Thomas P. DiNapoli
COMPTROLLER

OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

NEW YORK RACING ASSOCIATION, INC.

CAPITAL PROGRAM OPERATIONS

Report 2005-S-52

AUDIT OBJECTIVES

For the period July 1, 2003 through June 30, 2005, we determined whether NYRA's capital projects were justified and adequately planned; and whether outsourced projects were awarded through an open competitive bid process. We also determined whether capital projects were adequately monitored, and contract-related payments appropriately supported.

AUDIT RESULTS - SUMMARY

NYRA is required to plan and implement its capital projects in conformance with Section 258 of the Racing Law. As such, capital projects must be properly planned, which includes documenting the need/justification for each project estimating project costs based on sound information in consideration of NYRA's available budget. We found that NYRA officials continue to pay for projects where the justification is not documented as required. In addition, NYRA officials do not always analyze the costs or address the individual priority of projects. We also noted that essential capital improvements to NYRA properties have been postponed because of limited financial resources. Overall, we found that NYRA's new management team has begun addressing several of the issues raised in this report.

When we reviewed the 18 NYRA capital projects completed or in progress as of June 30, 2005, we found six projects, initiated under NYRA's prior management and costing $393,848 did not have adequate written justification supporting the reason for those projects. We also found there was no evidence of discussions or analyses regarding priorities for any of these projects. It is not evident why NYRA officials decided to go ahead with certain projects, while shelving others. There was also no evidence of any analyses to support estimated costs/benefits, or to determine which projects should be done in house and which projects should be outsourced. (See pages 5-6)

NYRA officials did not always use the bid process effectively or comply with their own policy regarding competitive bidding. We found NYRA did not always provide potential vendors with useful details when requesting bids and/or quotes on NYRA capital projects. In addition, NYRA did not always keep its potential bidders list up to date. Further, NYRA does not open any of its bid openings to bidders or have in place any other mechanism for bidders to review its contract awards. Going forward, for all procurements based on a lowest price determination, NYRA should make it bid openings public. For contract awards not made exclusively on the basis of lowest price, NYRA should implement other mechanisms to ensure the transparency of its contract award process. These bid-related issues were discussed in our prior audit report, but NYRA has still not addressed them. (See pages 6-8)

We found that 15 of the projects reviewed, costing $631,000, were not monitored by NYRA staff. Thus, there was no assurance that the projects were in compliance with contract specifications, or paid at appropriate intervals. (See pages 8-9)

NYRA officials neither complied with their written procedures nor their reported practices for any of the 16 change orders we reviewed. For example, contrary to established policy and reported practices, many change orders were approved after the work had already been done. (See pages 9-11)

This report, dated June 15, 2007, is available on our website at: http://www.osc.state.ny.us. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The New York Racing Association, Inc. (NYRA) is a non-profit racing association franchised to conduct race meetings and pari-mutuel betting at the State's three major thoroughbred racetracks (Aqueduct, Belmont and Saratoga). In return for this exclusive franchise, Section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law (Racing Law) stipulates that "NYRA… shall 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 trustees at 28. Eight trustees are appointed by the Governor, while the remaining 20 are elected by the Board and are involved in the racing industry as owners or breeders. Trustees are not compensated, but the Racing Law allows for reimbursement of their actual expenses incurred in the performance of their duties.

NYRA's major direct contribution to the State's economy is the pari-mutuel tax, calculated as a percentage of NYRA's total racing handle, which approximates about $10 million annually. In addition, NYRA is obligated to remit an annual franchise fee, which constitutes its entire net adjusted income (less $2 million allocated to horsemen's purses and awards), to the New York State Non-Profit Racing Association Oversight Board (Oversight Board), created July 29, 2005. The Oversight Board among other responsibilities, assumed the role of the former NYS Thoroughbred Racing Capital Investment Fund (CIF) - an entity that had been set up to approve, finance and monitor NYRA capital projects. This annual franchise fee represents repayment of prior CIF loans. Any accumulated remittances to the Oversight Board exceeding $7 million must be remitted to the State's general treasury.

