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**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**STATE COMMISSION OF
CORRECTION**

**SELECTED OPERATING
PRACTICES REGARDING
CORRECTION OFFICER
TRAINING AND FACILITY
PLANNING**

Report 2007-S-11

AUDIT OBJECTIVES

One of our objectives was to determine whether the New York State Commission of Correction (SCOC) has ensured that all correction officers at State and county correctional facilities, including facilities operated by the New York City Department of Correction (NYCDOC), are trained according to SCOC requirements. Another objective was to determine whether SCOC was aware of all construction or improvement projects at all correctional facilities.

AUDIT RESULTS - SUMMARY

SCOC is responsible for overseeing all State and local correctional facilities in New York State. As of December 31, 2006, there were 69 DOCS correctional facilities, 4 State-run secure youth facilities, 77 county facilities (73 jails operating and 4 City jails were closed), and 317 local police lockups. We found that SCOC has not ensured that all correction officers at State and county correctional facilities are trained according to SCOC requirements. In addition, SCOC was not aware of all construction or improvement projects at all correctional facilities.

The Correction Law requires SCOC to operate a correctional training program for correctional facility employees. Correction officers are required to receive basic training and other specialized training depending on their responsibilities. For most county correctional facilities, SCOC establishes the curriculum for the various courses, trains and certifies instructors to teach the courses, prepares the exams intended to demonstrate student proficiency, and certifies those who successfully complete the training. However, we identified instances where correction officers did not receive their basic training within the required time frame, and where course instructors were not certified. While

SCOC maintains a database of correction officer training activities, the database is not accurate and does not contain sufficient information to be used as an effective monitoring tool. In addition, SCOC has facility inspectors who visit correctional facilities to review training records, but the visits are not frequent enough to ensure correction officers receive their basic training within the required time frame. We also identified opportunities for SCOC to improve the exam process to ensure exams are administered fairly and that the process is reliable.

The Correction Law allows SCOC to exempt a correctional facility from SCOC's training program if the facility operates a correctional training program equal to or better than SCOC's. NYCDOC and the New York State Department of Correctional Services (DOCS) operate their own training programs. SCOC officials have determined that the NYCDOC training program meets requirements. SCOC has also accepted the DOCS program.

The Correction Law and SCOC regulations require SCOC to review and approve all construction or improvement plans of correctional facilities before the project is advertised for bid or before any construction is undertaken. SCOC does not have effective controls in place to ensure that all correctional facilities Statewide submit their proposed projects to SCOC. In one of our audit tests, we determined that DOCS facilities advertised 152 projects for bid, even though the projects had not undergone SCOC's review and approval. We also found there were at least 22 capital projects at county correctional facilities that were not sent to SCOC for review and approval. SCOC officials maintain that correctional facilities have an affirmative requirement to report and submit applications to SCOC for their projects, and that it is up to local officials to

know the Correction Law and to comply with it. SCOC officials also stated that maintenance projects as well as projects that do not relate to safety or security are exempted from their approval process. However, we note that the Correction Law does not provide for such exemptions. SCOC needs to be proactive in communicating to all correctional facilities that they must obtain approval for all projects related to their correctional facility.

Our report contains ten recommendations to improve the administration of SCOC's training and facility planning programs. SCOC officials agreed with several of these recommendations.

This report, dated August 15, 2008, is available on our website at: <http://www.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 Services
State Audit Bureau
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The New York State Commission of Correction (SCOC) is responsible for overseeing all State and local correctional facilities in New York State. The State facilities include the prisons operated by the Department of Correctional Services (DOCS) and the secure facilities operated by the Office of Children and Family Services (OCFS). The local facilities include the prisons operated by the counties and the jails or detention facilities operated by cities, towns, villages, and other municipal entities (local police lockups). As of May 18, 2007, there were 69 DOCS correctional facilities, 4 OCFS secure youth facilities, 77 county

correctional facilities (73 jails were operating and 4 City jails were closed), and 317 local police lockups.

