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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 19, 2006

Mr. Thomas J. Madison, Jr.
Commissioner
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, New York 12232

Re: Dejana Industries, Inc.
Contract C002895
Report 2004-R-1

Dear Mr. Madison:

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 selected aspects of Contract C002895 between the New York State Department of Transportation and Dejana Industries, Inc. for roadside clean-up services on State highways located in New York City. Our audit covered the entire contract period of October 1, 1997 through September 30, 2002.

A. Background

The New York State Department of Transportation (DOT) is responsible for maintaining State-owned highways throughout New York State. The actual maintenance work is often performed by contractors that are overseen by DOT. In 1997, DOT contracted with Dejana Industries, Inc. (Dejana). Under the contract, Dejana was to retrieve and dispose of roadway litter and debris on designated State-owned arterial highways in the five boroughs of New York City.

According to the terms of the contract, Dejana was to patrol certain highways each day (Monday through Friday), remove litter and debris from the pavement and shoulders of the highways, and dispose of the litter and debris. The highways to be patrolled were to be identified by DOT in biweekly work schedules. Each daily patrol was to last at least 4.5 hours, and could last as long as 7 hours, depending on the highway. Since DOT believed that the litter and debris on these highways could not be handled by conventional street sweepers, a certain type of specialized street-cleaning vehicle had to be used by Dejana. Two of these specialized vehicles along with two work crews were to be available each work day, and each work crew was expected to work a 40-hour week (counting travel time as well as patrol time). Dejana was to provide all the labor, materials and equipment needed to perform the tasks specified in the contract, and was to be paid a flat rate of \$1,619 per work crew per day.

Dejana was to be overseen by DOT officials in the regional office responsible for New York City (DOT divides the State into 11 regions, and Region 11 comprises the 5 boroughs of New York City). A senior engineer in that office was to prepare the biweekly work schedule and verify Dejana's billing invoices against that work schedule when Dejana submitted its invoices for payment (usually on a monthly basis). Three resident engineers stationed in the field were to inspect the highways to verify they had been cleaned. These observations were done when the engineers were out in the field, but there was no written procedure on how often these inspections should be done or when (e.g., before Dejana is scheduled to do work, during or after work is completed).

The contract with Dejana covered the five-year period October 1, 1997 through September 30, 2002, and expressly required Dejana to establish and maintain for six years complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance. According to DOT records, Dejana was paid a total of \$3,692,490 for work performed during this period. Between October 1, 1997 and September 11, 2001, DOT scheduled two Dejana work crews daily; between September 12, 2001 and September 30, 2002, DOT scheduled only one work crew daily. Prior to October 1, 1997, the work performed by Dejana was performed by a different contractor. Subsequent to September 30, 2002, New York City assumed responsibility for the maintenance of State highways located in the City.

B. Audit Scope, Objectives and Methodology

We audited Dejana's compliance with the requirements of Contract C002895, as well DOT's administration of the contract, for the five-year period October 1, 1997 through September 30, 2002. The objectives of our performance audit were to determine whether (1) the decision to use a contractor for roadside clean-up services was supported by an analysis of the costs and benefits of alternative courses of action; (2) the contract was awarded in a competitive manner; (3) the required work activities were adequately defined in the contract; (4) the services billed by Dejana were documented in accordance with contract requirements; and (5) Dejana's work crews and billing invoices were appropriately monitored and reviewed by DOT.

To accomplish these objectives, we reviewed Contract C002895 and certain contract-related documents. We also interviewed DOT and Dejana officials, and reviewed certain records maintained by DOT and Dejana. We were unable to review records that documented Dejana's daily work activities prior to January 1, 2002 (the first 51 months of our 60-month audit period), because Dejana did not retain its copies of these records as it was required to do under the terms of the contract, and the copies submitted to DOT in support of Dejana's billing invoices were lost when the DOT regional office moved to a new location. For the last nine months of the contract (January 1, 2002 to September 30, 2002), the documents provided by Dejana were of limited value because they consisted of DOT pre-printed work schedules which were signed off as complete. There was some evidence DOT monitored the work performed. In the absence of these records, we asked Dejana officials for access to contemporaneous employee time and attendance and payroll records. Such records could have provided supporting documentation for Dejana's invoices by showing that its employees were working as required on the DOT contract. However, Dejana officials denied us access to these records, stating that Dejana was a privately held entity. Consequently, our audit testing was severely limited and we were compelled to use alternative means, to the extent possible, in our efforts to determine whether Dejana's services were provided as billed.