NYRA investments in the improvement and maintenance of its land and buildings are vital for the long term viability of NYRA facilities, and the safety of all those on its premises. NYRA capital improvements during the audit period include various projects such as installing a sprinkler system, digging a liquid waste drainage system, and erecting guard houses. From July 1, 2003 to June 30, 2005, there were 18 such capital projects, either in progress or completed, costing approximately $3.7 million. Of the 18 projects, 5 were CIF-funded, and 13 were NYRA funded.

In 2003, NYRA was indicted for several crimes, and its financial condition has deteriorated rapidly - running annual deficits of as high as $22 million. As detailed in our prior reports on various NYRA operations (report titles and numbers cited below), from March 1, 2004 through July 24, 2005, pursuant to a Deferred Prosecution Agreement issued by the U.S. District Court, NYRA had been operating under the supervision of a Federally appointed Monitor. Of the 18 projects reviewed during our audit, 11 were initiated prior to the Federal

Monitor's tenure and NYRA's new management. The Federal Monitor's tenure ended on July 24, 2005. The Monitor stated in its final report dated September 13, 2005 that NYRA had complied with the Deferred Prosecution Agreement. The U.S. Attorney's Office recommended dismissal of the indictment against NYRA, and on the same date, the Federal Court dismissed the indictment. The Monitor's report outlined the significant structural reform NYRA made during its tenure. The Comptroller's Division of Investigations worked closely with the Federal Monitor on a variety of issues, including the development of an enhanced Code of Ethics for all NYRA employees.

In 1997, the Offices of the State Comptroller and the State Attorney General performed a joint review of selected NYRA capital program operations (*Report 96-J-89, issued September 1997*). This joint review determined that NYRA capital projects were not properly planned, often not justified, not bid in an open competitive manner, nor monitored effectively. Our recently issued audits of NYRA's Travel and Entertainment Expenses (*Report 2004-S-40, issued January 11, 2005*), and NYRA's Contracting and Procurement Operations (*Report 2004-S-61, issued June 15, 2005*), found NYRA's internal control structure, although improving as the result of newly appointed management and a Federally appointed Monitor, did not address internal control issues to help ensure that all NYRA financial management operations were operating effectively. In addition, NYRA's poor financial condition has resulted in serious limitations to its capital program due to insufficient funds. Most recently we performed an audit of the Annual Franchise Fee for Calendar Years 2002 and 2003 *(Report 2005-S-3, issued February 17, 2006)*, and of NYRA's Backstretch Operations *(Report 2005-S-29, not yet issued)*.

AUDIT FINDINGS AND RECOMMENDATIONS

Project Planning

NYRA is required to plan and implement its capital projects in conformance with Section 258 of the Racing Law. As such, capital projects must be properly planned, which includes documenting the need/justification for each project and estimating project costs based on sound information in consideration of NYRA's available budget. We found that NYRA officials continue to pay for projects where the justification is not documented as required and where the bid process proceeds without necessary planning. In addition, NYRA officials do not always analyze the costs or address the individual priority of projects.

For example, in 2005, NYRA sent a Request for Quotation (RFQ) to seven potential vendors for fencing at Belmont to enhance security of the barns holding horses ready to race. Only three vendors responded. The RFQ, sent April 5, 2005, was for "1,550 feet of fencing with nine (9) gates of assorted sizes." The specific sizes of the assorted gates were not detailed in the RFQ. After a vendor walk-through, one of the respondents submitted a bid on 1,725 feet of fencing, and another vendor (to which the contract was awarded) listed the actual footage as 2,000 feet (29 percent more than stated on the original RFQ). More importantly, two of the nine assorted gates installed were not of the correct size for their intended purpose (to allow trucks to pass through). As a result, 400 feet of additional galvanized wire, newly sized gates and an additional gate, were necessary to correct the problem costing an additional $9,000 more than the amount originally bid for the project.

Policies and Procedures

According to Section 258 of the Racing Law, NYRA must submit to the NYS Racing and Wagering Board (Board), by October 1 of each year, a five-year capital plan, effective January 1 of the following year. The plan should be designed to maintain the viability of thoroughbred racing in the State and should specify organizational objectives and how the capital projects included in the plan will encourage the fulfillment of such objectives. The plan is also required to include a timetable for each project, as well as the implementation status of each project in-process. NYRA officials informed us that their finance office staff meets annually with the facility managers of each track to discuss the projects on the five-year plan and to decide which projects should go forward.

