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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OGDENSBURG BRIDGE
AND PORT AUTHORITY**

**VEHICLE ACQUISITION,
USE AND DISPOSITION**

Report 2006-S-113

AUDIT OBJECTIVES

Our objectives were to (1) determine whether Ogdensburg Bridge and Port Authority (OBPA) complied with requirements for the procurement, use and disposition of its vehicles, and (2) account for all the vehicles owned by OBPA.

AUDIT RESULTS - SUMMARY

OBPA operates a bridge between the United States and Canada. OBPA also operates port facilities, an airport, a 25-mile railroad link connecting its port facilities with a national railroad network, and an industrial and warehouse park. To support its operations, OBPA has a fleet of motor vehicles (generally cars and light duty trucks).

We found OBPA did not comply with certain requirements for the procurement and use of its vehicles. For example, in 2001, Executive Order 111 stated that, by 2005, at least half the new light duty vehicles acquired by State agencies and public authorities should be powered by alternative fuels. However, none of the five new light duty vehicles acquired by OBPA since the effective date of Executive Order 111 are powered by alternative fuels. As a result, OBPA is not doing its part in helping the State meet important energy-related goals.

In addition, the Internal Revenue Service has determined that personal use of an employer-provided vehicle, including its use for commuting, should be considered income to the employee, and has issued guidelines for the calculation of this income. We found the OBPA did not fully comply with certain of these guidelines. We also found that required Board of Director approval was not obtained before new vehicles were ordered.

We were able to account for all 33 vehicles that were registered with the New York State Department of Motor Vehicles. However, we identified two unregistered vehicles that may have required registration. We also noted that 21 of the vehicles did not have a logo identifying them as OBPA property. We recommend that OBPA clarify the status of the two unregistered vehicles and add the logo to the 21 unmarked vehicles.

Our report contains 11 recommendations for improving vehicle management at OBPA. OBPA officials generally agree with our recommendations.

This report, dated June 5, 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

In 1950, Section 702 of the Public Authorities Law was approved by the State Legislature and signed by the governor, creating the Ogdensburg Bridge Authority to construct and operate a bridge across the St. Lawrence River between Ogdensburg, New York and Prescott, Ontario, Canada.

In 1960, the Law was amended to reconstitute the Bridge Authority as the Ogdensburg Bridge and Port Authority (OBPA), abolishing the former Ogdensburg Port Authority and transferring its duties to OBPA. New responsibilities of OBPA included the operation, development and improvement of the Ports of Ogdensburg and Waddington (Ports). OBPA responsibilities also now include a 25 mile railroad link to connect the Ports with the national railroad network, an industrial and warehouse park and a commercial/general aviation airport.

To support its operations, OBPA has a fleet of motor vehicles, 33 of which (excluding trailers and a boat) were registered with the New York State Department of Motor Vehicles (DMV) and are not used to carry passengers in revenue service.

AUDIT FINDINGS AND RECOMMENDATIONS

Vehicle Accountability

We accounted for all 33 vehicles that we expected to find at OBPA based on DMV registration information. However, we also found four other vehicles that, based on past use and practices, may have required registration with DMV, but these vehicles did not appear on DMV records and did not have a license plate. In addition, two of the

vehicles registered with DMV did not display a license plate.

In response, OBPA officials explained that they located and installed the license plates on the two vehicles we cited as registered with DMV but not displaying plates. With respect to the other four vehicles, OBPA officials explained that one vehicle is not used on the highway and, therefore, does not need a license plate, and another vehicle does not qualify for a license plate based on information from a DMV office. The latter vehicle is tractor and we have observed that other agencies do register and obtain licenses for these vehicles. OBPA officials provided no explanations for why the remaining two vehicles were not registered with DMV.

Vehicles should not be operated on public highways without registration and license plates. OBPA should ensure that all vehicles that may be operated on public highways are registered with DMV and display license plates. Procedures should require that documentation must support and explain instances where vehicles are not registered with DMV. OBPA should determine and document whether registration is warranted for the two unregistered vehicles that we observed.