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

C. Results of Audit

We found that, contrary to the requirements of the contract, Dejana did not maintain records supporting their invoices to DOT for a significant portion of the contract period. We reviewed certain other records (such as E-ZPass billing records for Dejana's street-cleaning vehicles) to determine whether the information on those records could provide any assurance the services on Dejana's invoices were provided as billed. However, our alternative review identified inconsistencies which strongly suggest services may not always have been provided as billed.

DOT officials stated that they were fully satisfied with Dejana's performance under the contract. However, they acknowledged the shortcomings in recordkeeping. They stated that it was DOT policy to disallow a portion of a contractor's payments when the contractor failed to maintain the supporting documentation required by the contract. Accordingly, they intended to disallow \$553,874 of the \$3,692,490 paid to Dejana under the contract. However, given the lack of documentation to substantiate the actual hours worked and the locations where each crew worked, we have no basis for determining whether this disallowance is appropriate and the remaining contract payments are in fact allowable. Dejana officials refused to provide us access to alternative records which may have provided the necessary documentation of its services. Our disallowance includes the tipping fees because we could not validate that Dejana collected debris from the arterial highways, and, as a result cannot accept costs related to handling the debris. We recommend DOT disallow all of its payments to Dejana for contract services (\$3,692,490) unless it can be documented that the services were provided as billed.

We also found that, because of ambiguities in certain contract terms, Dejana was reimbursed \$157,000 for waste disposal costs that either should have been included in Dejana's flat billing rate of \$1,619 per work crew per day or should have been covered by a separate competitively bid

contract. To avoid such ambiguities in future contracts, we recommend DOT clearly describe the scope of the work to be performed by the contractor and clearly describe how that work is to be reimbursed by DOT. We also determined that other improvements could be made in DOT's contract administration practices, particularly as they relate to the monitoring of contractor performance.

1. Use of Contractor for Services

DOT's contract with Dejana for roadside clean-up services cost more than \$700,000 a year. While roadside clean-up services are important, the services do not have to be provided by a private contractor. There are other alternatives for these services, and some of these alternatives may cost less or be more effective than a private contractor.

For example, the services could be provided by the DOT regional office, as the office could purchase the equipment and hire the people necessary for the job. The services could also be provided by the New York City Department of Transportation, as this agency is responsible for local roadways in the five boroughs and already has street-cleaning equipment and staff. It is also possible that a private contractor is the best option for the services. To determine which alternative is best, the costs and benefits of each alternative should be analyzed and compared to one another.

However, when we examined the contract-related documentation maintained by DOT, we found no indication that such an analysis had been performed by DOT officials prior to their decision to use a private contractor for the services. In fact, there was no indication other possible alternatives had even been considered. As a result, there is no assurance DOT officials selected the most cost-effective alternative when they decided to use a private contractor for roadside clean-up services in New York City. We recommend DOT routinely analyze the costs and benefits of all reasonable alternatives before deciding on a means of providing needed services.

2. Contract Award Process

The contract for roadside clean-up services was awarded to Dejana in 1997. We examined the contract award process to determine whether it was competitive. Contracts generally should be awarded in a competitive process, because competition provides assurance the lowest available price will be paid for the services. We found that the contract award process was competitive, as DOT solicited formal bids from qualified firms, received bids from two firms, and awarded the contract to the low bidder (Dejana's bid was \$1.7 million lower than the bid submitted by the existing contractor).