In the early 1990s, NYRA began to finance some of its capital projects with its own (non-CIF) operating funds. By doing so, it avoided the CIF project approval and monitoring process. In our prior joint review of NYRA's capital projects, we reported on this practice and recommended that NYRA follow Section 258 requirements for all its projects, regardless of the funding source. As such, once a project is approved and initiated, NYRA officials should monitor its progress to make sure it is completed on time and within budget as planned.

We found that, while NYRA did file its capital plans with the Board every year, the plans lacked required elements. For instance, none of the plans covering the 18 projects we examined contained information on the status of work in progress, or described how the project(s) would enhance thoroughbred racing. We also found that NYRA's self-financed projects were approved without documentation to justify estimated costs. We further determined that NYRA lacks comprehensive guidelines for monitoring its capital projects once initiated.

We attribute NYRA's noncompliance with requirements of Section 258, and the deficiencies noted in this report, in part, to the absence of a comprehensive written capital project policy and related management guidelines.

Project Justification and Cost Analysis

As stated above, Section 258 requires NYRA officials to provide justification for the capital projects listed on its five-year capital plan, stating how the project will advance the racing industry in the State. NYRA officials also told us that their Finance Office staff meets at the end of each year to discuss projects on the plan, and to prioritize the implementation of these projects on the basis of need, cost and feasibility. This process also includes a cost benefit analysis to determine whether a project should be performed in house or awarded to an independent contractor.

When we reviewed the 18 NYRA capital projects completed or in progress as of June 30, 2005 and costing $3.7 million (See Exhibit A), we found six projects, initialed under NYRA's prior management and costing $393,848, did not have adequate written justification supporting the reason for those projects. We also found that for all of these projects, there was no evidence of discussions or analyses regarding project priorities. It is not evident why NYRA officials decided to go ahead with certain projects, while shelving others. There was also no evidence of any analyses to support reported estimated costs/benefits, or to determine which projects should be done in house and which projects should be outsourced.

As a result of these deficiencies, NYRA officials had no basis to assess the reasonableness of bids received for outsourced projects. Also, certain completed projects went unutilized raising further concern about the justification of such projects. For example, in 2003, NYRA paid $295,000 for the construction of three guard houses in the Aqueduct racetrack backstretch area. The guard houses were completed in November 2003 but were not being utilized by NYRA's security staff as of March 31, 2006. According to NYRA officials, a new Security Department manager had been appointed between the time that this project was initiated and completed. The newly appointed manager, who started in December 2003, felt that the guard houses as erected served no useful purpose. Further, these guard houses do not appear on any of NYRA's capital plans for the audit period.

We also noted that certain essential capital improvements to NYRA properties were postponed because of limited financial resources. For example, 1 of the 18 projects we reviewed involved architectural services to develop a plan for the replacement of the copper roof at the Saratoga Racetrack. NYRA paid $11,590 for the architect's plan, which was provided to NYRA in 2002. The architect estimated the cost at about $125,000. However, to date, due to a lack of funds, NYRA has not initiated the construction of this project. Instead, to prevent potential water damage to the wood frame of the Saratoga facility, NYRA officials did a temporary repair of the damaged roof, using a material other than copper. Thus, NYRA's current fiscal condition may be jeopardizing the infrastructure of NYRA's racetracks to the detriment of the State's racing industry by putting off needed projects.

Recommendations

1. Develop and implement a formal comprehensive policy requiring justification, documentation and cost benefit analyses for all NYRA capital projects.

2. Ensure conformance to Section 258 requirements for the required five-year capital project plans.

3. Prepare requests for bids or quotations with as much information and specifications as possible to help ensure the receipt of informed bid/quote responses, and to minimize unnecessary change orders and associated costs not benefiting from competition.

Competitive Bid Process

We found NYRA did not always provide potential vendors with sufficient details when requesting bids and/or quotes on NYRA capital projects. In addition, NYRA did not always keep its potential bidders list kept up to date. Further, NYRA did not have procedures for having bidders attend bid openings to review NYRA's contract awards. Allowing bidders, where appropriate, to be present at certain of its bid openings (or the opportunity through some other vehicle to evaluate the competitive process) would strengthen the transparency of NYRA's contract award process. These bid-related issues were discussed in prior audit reports, but NYRA has still not addressed them.

