

New York Racing Association, Inc.

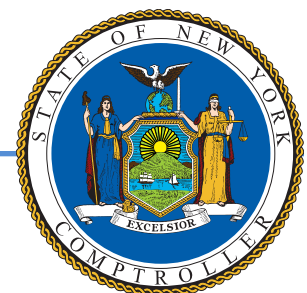
Purchasing and Procurement Practices

Report 2020-S-67 | March 2022

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the New York Racing Association, Inc. (NYRA) procured goods and services competitively and in accordance with its policies and procedures. Our audit covered the period from January 2018 through December 2020.

About the Program

Organized in 1955, NYRA is a not-for-profit corporation that holds the exclusive franchise rights to operate New York State's three major thoroughbred racetracks: Aqueduct Racetrack, Belmont Park, and Saratoga Race Course.

Section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law requires all contracts entered into by NYRA for the procurement of goods or services to be pursuant to a competitive bidding purchasing policy approved by the New York State Franchise Oversight Board (FOB). NYRA's Purchasing Policy and Procedures Manual (Manual), approved by the FOB in 2010, specifically states that "Company employees who are entrusted to purchase goods and services are expected to spend the Company's money in a prudent manner." Between January 1, 2018 and December 31, 2020, NYRA's expenditures were about \$250.3 million for goods and services.

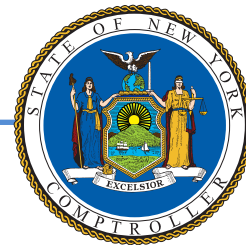
Key Findings

Our audit found NYRA does not have adequate monitoring and oversight over its purchasing and procurement process; consequently, sufficient competition is not fully promoted, and overspending may have occurred. Specifically:

- NYRA made a significant number of purchases without competitive bidding, instead using Bid Exception Memos (BEMs) for purchases using single or sole source exceptions. Documentation to justify NYRA's use of BEMs and the circumvention of competitive bidding was generally very limited.
- Contrary to Manual requirements, over 15,000 transactions under \$1,000 each, totaling approximately \$4.79 million, were made to purchase goods or services from suppliers outside of the approved vendor list without the Purchasing Department questioning why the approved vendors could not supply the goods or services.
- NYRA could not provide copies of change orders to support the payment of \$787,517 to a construction contractor. As a result, we could not determine whether the additional payments were justified.
- Some of NYRA's procurement practices deviated from the requirements in the Manual. These deviations allowed a NYRA employee to select his company to do business with NYRA and receive payments totaling almost \$200,000.
- We found weaknesses in NYRA's purchasing system and processes, a lack of segregation of duties, and a lack of risk assessment and analysis.

Key Recommendations

- Strengthen the integrity of the purchasing and procurement process by updating the Manual and obtaining FOB approval, and adhere to the approved policy when procuring goods and services.
- Monitor purchases and analyze historical purchasing data to identify categories of items that, in the aggregate, are budgeted for greater than \$50,000 and obtain competitive bids.
- Conduct periodic risk assessments of procurement operations to identify vulnerabilities and take action to address, as necessary.
- Conduct periodic audits of NYRA's purchasing and procurement process.



Office of the New York State Comptroller Division of State Government Accountability

March 16, 2022

David O'Rourke
President and Chief Executive Officer
New York Racing Association, Inc.
Jamaica, NY 11417-0090

Dear Mr. O'Rourke:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the 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 New York Racing Association, Inc. entitled *Purchasing and Procurement Practices*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 209 of the New York State Racing, Pari-Mutuel Wagering and Breeding 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,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
Agreement	NYRA's Franchise Agreement	<i>Key Term</i>
BEM	Bid Exception Memo	<i>Key Term</i>
FOB	New York State's Franchise Oversight Board	<i>Agency</i>
Manual	NYRA's Purchasing Policy and Procedures Manual	<i>Key Term</i>
NYRA	New York Racing Association, Inc.	<i>Auditee</i>
PML	Racing, Pari-Mutuel Wagering and Breeding Law	<i>Law</i>
Resorts	Resorts World New York City Casino	<i>Key Term</i>
RFP	Request for Proposal	<i>Key Term</i>
RFQ	Request for Quote	<i>Key Term</i>
VLT	Video Lottery Terminal	<i>Key Term</i>

Background

The New York Racing Association, Inc. (NYRA), organized in 1955, is a not-for-profit corporation that holds the exclusive franchise rights to operate New York State's three major thoroughbred racetracks: Aqueduct Racetrack, Belmont Park, and Saratoga Race Course.

In November 2006, NYRA filed for bankruptcy due to its poor financial condition, including a cumulative operating deficit of more than \$135 million. In September 2008, upon renewal of its exclusive Franchise Agreement (Agreement), NYRA entered into a bankruptcy settlement agreement conveying all rights, titles, and interests in its racetracks, such as properties (land and buildings), leasehold improvements, and works of art to the State. In return, the State forgave nearly all of NYRA's debt obligations. In addition, a Franchise Oversight Board (FOB) was established to oversee NYRA's financial operations. As per the Agreement, NYRA is required to pay the State a franchise fee under certain financial conditions. NYRA has reported that it has not been required to pay a franchise fee for the 3 years in our scope.

In October 2011, Resorts World New York City Casino (Resorts), operated by Genting New York, opened adjacent to Aqueduct Racetrack. According to the Agreement, a percentage of Resorts' Video Lottery Terminal (VLT) revenue is directed to NYRA for enhanced purses, operational support, and capital expenditures. The Agreement directs that NYRA receive VLT funding until 2033, unless the franchise is terminated before that time. However, the last FOB report on NYRA's operations stressed the need for NYRA to develop a plan to become profitable without reliance on VLT subsidies. According to its financial statements, NYRA reported total operating expenses of \$398 million, \$400 million, and \$334 million for 2018, 2019, and 2020, respectively. In addition, NYRA reported receiving a total of \$119 million, \$121 million, and \$55 million in VLT revenues for each of these 3 years, respectively.

From January 1, 2018 to December 31, 2020, NYRA spent approximately \$250.3 million for the purchase of goods and services. Section 208 of the Racing, Pari-Mutuel Wagering and Breeding Law (PML) requires that all contracts entered into by NYRA for the procurement of goods or services be pursuant to a competitive bidding purchasing policy approved by the FOB. The Agreement sets out requirements that NYRA must meet in order to retain the franchise, including a requirement that NYRA keeps its expenses at commercially reasonable levels and in accord with racing and wagering industry standards. Because NYRA operates its racing operations at a deficit, it is imperative that its purchasing practices result in obtaining goods and services at the best available prices, primarily through competition. PML Section 212 states that the duties and responsibilities of the FOB shall include but not be limited to: receiving, reviewing, approving, or disapproving capital expense plans submitted annually by the franchised corporation, and reviewing and approving all purchasing policies. In 2009, NYRA officials developed a Purchasing Policy and Procedures Manual (Manual) that included requirements for competitive bidding and the purchasing of goods and services at various dollar thresholds. The Manual was last approved by the FOB in 2010.

Audit Findings and Recommendations

NYRA does not adequately monitor and oversee its purchase and procurement process; consequently, sufficient competition is not fully promoted and possible overspending may have occurred. During our 3-year scope period, NYRA used 302 Bid Exemption Memos (BEMs) to purchase goods and services totaling \$30.5 million, with limited documentation as to why it was circumventing the bidding process that would have otherwise been required.

Overall, NYRA's procurement practices deviated from the Manual requirements, resulting in questionable awards, including: one employee selecting his company to do business with NYRA and receiving payments totaling almost \$200,000; and 15,298 transactions, totaling approximately \$4.8 million, where the purchases were from suppliers that were not on the approved vendor list.