SCOC is headed by three Commissioners who are appointed by the Governor to statutory terms. One Commissioner serves as Chair and Chief Executive Officer. Another Commissioner heads the Citizen's Policy and Complaint Review Council, which reviews unresolved inmate complaints about local correctional facilities. The third Commissioner heads the Medical Review Board, which investigates inmate deaths and oversees inmate health care services. SCOC also has a staff of 35 employees. For the fiscal year ended March 31, 2007, SCOC received a State appropriation of \$2.6 million.

AUDIT FINDINGS AND RECOMMENDATIONS

Correction Officer Training Program

Under Article 3 of the New York State Correction Law (Law), SCOC is required to maintain and operate a correctional training program for correctional facility employees as SCOC deems necessary. For local correctional facilities, which include local police lockups, SCOC promulgates rules and regulations for the in-service correctional training sponsored by the local facility. SCOC Regulations also require correction officers who use or order the use of chemical agents to complete a training program in chemical agents. In addition, SCOC Regulations require all county correction officers who work in inmate classification to complete a SCOC-approved inmate classification training program.

Between 1975 and 1992, SCOC operated a Statewide training academy for county correction officers. SCOC taught a mandated basic training course as well as courses in

chemical agents, classification, and instructor development. Most county prisons in the State sent their new correction officers to the training academy for the basic training and specialized courses. However, the New York City Department of Correction (NYCDOC) and DOCS provided their own training. After the training academy closed in 1992, SCOC decentralized its training operation by using county training coordinators, who are responsible for administering training programs at each county prison. SCOC establishes the basic training program course curriculum and specialized training courses, trains and certifies instructors to teach the courses, prepares examinations that are intended to demonstrate student proficiency in the subjects taught, and certifies correction officers who successfully complete the training.

Training of County Correction Officers

The basic training program consists of 160 hours of courses such as: ethics, personal awareness, sexual harassment, effective communication, special needs inmates, written communication, court testimony, sexual misconduct, suicide prevention/crisis intervention, stress management, and fire prevention and safety. Correction officers are required to complete this program prior to or within one year of undertaking their duties. SCOC certifies county correction officers to teach the approved course curriculum and proctor examinations across the State. Trainers are required to complete a "General Topics Course" to teach basic training and complete specialized "Train-the-Trainer" programs in the areas of chemical agents and inmate classification training. Each trainer certification is renewable every five years.

SCOC has a correction officer training database. The database should be accurate and contain sufficient information to allow

SCOC to effectively monitor the completion of required training. In addition, SCOC has facility inspectors who periodically visit correctional facilities to determine compliance with various SCOC regulations and guidelines, including training requirements.

We reviewed the training files at selected county correctional facilities for both correction officers and course trainers. We concluded that SCOC needs a better system of oversight to ensure that correction officers and trainers complete their required courses in a timely manner. We compared the training records at these counties with information in SCOC's database and found the following matters that need to be addressed:

- Eleven of 50 sampled correction officers attended the basic training course, but their certification of successful completion was not recorded in the SCOC database.
- Two trainers were not listed in the database of certified teachers, and certifications for three trainers who taught the basic training had expired.
- Three correction officers had worked for over one year without receiving basic training.

We found SCOC's training database does not have sufficient data to track whether correction officers received training within the required time frame. For example, the database does not always identify when a certificate for basic training was issued. The database also does not show when a correction officer was hired. We also found that the database does not contain information relating to chemical agents training. SCOC does not have a centralized listing of those

employees who need this training and who received it.

As part of their responsibilities, SCOC facility inspectors review basic training records at each county correctional facility every two years. However, because such reviews are not done annually, there is a risk that correction officers who have not taken the basic training course within the required time frame will not be identified in a timely manner.

