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OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

NEW YORK STATE CANAL CORPORATION

BOARD GOVERNANCE AND CONTROLS OVER SELECTED FINANCIAL PRACTICES

Report 2005-S-66

AUDIT OBJECTIVES

Our objectives were to determine whether (1) the Board of Directors for the New York State Canal Corporation (Corporation) has defined and carried out its duties and responsibilities in accordance with applicable requirements and best practices; (2) the Corporation has established adequate internal controls over procurement and contracting practices; and (3) the Corporation has effectively managed its canal-side community revitalization projects.

AUDIT RESULTS - SUMMARY

The Corporation is governed by a three-member Board of Directors (the same Board that governs the Thruway Authority). Such boards of directors are expected to adhere to certain Model Governance Principles (Principles), which were issued by the Governor's Office in February 2004. We found the Corporation's Board of Directors (Board) successfully implemented some of the Principles, but did not fully implement others. In particular, we identified an improvement to the process that the Board relied on to oversee the Corporation's awarding of construction contracts. We also found that a number of questionable travel reimbursements were paid to one Board member, and determined that the State cars provided to two Board members may be contrary to the State law prohibiting compensation for board members. Subsequent to our audit the number of Board members increased from three to seven. There is also an Executive Director who is responsible for the day-to-day operations.

We examined selected Corporation contracts and purchases and found that they generally complied with the policies and procedures established by the Corporation. We also found that the Corporation had recently strengthened controls over its property leases (the Corporation leases canal-side property to municipalities and private businesses). However, we noted that controls over these leases would be further strengthened if certain additional actions were taken.

At the time of our audit, the Corporation had expended about $36 million on various community revitalization projects along the Canal System. For example, seven harbors had been built, various waterfront improvements had been made, and portions of the planned 500-mile long Canalway Trail had been constructed. We found that, because of weaknesses in the Corporation's project management system and management reporting practices, individual revitalization projects are not as closely overseen as they should be. We also noted that work on the Canalway Trail was $17 million, or about 49 percent, over budget and at least two years behind schedule.

Our report contains 12 recommendations for improvement. Corporation officials agreed with some of the recommendations, but disagreed with others.

This report, dated January 27, 2008, 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
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Division of State Government Accountability
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BACKGROUND

The New York State Canal Corporation (Corporation), a subsidiary of the New York State Thruway Authority (Thruway Authority) was created in 1992 under Article 2, Title 9, Section 382, of the Public Authorities Law. The Corporation was created to operate and maintain the 524-mile-long New York State Canal System (Canal System), which includes the Erie, Champlain, Oswego, and Cayuga-Seneca Canals; and links the Hudson River with Lake Champlain, Lake Ontario, the Finger Lakes, the Niagara River, and Lake Erie. The Corporation also engages in community revitalization projects along the Canal System, either on its own or in partnership with private, government, and not-for-profit entities. Prior to the Corporation's creation, the Canal System was operated and maintained by the New York State Department of Transportation.

The New York State Canal System is used for recreational (e.g., boating and fishing) and commercial (e.g., shipping and tour boats) purposes. To help revitalize the Canal System and its surrounding communities, in 1992, the State Legislature created the Canal Recreationway Commission (Commission) to advise the Corporation on matters relating to economic revitalization and, in particular, to develop a revitalization plan. The Commission has 24 members representing various governmental, commercial, recreational, environmental, and other interests (such as tourism). The members are to be selected from certain State agencies and public authorities, and from counties and regional planning commissions adjacent to or intersected by the Canal System.

In August 1995, the Commission adopted the Canal Recreationway Plan (Plan). The Plan provides the criteria and framework for the development of the Canal System into a recreationway system and establishes the goals and objectives for increasing the Canal's recreational use, promoting its historic heritage, and enhancing its economic development potential. The Plan's goals include (1) preserving the best of the past, (2) enhancing recreational opportunities, and (3) fostering appropriate and sustainable economic development.

The Plan recommended the construction of seven harbors at gateways and key destinations along the Canal System. In addition, to improve canal frontage at lock sites and municipalities along the Canal System, the Plan proposed 96 service port and lock projects of varying complexity. The Plan also proposed the creation of a continuous 500-mile trail spanning the entire length of the Canal System. The Plan recommended that these improvements be funded and overseen by the Corporation and various partners such as private entities, not-for-profit organizations, State agencies, local governments, and the Federal government. The Plan did not specify locations for the recommended projects, but did provide a listing of possible sites.

In September 1995, the Corporation's Board of Directors (Board) adopted the Plan with the stipulation that a detailed schedule of costs, funding sources, and phases be prepared for the Plan's proposals prior to their implementation. In September 1996, New York State formally supported the Corporation's revitalization efforts, as the Governor announced a five-year $32.3-million Canal Revitalization Program (Revitalization I) that included several of the projects recommended by the Plan.

For example, Revitalization I called for the construction of seven harbors at Whitehall, Waterford, Seneca Falls, Oswego, Rochester, Tonawanda, and Little Falls. Revitalization I

also included some of the recommended service port and lock projects, and initiated work on the Canalway Trail. In addition, Revitalization I included provisions for marketing the new facilities. Revitalization I did not specify any funding sources for the projects. The Corporation expended about $20.3 million, using its own funds and Thruway Authority funds. The amounts expended by the Corporation's partners were not tracked by the Corporation.

In May 2002, the Governor announced a second five-year Canal Revitalization Program (Revitalization II). Revitalization II included more of the projects recommended by the Plan, some of which had been included in Revitalization I but were not initiated under that program. Under Revitalization II, the Corporation was to receive $25 million in Federal funds and use $25 million of its own or the Thruway Authority's funds (it was also expected that additional unspecified funding would be provided by participating partners). Almost all of the State and Federal funding was to be spent on the Canalway Trail and waterfront enhancements at harbors and ports. The enhancements were to include improvements such as the rehabilitation of canal walls, the construction of visitor information kiosks, and the provision of boater amenities such as potable water and electricity. As of November 30, 2005, the Corporation had reportedly spent about $15.4 million on Revitalization II projects.

The Corporation obtains its funds from leases on property that it owns along the Canal System, as well as permits, easements, sales, grants and other funds from the Thruway Authority; while the Thruway Authority obtains its funds from Thruway tolls, bonds, and investments. Most of the $20.3 million spent by the Corporation on Revitalization I projects came from the Thruway Authority. The Thruway Authority is specifically authorized by State law to use its funds for projects that benefit the Canal System.

As of December 2006, the Corporation had a total staff of 522 permanent employees and 47 seasonal employees. Its annual budget for 2006 was $80.1 million. Construction-related contracts are a significant cost for the Corporation. For example, in 2005, such contracts accounted for $36.1 million of the Corporation's total budget.

As is required by the Public Authorities Law, the Thruway Authority's three-member Board of Directors also serves as the Corporation's Board. The three Board members, who are nominated by the Governor and approved by the State Legislature, serve for nine-year terms. The Corporation's Board is required by its enabling legislation to meet at least quarterly, and a majority of the members constitute a quorum. As a result of changes to the Public Authorities Law in 2006, the number of seats on the Corporation's Board increased to seven beginning in 2007. The Board delegates day-to-day operations to an Executive Director.