Noncompliance with Competitive Bidding Requirements

The competitive bidding process is intended to foster competition among vendors, to guard against favoritism in bid awards, and to secure a fair and reasonable price for needed

goods and services. As such, it is imperative for NYRA to maintain an up-to-date list of qualified bidders to help ensure sufficient competition for all solicitations. It is also imperative that bid specifications be as specific and comprehensive as possible to avoid misconceived bids which could potentially result in costly change order requests and project delays. However, we found that NYRA officials do not always use the bid process effectively or comply with their own policy regarding competitive bidding.

NYRA's official purchasing policy during our audit scope period required that a competitive bid process be followed for purchases over $10,000. Emergency purchases are exempt from this requirement. Of the 18 projects in our audit scope, three were excluded from bidding requirements (two projects were deemed emergencies, and one project was for less than $10,000). Since two of the remaining 15 projects had multiple components (e.g., electrical and structural), the 15 projects comprised 18 bid opportunities. We found that 6 of the 18 opportunities were not bid and 3 were not properly bid, as required. These 9 procurements, totaling $598,181, were for projects including drainage, architectural design, and paving. Each of these procurements met the competitive bidding dollar threshold and was for routine jobs that could have been put out to bid. Since NYRA either did not bid or did not properly bid these procurements, it may not have obtained these goods and services at the lowest price possible.

We concluded that the three procurements were not properly bid because the bid process resulted in fewer vendors than needed to make the competitive bidding process work effectively. While NYRA generally solicited the minimum number of required bidders (three) as required by its policy, it did not research vendor profiles to determine whether they were qualified to do the work requested. For these three procurements, we found that four of the nine vendors solicited were non-responsive. We contacted these non-responsive bidders and found that their lack of qualifications to perform the requested work was the most prevalent reason given for not responding.

For example, for the $295,000 Aqueduct guard booth project, one of the solicited vendors did not respond to the bid solicitation or attend the mandatory walkthrough. A vendor representative told us they were not in the business of constructing guard booths. Despite this vendor's lack of response, NYRA solicited the same firm two months later for the construction of another guard booth. For the same reason noted above, this firm did not attend the walkthrough or submit a bid. Had NYRA done the basic research needed to verify vendor qualifications, it would not have solicited this vendor the first time, much less the second time. By soliciting firms that are not qualified to perform the project, NYRA limits competition on these projects negating the associated benefits of competitive bidding.

Bid Openings

NYRA bid openings are not open to bidders on any NYRA projects. Instead, only NYRA employees, including representatives from its Purchasing, Accounting, Internal Audit, and Legal Departments, are required to be present to open the bids, denote the individual amounts bid, and the date each was opened.

The driving force behind public competitive bidding requirements is to foster competition in order to obtain the best work or supplies at the lowest possible price, and to guard against favoritism, improvidence, extravagance, fraud

or corruption. In procurements based on a lowest price determination, it is appropriate to have public bid openings in order that bidders, among others can see and compare all bids. Public bid openings would add greater assurance that the bidding process is fair, that the award is made to the appropriate bidder, and the winning bid meets the same specifications required of all other bidders. Since NYRA excludes them from all bid openings presently, bidders have no way of ascertaining whether the process in any given instance was conducted in a fair and equitable manner. Going forward, as NYRA works to improve its contracting practices, having public bid openings in procurements decided on the basis of lowest price would enable bidders to review the transparency of the contract awards and could well encourage additional contract awards and contractors to bid on NYRA projects, thus stimulating competition.

According to NYRA officials, allowing bidders to attend its bid openings would place it at a competitive disadvantage. They assert that the requirement that certain of its employees attend the bid openings provides sufficient assurance of the integrity of the process.

We noted that the majority of bid openings held by NYRA during the audit period were not even attended by all required NYRA representatives in accordance with its own policy. These individuals include representatives from the Purchasing, Accounting, Internal Audit, and Legal Departments. For the 12 bid openings related to the previously discussed 15 projects, seven were not attended by the requisite NYRA departments. For example, according to NYRA records, the bid opening for a $2.4 million award to install a fire alarm system at Aqueduct was attended by only two NYRA employees representing Accounting and Purchasing.

Recommendations

4. Periodically revise NYRA's active bidder list to ensure as much competition as possible and to avoid soliciting unqualified or uninterested bidders.

