



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

January 18, 2024

David O'Rourke
President and Chief Executive Officer
New York Racing Association, Inc.
Jamaica, NY 11417-0900

Re: Purchasing and Procurement
Practices
Report 2023-F-31

Dear Mr. O'Rourke:

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 have followed up on the actions taken by officials of the New York State Racing Association (NYRA) to implement the recommendations contained in our initial audit report, *Purchases and Procurement Practices* (Report [2020-S-67](#)).

Background, Scope, and Objective

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. 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. According to the Agreement, NYRA is required to pay the State a franchise fee under certain financial conditions.

From January 1, 2022 to December 31, 2022, NYRA reported total operating expenses of \$385 million. During the same period, the entity spent approximately \$133 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 to retain the franchise, including a requirement that NYRA keep 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.

The objective of our initial audit, issued on March 16, 2022, was to determine whether NYRA procured goods and services competitively and in accordance with its policies and procedures. The audit covered the period from January 2018 through December 2020. The audit found that NYRA needed to improve monitoring and oversight of its purchasing and procurement process to fully promote sufficient competition. The audit also found that NYRA made a significant number of purchases without competitive bidding, instead using Bid Exception Memos (BEMs) for purchases using single and sole source exceptions. Documentation to justify NYRA's use of BEMs was generally very limited. Additionally, our audit found weaknesses in NYRA's purchasing system and processes, a lack of segregation of duties, and a lack of risk assessment and analysis.

The objective of this follow-up was to assess the extent of implementation, as of November 30, 2023, of the eight recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

NYRA officials made some progress in addressing the issues identified in our initial report; however, more work needs to be done. Of the initial report's eight recommendations, three were implemented, two were partially implemented, and three were not implemented.

Follow-Up Observations

Recommendation 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.

Status – Not Implemented

Agency Action – NYRA has not updated the Manual or obtained FOB approval. According to NYRA officials, they have held meetings with the FOB regarding updating the Manual; however, it has not yet been formalized.

Recommendation 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.*
- *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.*

Status – Not Implemented

Agency Action – Although the Manual has not been updated, NYRA's October 2022 procurement compliance training materials indicated a requirement for submission of detailed justification and supporting documentation for the use of all BEMs. We reviewed a sample of five BEMs and found four contained detailed justification and supporting documentation. However, NYRA officials could not provide detailed support for a 2022 BEM for a sole source contract valued at \$87,500. It is important that NYRA update its Manual, obtain FOB approval, and comply with the Manual's updated requirements.

Recommendation 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.

Status – Partially Implemented

Agency Action – NYRA officials advised us that they use an Excel spreadsheet to monitor and analyze their historical purchases and identify vendors that provided goods or services that were, in aggregate, greater than \$50,000. NYRA officials provided the spreadsheet, which included vendor and expenditure information; however, the spreadsheet did not contain an analysis or information, such as comments or conclusions, identifying categories of items that, in the aggregate, were budgeted for greater than \$50,000. According to NYRA officials, the Internal Audit and Finance departments are working on a new template that would allow them to conduct a more comprehensive analysis of purchasing data. However, neither the Excel spreadsheet nor the new template identified categories of similar goods or services; instead, they summarized the purchases by vendor. We recommend NYRA officials continue to finalize the analysis – so that similar goods or services provided by different vendors are also grouped – and obtain competitive bids.

Recommendation 4

Ensure departments are purchasing from the approved vendor list for purchases under \$1,000.

Status – Implemented

Agency Action – NYRA officials informed us that they limited the approved vendors to two companies and any purchases under \$1,000 must now follow the same established procurement process for purchases of \$1,000 or more (i.e., creating a purchase requisition, obtaining quotes, and submitting the quotes to the Purchasing Department for approval). We reviewed a sample of five purchases under \$1,000 and found that they were compliant with the procurement process. We acknowledge NYRA's efforts but continue to emphasize the importance of formalizing this new procedure in an updated and approved Manual.

Recommendation 5

Conduct periodic risk assessments of procurement operations to identify vulnerabilities and take action to address, as necessary.

Status – Not Implemented

Agency Action – NYRA has not conducted risk assessments of its procurement operations. In response to our original audit, NYRA officials indicated that their initial plan was to engage an external consultant to conduct the risk assessment. However, according to NYRA officials, part of their goal for 2024 is to have the recently appointed Senior Director of Procurement perform formal risk assessments.

Recommendation 6

Conduct periodic audits of NYRA's purchase and procurement process.

Status – Implemented

Agency Action – NYRA's internal auditors conducted monthly audits of its purchase and procurement processes for split purchases, invoices issued before purchase order, and duplicate payments. They also performed two conflict-of-interest audits.

Recommendation 7

Develop formal credit card and petty cash policies and disseminate to appropriate departments.

Status – Implemented

Agency Action – NYRA developed a credit card policy effective October 1, 2023 and disseminated it to all relevant departments. Additionally, in September 2022, NYRA discontinued its petty cash practice, and all corresponding accounts were reconciled and closed out. We reviewed the closed petty cash accounts and could not account for \$13,838. NYRA officials explained that these accounts dated back to 2008 and 2013. We recommend NYRA officials review these accounts and take appropriate actions, as needed.

Recommendation 8

Establish proper internal controls to safeguard assets.

Status – Partially Implemented

Agency Action – NYRA officials established a Fixed Asset Policy effective October 1, 2023. The policy requires that NYRA officials verify all fixed assets at least once every 5 years. In addition, the new policy requires all fixed assets be tagged with a unique asset identification number.

Despite establishing this policy, NYRA could not provide evidence that it has been fully implemented. Specifically, NYRA officials could not provide evidence that fixed assets have been verified or tagged. Instead, NYRA officials provided a list that identified leasehold improvements only. According to officials, the reason for verifying leasehold improvements was the relative high cost of leasehold improvements to the total assets. However, we note that, although leasehold improvements could be capitalized as fixed assets for accounting purposes, they are not susceptible to misappropriation or theft like the high-value artwork we identified in our prior audit report.

Major contributors to this report were Dmitri Vassiliev, Jiaying Li, and Elsa James.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of NYRA for the courtesy and cooperation extended to our auditors during this follow-up.

Sincerely,

Diane Gustard
Audit Manager

cc: Min Kim, NYRA