We also noted that 21 trucks and cars are not marked with the OBPA logo. All vehicles should display the logo to promote appropriate vehicle use by employees and to facilitate reporting of improper use that may be observed by the public.

Policies and Procedures

Section 2879(1) of the Public Authorities Law requires each public authority board to review and approve their procurement guidelines annually. We did not see any notations in the

Board minutes indicating that OBPA guidelines were formally reviewed and approved from May 2002 through June 2005. The guidelines provided to us were effective January 1990 revised through February 1991. OBPA officials commented that the Board is involved with and has reviewed many policy statements, but their most recent review of the Procurement Guidelines was not recorded in the minutes. We were further advised that the Board was reviewing the Guidelines again.

For procurements over \$5,000, the Guidelines did generally require approval by the Board and obtaining bids. The Guidelines also indicate that the State Office of General Services (OGS) "should be utilized whenever possible as long as product quality, delivery time, quantity, and price are equal or better" than can be obtained locally. It is not clear from the Guidelines whether Board resolution and authorization are required to procure from OGS contracts. OBPA officials explained that procurement of vehicles is included in the annual budget and the budget is approved by the OBPA Board and the Director of the Division of the Budget (DOB). As a result, if the budgeted amount is not exceeded, OBPA staff makes the purchase with no further Board approval. OBPA also noted that the time between DOB approval and the cut off date to order vehicles from OGS for acceptance of model year orders is short making it difficult to obtain Board approval. If the Board has the opportunity to approve the procurements, there may be better assurances that specifications and options selected are within the needs envisioned by the Board when they approved the budget.

Alternative Fuel Vehicles

Executive Order 111 (EO 111), issued June 10, 2001, requires most state agencies and public authorities (including OBPA) to reduce their energy consumption by 35 percent and

to begin to shift their procurement of light duty vehicles by increasing the percentage of vehicles from those using traditional fuels such as gasoline to those using alternative fuels such as electricity, compressed natural gas, 85 percent ethanol etc. Some vehicles can accept both traditional fuel sources and alternative fuel sources. Such hybrid vehicles would fulfill the requirements of EO 111.

EO 111 required that, by 2005, at least 50 percent of new light duty vehicles acquired shall be alternative fuel models with a goal of 100 percent procurement of alternative fuel vehicles by 2010. EO 111 required covered entities to report on compliance and the reasons for non-compliance commencing with procurements of 2005 model year vehicles. (Each entity must also report on efforts to reduce the impact of medium and heavy duty vehicles on the environment through reduced usage or alternative fuels.)

OBPA is not in compliance with EO 111. Five vehicles were purchased since this order went into effect, including two 2005 model year pickup trucks. All of these vehicles use gasoline. OBPA officials indicated that they recall EO 111, but may not have been aware of its specific requirements. They also point out that alternative fuel may not be available in their area and installation of such fuel sources may be costly. Nevertheless, EO 111 requires each entity to file a report and submit reasons for non compliance annually.

Personal Use of OBPA Vehicles

The Internal Revenue Service (IRS) has determined that personal use of an employer-provided vehicle, including its use for commuting, should be considered income to the employee. IRS Publication 15-B provides for three ways to calculate income from the personal use of an employer vehicle as shown below. In addition, IRS regulations require

the employer to have a written use policy in place prohibiting any personal use other than commuting in order to use the commuting rule to determine income associated with the employee's vehicle use.

- Fair market value (based on what the employee would have to pay to lease the same vehicle), allocated between the employer and the employee based on the employee's usage log, plus 5.5 cents per mile if the employer provides the gasoline.
- Cents-per-mile rule (multiplying a standard rate times the miles the vehicle was used for personal use) To qualify for this rule, the vehicle's fair market value when first used by an employee for personal use cannot exceed a maximum of \$14,800 for 2004. The vehicle must be used at least 10,000 miles per year, or have business use as its principal application.
- Commuting rule (multiplying \$1.50 times each one-way commuting trip) To use this rule, the employer must have a written policy forbidding any personal use other than for commuting and de minimus use, and the employee cannot be a "control employee" (either an elected official or an employee earning over \$128,200 in 2004 or \$131,400 in 2005.)

