



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Management of Internal Controls

Fuller Road Management Corporation



Report 2012-S-26

January 2013

Executive Summary

Purpose

To determine if the Board of Directors of the Fuller Road Management Corporation (FRMC) promoted internal controls that helped to ensure an ethical business climate and compliance with applicable laws, rules and regulations.

Background

FRMC is a private, not-for-profit real estate holding corporation. Its mission is to plan, design, develop, construct, own, operate and lease facilities that support the technical programs, strategic partnerships and business consortia of the College of Nanoscale Science and Engineering (CNSE). The Research Foundation of the State University of New York (Research Foundation) and the UAlbany Foundation are equal founding members in the mission of FRMC.

FRMC has an unpaid Board of Directors chaired by the CNSE Senior Vice President and Chief Executive Officer. The FRMC Board also includes four directors appointed by the UAlbany Foundation, four directors appointed by the Research Foundation and two independent directors elected by unanimous vote of the other Board members.

For the fiscal year ended June 30, 2011, the FRMC reported about \$350 million of assets. FRMC has reported that, since its creation in 1993, about \$14 billion of public and private investment has been made in facilities and programs of the CNSE. According to FRMC, this investment has resulted in the creation of about 3,100 jobs at the CNSE complex.

Key Findings

- The FRMC Board of Directors has promoted internal controls that help to ensure that the FRMC continues to support CNSE and continues to foster an ethical business climate and compliance with applicable laws, rules and regulations.
- The FRMC Internal Revenue Service (IRS) Form 990 for 2010 omitted the required disclosure of business relationships and related financial transactions for two Board Directors. FRMC amended Form 990 to correct this lack of disclosure when we pointed out the deficiency. Further, FRMC management retained a new independent auditor to help ensure that future regulatory reporting requirements would be in full compliance.
- While the FRMC had established effective procedures and controls over financial transactions, at a time of our audit fieldwork, these were not formalized into a written Accounting Procedures Manual that serves to memorialize requirements. Subsequent to the completion of our audit, FRMC management provided us with a copy of a finalized Accounting Procedures Manual that incorporated necessary procedures and controls over financial transactions.

Key Recommendations

- Ensure that IRS Form 990 is consistently prepared to disclose Board of Director business relationships and related financial transactions that are pertinent to the FRMC.
- Continue to maintain the Accounting Procedures Manual.

Other Related Audit/Report of Interest

[Fuller Road Management Corporation and the Research Foundation of the State University of New York: Use of State Funding for Research in Emerging Technologies at the State University of New York at Albany: Nanotechnology \(2010-S-4\)](#)

**Office of the State Comptroller
State of New York**

Division of State Government Accountability

January 23, 2013

Alain E. Kaloyeros, Ph.D.
Senior Vice President and Chief Executive Officer
College of Nanoscale Science & Engineering
257 Fuller Road
Albany, NY 12203

Dear Dr. Kaloyeros:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Fuller Road Management Corporation entitled *Management of Internal Controls*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1, of the State Constitution; and Article II, Section 8, of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

Fuller Road Management Corporation (FRMC) is a private organization incorporated in 1993 pursuant to Section 402 of the Not-For-Profit Corporation Law (Law) of New York State. In 1996, FRMC's Certificate of Incorporation was amended under Section 803 of the Law to convert FRMC to a 501(c) 25 not-for-profit real-estate holding corporation. FRMC's mission is to plan, design, develop, construct, own, operate and lease facilities supporting the technical programs, strategic partnerships and business consortia of the College of Nanoscale Science and Engineering (CNSE) at the State University of New York at Albany (SUNY Albany). The Research Foundation of the State University of New York (Research Foundation) and the UAlbany Foundation are equal founding members in the mission of the FRMC.

FRMC primarily conducts its business on behalf of CNSE by holding title to, collecting income from and managing property. FRMC is overseen by an unpaid Board of Directors chaired by the CNSE Senior Vice President and Chief Executive Officer. The FRMC Board includes four directors appointed by the UAlbany Foundation, four directors appointed by the Research Foundation and two independent directors elected by unanimous vote of the other Board members. At fiscal year end June 30, 2011, FRMC reported assets totaling about \$350 million.

The CNSE complex is large and continually growing with over 800,000 square feet of building space which includes 85,000 square feet of "cleanroom" facilities. At the time of our audit, projects that would add 500,000 of square feet to the CNSE complex were under construction. Presently, total private and public investment in CNSE is about \$14 billion. In addition CNSE has more than 300 global business partners. CNSE reports that the public and private investment at CNSE has resulted in the creation of 3,100 research and development jobs at the complex. FRMC officials anticipate significant additional investment in CNSE in the coming years.