On February 19, 2004, the Governor's Office, on behalf of the Public Authority Governance Advisory Committee, provided all State public authorities with a set of Model Governance Principles (Principles) to help improve their oversight, accountability, and transparency. It was expected that the Principles would be adopted by each public authority's board of directors. In December 2004, the Board amended the Corporation's by-laws in an effort to conform to the Principles.

AUDIT FINDINGS AND RECOMMENDATIONS

Board Governance

There are a total of 27 Principles and they are organized in the following 7 topical areas: (1) board training; (2) separating oversight and executive functions; (3) establishing a coordinated committee structure; (4) renewed focus on governance and ethics; (5) renewed focus on audits and accountability; (6) strengthening internal controls; and (7) transparency and disclosure. Public authorities were directed to develop an action plan for implementing the Principles as quickly as practical.

We found that the Board successfully implemented some of the Principles. However, we also identified areas in which the Principles were not always followed. We recommend specific actions to strengthen compliance with these Principles.

Board Approval of Contracts

According to the Corporation's procurement and contract guidelines, contracts for goods and services must be approved by the Board if they exceed $150,000, unless the contracts are construction-related. For construction-related contracts, the Board is to approve an annual contract-letting program. The program is to list the various construction projects that are to be started in the upcoming year and include budgeted amounts for each project. The amounts are to be budgeted by Corporation engineers. Once the program has been approved, the Corporation's Chief Engineer is authorized to solicit bids and award contracts for each project listed on the program, unless a contract exceeds the engineer's estimated amount by 20 percent. In such instances, the contract must be approved by the Board before it can be awarded.

We found that the Board complies with its established procurement and contract guidelines. The Board approves all contracts in excess of $150,000 relating to the Corporation's day-to-day operational needs, such as contracts for inspection services, marketing services, and maintenance services. The Board also approves an annual contract-letting program for construction projects and any individual construction contracts that exceed the original engineer's estimate by 20 percent. We noted that the documentation provided to the Board for the contract-letting program includes construction costs as a range (e.g., $10 million - $19.999 million). However, it does not include the engineer's estimates. We believe the engineer's estimate also needs to be provided so that the Board can determine whether construction contracts exceed estimates by 20 percent and, therefore, require Board review and approval.

We note that these construction-related contracts represent the Corporation's single largest expense of all Corporation expenditures. We further note that it is not unusual for individual construction contracts to exceed $1 million. For example, during our audit period, we identified that, in November 2004, a $2.4-million construction contract was let by the Corporation. The contract was not reviewed and approved by the Board; however, it should have been, because it exceeded the engineer's estimate by 35.7 percent.

Board Compensation and Travel Reimbursements

Article 2, Title 9, Section 382.4, of the Public Authorities Law states that Board members shall serve without salary or other compensation, but shall be entitled to actual and necessary expenses incurred in the performance of their duties. The three Board members also serve as the Thruway

Authority's Board of Directors, and in this capacity, they are subject to the same restrictions on salary and other compensation.

Two of the three Board members have been provided vehicles. Board members use the vehicles to drive to Board meetings or perform other Board duties; they are not reimbursed for the miles driven. However, the two Board members are also allowed to use the vehicles for their unrestricted personal use. The Corporation reports the personal use of the vehicles to Federal and State tax agencies, disclosing that the personal vehicle use is a form of compensation. Since the Public Authorities Law prohibits any type of compensation for Board members, their personal use of the two vehicles is inappropriate and should be discontinued.

One of the two Board members assigned a vehicle does not always use the vehicle to attend Board meetings. Instead, he sometimes flies from his home 198 miles to attend the meetings, which are held in Albany. According to the Corporation's travel guidelines, all air travel should be approved in advance and the reason for using that form of travel rather than a less costly form of travel (such as an assigned vehicle) should be documented. However, we found that neither prior approval nor the reason for the air travel was documented in these instances.

We also determined that, on one occasion, airfare was paid ($888) for a Board member to travel from Arizona to attend a scheduled Board meeting in New York City and, on another occasion, airfare ($692) was paid for this Board member to travel from Rochester to Albany for a Board meeting and then to Florida. In neither instance was prior approval or the need for the air travel documented.

In addition, this Board member inappropriately claimed reimbursement (and was paid) for air travel that did not occur. The Board member claimed reimbursement for air fare to fly from his New York State residence to a scheduled Board meeting in Albany. However, he actually traveled to Albany by train at a much lower cost.

When this Board member attends Board meetings in Albany, he stays at a hotel and is entitled to reimbursement for the hotel. According to the Corporation's travel guidelines, hotel reimbursements cannot exceed certain maximum amounts, which vary by location, unless the reason for the additional amount is documented and approved. We found that the Board member's hotel charges routinely exceeded the maximum allowable amount and the reasons for the higher charges were not documented. Nonetheless, the charges were paid in full. During the period January 2001 to December 2002, the excess charges totaled $502.

Overpayments for the period January 2003 to November 2005 were recovered as a result of an internal review prior to our audit. We identified an additional $2,252 in excess hotel and air fare reimbursements paid to the Board member. We recommend that these reimbursements be recovered. We further recommend that Board member's travel reimbursement claims be examined more closely before they are paid.

In response to our preliminary audit findings, Corporation officials stated that they had already identified and addressed the travel reimbursement issues. They stated that the Board member in question has not requested travel reimbursements for attending Board meetings since November 2004. They also note that this individual is entitled to the reimbursement of actual and necessary

expenses to fulfill his responsibilities on behalf of the Corporation. We agree, but note that the need for such expenses must be adequately documented, especially when the expenses are unusually high or are incurred in unusual circumstances.

Corporation officials also believe the issue of the two Board members' personal use of State vehicles should not be addressed in this audit report because it will be addressed in another statewide audit report (Report 2006-S-119 NYSTA: *Vehicle Acquisition, Use and Disposition)*. We believe it is appropriate to address the issue in both reports because each addresses the personal use of State vehicles in a different way.

Board Member Training

The Principles state that all board members should receive training on their legal, fiduciary, and ethical responsibilities as directors of public authorities. State-sponsored training in these areas was provided in December 2005. However, only one of the three Board members (the Chairman) attended the training. Corporation officials told us the two other members could not attend because of scheduling conflicts. The officials indicated that they agree with the need for the training and stated that all Board members will receive the training, including the four new members who will be added when the total number of Board seats is increased to seven.

Internet Posting of Board Meeting Minutes

Board meetings are open to the public and are announced in the local newspaper. Meeting minutes are prepared for each meeting. However, the Corporation did not post its Board meeting minutes or meeting announcements on its Internet website. Such an action would improve public accountability and transparency. Corporation officials agreed with our recommendation and, subsequent to our audit, Board meeting minutes and meeting announcements were posted on the Corporation's website.

Recommendations

1. Expand the information in the contract-letting program, submitted to the Board to include the engineer's estimate for the project.

   (Corporation officials state that broad cost estimates are necessary for proposed construction projects in the early stages of design; engineer's estimates are prepared when more precise construction projects are ready to be bid. They add that, nonetheless, the Board receives full and complete information to support the summary capital program submitted for approval and the Board is made aware of contract-letting results.)

   Auditor's Comment: We understand that the engineer's estimate may not be available for inclusion in the contract letting program and that other estimates may be necessary. Nevertheless, when such engineer's estimates become available, these should be provided to the Board so that it can determine if the 20 percent rule has been properly applied when awarding a construction contract. In line with this, Recommendation 1 states "Expand" the information provided to the Board.

