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

Division of State Government Accountability

Performance Incentive Program

Rochester-Genesee Regional Transportation Authority

Report 2014-S-2 February 2015

Executive Summary

Purpose

To determine whether the Rochester-Genesee Regional Transportation Authority's Performance Incentive Program uses reasonable criteria to measure employee performance and whether incentive awards are warranted and justified. Our scope period covers April 1, 2011 through March 31, 2014.

Background

The Rochester-Genesee Regional Transportation Authority (Authority) provides public transportation services in Monroe, Genesee, Livingston, Orleans, Wayne, Wyoming, and Seneca counties. Since 2005, the Authority has had a Performance Incentive Program (Program) to reward its employees for meeting performance goals. A series of legal opinions and directives issued by various State oversight agencies provide guidance for public authorities regarding performance incentive programs which, among other things, must be directly tied to the services each employee renders. Over the three fiscal years 2011-12 through 2013-14, the Authority distributed a total of $1.8 million in awards.

Key Findings

- The Program, by design, directed the bulk of incentive awards to upper management. Upper management received about $1 million, or a 57 percent share, of the total awards while accounting for less than 3 percent of the workforce.
- Over the scope of our audit, the Authority progressively transitioned the Program to one based exclusively on collective performance. Upper management's incentives were not linked to specific work they performed. Further, for the employees sampled for review, we often found that the Authority did not maintain documentation supporting how the employees met or exceeded performance criteria.
- In comparison to other Upstate New York transportation authorities, the Authority awarded its executives the largest incentive awards by far, even though it already compensates its executive team at levels that often exceed those of its peers. Based on our comparison of these authorities' ridership and financial statistics, we identified no compelling reason for the Authority's higher incentive payments.
- During our audit, we provided preliminary reports to Authority officials that questioned the justification for upper management's large incentive awards. Executive management refused to provide a written response to our findings. Subsequent to our fieldwork, we learned the Authority has scaled back the Program for 2014-15, but continues to direct most of the funds to upper management.

Key Recommendations

- Establish performance measures for Program award eligibility that are clearly differentiated from employees' normal job duties and are tied to individualized effort, not collective performance.
- Ensure any Program policy decisions are supported by appropriate comprehensive research and empirical data, including analysis of operating trends and comparison with other transportation organizations. For transparency purposes, make this information available for public scrutiny.

Other Related Audit/Report of Interest

Rochester Genesee Regional Transportation Authority: Management of Employee Overtime (2009-S-103)

State of New York
Office of the State Comptroller

Division of State Government Accountability

February 27, 2015

Mr. James H. Redmond
Chairman
Rochester-Genesee Regional Transportation Authority
1372 East Main Street
Rochester, NY 14609

Dear Mr. Redmond:

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 entitled *Performance Incentive Program*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities 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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State Government Accountability Contact Information:
Audit Director: John Buyce
Phone: (518) 474-3271
Email: StateGovernmentAccountability@osc.state.ny.us
Address:
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

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

Background

The Rochester-Genesee Regional Transportation Authority (Authority) provides public transportation services in Monroe, Genesee, Livingston, Orleans, Wayne, Wyoming, and Seneca counties. The Authority employs roughly 835 employees. Over half of the Authority's annual budget comes from government subsidies, which totaled about $45 million for the 2012-13 fiscal year, $33 million of which came from the State. The Authority is governed by a 13-member Board of Commissioners (Board) appointed by the Governor. The Board is responsible for monitoring the Authority's overall management; overseeing the actions of its Chief Executive Officer (CEO); and establishing policies related to qualifications, duties, and payment of salaries and other compensation for all Authority executive employees. The CEO heads the Executive Management Team, which is responsible for the Authority's overall administration, management, strategic planning, and operation.

The Public Authorities Law (PAL Title 11-B, Section 1299-GG) gives the Authority power to prescribe employees' duties and qualifications and to fix and pay their compensation. Since 2005, the Authority has had a Performance Incentive Program (Program) in place to reward employees who meet performance goals with payments in excess of their normal salary or wages. Presently, there are no direct provisions in State Law that specifically allow public authorities to implement performance incentive programs. In fact, under Article VII, Section 8(1) of the State Constitution, additional pay to public employees for work already rendered and fully compensated (e.g., a bonus) constitutes a gratuity and an improper gift of public moneys. However, this constitutional provision only applies directly to State agencies, and not to public authorities.

