attributable to NYRA's weak control environment. When the tone at the top suggests that controls should not get in the way of operations, there is little motivation to develop and implement sound controls. Thus, we found many instances in which NYRA blatantly disregarded the statutory competitive bidding requirement and its own procurement Policy, and other instances in which NYRA ignored the statutory requirement for economical operation by making unjustified or unnecessary procurements. As a result, NYRA spent more than it should have for goods and services. The following section of this report details examples of NYRA's problematic procurement practices and their results.

NYRA Procurement Practices

NYRA procurement practices must comply with the requirements of Section 213(5)(a) of the Racing Law and with NYRA's Policy, as submitted to Racing and Wagering. Management should monitor procurement operations to detect and correct any noncompliance that occurs. NYRA should also pursue economical procurement practices, in compliance with Section 208 of the Racing Law. Economical operation is not only mandated by the Law, but also dictated by NYRA's current financial condition: NYRA had net losses of \$6.7 million and \$19.8 million in the 2002 and 2003 calendar years. Therefore, it is essential that NYRA officials ensure its purchases are limited to those procurements that are justified, reasonable and necessary for NYRA operations.

To determine the extent to which NYRA procurement practices met these standards, we selected and tested a sample comprising 58 procurement transactions (e.g., vendor invoices) totaling \$3,812,468. These transactions involved the procurement of both products and personal services and were processed during the audit period. Our tests revealed that NYRA officials routinely circumvented - or allowed others (e.g., Facility Department staff) to circumvent - Section 213(5)(a) of the Racing Law and the Policy. We also found that NYRA paid for services that were not ordinary and necessary and not documented. These deficiencies resulted in payments for undocumented services during the audit period totaling \$77,885. Further, NYRA spent, in our judgment, excessive amounts (more than \$2.5 million) for trophies. If corrected, a potential

annual savings of over \$400,000 could be realized, as explained later on in this report.

In addition to our sample results, we also identified two subsidiary checking accounts during the course of our audit. Management officials used these accounts (one at Aqueduct and one at Saratoga) to buy goods directly from vendors. The purchases made through these accounts were not subject to even the minimal controls imposed by NYRA's Purchasing Department. Inappropriate expenditures from these accounts totaled \$12,778. Therefore, we recommend that if sufficient documentation cannot be provided, NYRA seek recovery of a total of \$90,663.

Noncompliance with Section 213(5) of the Racing Law and NYRA Policy

Section 213(5)(a) of the Racing Law requires that NYRA competitively bid contracts totaling more than \$250,000 to ensure that, for high-dollar procurements, NYRA obtains quality goods and services at the lowest possible price. NYRA's Policy requires competitive bidding for purchases of more than \$10,000 for the same reasons. The Policy also prohibits NYRA procurement agents from soliciting bids from any company that is owned, controlled or influenced by a NYRA employee, or that employs anyone (in a management or consulting capacity) who is also employed by NYRA. The Policy further states that a formal written contract is required where long-term relationships between NYRA and its vendors exist, and where significant dollar amounts will be exchanged.

NYRA's Policy also describes the procurement process in general and the documents used to initiate and finalize a purchase. Among the documents required by the Policy are the purchase requisition, prepared by the person/unit requesting the purchase; the purchase order, prepared and mailed by the Purchasing Department after vendor selection and price approval; a receiving report, prepared by a Purchasing Department employee or the person/unit requesting the purchase, upon receipt of the goods or services; and an invoice, submitted by the vendor after it has provided the goods or services. NYRA's Accounts Payable Department should verify that the goods are received and the invoice is accurate before paying the vendor's bill.

As a result of our sample testing, we identified widespread noncompliance with the Racing Law and NYRA Policy. Of the 58 transactions, totaling \$3,812,468, we found that only 9 transactions, totaling \$278,595, were processed appropriately; the remaining 49 transactions, totaling \$3,533,873, contained at least one violation (and sometimes multiple violations) of the Racing Law and/or NYRA's Policy. Listed below are the instances of noncompliance we found.