2. Take the following actions in regard to travel-related matters:

   - Instruct Board members to use their assigned vehicles for official business only.

- Ensure that the reasons for air travel are documented and prior approval for such travel is obtained.

- Do not reimburse travelers for more than the maximum allowable hotel reimbursement amounts unless the reason for the excess amount is documented and required to secure lodging.

- Recover the $2,252 in excess travel reimbursements unless the Corporation documents its basis and approval for exceeding maximum travel amounts.

(Corporation officials state that vehicle policy has been revised and controls over Board travel continue to be reviewed. However, they do not agree there is a need to recover the excess travel reimbursements because they conclude Board members are entitled to reimbursement to attend Board meetings regardless of where they are traveling from and they conclude that it is neither reasonable nor justified to recover any additional travel expenses from the former Board member.)

Auditor's Comment: The Corporation's travel policy (TA-52341) requires pre-approval for requests exceeding $500, requests involving air fare, or requests exceeding rates in excess of the Federal per diem rates. Contemporaneous documentation supporting such approval was not available for the expenses we questioned.

3. Provide governance training to all Board members.

   (Corporation officials replied they have taken action to implement this recommendation.)

4. Continue to publish Board meeting minutes and meeting announcements on the Corporation's Internet website.

   (Corporation officials replied that in addition to posting Board meetings and minutes they are also web-casting the minutes.)

Contracting Practices

The Corporation has a long-standing procurement process that is shared with the Thruway Authority. The process allows Corporation management to purchase goods and services in accordance with overall budget authorizations. The process has a well-defined set of policies and procedures and a feature that is unique among State public authorities: certain contracts and purchases that exceed specified dollar amounts are submitted to the Office of the State Comptroller (OSC) for review and approval. State agencies are required by Section 112 of the State Finance Law to submit such contracts and purchases for OSC approval, but the Corporation, along with the Thruway Authority, voluntarily makes these submissions.

We examined selected Corporation contracts and purchases and found that they complied with the policies and procedures established by the Corporation. We also determined that the Corporation has implemented a well-designed credit card procurement process that is highly structured and has strong control features to ensure appropriate use of credit card purchases.

However, improvements are needed in an important Corporation contracting activity: revenue leasing. The Corporation owns land adjacent to the Canal System and in other locations across upstate New York. The Corporation leases some of its land holdings

to municipalities and private-sector firms and, in return, receives cash payments or services-in-kind. The leases permit Corporation property to be used for both recreational (e.g., marinas, parks, and boat launches) and commercial (e.g., hydroelectric power generation) purposes. The leases generally cover a multi-year period, with one or more renewal options. During our audit period, the Corporation had 16 such leases and earned at least $250,000 a year in revenue from the leases.

To determine whether revenue leases are adequately controlled by the Corporation, we selected for detailed examination 5 of the 16 revenue leases that were active during our audit period. We selected our sample judgmentally, focusing on annual revenue, length of lease, and purpose. We selected the following five leases:

Lessee	Purpose	Lease Amount
City of Rochester	Economic Development	$150,000 per year plus 10% of certain fees
Rochester Gas and Electric Company	Operation of Hydroelectric Plant	$53,000 per year
Village of Montour Falls	Marina and Recreation Area	$48,059 per year
Village of Waterloo	Recreational Park	$1 per year plus 10% of gross sales
Genesee Waterways Center	Operation of Whitewater Course	$10,000 per year

According to the Corporation's procedures titled "Procedure for Leasing Canal Land," issued in January 1997 and revised in October 2001, before any Corporation property is leased, it should be appraised, both internally and externally, to determine its value. Such appraisals help Corporation officials negotiate fair lease payments for the property. However, we found that such appraisals were performed for only two of the five leases in our sample. We recommend action be taken by the Corporation to ensure that such appraisals are performed.

(In response to our draft report, Corporation officials stated that they established policy and procedures in 2004 that require the use of appraisals to assist in the valuation of contributions in property transactions.)

Auditor's Comment: The leases reviewed for the audit predate the 2004 requirement for appraisals.

In the agreement with Rochester Gas and Electric, the Corporation allows the utility to operate a hydroelectric plant at a dam owned by the Corporation. Under the ten-year lease, which began in 1998 and has three ten-year renewal periods, the Corporation and the utility are to share in the cost of automating the dam/hydroelectric plant. In addition, the utility is to pay the Corporation an annual rent over the life of the agreement and provide electricity to the Corporation free of charge over the initial ten-year lease period. The annual rent, which is set at $53,000 for the initial ten-year period and at $47,687 for the first ten-year renewal period, is not specified for the next two ten-year renewal periods. As a result, the interests of the Corporation may not have been adequately protected.

Corporation officials advised us that revenue agreements entered into after June 2004, in excess of $10,000 per annum, are required to be submitted to OSC pursuant to Corporation policy as amended. Our review of the Board minutes identified four resolutions for the sale or lease of Canal property that appeared to require submission to and approval by OSC. We found two were approved by OSC. The

other two had not been submitted to OSC for review and approval.

(In response to the draft report, Corporation officials indicated that one of the resolutions was a sale below the threshold necessary to be sent to OSC. They responded that the other will be submitted when it is finalized.)

Auditor's Comment: Corporation officials did not provide documentation supporting that one resolution was below the dollar threshold requiring OSC approval.

Recommendations

5. Ensure appraisals are performed for Corporation property before leases are negotiated for the property.

   (Corporation officials responded to the draft report that they had made changes to improve their land management practices before the audit and that the deficiencies occurred before the Corporation adopted the new practices.)

6. Prepare and maintain a list of leases for which a resolution has been approved by the Board that includes the status in terms of OSC review and approval.

   (Corporation officials did not respond to this recommendation.)

Community Revitalization Projects

We found that improvements are needed in the Corporation's oversight of individual revitalization projects. Activities not funded by the Corporation are not monitored by the Corporation, and funded activities are not monitored as closely as they should be because of weaknesses in both the Corporation's project management system and its management reporting practices. If construction projects are not monitored closely, they are less likely to be completed on time and within budget. At the time of our audit, work on the major part of Revitalization II (the Canalway Trail) was $17 million, or about 49 percent, over budget and at least two years behind schedule.

We recommend that the Corporation develop an appropriate project management system and keep the Board adequately informed about the progress and cost of individual revitalization projects. We also recommend the Corporation be regularly informed about the progress and cost of revitalization activities funded by other entities. We also recommend certain improvements in Corporation efforts to market the facilities constructed in its revitalization programs.

Project Oversight

Under Revitalization I and II, seven harbors were to be constructed along the Canal System; various port, lock, and waterfront enhancements were to be made; a major portion of the Canalway Trail (the 348-mile-long Erie Canalway Trail) was to be completed; and the new facilities were to be marketed to the public.

Revitalization I was budgeted for $32.3 million, as follows:

- $14.9 million for the development of the seven harbors;
- $6.1 million for service port and lock projects;
- $8.4 million for trail development; and
- $2.9 million for marketing efforts.

Revitalization II was budgeted for $50.0 million, as follows:

- $35 million for the completion of the Erie Canalway Trail;
- $14.4 million for waterfront enhancements at harbors and ports; and
- $600,000 for canal rowing access facilities.