In addition, to prove their proficiency, all correction officers must pass the basic training examination and other specialized exams, if applicable to their work-related activities. We noted that, for the basic training program, SCOC sends the examinations along with the blank answer sheets to the county instructors, who administer the test at the local level. The correctional facility returns the completed answer sheets to SCOC for grading, and SCOC issues certificates to the successful candidates. However, for the classification and the chemical agents training courses, the examinations and answer keys are kept at the correctional facility, and the examinations, are graded locally. The local trainers conduct the training, administer the examinations, and send the list of successful candidates to SCOC. Then SCOC issues the training certificates for the specialized courses. However, SCOC has less assurance that the chemical agents and classification exams are administered fairly and that the exams are graded accurately.

SCOC officials maintain that county correction officials are responsible for administering the training sessions and associated exams in accordance with SCOC expectations, since county officials would be accountable for incidents resulting from untrained correction officers. We also noted

that SCOC has just one employee assigned to overseeing all correction officer training (basic, chemical agents, and classification) for all county correctional facilities, including NYCDOC facilities.

In addition, SCOC training staff told us that the exam questions for the basic and specialized programs do not change from year to year (except for question updates/replacements due to changes in processes, regulations, etc.). SCOC does not have a pool of questions to use when preparing exams, and has not evaluated the basic training, chemical agents, and inmate classification exams for at least the last three years.

SCOC officials told us that their staff do not have the time to develop a pool of exam questions. They added that the exam questions will be updated if performance objectives change. However, not changing exam questions periodically could give an unfair advantage to some students, particularly those who need to take the exam more than once to pass.

Recommendations

1. Review records of county course instructors to ensure that all instructors have a valid certification.
2. Maintain information on the database relating to the dates that correction officers were hired and trained.
3. Review correction officer training records during facility inspections every year, rather than biennially.
4. Periodically verify that the examinations for basic, chemical agents, and classification are properly administered and the results are reliable.

5. Develop a pool of questions to be used for the various exams.

Facility Planning

The Law states that SCOC is responsible to “Approve or reject plans and specifications for the construction or improvement of correctional facilities.” SCOC Regulations require “that any plans and specifications for the construction or renovation of detention facilities must be submitted for review to the State Commission of Correction.” SCOC Regulations further state that “Approval of the commission must be obtained before a construction or renovation project is advertised for bids. If it is not contemplated that a bidding procedure is to be followed, approval must be obtained before any construction or renovation is undertaken.” The Commission’s Facilities Planning Office is responsible for reviewing proposed correctional facility construction (new and upgrades) to ensure that the construction will comply with required standards.

Correctional Facility Construction and Improvements

When projects are submitted for review, SCOC reviews the projects and makes recommendations, if needed, before approving them. However, we found that correctional facilities do not always inform SCOC of projects at their facility. In practice, officials at correctional facilities decide what projects they believe need SCOC review and approval. SCOC does not have effective controls in place to ensure that all correctional facilities statewide submit their construction projects to SCOC for review and approval.

SCOC’s Facility Planning Director told us that he does not believe there are any risks in this area and was not aware of any instances where a correctional facility made renovations

or undertook projects without Commission approval. However, we identified many instances where this has occurred. New York State agencies, including DOCS, must advertise construction projects in the New York State Register (Register) in order to competitively bid them. We reviewed the Register and found that DOCS facilities advertised 152 construction projects in the Register during 2005. We compared these projects with a list of projects that SCOC had approved between April 1, 2004, and April 24, 2007. None of the 152 projects was on the list initially provided to us. SCOC officials subsequently provided us with information on 52 of the 152 projects, which indicated they had waived their option to review and approve the plans for 51 projects and had requested the plans for one project. Examples of some of the waived DOCS projects included rehabilitating shower walls, repairing perimeter walls, providing yard lighting, and replacing vehicle and pedestrian gates.

SCOC documentation showed that SCOC waived the review of 51 projects because, according to a letter sent to DOCS, the “...projects will not directly affect existing security or safety, nor alter that existing design or program function” and “...the projects listed do not relate primarily to the care and custody of correctional inmates, and do not involve correctional programs or usages.”