Significant Purchases Without Competition

We found NYRA obtained significant goods and services without competition, and instead circumvented the competitive bidding requirement using BEMs, which contained limited justification for the need to use single or sole source procurement.

The Manual states that the purchase of goods and services valued at \$50,000 and over is subject to the competitive bidding process. The Purchasing Department must solicit sealed bids and use its best efforts to secure bids from a minimum of three vendors through a Request for Proposal (RFP) or a Request for Quotes (RFQ). The Manual also states that, in addition to the competitive process, a contract can also be awarded under emergency, sole source, and single source circumstances. In these cases, NYRA uses a BEM.

BEMs are to be used in the absence of three quotes for goods or services valued between \$10,000 and \$49,999 or in the absence of a formal bid if the goods and services are \$50,000 and over in value. BEMs are based on the following three procurement types:

- Single source – Two or more vendors can provide the commodity or services, but one vendor is selected over the others for reasons such as expertise or previous experience with similar contracts
- Sole source – Commodity or service is only available from one source
- Emergency procurement – Urgent and unforeseen event where health and public safety or the conservation of public resources is at risk

According to the Manual, the procurement record should, at a minimum, include the justification for single or sole source purchases, competitive methodology utilized, and reasonableness of price. Furthermore, the Manual references two circumstances under which a single source award may be utilized: (1) consultant and professional service where such service is uniquely positioned for the thoroughbred racing or pari-mutuel industry or where such consultant or specialty service is considered to be a subject matter expert; and (2) provision of services where the vendor is deemed

uniquely qualified through experience or reputation to provide the desired services (e.g., legal services, architectural services, media, lobbying, consulting).

During our 3-year scope, NYRA utilized BEMS to make 302 purchases (83 in 2018; 118 in 2019; 101 in 2020) totaling approximately \$30.5 million. We reviewed 31 BEMs – totaling about \$7.5 million and including 27 BEMs of \$50,000 or more that should have been formally competitively bid – to determine whether the justification for their use was properly documented, as required. The breakdown of the 31 BEMs was as follows:

- 7 sole source exceptions, totaling \$1.6 million
- 19 single source exceptions, totaling \$4.8 million
- 5 emergency exceptions, totaling \$1.1 million

We found that the justification for the purchases made using the single or sole source exceptions was generally limited. In fact, no other documentation to justify the lack of competition was provided except for a few sentences noted in the BEM.

- NYRA purchased four trophies, totaling \$96,000, from a vendor in England on the basis that the vendor was a single source. The BEM stated that this vendor “has created some of the world’s most illustrious sporting trophies; their distinguished heritage of iconic designs allows them to create the trophy styles that are suitable for NYRA’s new racing series, Turf Trinity and Turf Tiera; all trophies created for NYRA will be stamped with this vendor’s brand.” There was no additional justification as to why NYRA officials decided to purchase from this vendor when they were also purchasing trophies from other well-known vendors.
- In 2019, NYRA used a sole source exception, totaling \$160,000, for a specific artist to perform during the Belmont Stakes. The justification for this exception was that the performance taking place during the 151st Belmont Stakes can only be performed by that individual. However, there was no explanation why only that artist could perform and why other artists, who might have cost less, were not considered.
- In 2018, NYRA used a single source exception, totaling \$18,750, for about 19 hours of vocal coaching for its on-air broadcasters and the Chief Executive Officer and President. The only justification for the exception was “This vendor has worked in numerous industries and boasts an impressive client list that includes top sportscasters, TV networks such as ESPN, Fox and NFL Network, and business executives such as the NFL Commissioner.” No other justification or documentation was provided as to why this expense was warranted and an exception to obtaining at least three quotes was justified.
- In June 2018, NYRA officials approved a BEM, totaling \$18,600, for the rental of an event room from the New York Mets to announce the post positions for the Belmont Stakes. The only justification for this sole source BEM was that the

“New York Mets are the sole owners of the event room and will only allow their vendors for audio/video equipment and production, information technology, and equipment rental.” No other justification was provided to support why NYRA needed to make this announcement at Citi Field.

NYRA officials asserted that the Manual does not require the Purchasing Department to question the business judgment of departments’ requisitioners, and that they are allowed to use BEMs. NYRA officials added that they require requisitioners to perform due diligence before the Law, Purchasing, and Finance Departments approve a justification for an exception to the competitive bidding process. Examples of such diligence can include research to determine how many other companies are in the field and if the suggested vendor is uniquely qualified and/or has extensive experience. The Law and Purchasing Departments will conduct additional research to ensure that the requested exception is warranted. However, we were not provided with evidence of the additional research or diligence performed. Furthermore, the Manual requires that employees spend the company’s money in a prudent manner. Without detailed business justification, there may be inappropriate purchasing decisions and overspending.

Purchases Under \$1,000 Made Outside of Approved Vendor List

According to the Manual, goods and services under \$1,000, if available, must be purchased from suppliers on NYRA’s approved supplier list, which is maintained by the Purchasing Department. Moreover, the Purchasing Department must approve any procurements outside of the approved vendor list prior to the order being placed. According to the Manual, all dollar thresholds within the policy are to be calculated on an annual basis, and the Purchasing Department should periodically perform competitive analyses to determine if optimal prices are being obtained.

We found 15,298 transactions, under \$1,000 each and totaling approximately \$4.79 million, that were purchased from suppliers that were not on the approved vendor list without the Purchasing Department questioning why the approved vendors could not supply the goods or services. For example, NYRA’s approved vendor list had four vendors that could provide plumbing supplies and services. However, we found that NYRA purchased plumbing supplies and services, under \$1,000 and totaling \$335,504, from 15 non-approved vendors. Had the Purchasing Department monitored these smaller purchases, it would have found that the procuring departments were not complying with the requirement to purchase from the approved vendor list and questioned why these purchases were being made from vendors outside of the approved list.

It is also important that NYRA officials periodically analyze purchases under \$1,000 to identify opportunities for aggregating purchases, so they can be competitively bid and ensure the departments are purchasing from the list of approved vendors to obtain discounts and prevent favoritism.

Questionable Contract Awards and Purchases

The Manual provides guidelines on methods to gather and exchange information with the vendor community in a manner that promotes openness, fairness, and transparency. According to the Manual, NYRA may request additional information from a bidder concerning particular aspects of a submission to ensure that a proper and objective analysis and evaluation can be performed on an equitable basis. However, such request shall only seek further explanation of a bid as submitted and shall not require nor permit a bidder to add, change, or otherwise re-submit any aspect of a bid. Additionally, if there are large variances in the bid prices between the apparent low bid and the next higher bid, clarification must be sought to ensure the bidder understood the specifications and can perform/deliver at the bid price. A re-bid for best price can occur only after the Bid Committee determines that there was a misunderstanding of the scope of the project.

As part of our review of a judgmental sample of 130 procurement transactions for goods and services, totaling approximately \$13.5 million, we identified several awards that deviated from the process, as per the Manual, and one purchase that did not appear to be related to the regular business of NYRA.