However, we also determined that, prior to opening the bids, DOT did not prepare an engineer's cost estimate for the contract work. Such an estimate is useful when only a few bids are received, because the bids can be compared to the cost estimate. If the comparison indicates that the bids are reasonable, the low bid can be accepted. If the comparison indicates that the bids are not reasonable, additional competition can be solicited (i.e., the contract can be re-bid) or alternative means of obtaining the services can be pursued.

If DOT had prepared an engineer's cost estimate for roadside clean-up services, it would have had much greater assurance the price offered by Dejana for these services was in fact the lowest price available. While Dejana's price was much lower than the price offered by the other

firm that bid on the contract, there is minimal competition when only two firms compete. DOT requires that an engineer's cost estimate be prepared for construction contracts. We recommend that such an estimate also be prepared for roadside clean-up contracts and other significant maintenance contracts.

3. Contract Terms

According to the contract terms, Dejana was expected not only to remove litter and debris from the pavement and shoulders of designated State highways, but also to dispose of the litter and debris. Generally, litter and debris are disposed of in registered landfills and other appropriate waste disposal sites, and tipping (i.e., dumping) fees are charged for disposal at such sites. According to DOT's formal Invitation for Bid, which was made part of the contract, "dumping fees charged by the private hauler shall be paid by the contractor and reimbursed by NYSDOT."

Arguably, when Dejana bid on the contract, its proposed billing rate of \$1,619 per work crew per day should have included the cost of disposing of the waste picked up that day. As previously stated, Dejana was to be reimbursed through one daily flat rate per work crew, and, as a result, all of its expected costs should have been included in that daily flat rate.

However, we found that Dejana billed DOT separately for its tipping fees at a rate of \$600 per week, and was reimbursed by DOT for these fees. Over the five-year contract period, Dejana was reimbursed a total of about \$157,000 for these tipping fees.

DOT officials indicated that, in their opinion, the contract allowed separate reimbursement for tipping fees because it stated that "dumping fees charged by the private hauler shall be paid by the contractor and reimbursed by NYSDOT." We disagree, because both the Invitation for Bid and the bid submitted by Dejana indicated that the bid contract price (\$1,619 per work crew per day) was intended to include both the cost of collecting litter and debris and the cost of hauling the collected litter and debris to a disposal site.

If DOT officials originally intended for tipping fees to be reimbursed separately, the language in the contract should have explicitly stated that tipping fees were not to be included in the bid contract price, but were to be reimbursed separately. Moreover, if that was their intention, formal bids should perhaps have been solicited for the waste disposal services. According to State procurement guidelines in effect when this contract was bid, formal bids should be solicited when services are expected to cost more than \$15,000 a year, and the tipping fees were well in excess of \$15,000 a year. Thus, if tipping fees were not to be included in the bid contract price of \$1,619 per work crew per day, they should have been reimbursed through a separate contract and that contract should have been competitively bid.

We note that the contract language regarding the tipping fees is unclear, and, Dejana was able to take on the additional duties without any contract modification identifying it as the contractor for handling the dumpster. However, we have not been able to validate that the debris was collected from the arterial highways and, as a result, cannot accept the tipping fees.

To avoid such ambiguities on future contracts, we recommend DOT clearly describe the scope of the work to be performed by the contractor and clearly describe how that work is to be reimbursed by DOT.

Contracts for services may include performance standards. Such standards specify what is expected of the contractor and can be used in evaluating the contractor's performance. However, DOT officials did not include sufficient performance standards in the contract with Dejana. For example, how much time is allowed to travel to the work site and what happens if the contractor is late or does not have a full crew. As a result, officials were less able to evaluate the effectiveness of Dejana's performance in patrolling and cleaning State highways.

We note that the contract with Dejana was initially awarded for a three-year period with an option for an additional two years. DOT exercised this option and extended the contract to cover the full five-year period, but made no formal effort to determine whether Dejana's performance during the first three years of the contract was in fact satisfactory and worth retaining for an additional two years. Rather, in response to a question from the central office about extending the contract, a resident engineer in the regional office sent an e-mail stating that regional staff felt Dejana's performance had been good and they would like to see the contract extended. If performance standards had been included in the contract, the standards would have enabled a formal assessment to be made of Dejana's performance and such an assessment would have provided a more reliable basis for the contract extension decision. We recommend that DOT formally assess contractor performance before deciding whether or not to extend a contract.