SCOC officials were unable to provide us with any information that shows SCOC approved the one DOCS project that they specifically requested to review. They explained that these plans were requested around the time that the previous Facilities Planning Director had retired, and it appears the project “slipped through the cracks.” SCOC officials also told us that they did not have any information on the remaining

100 projects, due to changes in personnel during this time period.

SCOC officials maintain that correctional facilities have an affirmative requirement to report and submit applications to SCOC for construction or improvement projects, and that it is up to local officials to know the Law and to comply with it. SCOC officials also stated that “one-for-one replacement” projects as well as projects that do not relate to safety or security are exempted from their approval process. Nevertheless, we note that the Law requires SCOC to approve plans for the “construction or improvement of correctional facilities.” Accordingly, SCOC needs to become more proactive in communicating to all correctional facilities that they must obtain approval for all projects related to their correctional facility. After review, SCOC may waive its oversight role if the projects are outside its jurisdiction.

Furthermore, the Law does not limit SCOC oversight to only security and safety projects, and SCOC has not defined what security and safety projects it expects to oversee. In fact, SCOC’s planning and design guidelines for police holding/detention facilities state “...any drawings or specifications for the work of construction, reconstruction, alteration, repair or improvement of police holding/detention facilities...must be filed in the office of the State Commission of Correction.” The guidelines add that “...no such work should begin until the drawings and specifications, therefore, have been approved.” SCOC’s planning and design guidelines for county correctional facilities have similar wording.

While State agencies must advertise construction-related projects in the Register, there is no single source for advertising such projects by county or local governments. Therefore, we could not identify county or

local correctional facility construction projects that were advertised for bid which could be used to check for SCOC approval. However, we identified that there were at least 22 ongoing construction and renovation projects at county correctional facilities but SCOC had not reviewed or approved any of them. Examples of these projects include kitchen renovations, modification of a mess hall to a school, and a renovation of a court holding pen.

We also found indications that officials at county correctional facilities we visited may be uncertain as to what specific types of projects need SCOC approval. For example, officials from two different county facilities told us that they need to request SCOC review only if the construction or renovation affects the safety and security of inmates. Officials at one of these same counties told us about a project that they completed without SCOC oversight, and after SCOC became aware of the work, the facility was forced to remove it and submit plans for revised renovation. SCOC officials asserted that this facility knew that this type of project needed to be approved, but deliberately bypassed the review process.

Without clearer direction from SCOC as to which projects have to be submitted, and those that may be exempt, there is a risk that correctional facilities may complete work that is not in accordance with the Law and/or SCOC regulations and guidelines. This could have an impact on safety and security. In addition, correctional facilities may incur extra costs if construction commences prematurely and later needs to be stopped or modified after SCOC input.

Recommendations

6. Communicate to all correctional facilities on a yearly basis that every construction,

reconstruction, alteration, repair, or improvement project at correctional facilities needs to be reviewed and approved by SCOC before bids can be solicited and/or work begins.

7. Justify and document on a case-by-case basis all waivers from SCOC's review and approval process.
8. Monitor, on a sample basis, New York State bidding publications to determine whether correctional facilities received SCOC approval for construction and renovation projects before they proceeded with the bid announcements.
9. Before conducting the annual review contact county and local government officials to determine whether any capital projects have been started since the last review.

*New Institution Transition Assistance
Program*

SCOC provides training and assistance for counties that open a new facility or expand an existing facility under its New Institution Transition Assistance Program (NITAP). NITAP is designed to help counties through the process of opening a new facility or expansion.

SCOC's 2005 annual report states that NITAP assistance to correctional facilities includes reviewing their policies and procedures, training staff, reviewing move logistic plans, monitoring inmate transfers, and reviewing jail operations after the transition. However, SCOC officials have not established formal goals or objectives for NITAP; nor have they issued any written policies or procedures. Between April 1, 2004, and May 15, 2007, SCOC provided NITAP training on nine different projects. Four of these projects were new facilities and five of these projects were

expansions to existing facilities. We judgmentally selected three projects - one new facility and two expansions - to review the NITAP assistance that was provided to these facilities. We also visited two of these county correctional facilities to determine if NITAP operated as described and to learn the correctional facility officials' opinion about the value of the program.