- In 2018, NYRA's Purchasing Department received three bids to provide cleaning services at Saratoga, including from the contractor already providing these services. The contractor was not the lowest bidder, having bid \$52,562 higher than the lowest bid. NYRA's Director of Facility at Saratoga requested that the Purchasing Department ask the current contractor to match the lowest bid because he thought "changing vendors for \$50,000 over 3 years is not worth the risk." Purchasing Department personnel subsequently asked all bidders to submit their best and final pricing, and the current contractor reduced its price by \$78,922, making the bid \$2,044 lower than its closest competitor's re-submitted bid price. This request for re-submission with best and final pricing was not allowed, according to the requirements of the Manual, as there was no documentation to support that there was a misunderstanding of the scope of work. It was requested only because NYRA officials wanted to continue doing business with the current contractor. Ultimately, the Director of Facility selected the existing contractor as the winning bidder. NYRA officials asserted that the Manual does not preclude NYRA from seeking best and final offers for other reasons; however, the Manual is clear that the bidder shall not re-submit any aspect of a bid except when seeking further explanation.
- In 2017, a vendor won a bid to provide temporary staff despite not meeting the minimum qualification outlined in the RFQ, which stated that "bidders must be duly organized and operating as a business entity for a minimum of ten (10) years." Based on the vendor's submitted quotation and a New York Department of State record, the winning vendor's initial operations with the State had been in place for approximately 8 years by the time the RFQ was submitted; therefore, it did not meet the minimum qualifications in the RFQ and should not have been awarded the contract.

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- We identified an additional vendor that was awarded a 2018 contract, totaling \$250,495, even though it was not the lowest bidder. We found a memorandum from the chief engineer justifying the selection of this vendor because of its responsiveness to time constraints and ability to secure and deliver the items. However, NYRA did not provide documentation to show that the low bidder would not be responsive or could not deliver the items timely. Overall, the winning vendor was awarded three contracts, totaling about \$2.53 million, with NYRA during our 3-year scope period. It is important that NYRA comply with the requirements of the Manual to promote openness, fairness, and transparency, and encourage vendor participation.
 - NYRA paid Nassau County a total of \$2,080 for what appeared to be the rental of time at a rifle range for 8 different days between March 2018 and November 2018. There was no quote provided, as required by NYRA's policies. NYRA also purchased \$4,993 in ammunition from a gun vendor around the time of the shooting range rental. Overall, for the 3 years ending 2020, NYRA paid a total of \$13,391 (\$4,940 in range rental fees and \$8,451 for the ammunition). No other justification or explanation for the need for the rental of a shooting range was provided. We question the appropriateness of and the business need for these purchases and whether NYRA employees spent the organization's monies in a prudent manner.

In addition to the perception of favoritism and awards being granted to unqualified bidders, these practices can discourage other vendors from submitting future bids as they might believe that they do not have a fair chance at being awarded contracts.

Lack of Support for Payments and Overpayments

Good business practice requires the maintenance of supporting documentation for purchases, and payments should be made in accordance with contract terms. Our audit found a construction contractor that received payments totaling \$26.5 million between January 2018 and July 2020. NYRA did not provide copies of the change orders to support a total of \$787,517 in additional payments to this vendor. We also note that the change orders for this contract were not listed in NYRA's contract system. Without reviewing the terms of the change orders, we could not determine whether the payments were for additional work not covered by the agreed-upon original scope of work and, therefore, have no assurance of the appropriateness of these payments.

In 2017, NYRA entered into a 3-year contract, totaling \$436,122, with a company to provide automated teller machines at NYRA facilities. According to the contract terms, the vendor agreed on payment that was inclusive of all shipping, handling, installation costs, and taxes. However, we found that NYRA paid an additional \$15,296 (\$14,316 in sales taxes and \$980 in installation fees) to the vendor.

We note that the Manual does not specify when a comprehensive contract agreement is required, and NYRA officials indicated that their purchase orders contain the legal components of a binding contract. However, as indicated by the

examples above, there can be misinterpretations of contracts; consequently, it is crucial to have written comprehensive agreements to help prevent misunderstanding and avoid expensive litigation proceedings if disagreements arise. NYRA should develop clear criteria, such as dollar thresholds, to determine when a formal contract is necessary.

Weak Internal Controls

According to the Standards for Internal Control in New York State Government, internal controls help an organization achieve its objectives. Checks and balances support the mission, while helping prevent fraud, waste, and abuse and ensuring the efficient use of resources. Internal controls are the first line of defense and the best mechanism an organization has to safeguard its assets and resources. Consequences of weak internal controls can range from inaccurate or incomplete information, waste or misuse of assets, and embezzlement or theft. To ensure proper controls are in place, organizations need to periodically conduct risk assessments to identify potential risks that can prevent achievement of program objectives and establish controls to mitigate the risks identified. Our review found that several of NYRA's procurement practices were not in compliance with the FOB-approved Manual. More importantly, some of these deviations have resulted in weaknesses in internal controls related to NYRA's procurement process as well as in its inventory control system.

Quotes Inappropriately Obtained by Requisitioners

The Manual states that, for discretionary purchases between \$1,001 and \$9,999, the Purchasing Department will use prudent business judgment when placing such orders and will periodically perform competitive analysis on such requisitions to ensure that optimal prices are obtained. For discretionary purchases between \$10,000 and \$49,999, the Purchasing Department will solicit at least three written quotes before choosing a vendor. We found that each requisitioning department, not the Purchasing Department, is responsible for discretionary purchasing activities. NYRA officials asserted that the requisitioning department does not select the vendor but that, when a requisition is submitted to purchasing, the requisitioning department suggests a vendor and assigns the requisition to that vendor. The Purchasing Department then reviews the quote(s) and ensures that the purchase requisition complies with the Manual. NYRA officials could not provide documentation to support these assertions. In fact, we noted numerous emails in which the Purchasing Department asked the requisitioning department to make the final decision. For the previously mentioned cleaning services, Purchasing Department personnel asked the Director of Facility (requisitioning department), "How would you like to proceed?" The Director ultimately selected the vendor he originally wanted.

Having each requisitioning department solicit quotes, select vendors, and, in some cases, the requisitioner also signing for the receipt of goods and services is a lack of proper segregation of duties, which can lead to favoritism, split ordering, and other irregularities. For example, NYRA found that one of its employees established a

company that did business with his department from 2016 to 2019. During our audit scope, this company was paid a total of \$197,875 (\$130,925 in 2018 and \$66,950 in 2019). The employee's supervisor knew that services were being provided to NYRA and split-ordered to ensure that fees generally were under NYRA's threshold of \$10,000 in order to circumvent NYRA's purchasing policy and procedures of having to obtain three written quotes. Upon an investigation by NYRA, both employees were suspended for 2 weeks without pay. Although this situation was identified by NYRA, it still has not adjusted its process to comply with the Manual and thus prevent similar incidents in the future. If the solicitation and selection functions were carried out by the Purchasing Department, as required by the Manual, this activity would have likely been avoided. Additionally, had the Purchasing Department monitored purchases by conducting periodic analyses, officials would have found that these purchases were for similar goods and services over \$50,000 annually that should have been competitively bid.

We note that even after uncovering this incident, NYRA has not conducted a risk assessment of its procurement area, and NYRA's Internal Audit Department has not conducted a review of its procurement practices. It is important that such assessments and reviews be performed to identify weaknesses and establish controls that can be incorporated when updating the Manual – a process that NYRA officials informed us is in progress. Periodic audits can be used to monitor the established process.

Lack of Audit Trail and Policies for Use of Petty Cash and Credit Cards

Good business practice requires entities to establish policies for the use of petty cash and credit card purchases that detail what purchases are permissible using these methods. Our review found that three of NYRA's departments – Facilities upstate, Facilities downstate, and Security – have petty cash accounts. For our scope period, these departments spent \$20,422 from petty cash for items such as appreciation breakfasts, lunch and dinners, catering, a car wash, and a refrigerator. NYRA officials stated that they do not have a documented petty cash policy but that use of petty cash is infrequent and de minimis. They added they will evaluate whether to eliminate the use of petty cash and will draft a policy if they decide to keep it.