Audit Findings and Recommendations

Management of Internal Controls

Management is responsible for providing appropriate internal controls to provide reasonable assurance that the organization will achieve its mission and objectives. Specifically, internal control helps to assure that:

- operations are economical, efficient and effective,
- products and services are of high quality and are consistent with goals,
- resources are safeguarded against fraud, waste abuse,
- practices comply with laws, rules, and regulations, and
- financial and management data is accurate and produced in a timely manner.

We concluded that the FRMC Board of Directors has fulfilled its duties to support and provide for appropriate internal controls over operations and activities. We further concluded that, overall, internal controls at the FRMC are functioning as intended by the Board. Accordingly, the FRMC continues to properly support CNSE and continues to foster an ethical business climate and compliance with applicable laws, rules and regulations. We did identify some improvement opportunities pertaining to external reporting and formalizing certain procedures. These matters are discussed in the remainder of this report.

Control Environment

Management is responsible for providing a control environment, known as tone at the top, which emphasizes the importance of overall internal controls. The FRMC Board and management have created a positive internal control environment as evidenced by the following:

- The FRMC has a clearly stated mission that has been shared with all employees.
- The FRMC is governed by an appropriate set of by-laws.
- As required in the by-laws, the FRMC Board meets at least semi-annually.
- The Board conducts an annual meeting and, at this meeting, the President presents the business plan for the coming year as well as the latest annual financial reports.
- Audit, Finance and Governance Committees have been established in accordance with the by-laws.
- The Board adopted Conflict of Interest, Whistleblower, and Record Retention policies on May 6, 2009 and a Confidentiality Policy was established on June 20, 2012.
- FRMC Directors must annually complete a Conflict of Interest Disclosure Statement which is retained by the FRMC General Counsel.
- As an affiliate of the Research Foundation, FRMC adheres to the Foundation's Code of Conduct.

During our audit, we identified an exception to an otherwise strong internal control environment. In this regard, two Board Directors, Carl A. Florio and George M. Phillip, also serve on the Board of First Niagara Financial Group (First Niagara) and First Niagara received over \$100,000 from FRMC for transaction fees. Nevertheless, this potential conflict of interest and the related transaction fees were not disclosed as required on the FRMC's Internal Revenue Service (IRS) 990 filed for 2010.

After we brought this matter to the attention of FRMC officials, the FRMC submitted a revised IRS 990 for 2010 which made all required disclosures. It should also be noted that both Directors did disclose their relationship with First Niagara on the FRMC Conflict of Interest Disclosure Statement. Furthermore, FRMC officials retained the services of a new independent auditor to help ensure that in the future there would be full compliance with regulatory reporting requirements, and a presentation on the reporting requirements for IRS form 990 was made at a recent Board meeting.

Risk Assessment

Performing effective risk assessments to evaluate threats to organizational objectives and to identify economical mitigating controls is also an important element of internal control. The FRMC assesses its risks by using the following:

- the results of the FRMC annual financial audit,
- the IRS 990 reporting process,
- an insurance carrier's assessment program,
- annual planning and quarterly reporting processes, and
- risk assessment practices conducted by the FRMC independent auditor.

We conclude that the FRMC Board and management have provided adequate attention to risk assessment, and we note that the independent auditor has not identified risks in FRMC's internal control procedures or its financial reporting.

Information and Communication

Effective internal control requires a good system of communication to identify, capture and exchange information. During our review, we identified the following items that enable FRMC to inform and communicate with internal and external customers:

- FRMC prepares annual plans, financial statements and other required reports, which are presented annually to the Board and are publicly shared.
- The FRMC Board is provided with numerous materials to inform and assist them in fulfilling their fiduciary responsibilities. These items include prior Board meeting minutes, agendas for current Board meetings, quarterly progress reports on Annual Plan progress, quarterly financial statements, and copies of any resolutions for consideration at meetings.