Various individual projects were planned within each of the budgeted areas (except for marketing). For example, nine individual service port and lock projects, at nine different locations, were planned in Revitalization I; and six individual waterfront enhancement projects, at six different locations, were planned in Revitalization II. Similarly, 10 individual trail projects, covering 73 miles of the Erie Canalway Trail, were planned in Revitalization I; and 20 individual trail projects, covering the remaining 275 miles of the Erie Canalway Trail, were planned in Revitalization II.

To determine whether the Corporation had effectively managed the projects planned for the Revitalization I program and was effectively managing the projects planned for the ongoing Revitalization II program, we reviewed the Corporation's automated project management system and various other files, records, and reports relating to the projects.

In an effective project management system, project managers monitor the cost and progress of individual projects on an ongoing basis, comparing actual expenditures-to-date to budgeted expenditures and comparing actual completion dates to expected completion dates for important project milestones. In addition, reports summarizing this information are regularly transmitted to executive management so that appropriate management decisions can be made.

We found that improvements are needed in the Corporation's project management system. While the reports produced by the automated system enable project managers to compare actual completion dates with expected completion dates, they do not enable the managers to readily compare actual expenditures with budgeted expenditures for individual projects. Budgeted amounts are shown only for broad categories of projects (e.g., $14.9 million for the seven harbors in Revitalization I). In addition, the cost shown for the individual projects in each category is the sum of the actual expenditures-to-date and the budgeted remaining expenditures. As a result, it is not readily apparent how actual costs compare with original budgeted amounts.

As a result of these weaknesses in the Corporation's project management system, it is difficult to monitor individual projects as closely as they should be. When we reviewed the information that was provided to Board members to keep them informed about individual projects, we found the same weakness: actual costs were not compared with budgeted costs on a project-by-project basis. The only cost shown for individual projects was the sum of the actual expenditures-to-date and the budgeted remaining expenditures. We also noted that the estimated completion date for each project was not routinely provided to the Board, even though that information was readily available.

We recommend the Corporation's project management system compare actual expenditures-to-date with budgeted expenditures for each individual project. We further recommend that this information, along with the information comparing actual with expected completion dates, be regularly reported to the Board.

As was previously noted, some of the individual projects in Revitalization I and II were to be wholly or partly funded by local governments, not-for-profit entities or private businesses. For example, the service port and lock projects and some of the harbor projects included in Revitalization I were partly funded by the municipalities receiving the improvements. The municipalities oversaw the actual construction and billed the Corporation for its share of the work, which the Corporation verified against detailed project invoices.

While the costs incurred by the Corporation on these projects are included in the revitalization program information maintained by the Corporation, the costs incurred by the municipalities (and other partners) are not. Similarly, information about the status of ongoing projects overseen by such partners is not maintained by the Corporation. As a result, the revitalization program information maintained by the Corporation is not complete and, consequently, there is no single, authoritative source of information in the State about the cost and status of the projects in the Revitalization I and II programs.

Corporation officials told us they believe they are not responsible for revitalization activities funded by others and do not have the staff or funding to do so. Consequently, they have not tracked either the progress or the costs associated with these activities. While we would not expect the Corporation to monitor these activities as closely as its own activities, we question whether public accountability is adequate when the Corporation does not maintain complete information about the projects that were prompted by the Canal Recreationway Commission's revitalization plan for the Canal System. We recommend the Corporation maintain such information.

In the Revitalization I and Revitalization II programs, significant commitments were made to community revitalization in the areas along the Canal System. We found that many of these commitments have been met. As is shown in Exhibit A, as of November 30, 2005, the Corporation had expended a total of $20.3 million on the 20 projects and relating marketing activities included in Revitalization I (certain other projects were originally included in Revitalization I, but were deferred until Revitalization II).

In addition, as is shown in Exhibit B, as of November 30, 2005, the Corporation had expended a total of $16 million on 12 of the 29 projects included in Revitalization II, 9 of which were completed and 3 of which were in progress, and planned to award contracts for the remaining 17 projects by the end of 2007.

Most ($35 million) of the $50 million Revitalization II program is dedicated to 20 trail projects that will enable the 348-mile-long Erie Canalway Trail to be completed. We examined the Corporation's management of these projects and found that, according to records maintained by the Corporation, as of November 30, 2005, the expected cost of these 20 projects had increased by about 49 percent from $35 million to $52 million, an amount that exceeded the entire budget for Revitalization II. The Corporation had spent a total of $15.4 million on 9 of the projects, had completed 6 of the projects, and expected to spend another $36.6 million in completing the remaining 14 projects. In addition, in a report issued in December 2005, Corporation officials indicated that 11 of the projects, which had yet to be initiated, were not expected to be completed until 2009, two years later than planned.

The trails consist mainly of asphalt or stone dust material, and in some locations, bridges to keep the trails continuous along the

corridor. There are also parking areas, landscaping, fencing, and interpretive kiosks. According to Corporation officials, the estimated $17 million cost overrun was caused by several factors including higher-than-expected trail construction costs, unanticipated increases in petroleum and steel costs, and increased complexities that were identified during the more-detailed design phase of the projects. The officials stated that the original trail construction estimates of $65,000 per mile for stone dust surface trails and $100,000 per mile for asphalt surface trails were based on prices in effect in 2000. By 2006, the estimates for these types of trails had increased significantly to $125,000 per mile for stone dust surface trails and $200,000 per mile for asphalt surface trails.

We note that three of the trail projects were originally included in Revitalization I, but were deferred until Revitalization II. Because of this delay, the cost of the three projects increased. For example, in Revitalization I, the projects were estimated to cost $5.2 million; however, in Revitalization II, the projects were estimated to cost $6.6 million (an increase of nearly 27 percent), and the actual cost of construction will probably be even higher. Further such delays in the remaining trail projects could result in comparable cost escalations. It is therefore critical for the Corporation to ensure that the remaining trail projects are completed as expeditiously as possible.

(In response to our draft report, Corporation officials indicated they depended on federal funds to finance part of Revitalization I, but they were insufficient to complete all of the proposed projects.)

As part of our examination of the Corporation's management of the trail projects, we judgmentally selected two of the six completed trail projects from Revitalization II for detailed review: the Adams Basin to Albion trail project, which was completed at a cost of $2 million; and the Canajoharie to Fort Hunter trail project, which was completed at a cost of $3.1 million. First, we reviewed the Corporation's design and construction files for the two projects to determine whether the design and construction processes were adequately documented. We found that the processes were adequately documented, as the files contained both proposed and actual completion dates, contract letting dates, information relating to project extensions, and engineer estimates.

The records in the files indicated that the Adams Basin to Albion Trail was completed one month after the proposed completion date, while the Canajoharie to Fort Hunter trail was completed about two months after the proposed completion date. For both projects, the final cost was within 1 percent of budget. We also visited two completed segments of the Canalway Trail: Fort Plain to Canajoharie, and Canajoharie to Fort Hunter. We found both trail segments consisted of well-maintained paved trails with wooden fencing. We also observed an informational kiosk, benches, and a bike rack at the start of the Fort Plain to Canajoharie segment. Both trail segments were clearly marked and in good condition at the time of our visits.