We reviewed NYRA's credit card purchases of \$23,400 worth of gift cards – 40 gift cards in 2019, valued at \$200 each, and 308 gift cards in 2017, valued at \$50 each. NYRA officials informed us that the \$200 gift cards were part of a sponsorship deal and were donated to a non-profit organization. The non-profit, not NYRA, selected and distributed the gift cards, and NYRA did not have a listing of the recipients of the gift cards.

For the other 308 gift cards, NYRA officials indicated that the individuals who were involved in the purchase of these gift cards are no longer at NYRA and no list of the recipients was maintained. Maintaining a list of the persons who received these gift

cards, with their signatures acknowledging receipt, is a basic internal control for this high-risk asset, which can be given to undesignated individuals or stolen. Without this documentation, NYRA cannot be assured that the gift cards went to appropriate persons. We also found that NYRA does not have a policy addressing the usage of credit cards; as a result, we could not determine whether the use of credit cards for purchasing gift cards was appropriate. Lack of a formal policy can potentially lead to overspending and inappropriate purchases.

Weak Asset Controls

We selected a judgmental sample of 98 high-risk assets, such as televisions, cameras, printers, and vehicles, totaling \$331,615, to confirm their existence. However, we found that NYRA's capital asset subledger, totaling approximately \$93.5 million, did not differentiate items by identification number, such as serial or tag numbers. We asked NYRA officials how they identify and keep track of their assets, but they did not respond; instead, they generated a more detailed capital asset ledger for our sample. When we asked if NYRA could generate this for all assets, NYRA officials responded that they could not. Regardless, we attempted to find the sample of 98 high-risk assets. NYRA officials showed us 98 items; however, since assets are not tagged, we have no assurance that the items we saw were, in fact, the ones on our list.

We also reviewed NYRA's transportation and storage fees for 14 pieces of artwork, with an estimated value between \$311,000 and \$486,000, according to NYRA's artwork list. We attempted to verify the existence of the 14 pieces since NYRA had not verified that they were, in fact, in storage after they were transferred to another storage facility in July 2018. We were able to find 14 pieces during a visit to a storage facility; however, one of the pieces was not as described on NYRA's list. The artwork, which NYRA had listed as being in storage, was actually at Belmont Park.

NYRA has not established proper internal controls to safeguard its assets, such as a universal asset tagging system and periodic asset verification. Lack of proper internal controls can lead to misuse or theft of assets.

Recommendations

1. Strengthen the integrity of the purchasing and procurement process by updating the Manual and obtaining FOB approval, and adhere to the approved policy when procuring goods and services.
2. Ensure the updated Manual includes, but is not limited to, the following:
 - A requirement for the submission of detailed justification and supporting documentation for the use of all BEMs.
 - A consistent methodology on how to determine which vendors should be selected as approved vendors, and a process for monitoring purchases under \$1,000 to ensure they are made from approved vendors.

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- The establishment of proper segregation of duties, methods to encourage competition, and requirements to ensure optimal pricing.
 - Criteria, such as dollar thresholds, to determine when a comprehensive agreement is necessary.
3. Monitor purchases and analyze historical purchasing data to identify categories of items that, in the aggregate, are budgeted for greater than \$50,000 and obtain competitive bids.
 4. Ensure departments are purchasing from the approved vendor list for purchases under \$1,000.
 5. Conduct periodic risk assessments of procurement operations to identify vulnerabilities and take action to address, as necessary.
 6. Conduct periodic audits of NYRA's purchase and procurement process.
 7. Develop formal credit card and petty cash policies and disseminate to appropriate departments.
 8. Establish proper internal controls to safeguard assets.

Audit Scope, Objective, and Methodology

The objective of this audit was to determine whether NYRA procured goods and services competitively and in accordance with its policies and procedures. Our audit covered the period from January 2018 through December 2020.

To achieve our audit objective and assess relevant internal controls, we interviewed NYRA officials and reviewed relevant laws and regulations as well as NYRA's Manual. We also met with FOB officials. Additionally, we selected a judgmental sample of 130 procurement transactions (87 vendors), totaling approximately \$13.5 million, for goods and services purchased during our audit period, from a population of \$250 million (2,177 vendors). We used a risk-based approach for our sampled transactions. Specifically, we selected vendors that were paid more than the original contract amount and that were paid over \$50,000 but did not have a contract, as well as high-risk payments such as charitable contributions, entertainment expenses, petty cash, and credit card purchases. We also selected transactions just under various dollar thresholds, indicating potential split orders. We reviewed documents such as price quotes, purchase requisitions, approvals, invoices, receiving, payments records, contracts, as well as the RFPs/RFQs, as applicable. We visited the Aqueduct and Belmont Park Racetracks to verify the existence of 98 sampled assets, such as televisions, printers, and vehicles. The results of our judgmental samples cannot be projected to the populations.

Statutory Requirements

Authority

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 209 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

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 objective. 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, including some duties on behalf of public authorities. For NYRA, this includes reporting NYRA as a discrete component unit in the State's financial statements. This duty could be considered a management function for purpose of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, this duty does not affect our ability to conduct this independent audit of NYRA's purchasing and procurement practices.

Reporting Requirements

We provided a draft copy of this report to NYRA officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. In their response, NYRA officials indicated they disagreed with many of the conclusions in the report but would evaluate our recommendations and take appropriate actions, as necessary. Our responses to certain remarks are embedded within NYRA's response as State Comptroller's Comments.

Within 180 days after the final release of this report, we request that the Chairman or Chief Executive Officer of the New York Racing Association report to the State Comptroller, advising what steps were taken to implement the recommendations contained in this report, and where recommendations were not implemented, the reasons why.

Agency Comments and State Comptroller's Comments



The New York Racing Association, Inc. | P.O. Box 90 Jamaica, NY 11417 | 718-641-4700 | www.nyra.com

Mr. Kenrick Sifontes
Audit Director
Office of the State Comptroller
59 Maiden Lane
New York, NY 10038

Re: Audit Report 2020-S-67 – Procurement Practices

Dear Mr. Sifontes,

On January 24, 2022, the Office of the State Comptroller (the “OSC”) submitted its draft audit report (the “Draft Report”) based on your review of the purchasing and procurement practices of the New York Racing Association, Inc. (“NYRA”). As requested in the Draft Report, this letter serves as NYRA’s Management Response to the Draft Report. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Draft Report.

In general, NYRA disagrees with and objects to many of the stated conclusions that the OSC issued in the Draft Report (the “OSC Findings”). NYRA’s specific concerns are detailed below. However, at the outset, it is imperative for NYRA to address certain overarching and repeated issues that warrant special attention.

Of primary concern is the repeated use of inflammatory, conclusory headings and non-sequitur statements that mislead the reader. We respectfully stress the importance of the OSC taking a discerning look at its language choices and the consequences that such language may have on the accuracy of its findings. For example, in the opening paragraph, the OSC states:

State Comptroller’s Comment 1 – Our findings accurately reflect NYRA’s purchasing and procurement process. Moreover, the tone of our report is balanced and professional, and reflects the seriousness of the issues found during our audit.

“Our audit found NYRA does not have adequate monitoring and oversight over its purchasing and procurement process; consequently, sufficient competition is not fully promoted, and overspending may have occurred.”

This statement is overly vague, inaccurate and misleading. The purchasing and procurement process at NYRA undergoes robust monitoring and oversight both internally at the level of the procurement, legal and finance departments and externally by the Franchise Oversight Board. Moreover, the statement fails to note that the OSC only found a handful of isolated occurrences of what it (subjectively) deems to be potential



overspending. Similarly, the OSC does not present facts underlying its statement that NYRA fails to promote sufficient competition. Indeed, the minimal number of examples that the OSC offers to support its findings undermines this broad conclusory statement.