We found that SCOC staff regularly communicated with the officials at these facilities during the transition process, gave training, reviewed and provided input on policies and procedures, and reviewed and approved the move plan. SCOC staff also evaluated the facilities' maximum capacity and reviewed prison staffing. County correctional facility officials were pleased with SCOC's assistance and support during the transition.

We concluded that SCOC's NITAP program helps facilities through the transition process when building a new facility or expanding an existing facility. However, not having fully-defined program goals and objectives as well as the lack of any policies and procedures to guide the NITAP process could adversely affect the future success of the program, especially if there is an unexpected change in SCOC staff.

Recommendation

10. Develop clear goals and objectives as well as policies and procedures for the New Institution Transition Assistance Program.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We audited SCOC's actions to ensure that correction officers receive basic training and other specialized training, as required. We also audited SCOC's review

and approval process of correctional facilities' construction and renovation projects for the period April 1, 2004, through April 30, 2007.

To achieve our objectives, we obtained the relevant SCOC policies and procedures for training correction officers and for reviewing and approving facilities' plans for construction and renovation projects. We visited seven correctional facilities to determine if correctional officers received the basic training course within one year of being hired, and we interviewed correctional facility training coordinators and the SCOC facility specialist who coordinates the training program statewide. We obtained facility training records and compared them with the SCOC database. We requested the official training instructor list and compared it with the lists obtained from our site visits. In addition, we interviewed SCOC officials responsible for SCOC operations. We also interviewed officials from two correctional facilities to determine if all construction and renovation plans were reviewed and approved before going to bid or were awarded in accordance with SCOC policies and procedures. We reviewed the State Register and obtained a list of Office of General Services construction bids for correctional facilities and compared the list with SCOC approved projects since April 1, 2004. We requested and reviewed SCOC planning and design guidelines. We also interviewed SCOC staff involved in NITAP.

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 V, Section 1, of the State Constitution and Article II, Section 8, of the State Finance Law.

REPORTING REQUIREMENTS

We provided a draft report of the matters discussed in this report to SCOC officials for their review and comment. We considered their comments in preparing this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the State Commission of Correction 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, Bob Mehrhoff, Roger C. Mazula, Alexander Marshall, Raymond Barnes, Nicholas Angel, and Paul Bachman.

APPENDIX A - AUDITEE RESPONSE



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April 1, 2008

Ms. Carmen Maldonado, Audit Director
State of New York
Office of the State Comptroller
110 State Street
Albany, New York

RE: State Commission of Correction
*Selected Operating practices Regarding
Correction Officer Training and
Facility Planning: Report 2007-S-11*

Dear Ms. Maldonado:

The Commission is in receipt of your letter dated February 25, 2008 covering the draft audit report captioned above. We understand that the Commission's response to this draft will be included as an appendix to your final report. Please find the Commission's response set forth below.

AUDIT RESULTS – SUMMARY

The draft audit report incorrectly reports that there are "77 county prisons" (p. 2, et seq.) under the Commission's oversight. Although the term-of-art "penitentiary" is sometimes applied to three (3) free-standing upstate county institutions and one New York City institution reserved to those inmates serving definite sentences of one year or less, there are no county facilities properly referred to as "prisons." These are "jails." All 57 upstate and Long Island counties and the City of New York operate jails which have a specified definition (Correction Law Article 20). All but three jurisdictions incorporate housing of definite sentence-servers within their jails. Police departments operate detention facilities defined as "lockups" when used for pre-and post-arraignment detention (Correction Law Article 3; 9NYCRR Part 7501) and "police station jails" when used for other police detention.