- No competitive bidding. In 38 of the 58 transactions, totaling \$2,620,407, NYRA did not comply with the Policy's competitive bidding requirements. In 22 of these cases, totaling \$2.1 million, NYRA was also in violation of Section 213(5) of the Racing Law. For example, NYRA paid a provider \$797,913 during the audit period for web services without soliciting a minimum of 3 bids, as the Racing Law requires. NYRA could not provide evidence that any bids were solicited. In addition, vendor principals are related to the individual who, at the time services were first provided, was NYRA's Chairman and Chief Executive Officer. Therefore, this transaction also violates the Policy's prohibition of related-party transactions and was clearly a conflict of interest.

In another example, a vendor was awarded two consecutive revenue-based contracts (October 2000 and May 2002), valued at more than \$10 million in gross revenue per year, to provide food services for all NYRA facilities. There is no evidence that NYRA sought competitive bids for either of these two high-dollar contract awards. We note that the now deceased Chairman of the Board for this vendor was also a member of the Board of Directors for the Backstretch Employees Pension Fund for backstretch staff located at NYRA facilities. Although the Pension Fund is a separate legal entity from NYRA - NYRA remits payments to the Fund from purse monies on behalf of the Horsemen - who finance these payments. As such, the no-bid status of these contracts may give the appearance of a related-party transaction.

We also noted that 4 of the 38 no-bid contracts, totaling \$808,209, were awarded in 2004 when some of NYRA's new administration was already in place; 3 of these 4 contracts exceeded the \$250,000 statutory requirement for competitive bidding.

- No written contract. Of the 58 sampled transactions, 22 of them, totaling \$1,096,677, did not have written contracts, even though they met the criteria (long-term relationship/significant dollar value) stated in the Policy. For example, a vendor that had provided promotional services to NYRA for at least 6 years, at a cost of \$1.6 million during our audit period alone, did not have a written contract with NYRA until January 2004. Another vendor had provided public relations services for at least 3 years, during the audit period, at a cost of \$207,226, also without a written contract.
- Missing documentation. Of the 58 transactions tested, 25 purchases, totaling \$2,148,973, were missing supporting documents, such as the purchase requisition, purchase order and/or vendor invoice. Thus, we have no assurance that these procurements were properly justified and approved prior to purchase. Some of the items purchased in this manner include \$25,699 for racing program-related services, and \$132,787 for security services. In addition, NYRA had insufficient paper work to show it had received the goods or services it paid for in 25 of our sampled transactions, totaling \$1.1 million.
- Avoidance of approval procedures. For 5 of the 58 transactions, totaling \$321,292, the purchase order was dated after NYRA received the invoice. Some of the items procured in this manner include a sprinkler system at Saratoga (\$265,249) and fencing at Belmont (\$26,813).
- No support for vendor payment. For 6 of the 58 transactions, totaling about \$78,000, there was no evidence that the products or services paid for by NYRA were actually received; \$34,885 of this amount was paid to law firms. Although these firms submitted bills that stated the hours charged and the associated hourly rates, the firms did not provide detail (e.g., original staff time reports and project assignments) to support the charges.

In another case, NYRA paid a vendor \$10,000 for media advertising services based solely on the vendor's invoice. No documentation was supplied to support the services

were ordered via the appropriate channels or actually provided.

NYRA's Policy exists to help ensure NYRA purchases goods and services utilizing a process of competitive bidding, and avoids the appearance (or occurrence) of favoritism and fraud. When NYRA officials disregard both Section 213(5) of the Racing Law and their own Policy in procuring goods and services - by awarding no-bid contracts to related parties; avoiding written contracts; neglecting to maintain procurement documentation; and circumventing required purchase approvals - there is a significant risk that NYRA is paying too much for its purchases. In many instances, the actions of NYRA's prior management team also created the appearance of impropriety, or involved actual conflicts of interest. Such actions violate the public trust in NYRA, which is a quasi-governmental entity which holds an exclusive franchise to operate the three major thoroughbred tracks in New York State.

