



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

February 5, 2007

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

Re: Report 2006-F-50

Dear Mr. Hayward:

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, and Section 208 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law, we have followed up on the actions taken by officials of the New York Racing Association, Inc. (NYRA), to implement the recommendations contained in our audit report, *New York Racing Association, Inc. Contracting and Procurement Operations* (Report 2004-S-61), issued June 15, 2005.

Background, Scope and Objective

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 and Breeding Law requires NYRA to operate in a sound, economical, efficient and effective manner to produce a reasonable revenue for the support of (State) government. In return for this exclusive franchise NYRA is required to pay the State a pari-mutuel tax figured as a percentage of on-track handle, and an annual franchise fee based on its Federal corporate taxable income adjusted for certain excessive expenses noted in the statute. NYRA is governed by a 28-member Board of Trustees, some of which are appointed by the Governor. NYRA's franchise is scheduled to expire on December 31, 2007, unless further extended by the legislature.

The Racing Law requires NYRA to award contracts for goods and services costing more than \$250,000 via a process of competitive bidding. NYRA's own purchasing guidelines require bids be obtained for procurements exceeding \$10,000. During the prior audit period, NYRA spent about \$115 million annually for the procurement of goods and services. During our prior audit fieldwork, NYRA operated under the supervision of a federally appointed Monitor whose final report noted significant improvements in NYRA's overall financial management operating practices.

Our prior audit determined that neither the NYRA Policy in place for most of our audit period, nor an alternate set of procedures that NYRA staff claimed to have used in procuring goods and services, was adequate for ensuring 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. For example, we found 49 transactions, totaling \$3.5 million, contained one or more violations of the Racing Law and/or NYRA's Policy. 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. 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.

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 January 16, 2007, of the 10 recommendations included in our initial report.

Summary Conclusions and Status of Prior Audit Recommendations

Of our 10 prior audit recommendations, NYRA officials have implemented eight recommendations, partially implemented one recommendation and have not implemented one recommendation.

Follow-up Observations

Recommendation 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.

Status - Implemented

NYRA Action - Subsequent to our prior audit, NYRA officials issued a code of ethics which all staff were required to sign, and a comprehensive policy on contracting and procurement. NYRA has provided training to its personnel with procurement responsibilities and has appointed an Ethics officer. NYRA's new management team has evidenced a sincere desire to improve controls and compliance in all financial management operating areas.

Recommendation 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.

Status - Implemented

NYRA Action - As noted above, NYRA has required all of its personnel to sign and date its recently prepared Code of Ethics. Our testing of sampled employees found that NYRA employees have in fact signed the Code. NYRA has also appointed an Ethics Officer who is responsible for assessing compliance with the Code and fielding employee questions on related subjects.

Recommendation 3

Unless appropriate documentation is obtained, recoup the \$90,663 in disallowance noted in the report from the contractors/vendors noted herein where the provision of the 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.

Status - Not Implemented

NYRA Action - While NYRA officials told us they agree that there may be inadequate documentation to support the procurement items questioned in our report, they are confident that NYRA received the appropriate product or services from the noted vendors. As such, they have not attempted to recoup said disallowances.

Recommendation 4

Devise a comprehensive contracting and procurement policy that addresses all the deficiencies noted in this report.

Status - Implemented

NYRA Action - As noted above, NYRA has developed a revised comprehensive Contracting and Procurement Manual. Our review of the manual found it addresses the deficiencies noted in our prior report.

Recommendation 5

Distribute the revised procurement policy, as filed with Racing and Wagering, to pertinent NYRA staff and provide training related to implement the policy.

Status - Implemented

NYRA Action - NYRA officials provided us with a distribution list for their revised Contracting and Procurement Policy and a list of personnel who attended related training. Each attendee signed a sign-in sheet as proof of attendance.

Recommendation 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 the procurement operations; and performing annual vulnerability assessments of the procurement function.

Status - Implemented

NYRA Action - Subsequent to our prior audit, NYRA officials appointed a new Director of Contracting and Procurement responsible for overseeing all procurement transactions. In addition, NYRA's Internal Audit Department performed an audit and vulnerability assessment of NYRA's procurement operations both completed by September 26, 2006. The internal auditor's report was addressed to NYRA's Board of Trustees and Executive Management.

Recommendation 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.

Status - Partially Implemented

NYRA Action - NYRA's new management team had an independent consultant perform a follow up review of the procurement issues addressed in our prior report. However, they did not opine on whether additional controls and procedures need be developed as a result of their review, nor address whether corrective action was necessary against any NYRA officials or staff.

Recommendation 8

Determine the feasibility of using NYRA employees to perform certain tasks currently outsourced such as snow removal and bus shuttle services.

Status - Implemented

NYRA Action - NYRA officials have performed the requested analyses in response to this recommendation. Final determinations had not been made as of this writing.

Recommendation 9

Reduce the costs of trophies awarded to the owners of winning horses by purchasing trophies that cost less, and by splitting trophies' cost between NYRA and purses.

Status - Implemented

NYRA Action - NYRA officials have lowered the annual cost of trophies awarded to the owners of winning horses from \$649,215 for calendar year 2004, to \$453,460 for calendar year 2006.

NYRA's president also informed owners that beginning with the 2007 race meet, NYRA will be charging the cost of trophies to NYRA purses.

Recommendation 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.

Status - Implemented

NYRA Action - NYRA's current practice is to reconcile its Facilities Department petty cash fund each time the fund is replenished. To date, 19 such reconciliations have been performed. In addition, NYRA's Internal Audit Department has performed a review of the fund.

Major contributors to this report were Stuart Dolgon, Jeffrey Marks and Kamal Elsayed.

We would appreciate your response to this report within 30 days indicating any actions planned to address the unresolved issues in this report. We also thank the management and staff of the NYRA for the courtesies and cooperation extended to our auditors during this follow up audit.

Very truly yours,

Frank Patone, CPA
Audit Manager

cc: Lisa Ng - Division of the Budget