The number of county correctional facilities as set forth in the draft audit report is inaccurate. There are 63 upstate and Long Island free-standing jails/penitentiaries. There are 10 New York City jails operating as of December 31, 2006. Four additional New York City jails are

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Comment
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* See State Comptroller's Comments, page 16

closed, another was sold. There are 73 jails operating and subject to inspection/evaluation as jails in New York.

The draft audit report states that the audit team identified instances where correction officers did not receive their training within the required time and where course instructors were not certified. This appears to be based upon a draft audit report assertion that, in a sample of 50 training records, there were eleven (11) instances where correction officers had no training certificate found in Commission files, two trainers were not listed by the Commission as certified trainers and three correction officers had worked for over one year without receiving basic training. However, the audit team never responded to a request by the Commission to provide the names and unique identifiers of the 50 correctional staff comprising the sample in which these anomalies were found. Consequently, the Commission cannot evaluate the accuracy of the findings of the audit team based upon this sample, except to say that is exceedingly unlikely that any certified Commission program was instructed by an uncertified trainer. Trainers whose DCJS certifications have expired remain listed but are never employed in Commission programs.

*
Comment
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With respect to Facilities Planning, the draft audit report asserts that the audit team found that the Commission had not reviewed 100 of 152 Department of Correctional Services (DOCS) construction or improvement projects advertised for bid during 2005. The Commission believes that this audit test was not definitive in support of the draft audit report conclusion that the Commission "does not have effective controls in place to ensure that all correctional facilities Statewide submit their proposed projects to SCOC." Whether or not a particular DOCS project was advertised for bid in 2005 is not directly correlative with its Commission approval status during the period 2004-2007 or with whether any notice at all was required by the Commission.

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Comment
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AUDIT FINDING AND RECOMMENDATIONS

Correction Officer Training Program

The draft audit reports remarks in passing on the closure of the Commission training academy in 1992. It should be noted in the report that this closure was mandated by the state Division of the Budget as part of the State Deficit Reduction Plan for 1991-1992 and not for any programmatic reason.

*
Comment
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Training of County Correction Officers

The draft audit report cites the results of an examination of training records of 50 correction officers at local correctional facility sites compared with Commission records maintained in Albany. The draft audit report asserts that there were eleven (11) instances where correction officers had no training certificate(s) found in Commission files, two trainers were not listed by the Commission as certified trainers (the report did not comment as to whether these were certified by DCJS, which would qualify them to train Commission programs), and three correction officers who had worked for over one year without receiving basic training. However, the audit team never responded to a request by the Commission to provide the names and unique identifiers of the 50 correctional staff comprising the sample in which these anomalies were found. Consequently, the Commission cannot evaluate the accuracy of the findings of the audit team based upon this sample, except to say that is exceedingly unlikely that any certified Commission program was instructed by an uncertified trainer. Trainers whose DCJS certifications have expired remain listed but are never employed in Commission programs.

*
Comment
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* See State Comptroller's Comments, page 16

The draft audit report contends that the “SCOC’s database does not have sufficient data to track whether correction officers received training within the required time frame,” citing as an example that the date of issuance of a training certificate was not always found. While this may be true, the specific program in which the trainee was certified and the program date are always entered, so this finding makes a distinction without a difference. The draft audit report indicates that the database does not always show when a correction officer was hired. The Commission believes this assertion to be incorrect, except for the dates of hiring of certified trainees who are not uniformed correction officers, e.g. nurses, vocational teachers, civilian dispatchers and others who have no one-year training clock but who are routinely seated in Commission training programs. The draft audit report goes on to claim that the training database does not contain information relating to chemical agents training. The Commission’s database in fact does contain chemical agents training data, but retrievable for individual trainees, rather than in the aggregate. While obtaining aggregate chemical agents training data may be useful to completion of an OSC audit, whether an individual uniformed officer is authorized/trained to use chemical agents is of far more importance to the Commission in its investigations and other oversight activities than any aggregation by facility, region or statewide.