Guidance for public authorities regarding performance incentive programs has instead developed through the application of a series of legal opinions and directives issued by various State oversight agencies. The Authority cites these Opinions as the guideline it follows for structuring its Program. Specifically:

- In 2000, State Comptroller's Opinion #2000-9 was issued based upon a request for interpretation pertaining to a local industrial development agency. This Opinion concluded that an industrial development agency does not have statutory authority to make gifts to its officers and employees.
- Similarly, New York Attorney General Opinion 2007-F4 states that the ability to make gifts of assets would not directly relate to the powers, duties, or purposes of an authority.
- Finally, a subsequently issued Recommended Practice from the Authorities Budget Office (ABO) cites the Attorney General Opinion in concluding that authority funds may not be spent in support of the private or personal interests – or to the benefit of – directors, management, or staff.

These Opinions include the premise that additional pay will not be considered a gift if it is actually a pre-determined amount withheld until the end of a pre-specified work period (e.g., quarterly) and then paid as a reward for meeting certain performance criteria. Under these circumstances, the Opinions indicate additional pay is allowed if paid under a formal employee performance incentive program that meets certain specific criteria, as follows:

- Employees' total compensation, including their salary or wages and additional pay, should be directly tied to the services they each render.
- A performance evaluation process with specific, fixed performance criteria must be in place prior to the start of the specified service period;
- These criteria must be disclosed to all eligible employees beforehand;
- Eligible employees must also be made aware of the corresponding dollar amounts of additional pay for meeting the criteria; and
- The appropriate supervisors should then determine at the end of the work period whether the employees met the specified performance criteria and, if so, whether they are eligible for all or a portion of the additional pay.

Under the Authority's Program, employees' performance goals are set at the department level, with the exception of the CEO and upper management, which is comprised of the Executive Management Team and department heads. Eligibility goals for these employees are set by a Compensation Committee of the Board and by the CEO, respectively. Authority employees' quarterly and/or annual incentive award eligibility is generally tied to collective organizational goals developed as part of the Authority's five-year capital program plan, the development of which is also required under the PAL. Under this planning process, the Authority must annually develop goals and benchmarks for several performance measures, including ridership, on-time performance, and operating revenue-to-cost ratios. To this end, each year the CEO and Executive Management Team also develop goals for financial stability, customer satisfaction, service quality, and employee success. Once approved by the Board, these goals are formalized as the Authority's Transit Organization Performance Scorecard (TOPS) objectives and issued in its annual Comprehensive Plan (Plan) for the Authority.

During our audit period, the Program used a sliding scale of incentive payment award levels keyed to a percentage of base salary for most participating employees. However, some employees (e.g., certain unionized staff in the lowest tier) were only eligible to receive a flat award amount. For the three years ended March 31, 2014, the Authority paid a total of $1.8 million in incentive awards to roughly 315 to 350 employees each year: $629,776 in 2011-12; $584,638 in 2012-13; and $594,848 in 2013-14. Two of the Authority's employee unions do not participate in the Program at all, one of which accounts for more than half of all Authority staff.

Audit Findings and Recommendations

We examined payments made under the Authority's Program, which totaled $1.8 million over the three-year audit period. Our tests showed that the payments were made to eligible Program participants who met the established Program criteria, and that the payments were calculated in a manner consistent with Program provisions. However, management has designed the Program in such a manner as to direct a disproportionate share of funds to a small number of executives who already appear to be fairly compensated. Further, although we determined that the Program met most of the attributes required under the various Opinions, we found that in recent years the design of the Program has incrementally strayed farther from the goal of rewarding exceptional individual performance.

During our audit scope period, encompassing the 2011-12 through 2013-14 fiscal years, the Authority experienced losses in ridership and net profits, yet distributed a total of $1.8 million in performance rewards. Furthermore, upper management awarded themselves approximately $1 million of this amount, resulting in a 57 percent share of all funds being allocated to less than 3 percent of the workforce. Over the period of our audit, the Authority has also progressively transitioned the Program to one based exclusively on collective performance as defined by the Authority's TOPS goals, and not individual performance, as noted in the Opinions. Further, for the employees sampled for review, we often found that the Authority did not maintain documentation supporting how the employees met or exceeded performance criteria.

