



NEW YORK STATE POLICE
BLDG. 22, 1220 WASHINGTON AVE.
ALBANY, NEW YORK 12226-2252

WAYNE E. BENNETT
SUPERINTENDENT

January 11, 2007

Mr. Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
Division of State Services
Bureau of State Expenditures
110 State Street – 10th Floor
Albany, New York 12236

Dear Mr. McHugh:

I am writing to you in accordance with Section 170 of the Executive Law to report on the steps taken to implement recommendations contained in the Office of the State Comptroller's (OSC) Audit Report (2004-BSE-2) regarding the Lease, Acquisition and Maintenance Costs incurred in Contracts with M/A-COM for radio communications equipment.

Our existing contract with M/A-COM is essential to support the operational integrity of our independent public safety radio system until the Statewide Wireless Network (SWN) is fully operational. During the transition to SWN, we will continue to work with the Office for Technology (OFT) to coordinate the acquisition of user and infrastructure equipment under our contract with M/A-COM.

We offer the following responses to the recommendations addressed to the Division of State Police:

Recommendation #1: **Actively negotiate the interest rates on future equipment leases. As part of the negotiation process, share relevant information with the other two agencies and be aware of other financing options available to State agencies.**

Based on recommendations made in this audit, we have negotiated an amendment to our existing contract with M/A-COM. One of the amendments to the contract is that effective April 1, 2006, the Division of State Police will no longer enter into non-equity equipment leases under the terms of this contract. During the transition to SWN, OFT will continue to oversee the lease and acquisition of user and infrastructure equipment procured under our contract with M/A-COM under New York State Technology Policy #P03-003. OFT will also continue to assist in brokering discussions between the agencies to identify common contract concerns.

Recommendation #2: Recover \$1,697,589 in excessive interest fees and \$1,054,962 in excessive monthly user fees and buy out fees from M/A-COM.

OSC staff calculated the amount of retroactive recoveries related to excessive interest fees and excessive user fees. Any negotiations to make recoveries will require the active participation of OSC in order to explain their assumptions.

In our response to the draft report, we concurred with the finding that lease buyout options should be exercised as soon as practical upon completion of the 60-month lease term. Accordingly, we have negotiated a contract amendment with M/A-COM that provides for a \$1 buy out fee for each individual piece of equipment at the end of the 60 month lease term. We have also eliminated the provisions in the contract that provided for the ability to lease new equipment.

Recommendation #3: Comply with Division of the Budget bulletins and do not finance maintenance fees through lease payments.

In our response to the draft report, we concurred that maintenance fees in the first year should not have been amortized as a part of the 60-month lease costs. In the future, due to the previously noted amended M/A-COM contract, we will no longer enter into non-equity leases under the terms of this contract.

Recommendation #4: Routinely evaluate whether it is cost-beneficial to purchase contract items when their lease expires.

Upon completion of the 60-month lease term, we evaluate the need for the contract item. As previously stated, we have amended our contract with M/A-COM to include a \$1 buyout fee for those pieces of equipment that are determined to be essential to the operations of the Division.

Recommendation #5: Ensure fiscal managers with appropriate knowledge, skills and abilities are actively involved in acquisition decisions under the contract and are monitoring acquisition costs on an item-by-item basis to determine whether the costs are excessive.

As noted in our response to the draft audit report, we have undertaken a redesign of the procurement process for this contract. All procurement authorization letters are now co-signed by the managers in the Communications and Fiscal Management sections. Communications is responsible to determine that appropriate equipment is being procured. Fiscal Management is responsible for determining that the procurement is in compliance with the terms of the contract. We have worked with M/A-COM to clarify the billing schedules to insure that maintenance charges are clearly delineated from monthly lease charges.

Recommendation #14: Evaluate the need for all future maintenance agreements on a case-by-case basis and purchase the agreements only when they can be shown to be cost-beneficial. Evaluate the need for

all existing maintenance agreements and terminate those agreements that cannot be shown to be cost beneficial.

As previously noted, we concurred with the findings that maintenance plans are not necessary on all equipment. Before the issuance of the draft report, we removed all portable radios from maintenance plans. Since the issuance of the draft report, we have reviewed our entire remaining user and infrastructure equipment to determine which equipment should remain on maintenance plans. Decisions with regard to the procurement of first year maintenance, or any maintenance at all are based on the actual usage, warranties and repair histories of the specific piece of equipment.

Recommendation #15: If round-the-clock maintenance coverage is needed for base stations in the first-year of their leases, negotiate a separate first-year maintenance agreement for the base stations to provide coverage not provided by M/A-COM's warranty on these items.

The Division Communications Section evaluates the terms of the manufacturer's warranty for a piece of equipment against the operational necessity of that component. Based on this evaluation, a determination is made as to whether a separate first year maintenance agreement is required and terms of a separate maintenance agreement are negotiated.

Recommendation #16: When maintenance agreements are purchased for items, monitor the items to ensure that the required maintenance services are performed on each item.

One of the provisions of the contract amendment with M/A-COM provides for preventive maintenance schedules based on class of equipment. The Division Communications Section monitors MA/COM compliance with these schedules. Troop Communications sections are required to enter all maintenance activity into the existing Communications Equipment Inventory (CEI) and to keep Division Communications informed as to time & material work done outside of maintenance contracts.

Recommendation #17: Recover \$8,936,673 in monthly maintenance fees.

OSC staff calculated the amount of retroactive recoveries related to maintenance fees. Any negotiations to make recoveries will require the active participation of OSC in order to explain their assumptions.

Recommendation #18: Make fiscal staff responsible for verifying the accuracy of M/A-COM's invoices, and ensure that the staff have the knowledge, skills and abilities that are needed to perform this task effectively.

In our response to the draft audit report, we acknowledged that these overpayments were a result of the practice of having our Communications section verifying monthly invoices. We have

trained appropriate staff in Fiscal Management in the proper pre-audit of M/A-COM invoices. As previously stated, we have also amended the billing schedules to insure that maintenance charges are clearly delineated from monthly lease charges.

Recommendation #19: Recover \$592,703 in overcharges.

With regard to your audit finding on Double Maintenance (\$158,462), the Division has received credits in the amount of \$160,561.53 for overcharges related to maintenance. On the August 2006 invoice, M/A-COM credited the Division \$90,924.41 for maintenance overcharges on requisitions A-370-353-5166, A370-353-5309, and A370-353-5416. On the July 2005 invoice, M/A-COM credited the Division \$69,637.12 for duplicate maintenance on Zetron consoles.

OSC staff calculated the amounts of retroactive recoveries related to improper maintenance escalations (\$340,908), and inflated user fees (\$93,334). Any negotiations to make recoveries will require the active participation of OSC in order to explain their assumptions.

If you require any additional information regarding this response, feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne E. Bennett", with a long horizontal flourish extending to the right.

Wayne E. Bennett
Superintendent