Marketing Activities

In Revitalization I, a total of $2.9 million was budgeted for marketing activities, and Corporation records indicate that this amount was expended on marketing activities. According to the records, the funds were used to hire advertising agencies; design print advertisements; place articles in boating, sporting, travel and other magazines; and send representatives to various boating shows.

These marketing activities were consistent with the traditional marketing activities recommended by the Canal Recreationway Commission in its 1995 Plan. However, the Plan also recommended certain cross-promotional activities that could be undertaken in association with the Corporation's parent organization, the Thruway Authority. Since the New York State Thruway runs parallel to the Erie Canal, its travel plazas could be used to promote the Canal System to the motorists who stop at the plazas.

The Plan identified both short- and long-term opportunities for cross-promotion. In the short term, the Corporation could provide promotional literature at all toll plazas and educate toll operators about the Canal System so that they could direct potential visitors to its recreational areas. In the long term, the Plan recommended that the Corporation set up informational kiosks at the travel plazas with calendars of events, brochures, and continuous-loop videos at key plazas.

To determine whether any of these cross-promotional activities had been implemented, we visited a total of five randomly-selected travel plazas (for two we made two visits) and observed signage along the Thruway. During our visits to the travel plazas in January 2006, we found no evidence of marketing or promotional materials at any of the plazas. During subsequent visits in March 2006, we found that two plazas had begun to stock marketing and promotional materials, including boater resource pamphlets and trails pamphlets. However, neither plaza had informational kiosks, Canal System wall maps, or promotional videos.

Our observations of Thruway signage were made when we traveled between Albany and Syracuse, both east and westbound. We observed only two signs promoting the Canal System or directing travelers to the Erie Canal.

We also reviewed the Corporation's Internet website to determine whether the site was being used for marketing purposes. We found that the Corporation's website has links to the New York State Office of Parks, Recreation and Historic Preservation website, the State's "I Love NY" promotional website, and other websites promoting Canal System activities.

Corporation officials responded that signage along interstate highways is regulated by the State and the Federal governments, and it is difficult to add attractions to signs because there are limits on sign size and signs are generally limited to interchanges.

Recommendations

7. Modify the Corporation's project management system so that it compares actual expenditures-to-date to budgeted expenditures for each individual revitalization project.

   (Corporation officials' reply to our draft report suggests that the audit confuses the Governor's program announcements with the development of project budgets and preliminary schedules that eventually lead to contract-letting and the identification of completion dates. They otherwise do not comment on this recommendation.)

   Auditor's Comments: The Corporation's project management system does not allow management to track each canal project through its life-cycle with continual comparisons of actual expenses to original budget costs and remaining estimated costs for completion.

8. Provide the Board with regular information comparing actual expenditures with budgeted expenditures,

and actual completion dates with expected completion dates, for each individual revitalization project.

(Corporation officials state that the Board approves the annual contract-letting program and has delegated to executive management the responsibility to manage the program. They add that the Corporation provides quarterly updates on the progress of the contracts program.)

Auditor's Comments: Beyond quarterly reports on the contracts program, the Board should be informed with budget and cost information at the project level.

9. Maintain information about the progress and cost of all canal-related revitalization activities prompted by the Canal Recreationway Commission's revitalization plan for the Canal System, including activities that are funded by other entities.

   (Corporation officials agree with the goal to track revitalization efforts but state that they do not have the staff, funding or legal ability to comprehensively monitor each project.)

   Auditor's Comment: Corporation officials need to formulate a strategy for addressing these barriers.

10. Ensure that the remaining trail projects are completed as expeditiously as possible.

    (Corporation officials agree, but state that available funding and competing priorities dictate the schedule for Canalway Trail completion.)

11. Utilize Thruway travel plazas more effectively as areas to promote activities and events along the Canal System.

    (In response to our audit findings, Corporation officials noted they have performed cross-promotional activities by providing service area operations with Canal marketing materials for distribution and display for approximately the past ten years. They further stated that informational kiosks are installed at service area plazas that provide some information about the Canal. The Authority and Corporation will continue to seek ways to promote the Canal wherever feasible and practical.)

12. Install signage along the New York State Thruway directing travelers to Canal System locations to the extent allowed by State and Federal interstate signage regulations.

    (Corporation officials replied that they comply with the recommendation consistent with regulations.)

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. We audited selected Board governance and Corporation financial management practices for the period January 1, 2001 through March 31, 2006. To accomplish our objectives, we interviewed Corporation management and staff. We also reviewed relevant laws and regulations, the Model Governance Principles, and the Corporation's by-laws, policies, procedures, and Internet website. In addition, we reviewed certain documents maintained by the Corporation, such as contracts, reports, strategic plans, implementation plans, financial records, training materials developed for Board members, and the Corporation's action plan for implementing the Model Governance Principles. We also reviewed Board meeting minutes and observed selected Board meetings.

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. 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 functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5, of the State Constitution.

REPORTING REQUIREMENTS

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

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the New York State Canal Corporation 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 THE REPORT

Major contributors to this report include Carmen Maldonado, Gerald Tysiak, Roger C. Mazula, Deb Spaulding, Kathleen Garceau, Peter Pagliaro, and Dana Newhouse.

Exhibit A

New York State Canal Corporation Projects Included in the 1996 Revitalization I Program As of November 30, 2005		
Project Name		**Canal Corporation Costs Only**
Harbor Projects		
1	Little Falls Harbor	$2,062,913
2	Oswego Harbor	229,590
3	Rochester Harbor	2,214,682
4	Seneca Falls Harbor	650,506
5	Tonawanda/ North Tonawanda Harbor	3,166,968
6	Waterford Harbor	1,390,000
7	Whitehall Harbor	3,108,413
	Total Harbor Projects	$12,823,072
Trails		
1	Fairport to Palmyra	$769,438
2	Greece to Sweden	700,650
3	Albion to Medina	764,002
4	Canajoharie	635,793
	Total Trail Projects	$2,869,883
Service Ports and Lock Projects		
1	Pittsford: Fueling Station, Interpretative and Directional Signage	$23,240
2	Medina: Historic Canal Culvert	4,395
3	Clarkson: Improvements to San Souci Park	50,240
4	Brockport: Develop Dock and Expand Harvester Park	50,966
5	Baldwinsville: Develop Dock	35,000
6	Spencerport: Construction of Docks, Water and Electrical Hookups	60,640
7	Niskayuna: Improvements to Aqueduct Park	35,000
8	Hastings: Bulkhead, Boardwalk and Dock Improvements at Fort Brewerton Pier	89,400
9	Palmyra:	100,000
	Total Service Port and Lock Projects	$448,881
Marketing		$2,900,000