Unnecessary or Excessive Procurement Costs

To determine the extent to which NYRA pursued economical purchasing practices, as required by Section 208 of the Racing Law, we reviewed the same sample of transactions described above and analyzed each for propriety and necessity. Our tests showed that several transactions appear to be unnecessary and/or excessive. These transactions, which are listed below, also appear to be in violation of Section 213(5) of the Racing Law or one or more aspects of the Policy.

- Unnecessary services. In 2 of the 58 transactions, NYRA paid for contracted services it had no obligation to provide. Services from these 2 vendors cost NYRA about \$384,244 during the audit period. NYRA paid one vendor \$314,244 to transport horses between its tracks, even though this cost should be borne by the horses' owners. NYRA also paid for the insurance required to transport these horses. The premiums approximated an additional \$70,000 during the audit period.

In response to this issue, NYRA officials stated that they charge a stall fee of \$5 per day at Saratoga (except during racing meets), which they assert defray these costs. NYRA officials also stated that they intend to increase the stall fee to \$8.00 in 2005.

- Services NYRA could perform in-house. NYRA has demonstrated that it can save significant amounts by using NYRA rather than contractor personnel to perform certain routine functions. For example, NYRA paid an outside firm \$282,947 during the audit period for snow removal. Yet, on December 28, 2004, we observed NYRA's own staff plowing snow at the Aqueduct facility with equipment exhibiting the NYRA logo. When discussing this issue with NYRA officials, we were informed that they have, in fact, already begun to utilize in-house staff for this purpose and have reduced NYRA's costs to this contractor to \$25,000 during 2004. We also note that NYRA reportedly saved \$1.25 million on security services during the first 9 months of 2004 when it converted this previously contracted service to an in-house function.

NYRA should also determine how much it would cost to run its customer bus shuttle service with NYRA staff and vehicles. During our audit period, NYRA paid a contractor \$1.1 million to operate four to six buses each day to transport customers between facility entrances and property exits. NYRA officials told us they saved about \$138,000 of the above amount by providing closer guidance to the services provided by this contractor. Nonetheless, NYRA should do cost comparisons to determine which method (in-house vs. contractor) is more economical, and then use that method to provide shuttle service.

- Excessive cost. As part of the \$2.5 million NYRA spent on trophies during the audit period, NYRA spent over \$1.1 million for the 470 trophies issued to the owners of winning horses. The costs of the individual trophies – some of which are made of sterling silver - range from \$300 to about \$13,500, and average \$2,388 each. Trophy costs vary according to the size of the purse. For example, the owners' trophy for the annual Joe Hirsch Memorial is \$12,000. According to NYRA's new management, although trophies are now purchased with NYRA's operating funds, they used to be purchased with purse monies until about ten years ago. The practice was apparently changed at that time when NYRA's previous management team was installed. Therefore, the dollar amount of trophy purchases now affects NYRA's franchise fee – where previously it did not.

To assess the reasonableness of NYRA's trophy costs, we attempted to gather comparative data on trophy costs from other tracks. To date, we have been able to obtain useful information from only one upstate thoroughbred track (Fingerlakes), not as large as NYRA's multi-track facilities. Officials at this track told us that the costs of their trophies, which are split 50/50 between breeders (purses) and operating funds, average \$80 to \$100 each for stake races. In addition, we obtained a catalog from one longstanding trophy dealership in lower Manhattan, and found this vendor's costs for individual trophies for sporting events range from \$100 to \$375. Although it is also possible that other trophy-awarding entities could pay even more than NYRA does for individual trophies, it is clear that, with greater attention to cost, NYRA could reduce trophy expenses significantly. In fact, if NYRA were to split the costs of trophies between purses and operating funds - even at the trophies' current costs – NYRA could reduce its operating costs by more than \$400,000 annually, and increase its franchise fee payments by the same amount. To the extent that NYRA also reduced the average cost of trophies, additional savings would be realized.