Control Activities

Control activities refer to that aspect of internal control that specifies the required steps, duties and related documentation for preparing, approving and processing transactions. Control activities generally specify the separation of duties among employees that is necessary to ensure that no single individual has inordinate control over a financial transaction. Control activities are generally the responsibility of staff to carry out and, therefore, it is recommended that all control activities be written and included in an Accounting Procedures Manual (Manual) so that staff can be properly informed of expectations. We noted that the FRMC had not established an official Accounting Procedures Manual at the time of our review. However, in November 2012 FRMC officials provided us with a draft Manual for our review. We found that the draft Manual was adequate and provided the processes and procedures for all types of financial transactions as well as the specific duties of the FRMC Director of Finance, Treasurer and President with respect to their duties in handling the transactions. Subsequent to the completion of our audit fieldwork, FRMC management provides us with a finalized Accounting Procedures Manual. The Manual must now be continuously maintained.

Monitoring

Management must continually assess compliance with its internal control system and procedures. We concluded that FRMC management has adequate monitoring in place and noted the following measures that were in place to evidence ongoing monitoring:

- The Board continually monitors FRMC operations through its meeting process and specific approval for all key FRMC activities.
- The State University of New York at Albany and the CNSE staff serve as FRMC staff and review and process all FRMC transactions.
- Quarterly progress reports are prepared and used to determine compliance with the FRMC Annual Plan.
- FRMC officials and staff prepared a Strategic (Master) Plan and Environmental Site Assessment to guide the implementation of various phases of CNSE's site expansion projects. The Master Plan covers initiatives spanning 2008 through 2013. The Master Plan provides long-term direction and enables monitoring of goal achievement by providing for comparison of actual performance results against the Plan. The Master Plan also provides for updates and new developments. According to FRMC officials, the Plan will be updated in 2013 to reflect initiatives planned for the next five years.

Recommendations

1. Ensure FRMC officers, directors and committee members properly disclose all pertinent business relationships they have with the FRMC and any corresponding financial transactions as required by applicable law, rule, and regulation. Particular attention should be given to the completeness and accuracy of information included on the FRMC's IRS Form 990.
2. Continue to maintain the Accounting Procedures Manual.

Audit Scope and Methodology

The objective of our audit was to determine if the FRMC Board of Directors promoted internal controls that helped to ensure an ethical business climate and compliance with applicable laws, rules and regulations. The audit covers the period July 1, 2009 through October 31, 2012.

To perform our audit, we obtained and reviewed the *Standards for Internal Control in New York State Government*, *Internal Controls and Financial Accountability for Not-for-Profit Boards*, and *Right from the Start: Responsibilities of Directors of Not-for-Profit Corporations*. We reviewed FRMC's policies and procedures relevant to our audit objective. We also reviewed FRMC's by-laws, board meeting minutes, Strategic (Master) Plan, financial statements and IRS filings. We interviewed FRMC officials as well as FRMC's independent auditors. We reviewed a judgmental sample of financial transactions and bank statements to determine if FRMC's current procedures provide compensating control over financial transactions.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 (some of whom have minority voting rights) to certain boards, commissions and public authorities. 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 copy of this report to FRMC officials for their review and formal comment. We considered FRMC's comments in preparing this report and have included them in their entirety at the end of it. In their response, FRMC officials accepted our report, including its conclusions and recommendations.

Within 90 days of the final release of this report, we request FRMC officials 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 why.

Contributors to This Report

Brian Mason, Audit Director
Edward Durocher, Audit Manager
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Division of State Government Accountability

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



January 22, 2013

Brian E. Mason
Audit Director
Division of State Government Accountability
Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

RE: FRMC Response to OSC Audit Report 2012-S-6. FRMC Management of Internal Controls.

Dear Mr. Mason-

On behalf of Fuller Road Management Corporation (FRMC), its Board of Directors, leadership team, and staff, I want to thank the Office of State Comptroller (OSC) for the professional, competent, objective, and thorough audit of the FRMC Management of Internal Controls.

FRMC is particularly appreciative of the efficiency, speed, and professionalism exhibited by the OSC auditing team in providing timely, detailed, and beneficial analysis, as well as effective guidance on oversight and governance matters.

FRMC is further delighted that the OSC has determined that "...the FRMC Board of Directors has promoted internal controls that help to ensure that the FRMC continues to support CNSE and continues to foster an ethical business climate and compliance with applicable laws, rules and regulations..."

FRMC accepts the report as written in its entirety and acknowledge its flawless coherence to and full compliance with the commitment of the OSC to "helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations."

Please do not hesitate to call with any questions.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Alain E. Kaloyeros". The signature is fluid and cursive.

Alain E. Kaloyeros, Ph.D.
Chair
FRMC Board of Directors

cc: FRMC Board of Directors
Dean Fuleihan
John Loonan
Brenda Birken

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Albany, New York 12203