To provide protection against poor performance, a contract should describe the actions that could be taken by the contracting agency if the contractor does not perform in a satisfactory manner or fails to comply with any of the contract's requirements (e.g., a portion of the payments due to the contractor could be withheld). However, the contract with Dejana contained no such language. We recommend DOT routinely include such language in its contracts. Although the section addresses termination of the entire contract for various reasons, it did not cover what actions would be taken if the contractor did not perform certain portions of the work.

4. Documentation of Contractor's Work Activities

Throughout the contract period, Dejana billed DOT for its services at a rate of \$1,619 per work crew per day, plus an additional \$600 per week for waste disposal. To support its invoices, Dejana sent DOT a certified daily work accomplishment report for each day that was billed. This report listed the highways patrolled that day by each of the two street-cleaning vehicles and the hours each vehicle was in service. Dejana sent additional documentation to support the \$600 a week in waste disposal costs.

The Engineer 1 in DOT's regional office was to verify the invoices and supporting documentation against the appropriate biweekly work schedule, and approve or reject the invoices for payment. During the five-year contract period, Dejana was paid \$3,535,490 for daily highway patrols and \$157,000 for waste disposal, for a total of \$3,692,490.

We wanted to verify the accuracy and validity of Dejana's invoices by comparing a sample of invoices to their supporting certified daily work accomplishment reports. However, at the start of

our audit, Dejana officials told us that they did not have any certified daily work accomplishment reports for 1997, 1998, 1999, 2000 and 2001. They told us they sent the reports to DOT to support their invoices for those years and did not retain copies of the reports in spite of the fact that Dejana was required by the contract to keep such records. They had retained copies for 2002, but this covered only the last nine months of the 60-month contract period (October 1, 1997 through September 30, 2002). The records received from Dejana for the nine months were of limited value. Dejana officials merely signed off on pre-printed work schedules sent to them by DOT. There was no indication that a DOT employee attested to or monitored whether the work was done.

According to the terms of the contract, Dejana was required to retain copies of all contract-related records for a period of six years. Thus, records dating back to October 1, 1999 should have been available. In an audit of another DOT contract (Reports 2004-S-10 and 2002-S-15, which addressed the Turboliner Modernization Project), we also found that the contractor had not retained records supporting its invoices. We recommend that DOT officials do more to make contractors comply with record retention requirements. For example, contract terms should clearly indicate that all State payments might have to be refunded if it is later found that contract-related records have not been retained as required.

We asked DOT officials if they had retained copies of the daily work accomplishment reports. They told us these records were lost when the DOT regional office moved to a new location. They noted that the information from these reports was entered into a DOT database and monthly summary reports were printed from this database. They said the monthly summary reports were available for the entire contract period and could be compared to Dejana's invoices to verify the accuracy and validity of the invoices. However, in the absence of the original daily accomplishment reports, we had no way of testing the accuracy of the monthly summary reports.

In an effort to find an alternative means of verifying the accuracy and validity of Dejana's invoices, we reviewed the E-ZPass billing records for Dejana's special street-cleaning vehicles and Dejana's maintenance records for these vehicles. For the month of February 2001, we reviewed the E-ZPass billing records to determine whether the records confirmed that the vehicles were on the State highways they were supposed to clean at the times claimed on Dejana's invoices. We reviewed the vehicle maintenance records to determine whether they were consistent with the invoices (e.g., if the maintenance records indicated that a vehicle was out of service on the same day that an invoice claimed the vehicle was in service, the inconsistency would have to be explained). Our review of maintenance records was limited by the fact that many of the vehicle maintenance records from the contract period had not been retained by Dejana.