Over half of the Authority's annual budget comes from Federal, State, and local subsidies, which totaled approximately $44.7 million for 2012-13; State funds account for 74 percent of this amount ($33.3 million). Given this dependence on substantial government funding, the Board and Executive Management Team have a fiduciary responsibility to ensure spending is reasonable, necessary, transparent, and in the best interest of the Authority and that State funding is used effectively and efficiently. Management was often unable to provide sufficient documentation supporting individual award decisions, and with this lack of transparency there is little assurance that public moneys were used in compliance with the guidance provided in the Opinions about additional pay.

Distribution and Amount of Bonuses

As detailed in Table 1, over the three fiscal years ended March 31, 2014, the Authority distributed a total of $1.8 million in award payments to employees. Upper management of the Authority, who comprise about 3 percent of staff, received a disproportionate share of these payments: about $1 million, or 57 percent of the funds distributed. By contrast, unionized employees, who make up over 70 percent of the workforce, received a total of $302,109, or about 17 percent of the total.

Table 1

Award Range	FY 2011-12		FY 2012-13		FY 2013-14	
	Upper Mgmt.	All Other Staff	Upper Mgmt.	All Other Staff	Upper Mgmt.	All Other Staff
> $35,000	3	0	3	0	1	0
$25,000 to $35,000	4	0	2	0	3	0
$15,000 to $25,000	3	0	1	0	4	0
$15,000 to > $7,500	4	0	8	0	8	2
$7,500 to > $5,000	3	2	3	0	6	3
$5,000 to > $2,500	1	23	8	18	0	25
$2,500 to > $1,000	2	65	1	82	0	52
≤ $1,000	1	205	0	209	0	243
Subtotals	**21**	**295**	**26**	**309**	**22**	**325**
Total No. Awards	**316**		**335**		**347**	

Two of the Authority's employee unions do not participate in the Program, one of which represented 487 employees in 2012-13 – more than half of all Authority staff. In previous public statements, union leaders have expressed concerns about Authority upper management's large incentive awards and questioned the merit behind them.

We examined awards paid to 21 employees, including 17 upper management employees who received the largest annual Program awards. We examined Program case records and documentation related to these awards, which totaled $716,911 (40 percent of all Program awards), to determine whether the Opinions' guidelines for additional pay had been met prior to payment. We found that over 90 percent of the awards sampled were tied directly to collective TOPS goals, not to individual performance. Contrary to the 2012 Program guidance, which recommended that outstanding grades be given only for exceptional individual performance, most awards – even in the earlier years – were made solely because the Authority had reached specific collective TOPS goals.

While reviewing sampled awards, we found that the type of performance criteria used had been inconsistently applied among Program participants during the first two years of our audit period. Specifically, while some employees' awards were tied to a combination of specific tasks and collective goals, Executive Management Team awards were exclusively linked to collective TOPS goals every year. By 2013-14, all of the sampled awards were tied to TOPS goals, and none included specific tasks that were clearly differentiated from employees' normal job duties. We also noted that 90 percent of the time employees received the largest award for which they were eligible.

In many cases, sampled employees' performance evaluations only documented the specific

TOPS scores that award eligibility was based upon and the calculation of the award amount. The evaluations did not indicate exactly how the employees' efforts impacted the TOPS score(s). In addition, we often found that the Authority did not maintain documentation supporting how the sampled employees met or exceeded the performance criteria, and in numerous cases did not maintain evidence that the performance criteria were discussed with employees prior to the start of the award period, as the Opinions require. Authority officials stated that, due to changes in the administration during our audit period, they had problems locating Program documentation supporting employees' awards for the earlier years.

Award Eligibility Criteria

Ideally, incentive award eligibility should be based on individual merit, as measured and supported by employee performance evaluations. To this end, the Opinions require that employees' incentive awards be linked to meeting clearly defined performance goals beyond the expected job duties for which they are already compensated. As such, evaluations should contain a statement of work activities to be rewarded and the amount of financial reward associated with those activities. However, we found Program awards, particularly those paid to upper management, were not linked to specific work the employees performed. Furthermore, throughout the course of our audit period, the Executive Management Team significantly changed Program policies and procedures, each year straying farther from the Opinions' advice on additional pay.