5. Enhance the transparency of the contract award process by opening to the public bid openings for all procurements determined on the basis of lowest price. Where a public bid opening would not be appropriate because the particular contract award is based upon other factors in addition to lowest price, NYRA should implement alternative procedures whereby bidders and the public may assess the fairness of the contract award process.

Project Monitoring and Support for Payments

It is incumbent upon the management to ensure that the organization operates, as cost efficiently as possible, and without the taint of fraud. Usual managerial monitoring techniques include internal audits, vulnerability/risk assessments, site visits, meetings and continuous communication. In a capital project environment, specific criteria would include observing the progress of contracted projects, assessing compliance with contract specifications for materials and labor, adhering to health and safety regulations, and confirming the accuracy of contractor billings.

Project Monitoring

Our prior joint report with the NYS Attorney General recommended that NYRA officials prepare formal written guidelines to monitor

the progress of their capital projects and contractor compliance with contract terms. NYRA officials have not implemented this recommendation. Further, NYRA's own procedures manual states: "Throughout the course of a capital project, [NYRA's Capital Projects in excess of $250,000] shall be monitored and documented by NYRA's Compliance Officer..." Yet, the Compliance Officer position at NYRA has been vacant since early 2004. Subsequent to our audit fieldwork, NYRA officials informed us that the position of Compliance Officer has been eliminated and the related responsibilities have been reassigned to a newly created position of Chief Administrative Officer.

We did note however, for 3 of the 18 projects we reviewed (Saratoga Standpipe System, Aqueduct Fire Alarm System and Aqueduct Security Guard Houses) totaling $3.1 million, project monitoring was well documented by periodic progress notes prepared by NYRA officials or independent consultants. However, for the remaining 15 projects, costing $631,000, there was no evidence that any phase of project construction was monitored. Payments to contractors were based solely on invoices initialed by a facility manager. As a result, neither NYRA nor we have any assurance that the contractors for these projects were in compliance with contract specifications, or paid at appropriate intervals.

Contract Revisions

With capital projects, the original project specifications sometimes need to be modified as unexpected circumstances are encountered. For example, if a gas line is encountered while digging a tunnel, a work modification would be necessary to work around the gas pipe - usually resulting in additional costs. These modifications must be pre-approved to assess their reasonableness and to determine whether competitive bidding for the increased costs is required.

NYRA's procurement policy states that: "should additional work be required during a capital project, a 'change order form' (change order) shall be prepared and followed." The change order provides for the approval of a facility manager, as well as NYRA's Chief Operating and Chief Financial Officers. However, when we discussed this policy with NYRA officials, we were informed that NYRA's actual practice is that only a facility manager is required to approve a change order, unless it is in excess of 10 percent of the original contract cost, in which case it must also be approved by NYRA's Purchasing Department. In addition, NYRA officials informed us that in the future, NYRA's newly appointed Chief Administrative Officer will be approving change orders.

Seven of the 18 projects we reviewed had a total of 16 change orders in their respective project files. The following table on page 10 summarizes the number and dollar amounts of these change orders:

Project Description	Number of Change Orders	Total Change Order Amount	Total Project Amount	Percentage of Total Project Amount	Dates of Change Orders
Standpipe System	2	$ 2,535	$ 346,449	1	July 2004
Fire Alarm System	8	128,768	2,418,130	5	August 2003 - February 2004
Security Guardhouse	1	20,930	295,545	7	October 2003
Clubhouse Fire Escape	2	5,485	37,205	15	July 2003
Paving and Road Relocation	1	6,886	35,777	19	July 2003
Installation of Concrete Slab	1	1,325	22,577	6	April 2004
Chain Link Fence and Gate	1	9,000	62,397	14	May 2004
TOTALS	16	$174,929	$3,218,080	5	

NYRA officials did not comply with their written procedures nor stated actual practice as described in the table for any of the 16 change orders. For example, for the Fire Alarm System project, eight change orders totaling $128,768 were processed. Seven of these change orders were signed by all required personnel, while one was signed only by a facility manager. However, five of the eight change orders totaling $51,606 were approved after the date noted on the vendor invoices indicating that the work had already been started or completed - negating the purpose of a change order form. For the $9,000 chain link fence modification, there was no change order form available at all.