We identified a number of inconsistencies between the E-ZPass billing records and Dejana's invoices. For example, on February 2, 2001, TORO 1 and one of the shadow vehicles paid a toll at the Triboro Bridge Bronx toll plaza. The shadow vehicle traveled alone to the Throgs Neck Bridge toll plaza in the Bronx arriving at 1:27 p.m. There was no further E-ZPass information for TORO 1 after 12:14 p.m., although a direct return trip into Queens County or Nassau County would have required paying a toll. For that day, DOT's Detail Report indicates that TORO 1 was assigned to the Brooklyn/Queens Expressway (BQE) and TORO 2 was assigned to the Clearview Expressway in Queens and the Jackie Robinson Parkway which is located in both Queens and Brooklyn. Thus, there is no contract-related reason for either of the two TORO vehicles or the shadow vehicles to travel on the Triboro Bridge that day. Dejana provided an explanation for the whereabouts of the

TORO 1; however, it did not justify the number of E-ZPass transactions. We also identified a number of inconsistencies between the available vehicle maintenance records and Dejana's invoices. While some of these inconsistencies may be able to be explained (e.g., Dejana may have had more than two street-cleaning vehicles during the contract period, and thus may have been able to do its scheduled cleaning on days when one of its vehicles was out of service), our alternative review provides no assurance Dejana's invoices were accurate and valid, and strongly suggests that some of the invoices were not accurate and may not have been valid.

DOT officials assured us they were fully satisfied with Dejana's performance under the contract. However, they acknowledged the shortcomings in recordkeeping. They stated it was DOT policy to disallow a portion of a contractor's payments when the contractor failed to maintain the supporting documentation required by the contract. Accordingly, they intended to disallow \$553,874 of the \$3,692,490 paid to Dejana under the contract. However, we have no basis for determining whether this disallowance is appropriate and the remaining contract payments are in fact allowable. We recommend DOT disallow all of its payments to Dejana for contract services (\$3,692,490) unless it can be documented that the services were provided as billed.

5. Monitoring of Work Crews

Every Monday through Friday during the contract period (except for certain holidays), one or two Dejana work crews were to patrol certain State highways in New York City and remove litter and debris from the pavement and shoulders of those highways. To provide assurance these highways were in fact being patrolled and cleaned, three resident DOT engineers were to observe the highways on the days they were supposed to be cleaned. The biweekly work schedules were sent to the engineers so that they would know which highways were to be observed, and the engineers were to record their observations on the Maintenance Daily Report. During the five-year contract period, the three resident engineers were also responsible for monitoring the work of other contractors and recording their observations of these contractors in the Maintenance Daily Report.

To determine whether Dejana's work crews were adequately monitored by DOT, we examined all the Maintenance Daily Reports for the contract period that were available at DOT. Actual Maintenance Daily Reports were available for the period October 1, 1997 through December 31, 1998, and for the period July 1, 2001 through September 30, 2002. The actual reports were not available for the intervening period (January 1, 1999 through June 30, 2001), but information from the reports had been recorded on a DOT database and was available for our review.

We found that Dejana's work crews were observed by the resident engineers. However, on the basis of the information recorded in the Maintenance Daily Reports and the database, we cannot determine whether the work crews were adequately monitored, because the information was not sufficiently detailed. For example:

- The condition of the highway immediately before and after the street-cleaning vehicle passed was not recorded. As a result, there is less assurance the highways were actually being cleaned.
- The times of the observations were never recorded. As a result, there is less assurance the work crews were actually observed in every instance.

- In both the actual Maintenance Daily Reports and the database, the condition of the observed highways was always, without exception, reported as “satisfactory” by the engineers. This assessment would be more convincing and the observations would be more informative if additional details were provided about the highways.
- The work crews were required by the contract to work at least 4.5 hours a day. However, there was no indication the engineers ever verified this requirement was met.

We also note that the work crews were not observed very frequently. For example, the available Maintenance Daily Reports accounted for a total of 1,300 Dejana work days. However the work crews were observed on only 126 of these 1,300 work days: less than 10 percent of the time. We recommend DOT improve its contractor monitoring practices so that contractors are observed with sufficient frequency, and the observations are recorded in sufficient detail, to provide assurance contract requirements are being met.