We also identified another instance of unnecessary/excessive cost in a transaction from outside our sample. The vendor in this case was among a number of high-dollar vendors referred to us by the Federal Monitor because they were considered at risk for abuse of NYRA Policy. In this 2003 transaction, NYRA paid a vendor \$5,413 for a trustee's retirement gift, consisting of a silver tray and gold cufflinks. However, the purchase requisition and purchase order were for "owner/jockey trophies," not the tray and cufflinks; further, NYRA had no documentation to show these items were actually received. We also question the propriety of NYRA's purchase of luxury gifts for a departing trustee, since NYRA is a not-for-profit entity in a precarious financial condition.

In summary, the transactions noted above represent payments for unnecessary products and/or services; payments for services that could potentially be performed by in-house staff; and the procurement of extravagantly priced trophies and other items that NYRA should not incur. When NYRA's costs, including the costs of contracts and procurements, are higher

than they should be, NYRA pays less than it should for its franchise fee, and increases its growing financial deficit.

Subsidiary Checking Accounts

According to NYRA's Policy, its Purchasing Department is the official channel for procuring needed goods and services. Compliance with the purchasing procedures, as described earlier in this report, should ensure the integrity of NYRA's purchasing operations. However, in reviewing NYRA's procurement operations, we found that, until October 2004, NYRA maintained two subsidiary checking accounts that Aqueduct and Saratoga facility managers used to procure goods and services outside the Purchasing Department. Managers used these accounts, which existed in addition to the official account used by the Purchasing Department, like petty cash funds: managers made direct payments to vendors and submitted vouchers for reimbursement directly to NYRA's Accounts Payable Department. Reimbursements were used to replenish funds in the accounts. Unlike petty cash funds, however, these accounts had no payment ceiling. Further, since the accounts were outside the Purchasing Department, no purchase-related documents were used to verify the legitimacy and accuracy of purchases managers chose to make. During the audit period, these accounts were replenished as follows:

Year	Aqueduct	Saratoga	Totals
2002	\$23,593	\$21,247	\$44,840
2003	24,940	14,928	39,868
2004	7,581	4,375	11,956
Total	\$56,114	\$40,550	\$96,664

Although the maintenance of more than one checking account for purchase transactions is not inherently wrong, maintaining such accounts without controls, and without a ceiling on payments, is an extremely risky practice. At NYRA, these accounts were allowed to exist because of the poor control environment created by NYRA's previous management team.

We selected a sample of 12 out of 69 vouchers supporting reimbursements to these accounts during the audit period to determine whether account transactions were for procurements necessary to NYRA business, and whether the proper documentation existed to support the expenditures. We found that \$12,778 (50 percent) of the \$25,591 expenditures were either not supported by vendor receipts, or were not necessary

for NYRA business. Of the \$12,778 disallowed, \$9,926 related to expenditures from the Aqueduct account; the remaining \$2,852 in disallowances related to expenditures from the Saratoga account.

Year	Amount Audited	Amount Disallowed
2002	\$10,924	\$4,582
2003	9,273	4,925
2004	5,396	3,271
Total	\$25,593	\$12,778

In addition to the above disallowances, we noted many instances in which these accounts were used to purchase items, such as furniture and office supplies, that should have been purchased through NYRA's regular purchasing process. We conclude that these accounts were likely established and used for the express purpose of circumventing NYRA's official procurement processes and controls.

NYRA's current management team has recently replaced these accounts with official petty cash funds (Aqueduct, Belmont and Saratoga) with pre-established imprest amounts, individual transaction expenditure limitations, and documentation requirements.

Recommendations

1. Establish a control environment that, as the primary element in an adequate system of internal control, fosters ethical values, competence and compliance with the Racing Law, including competitive bidding requirements, and relevant NYRA policies.
2. Require that all NYRA employees sign and date a comprehensive Code of Ethics, and enforce compliance with the terms of the Code of Ethics.
3. Unless appropriate documentation is obtained, recoup the \$90,663 in disallowances noted in this report from the contractors/vendors noted herein where the provision of services paid for is not documented. Adjust the 2004 calendar year books and records accordingly, to allow for the appropriate calculation of the franchise fee.
4. Devise a comprehensive contracting and procurement policy that addresses all the deficiencies noted in this report.