State Comptroller's Comment 2 – Our audit found that NYRA did not monitor purchases by conducting periodic analyses to identify opportunities to aggregate purchases and increase competition. We identified over 15,000 transactions, totaling almost \$5 million, in purchases made from vendors outside of the approved vendor list as well as a significant number of BEMs without proper justification. Those are hardly isolated cases and are the basis for our statement that sufficient competition is not fully promoted.

Another significant concern to NYRA is the fact that the OSC fails to clearly and accurately describe the permitted use of business exception memos (“BEM”) as an adjunct to competitive bidding. To remove all doubt, the purchasing and procurement manual (the “Manual”) *expressly permits* NYRA to purchase goods and services in the absence of a competitive bid as long as such purchases meet specific criteria detailed in the relevant section of the Manual.

Even though use of this tool is expressly permitted, when a BEM is requested, the decision undergoes a careful review by the finance, legal and procurement departments before it is finally approved. Furthermore, BEM valued at fifty thousand dollars or more are reported to the FOB as part of a larger monthly contract report. NYRA is also required to notify the FOB thirty days prior to signing any contract procured using a BEM that is worth two hundred thousand dollars or more. Thus, the OSC’s conclusory finding that “NYRA obtained significant goods and services without competition; instead, using BEMs” is misleading.

State Comptroller's Comment 3 – Our statement is not misleading. While BEMs are permitted, they should be the exception. As indicated, NYRA is permitted to buy goods and services without competition if the purchase meets specific criteria; however, our audit found several examples of purchases that did not appear to meet the specific criteria for an exception to competition.

Finally, NYRA is genuinely puzzled by the OSC’s statement that NYRA should “strengthen the integrity of the purchasing and procurement process by updating the Manual and obtaining FOB’s approval.” NYRA, on its own initiative, submitted a revised procurement policy to the FOB and has been actively working with the agency to finalize that policy. Moreover, NYRA updated its procurement procedures manual to strengthen and modernize the procurement process. The OSC’s statement deliberately ignores that the updating process is already ongoing, a fact NYRA told the OSC on multiple occasions, both orally and in writing.

State Comptroller's Comment 4 – NYRA’s allegation that “OSC’s statement deliberately ignores that the updating process is already ongoing, a fact NYRA told the OSC on multiple occasions, both orally and in writing” is incorrect. Page 13 of our report clearly states that NYRA informed us the Manual is in the process of being updated. However, despite asking for a copy of the revised procurement policy and the date it was submitted to the FOB, NYRA did not

corroborate its statement. Instead, NYRA provided a copy of a PowerPoint presentation without assurance it had been presented to the FOB.

Specific Responses to the OSC Findings:

1. Misrepresentation of the Audit Scope Period – “Our audit covered the period from January 2018 through December 2020.”

Discussion: This is factually incorrect. On January 15, 2021, the OSC submitted an Initial Data Request document explicitly stating the audit scope period as the period of January 2018 through the end of fieldwork . . .”

Throughout the audit, the OSC requested information pertaining to 2021. By way of example, on September 27, 2021, the OSC sent an email requesting information relating to 2021 RFQ/ RFP sample selections.

State Comptroller’s Comment 5 – Our audit scope, as stated in the report, is accurate. While we requested some 2021 information, the audit evidence used to support our findings, conclusions, and recommendations is based on information from January 2018 through December 2020.

2. Misleading Key Finding – “Contrary to Manual requirements, over 15,000 transactions under \$1,000 each, totaling approximately \$4.79 million, were made to purchase goods or services from suppliers outside of the approved vendor list.”

Discussion: This finding lacks substantial context. The intention of the policy was not to limit purchases under \$1,000 to only suppliers on the approved vendor list. Rather, purchases under \$1,000 from an approved vendor were originally exempt from the purchase order (“PO”) process and could be purchased directly by the requisitioner. As stated in the Manual, “If available, all goods and services must be purchased from suppliers on the approved supplier list...Purchasing must approve any purchases outside of the approved vendor list prior...”

Contrary to the OSC implication, NYRA has the full authority to purchase from a supplier outside of the approved vendor list while also remaining in compliance with the Manual. The additional requirement for such purchases is that they must be approved by the Purchasing Department, which is evidenced by the creation of the PO.

State Comptroller’s Comment 6 – While NYRA has the authority to purchase from vendors outside the vendor list, it must demonstrate that the goods and services could not be obtained from the vendors on the approved list. The Purchasing Department routinely creating purchase orders does not demonstrate that they adequately assessed the appropriateness of making purchases outside of the approved vendor list.

It is also relevant to note that this process has been revised since 2010, and all purchases, regardless of dollar amount, are required to be submitted to Purchasing for review and obtain a PO.

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3. Misleading Key Finding – “NYRA could not provide copies of change orders to support the payment of \$787,517 to a construction contractor.”

Discussion: This finding lacks context. NYRA provided the summary detailing the five (5) components making up the \$787,517 change order, along with the approved payment application authorized by architect of record asserting that the additional work was justified and accurate.

State Comptroller’s Comment 7 – A summary of the five components that made up the \$787,517 change order payment is not a sufficient substitute for copies of actual change orders. Absent the change orders, we are unable to determine if the changes were appropriate and not part of the original scope of work.

4. Misleading Key Finding – “Some of NYRA’s procurement practices deviated from the requirements in the Manual. These deviations allowed a NYRA employee to select his company to do business with NYRA and receive payments totaling almost \$200,000.”

Discussion: This statement is overly broad and incomplete. The OSC offers one isolated incident that occurred in 2019 to justify its broad conclusion that “NYRA’s procurement practices deviated from the Manual requirements.” The OSC also fails to note that NYRA voluntarily disclosed that this violation occurred, that it was fully investigated by NYRA’s Purchasing and Legal/Compliance Departments and that corrective action was taken against the individuals involved.

State Comptroller’s Comment 8 – NYRA’s response does not acknowledge a serious concern demonstrated by this incident – that the Purchasing Department did not comply with the Manual’s requirement to solicit written quotes and select the vendors. As indicated in the report, even after this incident, NYRA failed to correct the process, creating an environment for similar incidents to potentially occur in the future. Additionally, NYRA did not voluntarily disclose this incident to us; rather, it was disclosed when we asked if any fraud or illegal acts related to its procurement process had occurred during our audit scope period.

5. Misleading Statement - “The Agreement sets out requirements that NYRA must meet in order to retain the franchise, including a requirement that NYRA keeps its expenses at commercially reasonable levels and in accord with racing and wagering industry standards.”

Discussion: It appears the language used by the OSC implies that NYRA is not keeping its expenses at commercially reasonable levels, despite there being absolutely no basis in fact or in the OSC’s own findings for making such a generalized statement. NYRA takes the requirements of the Franchise Agreement very seriously and it is irresponsible for the OSC to imply that NYRA is not in compliance with the Franchise Agreement without any factual support.

State Comptroller’s Comment 9 – This is a statement of fact included in the background of the report.

6. Inflammatory and Misleading Section Title – “Circumvention of the Competitive Bidding Requirement using Bid Exception Memos”

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Discussion: As discussed above in NYRA's general response, BEMs are expressly permitted by the Manual. Thus, the title in OSC's report, "Circumvention of the Competitive Bidding Requirement Using Bid Exception Memos," is misleading and inflammatory in nature. As provided in the Manual, there are four ways for NYRA to enter into a contract with a vendor: (1) Competitive bid via RFQ/RFP or obtaining three quotes (depending on the contract amount), (2) Emergency contract, (3) Sole Source contract, and (4) Single Source contract. Each and every one of these means to a contract is acceptable and in compliance with the Manual. Additionally, contracts awarded via BEMs are only executed once the justification is vetted by the Purchasing, Finance, and Legal departments. It is an egregious and misleading implication to connect an BEM with a purchasing policy violation.