Recommendations

1. *Routinely analyze the costs and benefits of all reasonable alternatives before deciding on a means of providing needed services.*

(DOT officials agreed with the recommendation and have taken corrective action.)

2. *Routinely prepare an engineer’s cost estimate for roadside clean-up contracts and other significant maintenance contracts.*

(DOT officials agreed and have taken action.)

3. *Ensure that all contracts for services clearly describe the scope of the work that is to be performed by the contractor, clearly describe how that work is to be reimbursed by DOT, and include performance standards for the contractor. Use the performance standards to assess the performance of the contractor.*

(DOT officials agreed and indicated they will continue to incorporate these items into their contracts.)

4. *When a contract has an option for an extension, formally assess the contractor’s performance before deciding whether or not to extend the contract.*

(DOT officials agreed and have taken corrective action.)

5. *Routinely include in contract language describing the actions that could be taken by DOT if the contractor does not perform in a satisfactory manner or fails to comply with any of the contract’s requirements.*

(DOT officials replied that it has been their practice to include such language in their contracts, and they will continue to do so.)

Auditor's Comments: Although the Invitation for Bid includes a section related to contract termination and remedies, this section refers to significant events such as "material breach of performance" or "the City of New York does not renew the contractor's permit." However, it does not address the type of performance-related issues such as what happens in the event the Resident Engineer reports the highways were not properly cleaned of debris; or the contractor's employees did not work the complete daily tour as scheduled, which would require corrective action but not termination of the contract. We believe some of these performance-related measures and remedies should be spelled out in the contract.

6. *Disallow, and recover from Dejana, all \$3,692,490 in payments made for contract services unless it can be documented that the services were provided as billed.*

(DOT officials disagreed with this recommendation because they had reasonable assurance that Dejana performed the contract work based on the Resident Engineers periodically reviewing Dejana's scheduled work operations and recording their observations on the Department's Maintenance Daily Reports (MDRs). These MDRs provided a basis for payment.)

Auditor's Comments: As indicated in the audit report, DOT did not have MDRs for 30 of the 60 months the contract was in effect. In addition, the MDRs that were available did not provide sufficient information about the contractor's performance such as actual hours worked versus the scheduled hours to justify payment of the daily rate. Dejana's failure to maintain records as required by the contract and its lack of cooperation regarding alternative records, does not provide reasonable assurance that Dejana should have been paid \$3,692,490.

7. *Improve contractor monitoring practices so that contractors are observed with sufficient frequency, and the observations are recorded in sufficient detail, to provide assurance contract requirements are being met.*

(DOT officials agreed with this recommendation and have taken corrective action.)

We provided draft copies of this report to DOT officials for their review and comment. Their comments were considered in the preparation of this final report, and are included as Appendix A. In general, DOT officials acknowledged that critical supporting documentation was not retained by Dejana; however, they also maintained that Dejana satisfactorily fulfilled its contractual obligations.

Department officials also advised that additional action taken as a result of the audit was placing Dejana Industries on a referral list (vendors which DOT evaluates when deciding whether a low bidder or subcontractor is responsible).

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Transportation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its 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 this report were Abraham C. Markowitz, Gerald Tysiak, Lesley Padmore, Alina Mattie, Nerissa Theobald, and Dana Newhouse.

We wish to thank the management and staff of the Department of Transportation for the courtesies and cooperation extended to our auditors during this audit.

Yours truly,

Carmen Maldonado
Audit Director

cc: Lisa Ng, Division of the Budget
Peter Dejana, Dejana Industries, Inc.



State of New York
Department of Transportation
Albany, N.Y. 12232
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Thomas J. Madison, Jr.
Commissioner

George E. Pataki
Governor

January 24, 2006

Ms. Carmen Maldonado, Audit Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 Williams Street – 21st floor
New York, NY 10038

Subject: Working Draft Report 2004-R-1
Dejana Industries, Inc. Contract C002895

Dear Ms. Maldonado:

Thank you for the opportunity to review the report. The Department of Transportation (Department) provides the following response.