Recommendations (Cont'd)

5. Distribute the revised procurement policy, as filed with Racing and Wagering, to pertinent NYRA staff and provide training related to implementing the policy.
6. Monitor compliance with NYRA's official purchasing guidelines and required process of competitive bidding by improving supervisory oversight of procurement; monitoring the propriety of selected purchasing transactions on a periodic basis; doing internal audits of procurement operations; and performing annual vulnerability assessments of the procurement function.
7. To the extent not already addressed by the Federal Monitor, investigate the questionable procurement-related activities highlighted in this report to determine whether additional controls and procedures need to be developed to prevent and/or detect their future occurrence. Take corrective disciplinary action against NYRA officials and staff as appropriate.
8. Determine the feasibility of using NYRA employees to perform certain tasks currently outsourced such as snow removal and bus shuttle services.
9. Reduce the costs of trophies awarded to the owners of winning horses by purchasing trophies that cost less, and by splitting trophies' costs between NYRA and purses.
10. Maintain NYRA's newly established Facilities Department petty cash funds in compliance with the requirements noted in this report. Require that periodic reconciliations and reviews of these funds be performed by NYRA's Internal Audit Department.

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APPENDIX B

THE NEW YORK RACING ASSOCIATION INC. P.O. Box 90, Jamaica, New York 11417-0090

(718) 641-4700

Charles E. Hayward
President
Chief Executive Officer



May 9, 2005

William P. Challice
Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 William Street – 21st Floor
New York, New York 10038

Re: Audit Report 2004-S-61

Dear Mr. Challice:

On behalf of the New York Racing Association, Inc. ("NYRA"), we provide this letter in response to your draft audit report (2004-S-61) of NYRA's Contracting and Procurement Operations for the period January 1, 2002 through December 31, 2004. We appreciate your having raised these issues with us and, with the minor exceptions as noted below, agree in principle with your assessments and recommendations. NYRA's own assessment during the latter part of 2003 was quite similar and, as a result, NYRA instituted a rigorous program of procurement scrutiny and control. The result was an overall reduction in operating expenses of \$7,451,635 in fiscal year 2004. The cuts were across the board and are reflected in every department in the company. In addition, NYRA has committed to the New York State Racing and Wagering Board to develop a robust set of internal policies and controls during fiscal year 2005. Included will be a comprehensive contracting and procurement policy.

Response to Recommendations

1. NYRA has taken the following steps to create a robust control environment:
 - NYRA has installed new Co-Chairs of its Board of Trustees, revamped its entire management structure and replaced several of its senior management personnel including its President/CEO, Chief Financial Officer and virtually all the key financial personnel including the Controller, Internal Audit Director, Assistant Controller and Accounts Payable Manager.
 - Our new management team of highly competent and experienced professionals is focused on enhancing NYRA's financial controls and documentation. To that end, we have committed to develop a comprehensive accounting and internal controls manual for NYRA's operations, which will include a contracting and procurement section. Through the competitive bid process, NYRA has engaged the services of Belmont Park Saratoga

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BridgeMark, a division of BDO/Seidman, to provide project management expertise to help manage the project and deliver a revised accounting and internal controls manual by the 4th Quarter of 2005. The purchasing and procurement section is scheduled to be completed and filed with the State Racing and Wagering Board by June 30, 2005.