State Comptroller's Comment 3 – Our statement is not misleading. While BEMs are permitted, they should be the exception. As indicated, NYRA is permitted to buy goods and services without competition if the purchase meets specific criteria; however, our audit found several examples of purchases that did not appear to meet the specific criteria for an exception to competition.

7. Misapprehension of the Manual – “According to the Manual, the procurement record should, at a minimum, include the justification for single or sole source purchases, competitive methodology utilized, and reasonableness of price”

Discussion: Please see NYRA's general response above.

8. Misleading Finding – “During our 3-year scope, NYRA utilized BEMS to make 302 purchases (83 in 2018; 118 in 2019; 101 in 2020) totaling approximately \$30.5 million.”

Discussion: See NYRA's response to #6 above.

9. Misapprehension of the Manual – “In fact, no other documentation to justify the lack of competition was provided except for a few sentences noted in the BEM.”

Discussion: The Manual does not require additional documentation of the justification. In fact, the OSC's assumption that BEMs require additional documentation is based on a glaring misapprehension of language in the Manual. This OSC Finding is fundamentally flawed and does not support a conclusion that any violation or deviation from the Manual occurred. NYRA explained the OSC's flawed assumption on numerous occasions.

State Comptroller's Comment 10 – The Manual requires that NYRA maintain justification for single or sole source purchases. The lack of justification goes against well-established business practices as well as the overarching goal of having an open and fair procurement process. If NYRA believes that the Manual does not require that justification be maintained, then, as we recommended, this should be included in the updated Manual.

NYRA's policies do not require requestors to substantiate transactions because the need for and expense or purchases is approved by the appropriate member of the requesting department. The

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Purchasing Department is responsible for ensuring that the procurement adhere to the Manual. Expense justification is a function of a department's budget and is not the core focus of the Purchasing Department. Please see NYRA's general response above.

State Comptroller's Comment 11 – According to the Manual, the procurement record should, at a minimum, include the justification for single or sole source purchases, competitive methodology utilized, and reasonableness of price. The criteria considered when making these decisions should be formally documented to support the BEM usage.

10. Misapprehension of the Manual – “There was no additional justification as to why NYRA officials decided to purchase from this vendor when they were also purchasing trophies from other well-known vendors.”

Discussion: As stated above, additional justification is not required by the Manual. Notwithstanding, it should be noted that trophies are a highly specialized item and the Racing Department best tries to match trophies to the race it represents. The Racing Department made a discretionary business judgment about which vendor would create the most suitable trophies for its “turf triple series,” which was added to NYRA's program in 2019.

11. Misapprehension of the Manual – “There was no explanation why only that artist could perform and why other artists, who might have cost less, were not considered.”

Discussion: Similar to trophies, NYRA's business leaders are well within their discretion to determine which artist would be best-suited to perform at NYRA's premier racing and entertainment event of the year, the Belmont Stakes Racing Festival. Criteria considered when making that decision includes, inter alia, a performer's social media presence, name recognition, availability, and cost.

State Comptroller's Comment 11 – According to the Manual, the procurement record should, at a minimum, include the justification for single or sole source purchases, competitive methodology utilized, and reasonableness of price. The criteria considered when making these decisions should be formally documented to support the BEM usage.

12. Misapprehension of the Manual – “In 2018, NYRA used a single source exception, totaling \$18,750, for about 19 hours of vocal coaching for their on-air broadcasters and the Chief Executive Officer and President.”

Discussion: As stated above, additional justification is not required by the Manual. Notwithstanding, it should be noted that the 2018 Belmont Stakes had the potential for a Triple Crown winner, as Justify had already won the Kentucky Derby and Preakness Stakes. NYRA made the business decision to engage a renowned voice coach to prepare NYRA's executive team and on-air broadcasters for televised appearances. Any suggestion that NYRA violated the Manual is factually inaccurate. Please see NYRA's general response above.

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State Comptroller's Comment 11 – According to the Manual, the procurement record should, at a minimum, include the justification for single or sole source purchases, competitive methodology utilized, and reasonableness of price. The criteria considered when making these decisions should be formally documented to support the BEM usage.

13. Misleading Finding – “NYRA officials approved a BEM, totaling \$18,600, for the rental of an event room from the New York Mets to announce the post positions for the Belmont Stakes..., NYRA officials asserted that the Manual does not require the Purchasing Department to question the business judgment of departments’ requisitioners, and that they are allowed to use BEMs.”

Discussion: This OSC Finding does not support a conclusion that any violation or deviation from the Manual occurred. The 2018 Belmont Stakes had the potential for a Triple Crown winner, as Justify had already won the Kentucky Derby and Preakness Stakes. Due to high profile nature surrounding the post position drawing, NYRA’s executive management made the business decision to hold the event at Citi Field, home of the New York Mets. Once that decision was made, Purchasing’s only role was to ensure that the related procurements were done within the rules of the Manual; the Manual does not require the Purchasing Department to question decisions made by the CEO and executive management. The suite rental was procured via a Sole Source exception memo, since the New York Mets are the only vendor that can offer and provide a suite at Citi Field. Any suggestion that NYRA violated the Manual is factually inaccurate.

State Comptroller's Comment 12 – Lack of documentation justifying the use of a sole source BEM is not in compliance with the Manual and is indicative of poor controls. Business decisions and criteria should be detailed and formally documented to support the need for the BEM. NYRA’s executive management is not exempt from following NYRA procurement rules.

14. Misleading Finding – “The Law and Purchasing Departments will conduct additional research to ensure that the requested exception is warranted. However, we were not provided with evidence of the additional research or diligence performed”

Discussion: The OSC was previously informed that due diligence is performed but not documented formally so the OSC was aware that no additional documentation was ever forthcoming.

State Comptroller's Comment 13 – Without supporting documentation, there is no assurance about the accuracy of NYRA’s claim that additional research or due diligence was performed.

15. Misleading Finding – “As part of our review of a judgmental sample of 130 procurement transactions for goods and services, totaling approximately \$13.5 million, we identified several awards that deviated from the process”

Discussion: This finding is factually incorrect. From the sample population, OSC identified four awards which they are mischaracterizing as deviations from the purchasing process and NYRA strongly refutes such implications. Please see response #16, #17, #18, and #19.

State Comptroller's Comment 14 – We stand by the finding as presented in the report.

16. Misleading Finding – “This request for re-submission with best and final pricing was not allowed, according to the requirements of the Manual, as there was no documentation to support that there was a misunderstanding of the scope of work. It was requested only because NYRA officials wanted to continue doing business with the current contractor. Ultimately, the Director of Facility selected the existing contractor as the winning bidder.”

Discussion: Seeking “best and final” pricing from bidders is not limited to circumstances where there was a misunderstanding of the scope of the work. This is only one circumstance under which NYRA can seek final pricing from all bidders. The rule does not, as the OSC Finding leads the reader to believe, preclude NYRA from seeking best and final offers for other reasons. Such a narrow reading of the “best and final offer” tool is incongruent with the Manual and is contrary to NYRA’s goal of achieving maximum cost savings for the company. Moreover, this interpretation is inconsistent with the practices of other entities that adhere to strict procurement procedures. For example, the New York City Department of Education (“DOE”) defines best and final offers as “the revised and corrected final proposals submitted by proposers after discussions, if any, have been held.” The DOE even permits more than one best and final offer to be submitted if “the Chief Administrator makes a determination that it is in the DOE’s best interest to conduct additional discussions and/or require another submission of best and final offers.”