Exhibit B

New York State Canal Corporation Projects Included in the 2002 Revitalization II Program As of November 30, 2005			
Project Name		**Status of Project**	**Canal Corporation Costs Only**
Trails			
1	Adams Basin to Albion	Completed	$2,003,475
2	Fort Plain to Minden	Completed	
3	Canajoharie to Fort Hunter	Completed	$3,107,179
4	Oriskany to Utica	Completed	
5	Minden to Little Falls	Completed	
6	Palmyra to Newark	Under Construction	
7	Greece to Pittsford	Completed	
8	Jordan to Camillus	Under Construction	
9	Tonawanda to Amherst	Under Construction	
10	Amherst to Lockport	Contract to be issued in 2006	
11	Jordon to Port Byron	Contract to be issued in 2006	
12	Little Falls to Ilion	Contract to be issued in 2006	
13	Canastota to Erie Canal Village	Contract to be issued in 2006	
14	Newark to Clyde	Contract to be issued in 2006	
15	Rotterdam Junction to Amsterdam	Contract to be issued in 2007	
16	Clyde to Port Bryon	Contract to be issued in 2007	
17	Ilion to Utica	Contract to be issued in 2007	
18	Camillus to Onondaga Creekwalk	Contract to be issued in 2007	
19	Onondaga Creekwalk to Dewitt	Contract to be issued in 2007	
20	Schenectady Canalway Trial	Contract to be issued in 2007	
Canal Rowing Access Facilities Training Projects			
1	Rochester	Completed	$200,000
2	Onondaga Lake	Contract to be issued in 2006	
3	Capital Region	Contract to be issued in 2006	
	Total Rowing Facility Projects		$200,000
Waterfront Enhancement Projects			
1	Montezuma: Visitor and Nature Center-Canal Access	Completed	$34,500
2	Brockport: Wall Rehabilitation	Completed	$700,000
3	Sylvan Beach: Visitor's Center	Contract to be issued in 2006	
4	Seneca Falls: Wall Rehabilitation and Boater Access	Contract to be issued in 2007	
5	Three Rivers: Wall Rehabilitation and Boater Access	Contract to be issued in 2007	
6	Middleport: Wall Rehabilitation and Boater Access	Contract to be issued in 2007	
	Total Waterfront Enhancement Projects		$734,500

John L. Buono
Chairman

New York State Thruway Authority
New York State Canal Corporation
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Michael R. Fleischer
Executive Director
TDD/TTY 1-800-253-6244

August 10, 2007

Ms. Carmen Maldonado
Auditor Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

Re: New York State Canal Corporation 2005-S-66 Board Governance and Controls Over Selected Financial Practices Draft Audit Report

Thruway Authority (Authority)/Canal Corporation (Corporation) staff have reviewed the above referenced report concerning Board governance and controls over selected financial practices and offers the following response. The Draft Report contains several factual inaccuracies and misrepresentations despite several meetings and written communications attempting to clarify many of these points. Enclosed is a table that lists the discrepancies by page/column/paragraph. The Authority/Corporation's comments on the recommendations contained in the Draft Report are indicated below by section.

Board Governance

- Expand the information in the contract letting program, submitted to the Board to include the engineer's estimate for the project.

The Draft Report appears to confuse the procurement of goods and services with the awarding of construction contracts. Pursuant to Public Authorities Law (PAL) section 2879, the Authority/Corporation has adopted a Policy with procedures which detail how it will procure goods and services. Pursuant to that Policy, the Executive Director may approve procurement contracts that do not exceed $150,000. Pursuant to PAL Section 359, all Authority/Corporation construction contracts must be awarded to the lowest responsible bidder.

As noted in the Draft Report, each year the Authority/Corporation Board approves the construction contracts letting program for the coming year. OSC's recommendation appears to be based on a summary schedule provided to the Board listing on-going contracts and projects to be let in 2006 that included a range for the expected construction costs. While summary schedules have been presented to the Board in various forms over the years, the Draft Report fails to note the detailed, approximately 150-page Contracts Program that is made available for Board members to review that provides the backup information to support the resolution. The Contracts Program includes detailed costs on projects proposed in various phases of development from preliminary design through construction.

* Comment 2

* See State Comptroller's Comments, page 28

The costs for construction contracts that have not been let are based on the latest engineering estimates at the time and, as stipulated in the Board authorization, the Chief Engineer can let only these projects and only within set cost parameters or budgeted amounts. Additional Board action is required to change projects or to award a contract above the caps set on costs. Depending on the design phase of the project, the Contracts Program estimates/costs can be the "engineer's estimate," an estimate based on past experience or engineering judgment or, on occasion as noted in the comment VI in the enclosed table, even a low bid amount. The engineer's estimate is one of the last things developed in a project, usually available just prior to advertising a project. If it is developed post Contracts Program approval, the engineer's estimate is compared to the budgeted amounts before running an advertisement to make sure sufficient funds are available. Board members are notified of letting results and this information is posted on the Authority/Corporation's website.

- Take the following actions in regard to travel-related matters:

Instruct Board members to use their assigned vehicles for official business only.

The Authority/Corporation policy for the assignment and use of vehicles was revised in April 2007. The Chairman is now the only Board member assigned a vehicle and must reimburse the Authority/Corporation for any personal use of the vehicle.

- Ensure that the reasons for air travel are documented and prior approval for such travel is obtained.

See below responses.

- Do not reimburse travelers for more than the maximum allowable hotel reimbursement amounts unless the reason for the excess amount is documented and required to secure lodging.

The Authority/Corporation has travel policies in place for its employees that require prior approvals and documentation as noted. Board members must adhere to the same policy. Applicable controls over Board member travel are currently being reviewed by the Authority/Corporation's Audit and Finance Committee.

- Recover the $2,252 in excess travel reimbursements unless the Corporation documents its basis and approval for exceeding maximum travel amounts.

To clarify, according to OSC's supporting schedule that was not attached to the Draft Report, the $2,252 includes the following "excess" travel expenses for 2001 and 2002 Board meetings:

Airfare disallowed Phoenix to NYC 02/01 mtg.	$888.00	
Airfare disallowed NYC to Rochester 02/01 mtg.	155.75	$1,043.75
Airfare disallowed Rochester to Albany to Florida 04/02 mtg.	692.38	
"Credit" for Amtrak ticket allowed 04/02 mtg.	- 59.20	633.18
Hotel accommodations in excess 2001-2002		502.00
Other misc. expenses disallowed 2001-2002		73.09
TOTAL		$2,252.02

The former Board member in question personally attended 48 of the 50 Board meetings held during the period 2001-2005. The former Board member did not seek reimbursement of expenses of any kind for 25 of those meetings. The Public Authorities Law does not indicate that Board members may only be reimbursed for their travel expenses when traveling from home to a Board meeting. They are entitled to reimbursement of travel expenses incurred in order to attend a Board meeting, regardless of where they are traveling from. Board members are executives in other companies and take time out of their schedules to serve the Authority/Corporation without compensation. Accommodation of their business plans or personal time through the reimbursement of transportation expenses by air or train is not only permissible under the law, but also reasonable.

The necessity or "basis" for the transportation expenses in question was clearly to facilitate Authority/Corporation business at the Board level. The former Board member's participation for both Board meetings was necessary to constitute a quorum due to the absence of another Board member. Prior approvals for travel by air and the reason for the last minute change in plans that prompted travel by train vs. air were not documented. However, the transportation expenses incurred were approved for reimbursement at the time because they were deemed reasonable and necessary.

The former Board member was reimbursed 19 times for lodging costs which exceeded the state rate during the OSC audit period. Authority staff made the lodging arrangements and advised the former Board Member the rate charged was permissible to preserve the option of cancellation of the lodging without financial penalty in the event of a last minute change to the schedule. In 2005, the Authority/Corporation completed an internal review of executive travel vouchers for the period January 1, 2003, to March 31, 2004. The result of the internal review was an adjustment to the lodging rates reimbursed to this Board member for 2003 and 2004 and reduction of then pending reimbursement requests for 2005. In addition, staff was instructed to discontinue the practice of arranging lodging for Board Members above the state rate.