We found that the Authority did not have formal Board-approved procedures in place governing its Program until April 2013. Instead, at the beginning of our audit period in 2011, specific eligibility and award instructions were contained in less formal Program guidelines that followed earlier informal policies originally developed in 2005. These guidelines required that specific performance criteria be disclosed to employees prior to the eligibility period; the performance goals be challenging, yet attainable and measurable; and award payment only occur after supervisors verified that employees' work met the criteria. A March 7, 2011 memo to department heads from the Chief Administrative Officer supported these guidelines, and reinforced the intent that exceptional individual performance be the basis for awards. The memo discouraged department heads from giving all employees the same wage increase, noting that all employees do not contribute the same way, and suggested outstanding grades be given only to those employees who "truly perform at the highest levels."

The following year, in 2012, the Authority implemented the new four-tier structure, which established award amounts tied to employees' base salary. Under the Tier structure, eligible employees could receive incentive awards at different levels based upon their job title and function, as detailed in Table 2. A 2012 policy issued by the Executive Management Team indicates that the goal of the new Tier structure was "to reward those whose work most directly influences the achievement of company goals."

Table 2

Tier	Class of Employee	No. of Eligible Members*	Available Incentive
1	Executive Management Team	5 to 7	20 to 25% of base salary
2	Leadership Team (e.g., Department Heads)	14 to 20	10 to 15% of base salary
3	Key Decision Makers	About 50	10% of base salary
4	Other Contributors	225+	Union contract amount or flat rate up to $500/yr.

*Range of eligible employees across the three years audited.

By the end of our audit period three years later in 2014, the Program policy had been revised to establish collective achievement of TOPS goals as the primary basis for awards to the almost total exclusion of individual performance. In fact, a June 20, 2013 addendum to the Program guidelines specifically states that employees should receive incentive awards if their relevant TOPS goals are met "regardless of their individual performance." At the same time, the Program, by design, directed the bulk of incentive awards to upper management.

In our discussions, officials maintained their position that the Authority follows State requirements for incentive programs. They emphasized that these State requirements are vague and, in their opinion, do not prohibit the Authority from making awards tied to attaining collective organizational goals. In June 2013, Authority management hired an independent accounting firm to evaluate administration of the Program for the year ended April 30, 2013, and the consultant reported no exception to its design. However, we found the extent of this firm's review of the Program was limited to performing a set of agreed-upon procedures dictated by management, and it accordingly disclaimed any opinion on the sufficiency of those tests.

Specifically, we found that the firm's review of the Program design was limited to reading the Program description outlined in the Authority's most recent Comprehensive Plan in comparison to the gift prohibitions contained in the State Constitution and certain of the Opinions. We also note that Authority management dictated the specific Program aspects that would be tested for compliance; that the firm did not evaluate the appropriateness of the Program's methodologies for calculating award payments; and that it conducted very limited testing related to upper management's Program awards.

Given the Program's goal of "rewarding those whose work most directly influences the achievement of company goals," we agree that organizational goals could be a factor in determining award eligibility for upper management. However, TOPS goals should not be the sole determinant of award eligibility, especially for the majority of employees whose individual efforts do not tangibly impact TOPS' critical success indicators.

TOPS, by design, is not intended to account for individual employee performance. Rather, the Authority uses this system to track and report its progress in attaining specific financial and non-financial strategic goals in its annual Plan. TOPS assigns performance metrics and point values for financial sustainability, customer service, service performance delivery, and employee success, which are measured based on one or two specific "critical success indicators." For example, net income is the critical success indicator for financial sustainability, and ridership growth is the critical success indicator for customer service. While upper management's decisions and individual work efforts likely had an influence on TOPS' critical success indicators, the connection is still not clear in terms of how and to what extent. Some individual members of upper management may have done extra work that impacted the indicators, while some may not have done additional work.

Authority performance data indicates that between 2011-12 and 2012-13 annual ridership declined by 1.3 percent, operating revenue declined by $100,000, and operating expenses increased by $3.4 million. As documented in the minutes from the November 9, 2011 Board meeting, the Board eased a number of TOPS goals for 2012-13 after failing to meet them the year before – including goals related to net income and ridership growth. The Board determined the goals were not met because they were either too high, not realistic, or inappropriate. Despite these negative trends, the Authority reported that 2012-13 marked its fifth consecutive year of exceeding performance goals and, as a result, distributed $584,638 in Program awards.