State Comptroller's Comment 15 – As stated on page 10 of the report, the Manual is clear that the bidder shall not re-submit any aspect of a bid except when seeking further explanation. This is to prevent favoritism and ensure fairness to all the bidders.

17. Misapprehension of the Manual – “the winning vendor’s initial operations with the State had been in place for approximately 8 years by the time the RFQ was submitted; therefore, it did not meet the minimum qualifications in the RFQ and should not have been awarded the contract.”

Discussion: NYRA expressly permits the submission of joint bid in its RFPs/RFQs. In this instance, the bidder filed a joint bid with a company that had been in business for twenty-five years. NYRA was satisfied that the combined length of time that these two companies had been in business would offer the experience, and more importantly, the stability, that was required of the vendor to successfully carry out the required scope of work.

State Comptroller's Comment 16 – We were not previously informed about this joint bid. Further, we reviewed NYRA’s RFP/RFQ for this contract and there is no mention of submission of a joint bid. This contract was awarded to that specific vendor. Based on the contract, no other bidders were involved. In the RFP’s Questions from Bidders and Answers that NYRA provided to all potential bidders, NYRA answered a bidder’s

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question by stating that bidders must be operating under the current name or, if under a different name, in a substantially similar business for 10 years. If there is a name change, bidders should submit a description of the transformation, including any names the business has operated under, the nature of the prior business, and the reasons for the name change. Nevertheless, NYRA provided no supporting document that this vendor fulfilled the 10-year requirement or that there was another company involved.

18. Misleading Finding – “We identified an additional vendor who was awarded a 2018 contract, totaling \$250,495, even though he/she was not the lowest bidder.”

Discussion: This finding lacks substantial context. As stated in the Manual,

“...All other factors being equal, the award will be made to the lowest responsible bidder. If award is made to other than the lowest bidder, the relevant department head or a representative from the Purchasing Department must issue a memo to the bid folder explaining the reason for the award, subject to approval by the CFO...”

Therefore, NYRA remained in compliance with the Manual. Any suggestion by the OSC that there was a violation or deviation from the Manual is factually inaccurate.

State Comptroller’s Comment 17 – The vendor, which was not the lowest bidder, was awarded a contract through the issuance of a memo signed by a chief engineer rather than by the department head. The memo did not fully justify the reason for not awarding the contract to the low bidder. For example, it did not indicate the low bidder was unresponsive or could not deliver the items timely, thus giving the appearance of favoritism.

19. Misleading Finding – “No other justification or explanation for the need for the rental of a shooting range was provided. We question the appropriateness of and the business need for these purchases and whether NYRA employees spent the organization’s monies in a prudent manner.”

Discussion: Contrary to the OSC’s statement questioning the appropriateness and business need of the purchases, the rental of Nassau County Rifle Range and purchase of the ammunition were for the purposes of firearm qualification as required by the Department of Criminal Justice Services for NYRA’s Security Guard/Peace Officers to carry firearms. The Purchase Requisition clearly stated the purpose of the purchase. Despite informing the auditors that all requisitions require a “justification” or “purpose” field to be filled out before approval, the OSC neglected to review the Purchase Requisition.

State Comptroller’s Comment 18 – We did not neglect to review the purchase requisition. We asked NYRA to provide documentation to support the purchase. The documentation NYRA provided did not indicate the purpose of, or who attended, the shooting event but included a field labeled “justification” that appeared as a hyperlink

that was inactive. NYRA has still not provided support for this justification.

20. Misleading Finding – “NYRA did not provide copies of the change orders to support a total of \$787,517 in additional payments to this vendor.”

Discussion: This OSC Finding lacks context. NYRA provided the summary detailing the five components making up the \$787,517 change order, along with the approved payment application asserting that the additional work was justified and accurate.

State Comptroller’s Comment 19 – As stated in our report and not disputed by NYRA officials, NYRA did not provide copies of the change orders. The summary simply listed the amounts of the change orders but not the detailed scope of work. The approved payment application forms showed that NYRA was billed but were not an official contract that both parties agreed to before the work would be done (also see Comment 7).

21. Misleading Finding – “We note that the Manual does not specify when a comprehensive contract agreement is required, and NYRA officials indicated that their purchase orders contain the legal components of a binding contract”

Discussion: This statement is accurate in that NYRA’s purchase orders contain protective language. What the OSC fails to include in its statement is that the Manual itself does not require a comprehensive agreement. The Manual states, in relevant part:

“Purchasing in conjunction with the Law Department, shall determine if the relevant PO should be supplemented by a comprehensive agreement. The Law Department and the relevant vendor will negotiate the form of the agreement memorializing the transaction.”

State Comptroller’s Comment 20 – As NYRA agrees, our statement regarding a comprehensive contract agreement is accurate. We encourage NYRA to develop clear criteria to determine when a formal contract is required.

22. Misleading Finding – “Our review found that several of NYRA’s procurement practices were not in compliance with the FOB- approved Manual.”

Discussion: This statement is overly vague and without foundation Please see NYRA’s general response above.

State Comptroller’s Comment 21 – We stand by our findings that several of NYRA’s procurement practices were not in compliance with the FOB-approved Manual (also see Comment 2).

23. Misleading Finding – “We found that each requisitioning department, not the Purchasing Department, is responsible for discretionary purchasing activities.”

Discussion: This finding lacks substantial context, and as NYRA communicated to the OSC numerous times, is factually inaccurate. The requisitioning department works in consultation and

collaboration with the Purchasing Department. Consistent with the Manual, the Purchasing Department works in conjunction with the requisitioning department to solicit quotes or formal proposals for a good or service. Many of NYRA's purchases are unique and specialized to a specific department, making it in NYRA's best interest to have a knowledgeable party involved in obtaining quotations. Furthermore, the requisitioning department does not select the vendor; for a purchase under \$50,000, the requisitioning department suggests a vendor and assigns the requisition to that vendor based on the lowest quote. The Purchasing Department reviews the quotes and ensures that the purchase requisition follows the Manual. Contrary to the inaccurate assumptions made by the OSC, there is no requirement to maintain formal documentation of this review; evaluating quotations prior to creating a PO is a normal daily function of the Purchasing Department and is performed with each requisition. Only after the Purchasing Department confirms that the Manual has been followed does it create and issue a PO to the suggested vendor on the purchase requisition. In the case of a competitive bid, the Purchasing Department will perform a Cost Benefit Analysis ("CBA") and communicate the results of that analysis to the requisitioning department. The Purchasing Department asks the requisitioning department if they would like to proceed with an award to the lowest responsible bidder because as explicitly stated in all bids, "NYRA reserves the authority to award a contract for all, part, or none of the services requested by this RFQ/RFP." If the proposals received to a bid are more costly than anticipated or if the goods/services do not meet NYRA's expectation, the requisitioning department can ask to cancel the bid. The question of "How would you like to proceed" is not only normal and routine but is expected in each bid. The Purchasing Department must confirm that any proposal received meets the needs and budget requirements of the requisitioning department before awarding a contract. The Director did not select the vendor, but rather gave the Purchasing Department the consent to proceed with an award to the lowest, responsible bidder, who was determined by the Purchasing Department.

State Comptroller's Comment 22 – This contract was awarded to the aforementioned vendor, which was not the lowest bidder. Further, we did not make inaccurate assumptions that the Manual required formal documentation of the review. Rather, we asked NYRA to provide any support to prove the Purchasing Department solicited and reviewed the quotes. However, NYRA did not. For the cleaning services contract discussed on page 10 of the report, the Purchasing Department communicated the result of the Cost Benefit Analysis to the Director of Facility Department and asked how to proceed. The Director responded that "changing vendors for \$50,000 over 3 years is not worth the risk. Can you ask [the current vendor] to reduce their price to at least match?" The Purchasing Department then suggested that they had to ask all vendors for their best and final pricing. After all vendors submitted their best and final pricing, the Purchasing Department again asked the Director, "Please let me know how you would like to proceed." The Director replied, "Let's go with [the current vendor]." Based on the conversation, it does not appear that the Purchasing Department was concerned about the requisitioning department canceling the bid. Rather, the correspondence shows that the Director had the final word about who was selected.