- An effective control environment must include rigorous cost control. NYRA, in fact, reduced its operating expenses during 2004 by \$7,451,635.
- 2. NYRA has committed to revise its current Code of Ethics and is working closely with its Federal Monitor and the Office of the State Comptroller on such a revision. When complete, it will be distributed to all NYRA employees who will evidence receipt through a signature and date. To ensure compliance, NYRA has named its Assistant Counsel as Ethics Compliance Officer. This individual will be responsible for implementation, keeping the document current, distributing the document to all employees, and conflict of interest resolution. In addition, we have established an Ethics Committee, which includes the CEO, CFO, General Counsel, Director of Human Resources and Ethics Compliance Officer. The committee will monitor compliance and resolve non-routine conflicts.
- 3. As stated above, NYRA has taken substantial steps to improve its controls and documentation. While we agree that there may be inadequate documentation for the items listed in your report, we are confident that NYRA received value from the vendors in question and the expenses listed are legitimate. Any effort to attempt to recoup any costs would not be achievable.
- 4. NYRA has committed to the development of a robust accounting and internal controls manual. We have engaged the services of BridgeMark, a division of BDO/Seidman, to provide project management expertise to facilitate the development of this document. The Contracting and Procurement section will be completed during the first phase of this project and is due to be finalized by June 30, 2005. It will address the deficiencies noted in the report, compliance with Racing Law and best practice purchasing procedures.
- 5. Upon completion, the revised procurement policy will be distributed to pertinent NYRA staff. Formal training will be conducted by the Purchasing Department to ensure all relevant personnel understand the policies and procedures to follow in the procurement of goods and services.
- 6. In order to better monitor compliance with NYRA's official purchasing guidelines, NYRA has taken the following steps:

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- We have decided to add the position of a Contracting and Procurement Director and begun the process to recruit a competent professional to join our staff.
 - The CFO (or Controller if CFO is unavailable) attends every bid opening and signs every purchase requisition and purchase order. This method of monitoring every transaction will continue until such time as a new policy is developed and fully implemented.
 - Internal Audit has various pieces of the procurement process in its current Audit Plan.
 - NYRA has developed a Risk Assessment and will continue to update it annually as a joint effort between Internal Audit and Finance. The Risk Assessment will be inclusive of the procurement function.
7. NYRA has taken aggressive steps to investigate questionable purchasing activities and has promptly disclosed anything that may seem improper to the Federal Monitor. We feel that the creation of a control environment that reflects integrity, ethics and competence is well under way. It will be furthered by the completion and implementation of the revised Internal Controls and Procedures Manual, which will contain prudent safeguards to ensure that best practices are employed in the procurement of goods and services.
8. As mentioned above, NYRA has implemented an aggressive cost cutting program. Included in this program have been analyses of whether to in source or outsource certain functions. For example:
- With the exception of the Aqueduct parking fields and Belmont barn area, NYRA does all snow plowing in house at all three tracks. With the cost of a single plow blade of size to plow our lot in excess of \$100,000, it is considerably less expensive to contract that small part of the snow removal process.
 - Given our capital constraints and lack of facilities to service even a small fleet of busses, our strategy has been to reduce the cost of bus service. In fact, our 2004 cost of \$294,867 was \$138,713 (32%) less than the \$433,580 spent in 2003.
 - In 2004, we took barn and facility painting in-house and saved in excess of \$100,000 by utilizing existing manpower.
 - We have recently engaged the services of a specialist in facility cleaning and will soon publish an RFP to outsource cleaning. We will determine in the process whether there are sufficient cost savings opportunities to keep the function in house.

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9. NYRA has, in fact, substantially reduced the cost of trophies. Our 2003 expense of \$843,835 was reduced to \$648,620 in 2004, a savings of \$195,215. We are forecasting an expenditure of \$550,000 in 2005, which will create additional savings of \$98,620. Given the competitive nature of our business and the high quality of our stakes program, we believe it is prudent to award trophies owners will appreciate. We believe this can still be achieved at these lower levels of spending. NYRA absorbs the entire cost of trophies, as does virtually every other racetrack in the country.
10. The petty cash funds are reconciled at the time of replenishment, without exception, by the Accounting Department. NYRA's Internal Audit will periodically reconcile and review these funds.

Again, NYRA thanks the Office of the Comptroller for raising its concerns and looks forward to working with the Comptroller in a constructive and cooperative manner.

Sincerely,



Charles E. Hayward

cc: Governor George E. Pataki
Joseph L. Bruno
Sheldon Silver
David A. Paterson
Charles Nesbitt
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