According to the IRS, the amount of income from personal use of an employer provided vehicle can either be added to the employee's W-2 or the employee can pay the employer the calculated amount.

We found OBPA was inconsistent in reporting income attributable to the personal use of its vehicles by its employees. For example, worksheets calculating personal use

of assigned vehicles for both years of our audit scope period were available for the Executive Director and the Deputy Executive Director but not for the Operations Manager. OBPA officials were not sure why this was the case but indicated that it could be that Operations Manager did not file such a worksheet as a basis for reporting to the IRS his personal use of a vehicle because the Manager was in "on-call" status. However, this justification was not documented and being in "on-call" status does not automatically afford an exemption from reporting personal use under the IRS guidelines. We recommend that OBPA document the exclusion for "on-call" use of vehicles and seek an IRS ruling in this matter.

OBPA uses the cents-per-mile method to calculate personal use of its vehicles for IRS reporting requirements. However, OBPA did not maintain the records to demonstrate qualification for use of this rule. We noted that the Executive Director is assigned a passenger car, the original cost of which exceed the maximum for the cents-per-mile rule.

Surplus Vehicles Sales

OBPA officials advised us that they have no written vehicle sales policy, but their practices include surrendering the license plates; listing the asset for sale through a legal notice in the local newspaper and mailing a similar notice to those on a bidders list; conducting a sealed bid for the sale; having the Board approve the sale; and transferring the asset to the successful bidder upon payment.

In 2002, OBPA bid the sale of a used truck. The highest bid was \$25. The Board rejected this bid as too low and required a subsequent sale be held with a minimum bid price of \$500. The sale was held at additional administrative expense, and the vehicle sold

for \$556. In 2003, OBPA set a minimum price that would be acceptable for any vehicle offered for sale. However, for sales of vehicles in 2004, the Board did not establish a minimum sales price. While all sales are subject to approval by the Board, we recommend that OBPA consistently require that a minimum sales price is set for all vehicles. This avoids the cost for and a risk of a second sale because an acceptable price was not obtained in the first sale.

We also noted that OBPA maintained a bidders list for surplus asset sales. In addition, OBPA advised that they sent letters to unsuccessful bidders telling them that they would be added to the bidders list. However, we found that such bidders were not always added to the list used for subsequent year's sales.

Recommendations

1. Ensure that all vehicles that may be operated on public highways are registered with DMV and display license plates.
2. Maintain documentation to support decisions that vehicles do not require registration with DMV. Provide such documentation for the two unregistered vehicles we identified during the audit.
3. Require that all OBPA vehicles display the OBPA logo.
4. Annually review and approve procurement guidelines and make sure that Board minutes reflect this action.
5. Seek Board resolution and authorization to use OGS contracts to procure the specific vehicles already reflected in the Board-approved budget unless OGS

contracts cannot meet the vehicle requirements.

6. Develop a plan for ensuring compliance with EO 111 and report such compliance annually as required.
7. Document the justification that "on-call" status is excluded from the personal use reporting requirements and seek an IRS opinion to support this view.
8. Maintain documentation needed to support the use of cents-per-mile rule and comply with the requirements of the rule.
9. Prepare written policies to cover vehicle sales.
10. Require that a minimum sales price is set for all vehicles that are to be bid for sale.
11. Update the bidders' list to include unsuccessful bidders from previous sales.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. Our audit covered the period May 1, 2002 through the conclusion of our audit field work on July 7, 2005. To accomplish our objectives, we compared OBPA's vehicle inventory and associated license plates to Department of Motor Vehicle (DMV) records; confirmed the existence of vehicles; reviewed surplus asset sales; verified compliance with procurement guidelines, including Executive Order 111 pertaining to acquisition of alternative fuel vehicles; and tested for the proper reporting of personal use of OBPA vehicles in accordance with income tax reporting requirements. This audit is one in a series of audits regarding public authority vehicles.