For the above reasons, the Authority/Corporation disagrees with OSC's conclusion and recommendation on this issue as it is neither reasonable nor justified to recover any additional travel expenses from this former Board member.

* Comment 2

- Provide governance training to all Board members.

As of this date, six of the seven Board members have attended governance training. The one remaining Board member could not attend the one session that has been offered in his area since appointment to the Board as it was full/closed. This Board member is planning to attend the next session offered in his area.

* See State Comptroller's Comments, page 28

- Continue to publish Board meeting minutes and meeting announcements on the Corporation's Internet website.

The Authority/Corporation is not only posting Board meeting announcements and minutes on its internet website, but is also web-casting the meetings and providing archived files for viewing post meeting in accordance with Executive Order No. 3.

Contracting Practices

- Ensure appraisals are performed for Corporation property before leases are negotiated for the property.

The Corporation established policy and procedures in 2004 that require the use of appraisals to assist in the valuation of consideration in property transactions.

- Determine the status of the four leasing agreements not submitted to OSC.

This recommendation references text in the Draft Report of Board resolutions that were not specifically identified by OSC. Four Board meeting dates were listed. On one of the dates no Board meeting was held (January 9, 2006). Therefore, assumptions were made as to what four "leasing agreements" OSC is requesting a status on and that information is provided below.

May 17, 2005
Resolution No. 342 — Authorizes the lease of approximately 0.50 acres of Canal land located in the Village of Sylvan Beach, County of Oneida, to the Village of Sylvan Beach
Status: The term and conditions of this lease have not been finalized with the Village of Sylvan Beach. This lease will be submitted for OSC review when it has been finalized.

* Comment 2

June 21, 2005
Resolution No. 345 — Authorizes amendment to the lease of 1.89+/- acres of Canal land located in the Village and Town of Herkimer, to Unlocked the Legends Inc.
Status: As noted in the Draft Report, this lease amendment was submitted for OSC review in December 2005. The lease was returned at the request of Authority/Corporation due to the failure of the firm's principal to complete required documentation.

* Comment 2

January 9, 2006 (assumed to be January 19, 2006)
Resolution No. 371 — Authorizes partial withdrawal of Canal Corporation Board Resolution No. 300 adopted at Meeting No. CC-103 held on September 26, 2002; transfer of approximately 0.521 acre in Waterford, NY, to VLG Real Estate Developers, LLC; and acquisition of approximately .03 acre in Waterford, NY, from VLG Real Estate Developers, LLC
Status: This resolution results in the sale, not lease, of Canal lands. Term and conditions of the sale have been finalized and the documents were sent to OSC for review in June, 2006. OSC approved this sale and it has since been closed. Two other resolutions (No. 369 and 370) in this meeting authorized the transfers of jurisdiction over Canal lands to other State agencies. These are not disposals of property interests in that the title of the property remains with the people of the State of New York. Pursuant to Corporation policy and procedures, transfers of jurisdiction are not subject to OSC review.

* Comment 2

*See State Comptroller's Comments, page 28

May 4, 2006
Resolution No. 378 — Authorizes the sale, not lease, of four relatively small parcels of Canal land. The market value of these parcels does not exceed the dollar threshold that requires OSC review and approval pursuant to Corporation policy and procedures. At its May 16, 2007, meeting, CC-147 resolution No. 424, the Corporation Board approved a time extension until November 2007 to facilitate these closings as additional time is necessary to complete surveys and sales contracts. One other resolution (No. 379) in this meeting authorized the transfer of jurisdiction over Canal lands to another State agency. As noted above, transfers of jurisdiction are not subject to OSC review.

* Comment 2

Community Revitalization Projects

- Modify the Corporation's project management system so that it compares actual expenditures-to-date to budgeted expenditures for each individual revitalization project.

This recommendation appears to be based on a section in the Draft Report that confuses the preliminary planning estimates used to create the Governors program announcements with actual project budgets (See comment I in the enclosed table).

- Regularly provide the Board with information comparing actual expenditures and actual completion dates to expected completion dates for each revitalization project.

The Authority is required to provide quarterly updates to the Board regarding the progress of the annual Board-approved Contracts Program (see response to recommendation No. 1 and comment I in the enclosed table), and manages the program in accordance with the delegations of authority contained in the approved Board Resolution. The Board has delegated the management of the annual Contracts Program to the Executive Director, Chief Engineer and Chief Financial Officer. Specifically, Board Resolutions for the annual Contracts Program state, "...quarterly reports shall be submitted to the Board by the Chief Engineer on all awarded construction contracts; on approved additional funds for construction contracts over and above the contingency funds; on all engineering agreements and supplemental engineering agreements, approved pursuant to the provisions of this resolution..." The recommendation to provide the above information to the Board is sufficiently satisfied by the approval of the annual Contracts Program and periodic reporting by senior level management that is required or otherwise requested.

- Maintain information about the progress and cost of all canal-related revitalization activities prompted by the Canal Recreationway Commission's revitalization plan for the Canal System including all activities that are funded by other entities.

The Corporation agrees with the goal of tracking revitalization efforts along the Canal System, but does not have the staff, funding or legal ability to monitor the progress and detailed costs of projects funded by other public (state, federal or local) or private sources when there is no participation, either through funding or property ownership by the Corporation. Additionally, the federally funded Canal Corridor Initiative refused to provide the Corporation with such information when requested. The Corporation does maintain a database capturing Department of State (DOS) and the Office of Parks, Recreation and Historic Preservation (OPRHP) grants in and around canal communities, in particular those grants that aid in implementing the harbors and ports outlined in the Canal Recreationway Plan.

*See State Comptroller's Comments, page 28

Canal staff is also included on review teams for grants for revitalization projects in Canal Communities funded by DOS, OPRHP, and the Erie Canalway National Heritage Corridor Commission.

- Ensure that the remaining trail projects are completed as expeditiously as possible.

Although this goal is shared by the Corporation, available funding and competing priorities dictate the schedule for Canalway Trail completion.

- Better utilize Thruway travel plazas as areas to promote activities and events along the Canal System.

The Corporation has performed cross-promotional activities as described in the Draft Report by providing service area operators with Canal marketing materials for distribution and display for approximately the past ten years. Additionally, an informational tourist kiosk is installed at the Chittenango Service Area that provides extensive information about the history of the Canal. Several other "History Happened Here" kiosks have been installed in other service areas that provide some information about the Canal. The Authority and Corporation will continue to seek ways to promote the Canal whenever feasible and practical.

- Install signage along the New York State Thruway directing travelers to Canal System locations to the extent allowed by State and Federal interstate signage regulations.

As noted in the Draft Report, signage along the Thruway is restricted by State and Federal regulations. This issue has been researched in the past and the signage currently installed is consistent with these regulations.

The Authority has addressed the opportunities for improvement noted in the Draft Report. If you need additional information, please contact Mr. Michael Flynn, Director of Audit and Management Services at 518-471-5853.