The 2013-14 Plan projected the Authority's revenue growth would continue lagging behind expenses for the next four years, in large part because of slow economic growth within the region. As such, the Plan projected the Authority's net deficit will continue to increase, reaching a high of $10.4 million in 2016-17. In light of the challenging economy, it is understandable that companies experience losses. However, considering the difficult financial environment RGRTA is working under, we question the appropriateness of awarding large bonuses to executives based solely on TOPS goals.

Comparison With Other Upstate New York Transportation Authorities

The Authority's large incentive awards to upper management could possibly be justified if it was found that comparable authorities paid their own upper management more in base salary and incentives, and the Authority used the performance incentives as a means to make its management's compensation competitive with that of their peers. Therefore, to assess the reasonableness of the Authority's awards, we compared them with those of the three other Upstate New York transportation authorities: Central New York Regional Transportation Authority (CENTRO), Niagara Frontier Transportation Authority (NFTA), and Capital District Transportation Authority (CDTA). We found that the Authority awarded its executives the largest incentive awards by far, even though it already compensates its executive team members at levels that often exceed those of its peers.

An analysis of executive management salaries commissioned by the Authority in 2012, and including a comparison of base salary rates at similar-sized transit authorities nationwide, showed that in 2011 the Authority paid its executives similarly as its peers. This analysis also compared 2011 Program payments with those of local tax-exempt organizations and they too compared favorably, although we question the usefulness of such a comparison given that public authorities and not-for-profits are distinctly different entities. Instead, it is more valid to assume that the responsibilities and compensation packages of the Authority's upper management are more comparable to those of other Upstate New York transportation authorities than to private corporations.

We compared the Authority's awards with those made by CENTRO, NFTA, and CDTA. Based on data reported to the State's Public Authorities Reporting Information System (PARIS) for 2011-12 and 2012-13, no CDTA or CENTRO employee received an award of more than $1,500. Further, no NFTA employee received an incentive award over $5,000. Instead, most NFTA incentives were small payments to operational staff. We also compared the salaries of ten of the highest paid management positions at the Authority and similar positions at CENTRO, NFTA, and CDTA, and found the Authority almost always paid these employees higher base salaries. Therefore, it seems highly unlikely the Authority used the performance incentives as a means to make its management compensation package competitive with that of its peers.

When discussing the large differences in awards given by the Authority compared with the other three authorities, officials suggested that we needed to consider other important performance indicators, such as available cash on hand. However, they could not provide any statistical data to support that the Authority significantly outperformed these peers. Based upon our review of all four authorities' reported ridership, on-time performance, and operating revenue-to-cost statistics, we identified no reason for the great disparity in performance awards given by the Authority compared with those by CENTRO, NFTA, and CDTA. Generally, the Authority's performance was consistent during the period and similar to that of the other three authorities. Without compelling research and performance documentation to support the Authority's basis for incentive award eligibility, the Program's award process is not transparent, which ultimately calls into question the propriety of awards.

Conclusion and Subsequent Events

During our audit, we provided preliminary reports to Authority officials in which we questioned, among other things, the Authority's justification for upper management's large incentive awards in light of several important factors, including:

- The vast difference in base pay and incentive payments provided to Authority staff compared with their Upstate counterparts;
- The Authority's declining net income trends and its continuing fiscal challenges; and
- The Program's reliance on collective organizational goals to the virtual exclusion of individual performance in determining award eligibility.

Executive management refused to provide a written response to any of our findings or discuss these matters in detail as part of our exit conference. As a result, absent proper justification for upper management's large awards, it is not apparent how they represent payments for performance that is above and beyond the work for which these employees had already been fully and fairly compensated, as would be required under the Opinions. We also conclude the Board and Executive Management Team have failed to responsibly fulfill their fiduciary duties for managing and overseeing the Program, and ensuring that spending is transparent, reasonable, and necessary.

In late August 2014, subsequent to our exit conference, news reports announced that the Authority had significantly scaled back its incentive award program for 2014-15. Under the revised Program (entitled the Annual Variable Pay Plan [or Plan]), the Authority has reportedly eliminated eligibility for roughly 75 percent of staff who formerly participated. Lower-level staff participation has been all but eliminated, except for certain unionized staff as mandated by contracts. Instead, the Plan continues to focus payments primarily at higher level management employees, although the amount of the potential awards had been reduced, as illustrated in Table 3.