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

This audit was performed according to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to OBPA officials for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix A. OBPA officials generally agreed with our recommendations.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Ogdensburg Bridge and Port Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO REPORT

Major contributors to this report were Carmen Maldonado, Robert Mehrhoff, Santo Rendon, and Joseph F. Smith.



Ogdensburg Bridge & Port Authority

March 22, 2007

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

Dear Ms. Maldonado:

The Ogdensburg Bridge and Port Authority is pleased to provide the following response to the Office of the State Comptroller's draft audit report regarding Authority compliance with the procurement, use and disposition of Authority vehicles. The Authority understands that this response will be included as an appendix to the final issued draft report.

The Authority appreciates the opportunity to respond in writing and the following response is categorized based upon the topics specified in the draft report's Audit Findings and Recommendations.

Vehicle Accountability

The four Authority vehicles noted in the audit possibly requiring Department of Motor Vehicle (DMV) registration, but not appearing on DMV records and not possessing license plates are as follows:

- John Deere Front End Loader
- Toyota Fork Lift
- New Holland Tractor
- Jacobson Mower

Upon your recommendation, the front end loader was registered with the DMV and license plates were obtained and displayed. During efforts to register and license the New Holland tractor, the Authority was informed by DMV officials that the tractor is not a vehicle

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type authorized to be licensed. The Toyota fork lift has been out of service for the past fifteen years, is not made for travel on public roads, and has not left the Port premises since the time of its acquisition. As there is no intention of putting the fork lift back into service, the Authority has not attempted to register this vehicle. However, the Authority will properly register and license this vehicle prior to it being put back into use. Contact with DMV officials regarding the Jacobson mower ended with the same results as mentioned earlier regarding the New Holland tractor. The Authority will make another attempt at registering the Jacobson mower as this vehicle does travel between Authority sites.

The two vehicles noted in the audit as being registered with the DMV but not displaying license plates are as follows.

- Highlander Boat Trailer
- Hyster Fork Lift

Upon your findings, Authority employees located license plates registered to these two vehicles and the plates have been displayed upon both vehicles. However, the boat trailer is out of service and the fork lift does not travel on public roads.

To comply with your audit recommendation to promote appropriate vehicle use, the Authority will display a logo on all vehicles.

Policies and Procedures

It is now Authority practice to have the Board approve Authority Procurement Guidelines on an annual basis. Procurement Guidelines were last approved during the May 2006 regular Board meeting.

The Authority will now require a formal Board resolution for the purchase of vehicles. Prior practice of deeming budget approval as proper authorization will no longer be followed.

Alternative Fuel Vehicles

In accordance with the federal Energy Policy Act, the Authority files an annual compliance report with the New York State Office of General Services. Pursuant to the Energy Policy Act, the Authority is exempt from alternative fuel vehicle purchasing compliance as its fleet of Light Duty Vehicles is less than fifty (50).

As such, the Authority mistakenly believed that they were also exempt from Executive Order 111 vehicle purchasing requirements. With proper clarification provided by the OSC

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during the vehicle audit process, the Authority is now aware of their responsibilities under Executive Order 111 and all future vehicle purchases will be made in compliance with the order.

Personal Use of OBPA Vehicles

Per your recommendation, the Authority now requires all employees assigned vehicles to report their personal use miles. In addition, the Authority has discontinued using the cents-per-mile method for reporting taxable income attributable to personal use miles and is now using the appropriate lease value method.

Surplus Vehicle Sales

In an effort to reduce administrative costs, the Authority will now establish minimum acceptable bid prices on all vehicle and equipment surplus sale items in accordance with your audit recommendation. Furthermore, the Authority's surplus sale policies will be established into a written policy for clarification.

The Ogdensburg Bridge and Port Authority appreciates the professional and cooperative nature extended by the Office of the State Comptroller while performing this audit.

Very truly yours,



Mark T. Mashaw, CPA
Chief Financial Officer

MTM/pb

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