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24. Misleading Finding – “Although this situation was identified by NYRA, it still has not adjusted its process to comply with the Manual and thus prevent similar incidents in the future.”

Discussion: See NYRA’s response to #4 above.

State Comptroller’s Comment 8 – NYRA’s response does not acknowledge a serious concern demonstrated by this incident – that the Purchasing Department did not comply with the Manual’s requirement to solicit written quotes and select the vendors. As indicated in the report, even after this incident, NYRA failed to correct the process, creating an environment for similar incidents to potentially occur in the future. Additionally, NYRA did not voluntarily disclose this incident to us; rather, it was disclosed when we asked if any fraud or illegal acts related to its procurement process had occurred during our audit scope period.

25. Misleading Finding - “NYRA’s Internal Audit Department has not conducted a review of its procurement practices..., Periodic audits can be used to monitor the established process.”

Discussion: As explained to the OSC, this OSC Finding lacks context and is incorrect as it misrepresents the NYRA’s Internal Audit Department (“IAD”) and its audit activities.

During, the audit scope period, IAD performed several audit activities to promote prudent spending and support NYRA’s adherence to the Manual. By way of example, in 2018, IAD planned and facilitated the entity-wide procurement training with the Purchasing Department. Also, IAD was a significant contributor to the Procure-to-Pay project to assist NYRA’s transition and implementation of the new procurement system by regularly advising best practices to promote robust control environment. The implementation of the new procurement system completed in 2019. In 2020, IAD’s audit plan included the Procurement Bidding Process and Procurement Data Analytics in Q3 and Q4, respectively. IAD could not execute the 2020 audit plan due to a global pandemic and the furlough of the IAD team. Upon partial return of the IAD team, IAD planned a Procurement Data Analytics Review but that was put on hold to accommodate this audit by the OSC.

In addition, IAD executes a risk-based internal audit plan. Based on the annual risk assessment result, IAD selects the highest risk areas to be audited in the respective year. Further, the audit plan is refreshed regularly throughout the year and with triggering events to respond to the changing risk landscape. The OSC’s blanket statement contradicts the best practices of risk-based internal audit planning. IAD will review purchasing practices as deemed appropriate.

State Comptroller’s Comment 23 – NYRA’s Internal Audit Department did not conduct a review of NYRA’s procurement practices during our audit scope.

26. Trivial Finding – “NYRA officials stated that they do not have a documented petty cash policy but that use of petty cash is infrequent and de minimis. They added they will

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evaluate whether to eliminate the use of petty cash and will draft a policy if they decide to keep it.”

Discussion: As OSC pointed out in the report, NYRA spent \$20,422 in petty cash, which is less than 0.01% of the total spent for purchase of goods and services from January 1, 2018, to December 31, 2020, which is clearly immaterial. By way of example, in 2020 and 2021, the total petty cash spend was \$5,788 and \$3,001, respectively.

State Comptroller’s Comment 24 – Petty cash funds provide a convenient way to pay for small expenses, and by definition are low dollar amounts. However, part of being an accountable organization is understanding that keeping cash in any office entails risk of misuse or theft, and thus policies that provide procedures designed to mitigate these risks are necessary. NYRA has been using petty cash without a formal policy for years, increasing the risk of misuse and theft.

27. Misleading Finding- “Without this documentation, NYRA cannot be assured that the gift cards went to appropriate persons. We also found that NYRA does not have a policy addressing the usage of credit cards; as a result, we could not determine whether the use of credit cards for purchasing gift cards was appropriate. Lack of a formal policy can potentially lead to overspending and inappropriate purchases.”

Discussion: This finding lacks substantial context, and as NYRA communicated to the OSC numerous times, NYRA does not have a formal credit card policy because there are only two active credit cards at NYRA; one is held by the Purchasing Department and one is held by the Facilities Department. These cards are not routinely used, and both cards are only to be used for emergency situations or when a credit card is the only method of acceptable payment. Further, credit card purchases are monitored and reviewed on a routine basis by respective departments.

Further, the purchases of gift cards using a credit card were appropriate, and they did not deviate from the procurement policy. The Purchasing Department properly procured the gift cards on behalf of the requesting department as the credit card was the only acceptable payment method. The purpose of the purchase was clearly stated, and the requesting department properly approved the purchase.

State Comptroller’s Comment 25 – Based on the information provided for the audit scope, over \$650,000 in transactions were associated with credit card purchases. Many of these transactions appear to be routine and not emergencies, such as payment for temporary help. We continue to recommend NYRA establish a formal credit card usage policy.

28. Misleading Finding – “We asked NYRA officials how they identify and keep track of their assets, but they did not respond; instead, they generated a more detailed capital asset ledger for our sample. When we asked if NYRA could generate this for all assets, NYRA officials responded that they could not. Regardless, we attempted to find the sample of 98 high-risk assets. NYRA officials showed us 98 items; however, since assets are not tagged, we have no assurance that the items we saw were, in fact, the ones on our list.”

Discussion: This finding lacks context. While true that NYRA does not "tag" all of its fixed assets, the far majority of fixed asset additions consist of the construction or betterment of permanent, immovable assets (e.g., barns, building refurbishments, track improvements, etc.); therefore, NYRA does not "tag" these easily identifiable assets due to virtually zero risk of theft. Of the \$93.5M asset additions reviewed by the DSC, 81%, or approximately \$75.7 million, of the assets were characterized as Leasehold Improvements on NYRA's balance sheet. NYRA determined in its reasonable business judgment that because most of the referred to assets are characterized as "low-risk of theft," the benefit of implementing a tracking system does not outweigh the cost involved.

Furthermore, NYRA separately maintains a log of its vehicles and computer equipment, two asset types which could be deemed as high-risk. The DSC mis-characterized the events that transpired regarding the asset listing and multiple asset verification. For example, vehicles were properly tagged with NYRA's asset numbers and VIN numbers.

State Comptroller's Comment 26 – Our finding does not lack context. The report specifically discusses a sample of high-risk assets such as cameras, televisions, printers, and vehicles rather than immovable assets such as barns and buildings. While NYRA indicated it maintains a log of vehicles and computer equipment, we recommend that it establish proper controls to safeguard assets.

29. Misleading Finding - "We were able to find 14 pieces during a visit to a storage facility; however, one of the pieces was not as described on NYRA's list."

Discussion: The finding mischaracterizes and overstates the one-off human error into a pervasive asset control issue. The inventory list contained a typographical error, where the preparer possibly typed the letter D instead of F (i.e., 38PMD instead of 38PMF). The error was quickly resolved during the storage facility visit by verifying the third-party Bill of Lading.

State Comptroller's Comment 27 – Our report does not mischaracterize and overstate the issue. It was not until our audit that NYRA officials became aware that an art piece (estimated between \$12,000 and \$18,000) they incorrectly labeled as being at a non-NYRA storage facility for over 3 years was, in fact, located at NYRA's Belmont Park racetrack and another item (estimated between \$15,000 and \$20,000) was in storage and not where NYRA believed it was located.

30. OSC Recommendations

Discussion: NYRA will evaluate DSC recommendations and take appropriate actions, as necessary.

Please feel free to contact us should you have any questions or need additional information.

Sincerely,



Renee Postel
SVP/Chief Financial Officer

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