Table 3

Tier	Class of Employee	Potential Incentive Award	
		Prior Years	2014-15
1	Executive Management Team	20 to 25% of base salary	12% of base salary
2	Leadership Team (department heads)	10 to 15% of base salary	5 to 7% of base salary
3	Key Decision Makers (managers)	10% of base salary	4% of base salary
4	Other Contributors	Flat rate	Flat rate

Although the Plan appears to have been approved by the Board in April 2014, officials never shared this document with our auditors, who were on site into August 2014 (or four months after the Plan was approved by the Board). We view this as another example of management's lack of transparency surrounding Program payments.

Recommendations

1. Establish performance measures for Program award eligibility that are clearly differentiated from employees' normal job duties and are primarily tied to individualized effort, not solely to collective performance.

2. Ensure that Program policy decisions are supported by appropriate comprehensive research and empirical data, including analysis of operating trends and comparison with other transportation organizations. For transparency purposes, make this information available for public scrutiny.

Audit Scope and Methodology

We audited whether the Authority's Performance Incentive Program uses reasonable criteria to measure employee performance and whether incentive awards are warranted and justified. Our audit covered the period April 1, 2011 through March 31, 2014.

To accomplish our audit objectives, and determine whether associated internal controls over the authorization and payment of incentive awards were adequate, we interviewed Authority management and staff, examined Program records and Board and Committee minutes, and reviewed relevant State laws and legal opinions. We reviewed all relevant Program descriptions, internal memorandum, policies, and procedures provided by the Authority. Also, we compared source payroll records with Program payment database information to verify the reliability of incentive payment information. To determine whether awards were similar among the Authority, CENTRO, NFTA, and CDTA, we compared all four authorities' PARIS and National Transit database payroll and performance data.

In addition, we sampled 21 employees who received incentive awards from 2011-12 through 2013-14 to determine whether their incentive payments were warranted and justified. Our sample included 17 employees who received the largest annual awards, along with four other random employees who received awards. We reviewed awards to the 21 employees totaling $716,911 over our three-year audit scope period. We examined Program case records and other documentation to determine whether: the sampled employees were notified in advance about the Program's eligibility requirements and performance expectations; their post-period performance evaluations were approved by their supervisors; and work was assigned in addition to normal job duties. We also noted when incentive awards were made but evidence of actual performance was missing. In addition, we assessed whether incentive award amounts were proper based upon Program procedures and the evidence of work performed. To determine whether Program payment records adequately account for all incentive awards, we also sampled ten employees who received large other compensation or extra payments during our audit period. We reviewed Authority records to confirm that these payments were not actually employee incentive awards.

As is our practice, we requested that auditee officials submit a letter of representation. The purpose of the letter of representation is to affirm that all relevant records and related data have been made available for audit. Officials further affirm that either all applicable laws, rules, and regulations have been complied with, or any exceptions and material irregularities have been disclosed to the auditors. The letter of representation is also intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. However, Authority officials have not provided a representation letter in connection with this audit. We therefore question the reliability of the information we received during the course of our audit. As previously noted, Authority officials did not provide us with the Annual Variable Pay Plan (approved by the Board in April 2014), although auditors were on site into August 2014.

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 objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of Public Authorities Law.

Reporting Requirements

We provided a draft version of this report to Authority officials for their review and comment. Officials disagreed with our findings and believe the program is beneficial and transparent. The Authority's response is attached in its entirety to the end of this report. Our rejoinders to comments in the Authority's response are included in the report's State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Rochester-Genesee Regional Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

John F. Buyce, CPA, CIA, CFE, CGFM, Audit Director
Brian Reilly, CFE, CGFM, Audit Manager
Mark Ren, CISA, Audit Supervisor
Kathleen Hotaling, Examiner-in-Charge
James Boudreau, CPA, Staff Examiner
Bruce Brimmer, Staff Examiner
Marzie McCoy, Senior Editor

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Brian Mason, Assistant Comptroller
518-473-0334, bmason@osc.state.ny.us

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

RGRTA
myRTS.com

Dec. 22, 2014

Mr. John F. Buyce
Office of the State Comptroller
Division of Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: Audit Report 2014-S-2

Dear Mr. Buyce:

I am writing in my role as Chairman of the Board of Commissioners for the Rochester Genesee Regional Transportation Authority in response to the above cited audit report conducted by your office. Accompanying this letter is a letter from the RGRTA Chief Financial Officer Scott M. Adair, CPA addressing the specifics of the audit recommendations.