Sincerely,

Michael R. Fleischer
Executive Director

Enclosure
cc: John L. Buono, NYSTA/CC Chairman
Michael Flynn, Director of Audit and Management Services
Liza Ng, DOB

NYS Thruway Authority/Canal Corporation Comments
on OSC Audit 2005-S-66 Board Governance and
Controls Over Selected Financial Practices
Draft Audit Report

Ref	Page	Column	Paragraph	Comments	
I	2	2	1st full	This paragraph and elsewhere in the Draft Report confuses the preliminary planning estimates used to create the Governors program announcements with actual project budgets. Project budgets are approved by the Board as part of each annual Contracts Program. These budgets are updated regularly, as a project progresses through the design phases, in accordance with the approved Board resolution for the Contracts Program. Preliminary schedules are likewise confused in the Draft Report with letting and completion dates. Preliminary schedules are a goal, but letting and completion dates are driven by available funding, project complexities and competing higher priority critical infrastructure needs of the Authority and the Corporation have resulted in deferred trail projects.	* Comment 3
II	4	1	1st partial	See response to recommendation No. 9	
III	4	1	3rd partial	The Corporation does not solely obtain its funds from leases. Permits, easements, sales and, on occasion, federal and state funding is received for the Canal. Thruway Authority tolls provide the largest portion of Corporation's funding.	* Comment 2
IV	4	2	1st partial	The $20.3 million was for Revitalization I. The Draft Report does not clearly indicate the program. Although the Authority is authorized to use its funds for projects which benefit the Canal System, by statue the Authority's priorities must be funded before the Corporation.	* Comment 2
V	4	2	1st full	As of December 2006, the Corporation had 522 permanent employees and 47 seasonal employees for a total of 569. Seasonally this number fluctuates. For example, in July 2006, the seasonal count was 186 plus 526 permanent employees which totaled 712 at that time. The 750 number, as indicated in the Draft Report, is misleading without a further breakdown.	* Comment 2
VI	5	2	2nd	No Canal projects were awarded in November 2004. An assumption was made that the Draft Report is referring to the construction project (D213414) which was let in November 2004. This project was approved or awarded by OSC on March 16, 2005 following the recommendation for award dated December 21, 2004. A construction value or "engineer's estimate" of $2,378,483.00 was included in the 2005 Contracts Program which was approved by the Board under Resolution No. 333 at Meeting No. CC-126 on December 16, 2004. The timing was such that a revision of the 2004 Contracts Program item was unnecessary. Board approval occurred prior to the recommendation for award, therefore, no gap in Board oversight occurred, and procurement and contract guidelines were followed by Corporation and Authority staff.	* Comments 2,4

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*See State Comptroller's Comments, page 28

VII	6	1	4th partial	The $888 airfare was paid for the former Board member to travel from Arizona to NYC (not Albany as indicated in the Draft Report) in 02/01. The second airfare originally scheduled from Rochester to Albany to Florida for $692 was for the day of the Board Meeting 04/22/02. Plans changed and the former Board member came to Albany the day before the meeting via train. The former Board member's participation for both Board meetings was necessary to constitute a quorum due to the absence of another Board member.	* Comment 2
VIII	6	2	1st full	There was no other airfare for $692 as indicated in the Draft Report (see comment VII and summary of expenses in response to recommendation No. 2).	* Comment 2
IX	6	2	3rd	According to a supporting schedule previously supplied by OSC (not attached to the Draft Report), "excess" hotel charges for 2001-2002 totaled $502 (not $577 as indicated in the Draft Report).	
X	6	2	4th	The Draft Report states that "overpayments for the period…were recovered." However, it does not clearly state that this was the result of an internal review that was completed prior to the start of the OSC audit.	* Comment 2
XI	8	2	4th	The Canal Corporation has revised its Real Property Management Policy and its Standard Operating Procedures to comply with the Public Authorities Accountability Act and includes appraisals for the disposition of all real property, including leases, except in limited circumstances where fair market value may be determined by other means.	
XII	9	1	1st	An agreement for the Court Street Dam Implementation Project (D#213398) which further defined/supplemented the cost sharing provisions of the revenue contract was reviewed and approved by OSC on October 26, 2004. The annual rent was specified for the subsequent renewal periods. The base rent noted in the contract represents a minimum to be paid which will be adjusted by a formula that takes into account water provided and the current cost of wholesale energy. A schedule was provided to OSC that listed all meters or Canal locations in the utilities service area. This schedule was attached to the original agreement with RG&E and has been periodically revised (the current listing was also provided to OSC during the audit at their request).	
XIII	9	1	2nd	On March 27, 2000, OSC reviewed and approved the underlying memorandum of agreement (MOA) between the City of Rochester and the Corporation that provides for the development and maintenance of the project. The MOA repeatedly references this lease which at the time had yet to be entered into by the City and the Corporation. The in-kind services are detailed in the MOA section C. The lease further defined the in-kind services in section 8.03 and 8.04.	* Comment 2
XIV	9	2	1st	For the Draft report to be critical of the terms and conditions of the agreements/leases in question seems incongruent given OSC's role in review/approval of the underlying or related agreements at the time and the noted factual inaccuracies (see two previous comments).	* Comment 5

*See State Comptroller's Comments, page 28

NYS Thruway Authority/Canal Corporation Comments
on OSC Audit 2005-S-66 Board Governance and
Controls Over Selected Financial Practices
Draft Audit Report

XV	9	2	2nd	The Authority/Corporation identified weaknesses in its land management practices prior to OSC's audit. Policies and procedures were developed which address many of the real property issues which this Draft Report identifies as deficient. The Draft Report fails to recognize these "new" policies and procedures by identifying deficiencies which occurred prior to their adoption. Agreements entered into prior to the "new" policies and procedures cannot be reopened solely on that basis until the agreements expire or are renewed. In addition, no Board meeting was held on January 9, 2006, as indicated in the Draft Report.
XVI	9	2	3rd	See responses to recommendation No. 7 and 8.
XVII	11	1	3rd	See responses to recommendation No. 7 and 8.
XVIII	11	2	3rd	See response to recommendation No. 9.
XIX	12	2	2nd	Revitalization I acknowledged (page 3) that funding would depend upon the receipt of federal Transportation Enhancement funding, which was a competitive process through the NYS Department of Transportation. While some funding was received, it was inadequate to complete all of the proposed projects.
XX	13	2	2nd full	See response to recommendation No. 11.

* Comment 6

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* See State Comptroller's Comments, page 28

APPENDIX B - STATE COMPTROLLER'S COMMENTS ON AUDITEE RESPONSE

1. We understand that the engineer's estimate may not be available for inclusion in the contract letting program and that other estimates may be necessary. Nevertheless, when such estimates become available, these should be provided to the Board so that it can determine if the 20 percent rule has been properly applied when contracting a construction contract.

2. We have updated the report to reflect information in the Corporation's response.

3. The Corporation's project management system does not allow management to track each canal project through its life cycle with continual comparison of actual expenses to original budgeted costs and remaining estimate costs for completion.

4. The contract award exceeded the engineer's estimate by 35.7 percent and, therefore, should have been reviewed and approved by the Board.

5. We acknowledge that OSC had a role in the review/approval of the agreements. However, we urge Corporation officials to focus on correcting the weaknesses and deficiencies in the leases it approves as the starting point to improving the process.

6. We recognize actions taken by Authority officials to address the deficiencies in its land management practices. Our report cites that the procedures were revised. One of the leases which started in 1998 is approaching its 10-year lease term, and the Corporation should take this opportunity to address the weaknesses in the agreement before it takes any action to renew it.