The only documentation of approval for this modification is an email from a facility manager to the Purchasing Department dated 12 days after the vendor invoice.

Support for Vendor Payments

Documents required in advance to support payments to vendors typically would include a purchase order, a vendor invoice and a receiving report. Collectively, these documents evidence authority to purchase, the vendor's attestation of delivering the requested goods or services, and the purchaser's satisfactory receipt thereof. With capital projects however, required support may come only in the form of a contract, detailing the work to be performed, and a sign off by an independent monitor authorizing interim or final payment. The assumption is that the contractor's work has been actively monitored in terms of both materials and labor.

At NYRA, we physically observed the capital projects in our sample. Each was complete as

of our observation date. However, because NYRA maintains very little documentation to evidence its monitoring of capital projects during their construction, we are unable to assess whether the contractors complied with all relevant terms of their respective contracts.

Recommendations

6. Prepare formal written guidelines for monitoring NYRA's capital projects. The guidelines should cover on-site monitoring techniques, documenting monitoring efforts, and procedures to follow for change orders and identification of non-compliance with contract terms.

7. Assign an independent qualified employee to actively monitor each project, such as a compliance officer. Where specialized work is performed, consider contracting with a qualified independent consultant to monitor contractor compliance.

AUDIT SCOPE AND METHODOLOGY

We reviewed the 18 NYRA capital projects that were completed during the period July 1, 2003 through June 30, 2005. For our review of vendor backgrounds, our audit scope extended back to January 1, 2002. The objectives of this audit were to determine whether NYRA capital projects are justified and planned adequately; whether outsourced capital projects were awarded via an open process of competitive bidding; and whether capital projects were adequately monitored, and associated payments appropriately supported.

To accomplish our objectives, we reviewed available NYRA documentation pertaining to bid solicitation and vendor selection, project planning and justification, and support for payments. This included a review of NYRA's 5-year plans, applicable sections of the Racing Law and NYRA's Procurement Policies and Procedures. We also researched NYS Office of General Services and NYS Office for Technology Project monitoring Guidelines to establish industry practices. We spoke to NYRA facility managers and visited each NYRA facility to verify project completion. We contacted non-responsive bidders to determine the reasons they did not bid. We reviewed prior audit reports and a report prepared for NYRA by the consulting firm Safir-Rosetti, as well as the Federal Monitor's report. We reached out to officials from both the NYS Thoroughbred Racing Capital Investment Fund and the State Racing and Wagering Board. In addition, we worked with personnel from OSC's Investigations Unit and NYRA's Internal Audit Unit.

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 Office of Operations. 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.

AUTHORITY

The audit was performed according to the State Comptroller's authority under Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to NYRA officials for their review and comment. Their comments were considered in preparing this report, and are included as Appendix A. NYRA agreed with our recommendations. However, regarding Recommendation 4, NYRA indicated that while internally it has begun to evaluate vendors providing goods and services in excess of $100,000, the Racing and Wagering Board will not permit NYRA to modify its vendor list to exclude vendors with poor evaluations. We will be pursuing this matter with the Board.

Within 90 days after final release of this report, we request 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 of the steps that were taken to implement the recommendations it contained, and/or the reasons certain recommendations were not implemented.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Frank Patone, Samantha Biletsky, Sal D'Amato, Anthony Carlo, Jeffery Marks, Ira Lipper and Nancy Varley.