REPORT COMMENTS

Page 2, Last Paragraph (Audit Scope, Objectives and Methodology). This paragraph reports that there was no evidence that the Department monitored to ensure contract work was performed. This is not true. Department officials provided testimonial evidence that it monitored the contractor’s work throughout the contract. This testimonial evidence was supported by documentary evidence (e.g. Maintenance Daily Reports) which the Department provided to your office during the course of the audit. This documentary evidence is referenced in the report’s conclusion on page 9, where it states that, based on your office’s review of the Department’s Maintenance Daily Reports, the Department’s Resident Engineers observed Dejana operations on 126 of 1,300 possible workdays.

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Page 6, Paragraph 4 (Contract Terms). This paragraph states that the Department did not have performance standards in place to monitor Dejana’s performance. This is incorrect. On Page 4 of the Invitation for Bids, under Operation Methods, the first paragraph states: “The work shall generally leave a surface free from material larger than a four inch (4”) diameter object up to the maximum size of a deer carcass.”

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Page 6, Paragraph 6 (Contract Terms). This paragraph states that the contract did not contain language to protect the Department against poor performance. This is incorrect. Page 13 of the Invitation for Bids (the Termination and Remedies section) contains methods by which the Department could terminate the contract for poor performance.

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* State Comptroller’s Comment:

Our final audit report has been revised to reflect DOT’s response.

Carmen Maldonado
January 24, 2006
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RESPONSE TO RECOMMENDATIONS

Recommendation 1. Routinely analyze the costs and benefits of all reasonable alternatives before deciding on a means of providing needed services.

DOT Response: Agree. An instructional letter will be issued to all Regional Maintenance Engineers by March 1, 2006.

Recommendation 2. Routinely prepare an engineer's cost estimate for roadside clean-up contracts and other significant maintenance contracts.

DOT Response: Agree. An instructional letter will be issued to all Regional Maintenance Engineers by March 1, 2006.

Recommendation 3. Ensure that all contracts for services clearly describe the scope of the work that is to be performed by the contractor. Clearly describe how that work is to be reimbursed by DOT, and include performance standards for the contractor.

DOT Response: The Department agrees with this recommendation and will continue to incorporate these items into their contracts.

Recommendation 4. When a contract has an option for an extension, formally assess the contractor's performance before deciding whether or not to extend the contract.

DOT Response: Agree. An instructional letter will be issued to all Regional Maintenance Engineers by March 1, 2006.

Recommendation 5. Routinely include in contract language describing the actions that could be taken by DOT if the contractor does not perform in a satisfactory manner or fails to comply with any of the contract's requirements.

DOT Response: As it did with this contract, the Department includes language in all its contracts which specify what actions the Department can take if the contractor does not perform in accordance with the contract. In this contract, the Termination and Remedies section of the Invitation for Bids contained methods by which the Department could terminate the contract for poor performance. We will continue to include such language in our contracts.

Recommendation 6. Disallow, and recover from Dejana, all \$3,692,490 in payments made for contract services unless it can be documented that the services were provided as billed.

DOT Response: We disagree. The Department cannot disallow all contract costs when it has reasonable assurance that Dejana performed the contract work. This reasonable assurance was primarily derived from the following contract monitoring practices.

The Region's contract manager provided Dejana work schedules to Regional Resident Engineers 1-2 weeks in advance. The Resident Engineers periodically reviewed Dejana's scheduled work operations and recorded their observations on the Department's Maintenance Daily Reports

Carmen Maldonado
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(MDRs). These MDRs provided the Regional Contract Manager with reasonable assurance that Dejana performed work as scheduled and, thereby a basis to authorize payments to be made.

Recommendation 7. Improve contractor monitoring practices so that contractors are observed with sufficient frequency, and the observations are recorded in sufficient detail, to provide assurance contract requirements are being met.

DOT Response: We agree that the level of detail recorded on monitoring reports could be improved. An instructional letter will be sent to all Regional Maintenance Engineers by March 1, 2006.

Sincerely,



Brian O. Rowback,
Chief Operating Officer

cc: B. Barnes, Division of the Budget