Notwithstanding that the draft audit report has inaccuracies with respect to dates of training, uniformed staff hiring dates and chemical agents training, the Commission acknowledges that its training database is obsolete, prone to breakdown and requires replacement. Accordingly the agency will identify 2008-2009 OTPS funds to purchase licensure of new, state-of-the-art training database software.

* Comment 4

Recommendations

1. Review records of county course instructors to insure that all instructors have a valid certification.

The Commission’s Training Coordinator always verifies that all instructors have a current trainer certification from the Commission or from DCJS for every program sanctioned by the Commission.

2. Maintain information on the database relating to the dates that correction officers were hired and trained.

The database contains dates of hire and dates of basic training program completion for all uniformed staff. Some civilian staff in the training database may not have dates of hire.

3. Review correction officer training records during facility inspections every year, rather than biennially.

The Commission will amend its inspection cycle schedule to conform to this recommendation.

4. Periodically verify that the examinations for basic, chemical agents and classification are properly administered and the results reliable.

* See State Comptroller’s Comments, page 16

The Commission will proctor selected chemical agents and classification examinations for proper administration and reliability of results. The Basic Training examination system is under exclusive Commission control and is deemed by agency leadership to be properly administered and reliable.

5. Develop a pool of questions to be used for the various exams.

The Commission will assign a workgroup to expand the pool of questions available for populating exams.

Facility Planning

Correctional Facility Construction and Improvement

The draft audit report asserts (p. 6) that “SCOC does not have effective controls in place to ensure that all correctional facilities statewide submit their construction projects to SCOC for review approval.” It should be noted that due to a retirement, followed by recruitment and Civil Service delays, the Commission was without an incumbent for its lone Facilities Planner position from August 24, 2005 through May 29, 2006, a substantial portion of the time period covered by the OSC audit.

Nonetheless, the draft audit report’s conclusion appears to be based in large part on an examination of 152 Department of Correctional Services (DOCS) projects which were advertised for bid in 2005, 100 of which were not reviewed by the Commission or waived as not requiring review during the period April 2004 through April 2007. The connection between Commission approval given on or after April 1, 2004 and advertisement for bid during calendar 2005 is tenuous and coincidental. First, the Commission pre-selects DOCS projects at approximately six-week intervals from a list of projects which have been assigned bid dates by DOCS. Approximately six percent of the listed projects are requested for review by the Commission, the rest being waived. But the Commission does not require even a submission for repairs, cosmetic renovation such as painting, or one-for-one replacements, e.g., sinks, floor coverings. Therefore, the fact that 100 of the 152 projects eventually bid may not have been reviewed and pre-approved is in itself immaterial, as it is possible all 100 projects were waived or that some never required submission in the first instance, notwithstanding that a suitable record of actual waiver statements was not found. It is worthy of note that a project listed for bid in calendar 2005 that should have been pre-approved by the Commission may well have been pre-approved by the Commission before April 1, 2004. To illustrate, when the Commission examined four DOCS projects approved at the December 2004 Commission meeting, it found that none were advertised for bid throughout the year 2005. Some approved projects do not go to bid for several years. Some never go to bid. Whether or not a particular DOCS project was sent out for bid is not directly correlative with whether it was pre-approved by the Commission in the preceding year or even required pre-approval. Therefore, an absolute conclusion respecting Commission pre-approval of DOCS construction and improvement projects cannot be sustained based on the evidence offered.

The draft audit report suggests that correctional facilities may be uncertain as to what types of projects may require pre-approval by the Commission. The draft report states, “Without clearer direction from SCOC as to which projects have to be submitted and which may be exempt, there is a risk that correctional facilities may complete work that is not in accordance with the Law . . .” There is no good reason that such uncertainty should occur. The terms

“safety” and “security” have a generally accepted construction in correctional practice as well as dictionary definitions. It is not practical to attempt to formulate a definition that covers every possible aspect of the security of correctional facilities or of the safety of staff and inmates. Many such aspects are purely situational and/or unique. Uncertainty may be resolved by inquiry from the respective government unit. Moreover, Correction Law §45(10) places an affirmative duty on state and local governments to know the law and to conform to it. It is impractical for the Commission to attempt to specify which of the myriad types of construction or improvement activities require prior approval or to identify every type of project in the far larger universe of projects on which prior approval may be waived or not submitted at all. Similarly, it is not the Commission’s duty to prospectively search the state for projects that may require prior approval but which may not have been submitted.