It is clear from reading this audit that the Comptroller's office doesn't favor the performance incentive system that RGRTA employs. Yet at the same time, your office can not show that the system is in violation of any existing laws or legal opinions. The draft audit claims the series of legal opinions and directives issued by various State oversight agencies provide guidance for public authorities regarding performance incentive programs which "must be directly tied to the services each employee renders." I have read through all of the information that's been shared and cannot find anything that's consistent with the conclusion that incentives must be tied directly to the service each individual employee renders.

* Comment 1

It appears that the Comptroller's office is attempting to use the audit process to draw inaccurate, false and misleading conclusions based on leaps of logic that simply defy gravity. I am disturbed at the suggestion that the board is failing to responsibly fulfill its fiduciary responsibilities. At no point during the audit process did anyone from the Comptroller's office ask to speak with me as the Chairman of the Board or as Chairman of the Compensation Committee.

* Comment 2

The Authority's performance goals are laid out in advance of the fiscal year, the results are reviewed at every board meeting and the board holds management accountable for those results. These meetings are open to the public,

Rochester Genesee Regional Transportation Authority 1372 East Main Street, Rochester, NY 14609 • P: 585-654-0200 • F: 585-654-0293

* See State Comptroller's Comments on page 21.

2 – Mr. John F. Buyce

videotaped and available for anyone to see on our web site, as our system is built on transparency.

Most importantly, the incentive system forces management to concentrate on the areas that the board has determined to be the Authority's priorities. The Board of Commissioners has set maintaining the financial health of the organization, on time performance and customer satisfaction as its primary goals this year.

*
Comment
3

RGRTA is recognized across the country for its innovation and customer focus. Our Executive Team is more than capable of running transit authorities anywhere in the county with similar, solid results. Most importantly, the Authority, as always, will continue to be a responsible financial steward.

Sincerely,

James H. Redmond

James H. Redmond
Commissioner and Chairman

RGRTA

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December 22, 2014

Mr. John F. Buyce
Office of the State Comptroller
Division of Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Re: Audit Report 2014-S-2

Dear Mr. Buyce:

On November 24, 2014 we received the New York State Comptroller's draft audit Report 2014-S-2, "Performance Incentive Program" (the "Report"), which reviewed the Rochester Genesee Regional Transportation Authority's Performance Incentive Program for the period April 1, 2011 through March 31, 2014. We have carefully reviewed the Report and the two recommendations proposed and submit the following response:

1. *Establish performance measures for Program award eligibility that are clearly differentiated from employees' normal job duties and are primarily tied to individualized effort, not solely to collective performance.*

   As demonstrated by a number of metrics, the Authority has continuously improved its performance operationally and financially through the collective performance of all our employees. At the start of the period under audit, a broad ranging combination of individual and collective efforts were part of the Performance Incentive Program (the "Program") available to employees (with the exception of certain Organized Employees who have not been allowed to participate based on contract language). In 2013 the Program was revised and is now based on the collective performance of the entire organization. Our experience is showing that this type of Program strengthens our work towards the goals established by our Board of Commissioners in our publically available Comprehensive Plan. The Annual Comprehensive Plan establishes the Authority's Operating Budget, Capital Budget, Multi-Year Financial Plan, Strategic Plan and Operational Initiatives, and the Transit Organization Performance Scorecard (TOPS) for the upcoming fiscal year, which is adopted prior to the start of the fiscal year.