Exhibit A

Summary of Sampled Capital Projects

Project Description	Dollar Amount of Project	CIF-Funded vs. Self-Funded	Date Project Initiated	Date Project Completed	Adequate Written Justification	Properly Bid	Project Construction Monitored
Yaddo Drainage (Saratoga)	$ 191,421	CIF	June 1996	Nov. 2003	Yes	No	No
Stable Drainage (Saratoga)	34,082	CIF	Nov. 2000	Nov. 2001	Yes	No *	No
Grandstand Copper Roof (Saratoga)	15,250	CIF	Nov. 2000	April 2002	No	No	No
Fire Alarm System (Aqueduct)	2,418,130	CIF	Dec. 2000	Aug. 2004	Yes	Yes	Yes
Clubhouse Fire Escape System (Saratoga)	37,205	Self	Oct. 2001	July 2003	Yes	Yes	No
Standpipe System (Saratoga)	346,449	CIF	Oct. 2002	July 2004	Yes	Yes	Yes
Security Guardhouse (Aqueduct)	295,545	Self	Jan. 2003	Nov. 2003	No	No *	Yes
Brick Park Booth (Gate 3 - Belmont)	11,800	Self	May 2003	July 2003	Yes	Yes	No
Paving and Road Relocate (Saratoga)	35,777	Self	July 2003	July 2003	No	No	No
Install Traffic Lane (Clubhouse - Saratoga)	9,100	Self	July 2003	July 2003	No	N/A	No
Road Surfacing (Barn Area - Belmont)	15,600	Self	Nov. 2003	Nov. 2003	No	No	No
Excavate/Install Concrete Slab (Belmont)	22,577	Self	March 2004	April 2004	No	Yes	No
Galvanized Steel Ladder (Belmont)	27,514	Self	June 2004	Dec. 2004	Yes	No	No
Cooling Tower Roof (Asbestos/Steel - Aqueduct)	59,939	Self	Aug. 2004	June 2005	Yes	Yes	No
New Cooling Tower Roof (Aqueduct)	66,535	Self	Oct. 2004	April 2005	Yes	No	No
New CCTV Enclosure Roof (Aqueduct)	23,250	Self	Feb. 2005	April 2005	Yes	N/A	No
Fence and Gate - Detention Barn (Belmont)	62,397	Self	April 2005	May 2005	Yes	Yes	No
Electrical Installation (Barn/Backstretch - Saratoga)	18,910	Self	June 2005	June 2005	Yes	N/A	No
Total	$3,691,481						

Notes:

N/A = Not applicable. Project cost was either under $10,000 or project was an emergency repair.

* This project was broken into one or more components resulting in multiple bid opportunities. One or more of the bid opportunities did not follow NYRA's procedures.

APPENDIX A - AUDITEE'S RESPONSE

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

(718) 641- 4700
www.nyra.com

CHARLES E. HAYWARD
PRESIDENT
CHIEF EXCUTIVE OFFICER

January 30, 2007

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

Re: Draft Audit Report 2005-S-52

Dear Mr. Challice:

The New York Racing Association Inc. ("NYRA"), writes in response to your draft audit report (2005-S-52) regarding NYRA's Capital Program Operations (the "Draft Audit") for the period July 1, 2003 to June 30, 2005. NYRA appreciates the concerns raised by the Comptroller's Office and our responses are set forth below.

Recommendations #1, #2 & #3

NYRA agrees with and will implement the following recommendations:

1. Develop and implement a formal comprehensive policy requiring justification, documentation and cost benefit analyses performed for all NYRA capital projects.

2. Ensure conformance to Section 258 requirements for the required five-year capital project plans.

3. Prepare requests for bids or quotations with as much information and specifications as possible to help ensure the receipt of informed bid/quote responses, and to minimize unnecessary change orders and associated costs not benefiting from competition.

Recommendation #4

NYRA has already begun the process of evaluating the goods or services provided by vendors in excess of $100,000 in value. These evaluations are performed by the various NYRA department heads and are maintained by the Purchasing Department. However, the New York State Racing and Wagering Board will not allow NYRA to modify NYRA's vendor list to exclude those vendors with poor evaluations. Therefore, NYRA cannot implement this recommendation.

Aqueduct *Belmont Park* *Saratoga*

Recommendations #5, #6 & #7

NYRA agrees with and will implement the following recommendations:

5. Enhance the transparency of the contract award process by opening to the public bid openings for all procurements determined on the basis of lowest price. Where a public bid opening would not be appropriate because the particular contract award is based upon other factors in addition to lowest price, NYRA should implement alternative procedures whereby bidders and the public may assess the fairness of the contract award process.

6. Prepare formal written guidelines for monitoring NYRA's capital projects. The guidelines should cover on-site monitoring techniques, documenting monitoring efforts, and procedures to follow for change orders and identification of non compliance with contract terms.

7. Assign an independent qualified employee to actively monitor each project, such as a compliance officer. Where specialized work is performed, consider contracting with a qualified independent consultant to monitor contractor compliance.

NYRA would like to thank the State Comptroller's office for raising its concerns and looks forward to continuing to work with the Comptroller's office in a constructive and cooperative manner.

Sincerely,

Charles E. Hayward