Recommendations

6. Communicate to all correctional facilities on a yearly basis that every construction, reconstruction, alteration repair or improvement project needs to be reviewed and approved by SCOC before bids can be solicited and/or work begins.

The Commission has required the Department of Correctional Services (DOCS), and DOCS has agreed, to provide a monthly revolving listing of all projects assigned bid dates for which the Commission shall either request plans and specifications or waive review. For the local correctional system the Commission will circulate an annual memorandum to all counties and the City of New York as recommended in the draft audit report.

7. Justify and document on a case by case basis all waivers from SCOC’s review and approval process.

The Commission will implement this recommendation by exclusion, i.e., will document its monthly requests for plans and specifications to DOCS to state the reason(s) for waiving all other classes of projects assigned for bid and grouped with projects requiring review. The Commission shall maintain documentation of all local correctional facility projects waived, with reasons therefore.

8. Monitor, on a sample basis, New York State bidding publications to determine whether correctional facilities received SCOC approval for construction and renovation projects before they proceeded with the bid announcements.

Such a strategy would only apply to DOCS and even at that would be cumbersome and unreliable. Hundreds of projects are waived every year. Hundreds more require no submission of notice at all. There is no direct correlation between Commission approval/waiver and advertisement for bid in New York State bidding publications. As noted elsewhere in the Commission’s response, some projects do not go to bid for years after Commission approval or waiver, and some, such as repairs in place and one-for-one replacements, require no notification, much less pre-approval or waiver.

9. Before conducting the annual review, contact county and local government officials to determine whether any capital projects have been started since the last review.

The Commission shall implement this recommendation.

New Institutions Transition Assistance Program (NITAP)

The draft audit report asserts that Commission officials have not established formal goals for NITAP, nor have they issued any written policies and procedures. In fact, the Commission's NITAP has adopted and incorporated two National Institute of Corrections programs and their associated manuals as the procedural template for the program. *Planning of New Institutions and How To Open A New Institution* together form the procedural framework for the Commission's program. The goals and objectives are forthright and clear and model policies and procedures comprehensive.

Recommendation

10. Develop clear goals and objectives as well as policies and procedures for the New Institutions Transition Assistance Program.

The Commission shall develop a written policy that incorporates the National Institute of Corrections work products into its NITAP operations.

Thank you for the opportunity to respond to the draft audit report

Sincerely,

Daniel L. Stewart
Chairman

APPENDIX B - STATE COMPTROLLER'S COMMENTS

1. The report has been revised to reflect information in the Commission's response to the draft report.
2. The response is incorrect. The information for the sampled correctional staff was provided to Commission officials. However, no additional information was received to change the audit results.
3. Although the Commission does not agree with our conclusion regarding the effectiveness of their controls to ensure all correctional facilities submit their proposed projects for review, they could not provide any evidence that they had, in fact, received and reviewed 100 of the 152 projects advertised for bid during 2005. We acknowledge that a project can be initiated several years before it is advertised, however, the Commission could not provide any evidence that these projects were known to them at any point in time. Furthermore, on page 7 of this report we cite an example where SCOC officials forced a facility to remove renovation work they had not previously reviewed and approved and submit plans for revised renovations. We also identified 22 projects at county correctional facilities which SCOC had not reviewed or approved. We believe that all of these examples support our conclusion that SCOC needs to improve its controls over construction projects.
4. Although the Commission states several reasons why the audit results are incorrect, the bottom line is that they acknowledge that its training database is "obsolete, prone to breakdown and requires replacement" and will purchase licensure of new, state-of-the-art training database software.