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Rochester Genesee Regional Transportation Authority 1372 East Main Street, Rochester, NY 14609 • P: 585-654-0200 • F: 585-654-0293

2. *Ensure that Program policy decisions are supported by appropriate comprehensive research and empirical data, including analysis of operating trends and comparison with other transportation organizations. For transparency purposes, make this information available for public scrutiny.*

   The Authority's Management and the Board of Commissioners ~~truly~~ take exception to this recommendation. The Authority's Management reviews on a yearly basis the operating statistics of the Authority and based on this review, feedback from customers, discussions with other Transit agencies across the United States and public conversations with the Board of Commissioners, the goals of TOPS are developed. The TOPS measurements reflect organization-wide goals focused on the strategic priorities of Financial Sustainability, Customer Experience, Service Quality and Employee Engagement. The establishment and review of TOPS is discussed in open session of the Board of Commissioners which meets on a monthly basis and are open to the public, video-taped and available for viewing from our website.

* Comment 3

In conclusion, The Authority noted an overall negative tone to Report 2014 S-2. It appears that the State Comptroller doesn't agree with our approach that emphasizes collective performance over individual performance. The Authority's Management and Board of Commissioners have concluded that the Performance Incentive Program has been a cornerstone of our success in maintaining the lowest fare structure of any Transit Authority in New York State. We believe this it notable given rising operational costs and that State and Federal revenues remain relatively flat over this same time period.

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The Authority, as always, will continue to be a responsible financial steward and drive forward to achieve the vision of becoming The Preferred Transportation Choice.

Sincerely,

Scott M. Adair, CPA
Chief Financial Officer

Cc:
Jim Redmond, Board Chairman
Mike Jankowski, Audit Committee Chairman
Bill Carpenter, Chief Executive Officer

State Comptroller's Comments

1. Various State legal opinions have expressed the view that the word "compensation" generally connotes the total consideration paid employees for services they directly render. Our report indicates a series of legal opinions state additional pay to public employees for work already rendered and fully compensated (e.g., a bonus) constitutes a gratuity and an improper gift of public moneys which public authorities do not have the statutory authority to make. Our report further indicates that the legal opinions include the premise that additional pay will not be considered a gift if it is actually a pre-determined amount withheld until the end of a pre-specified work period and then paid as a reward for continued competent and faithful service. Nowhere in our report do we state the Authority's Program is illegal. We do, however, question using TOPS goals as the sole determinant of award eligibility, especially for the majority of recipients whose individual efforts do not tangibly impact TOPS' critical success indicators. Furthermore, this practice seems to contradict Authority Program guidance issued in prior years, which discouraged giving all employees the same wage increase because "all employees do not contribute the same way," and instead directed that managers should reward only those employees who "truly perform at the highest levels."
2. During our audit, we provided preliminary reports to Authority officials in which we concluded, among other things, the Board and Executive Management Team had failed to responsibly fulfill their fiduciary duties for overseeing the Program. However, Authority officials refused to provide a written response to any of our findings or discuss them in detail, either separately or as part of our exit conference. They also refused to provide a representation letter affirming all relevant records had been made available for audit and all applicable laws, rules, and regulations had been complied with.
3. As previously mentioned, TOPS is not intended to account for individual employee performance. Rather, TOPS' primary purpose is to track and report upon the Authority's progress in attaining specific financial and non-financial strategic goals. Our audit addressed whether Program awards are warranted and justified. As such, our audit report specifically refers to the lack of transparency involving Program payments, not the Authority's communication of its annual organization-wide TOPS performance goals.
4. Authority performance data indicates that between 2011-12 and 2012-13 annual ridership declined by 1.3 percent, operating revenue declined by $100,000, and operating expenses increased by $3.4 million. Despite these negative changes, the Authority was able to award $584,638 in FY 2012-13 and, in its 2013-14 Plan, reported that FY 2012-13 marked its fifth consecutive year of exceeding performance goals. That the Authority was able to make large incentive awards in FY 2012-13 – including $340,149 to upper management – despite such losses suggests that the Program scores for the award year were less a reflection of individual employees' actual performance and merit, and more a result of the Authority's adjustment of TOPS goals.

5. We identified multiple issues with the Authority's Program, in addition to its use of collective goals as the sole determinant for award eligibility. Of particular concern is the fact that management designed the Program to direct a disproportionate share of funds to a small number of executives who appear to be fairly compensated. Officials refused to provide written responses, or discuss in any detail, why the Authority awarded its executives far larger incentive awards than those at other Upstate New York transportation authorities, entities that faced similar circumstances and had comparable performance. Further, the Authority's draft response did not address this topic. Absent detailed justification for these specific matters, and other findings contained in our report, it is not apparent why these awards were justified.