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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 8, 2006

Mr. Thomas J. Madison
Commissioner
Department of Transportation
50 Wolf Road
Albany, NY 12232

Re: Report 2005-F-30
Privatization of Stewart International
Airport - Monitoring of Capital Construction
Projects

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 have followed up on the actions taken by Department of Transportation officials to implement the recommendations in our audit report, *Privatization of Stewart International Airport Monitoring of Capital Construction Projects* (2003-S-38).

Background, Scope and Objective

Stewart International Airport (Stewart) is located in New Windsor, New York, near the City of Newburgh, about 60 miles north of New York City. Stewart, a former Air Force Base, was acquired by the Department of Transportation (Department) in 1982, and was operated by the Department with the assistance of contractors until April 1, 2000. At that time, as part of an airport privatization program sponsored by the Federal Aviation Administration (FAA), the Department leased Stewart to SWF Airport Acquisition, Inc. (SWFAA), a subsidiary of the National Express Corporation, for a period of 99 years. SWFAA's parent company was selected as the preferred bidder in response to a Request-for-Proposal. The lease required SWFAA pay the Department a total of \$35 million: \$24 million upon the signing of the lease; \$6 million when four parcels of property, formerly used for landfill have been fully remediated by the Department and transferred to SWFAA; and \$5 million when a contract is awarded by the State for construction of a new access road to Stewart. The lease also calls for the Department to complete nine capital-related projects that were either ongoing or completed but not closed-out at the time of the lease. In addition, SWFAA was to invest a total of \$48.6 million in capital improvements at Stewart during the first five years of the lease period, subject to certain contingencies (such as the availability of anticipated Federal grants and the volume of business conducted at Stewart during that period). The capital improvements to be made by SWFAA are generally described in a preliminary capital improvement plan that is included in the lease. In addition, each year, SWFAA has to submit to the FAA an updated five-year capital improvement plan, and provide the Department with a copy of the approved plan.

Our initial audit report which was issued on May 20, 2004 examined whether the monitoring mechanisms established by the Department were sufficient for the long-term nature of the lease and whether the pending access road construction project had been handled in an appropriate and timely manner. We found the Department needed to improve its mechanisms for monitoring construction projects at Stewart and that the Department's project records were in disarray. We questioned the amount of resources allocated by the Department on an access road project that was still in litigation. The objective of our follow-up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of December 15, 2005 of the five recommendations included in our initial report.

Summary Conclusions and Status of Recommendations

The Department has made progress in correcting problems we noted in the initial audit. As our audit tests, observations and review of the records continue to reveal some degree of non-compliance with our recommendations, we believe there is still some need for improvement. Of the five audit recommendations, three recommendations were implemented, one recommendation was partially implemented and one recommendation was not implemented. At the closing conference, Department officials indicated that full implementation requires cooperation of SWFAA officials which has not been forthcoming.

Follow-up Observations

Recommendation 1

Improve the system for maintaining records relating to the Department's construction projects at Stewart.

Status - Implemented

Agency Action - We reviewed the current system of maintaining construction records for the Department's projects at Stewart Airport and found the records were orderly and fully indexed.

Recommendation 2

Institute legal action against the contractor on the Southwest Fuel Farm project.

Status - Implemented

Agency Action - Department officials advised that the original contractor and the surety for the Southwest Fuel Farm are in default and that legal action has been taken through the Office of the Attorney General. Department officials indicated they are in the process of finalizing the amount of damages as of our closing conference on December 15, 2005.

Recommendation 3

Closely monitor the work that remains to be done on the Southwest Fuel Farm and Runway 16 projects, and closely monitor the progress of the access road project once that project has been initiated.

Status - Partially Implemented

Agency Action - Aside from some training of SWFAA employees, Department officials are ready to turn over the operation of the Southwest Fuel Farm to SWFAA. There will be no progress on the Runway 16 until SWFAA's Master Plan is approved. SWFAA provided us with the Executive Summary to the Master Plan. Litigation regarding the access road project was finally settled in November 2005. Subsequently, at the closing conference on December 15, 2005, Department officials informed us that construction work has begun on the access road project.

Recommendation 4

Require SWFAA to retain all critical records relating to the construction projects, including, but not limited to the engineer's logs, construction schedules, and the critical path schedule. Periodically review the projects records maintained by SWFAA to determine whether they comply with the records retention requirements.

Status - Not Implemented

Agency Action - While neatly stored in file cabinets, the files themselves were exceedingly sparse and missing most essential information. At the closing conference, Department officials indicated they have no authority to require compliance by SWFAA.

Recommendation 5

Evaluate all of the factors related to the access road project needed to improve access to Stewart, in terms of time, staff and funding and access whether it is reasonable and in the best interest of the State and all other parties to continue in this manner and for how long. Such decisions should be documented.

Status - Implemented

Agency Action - In the interim between the issuance of the initial audit report and the completion of our follow-up audit, Department officials evaluated whether to continue to pursue the ongoing litigation approving construction of the access road project. The litigation was concluded in November 2005 for the access road and returns 8,000 acres of preserved land to Orange County. Department officials advised us that construction has begun on the project.

The major contributor to this report is Abraham C. Markowitz.

We would appreciate your response to this report within 30 days, indicating any action planned to address the unresolved issues discussed in this report. We also thank management and the staff of the Department of Transportation for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: John Samaniuk, Department of Transportation
Robert Barnes, Division of the Budget