

ALAN G. HEVESI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 22, 2006

Mr. Robert F. Cross
Chairman
Albany Port District Commission
Port of Albany
Albany, NY 12202

Re: Internal Controls Over Financial
Operations
Report 2005-S-47

Dear Mr. Cross:

According to the State Comptroller's authority, as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we audited the Albany Port District Commission's (Port) system of internal controls over its financial operations for the period January 1, 2002 through March 31, 2005.

A. Background

The Port was established by legislation in 1925 as a public benefit corporation to develop port facilities on the Hudson River at the cities of Albany and Rensselaer. Accordingly, the Port manages commercial shipping (maritime) activities as well as an industrial park. The Port has about 201 acres in Albany and 35 acres in Rensselaer. During 2004, the Port had net operating income, before depreciation, of \$824,000. Its operating revenue for the year totaled \$3.4 million, while its operating expenses totaled \$2.6 million. Its main sources of revenue were tenant leases (\$2.3 million from 30 tenants) and maritime activities (\$927,000). Its largest expenses related to payroll (\$979,000), barge feeder service (\$435,000) and professional consultant fees (\$422,000). The Port had fixed assets valued at more than \$21 million and employed 35 individuals (8 administrative, 5 maintenance, and 22 part-time security staff).

In 2000, the Port adopted a new Master Plan that called for the Port of Albany to be transformed into a container port. Such ports use special cranes to lift large box-shaped metal containers on and off ships and on and off trucks that bring the containers to and from the ports. Accordingly, the Port obtained a heavy lift crane and now serves as a feeder port for the Port Authority of New York and New Jersey. In 2002, the Port became involved in a major riverfront development project (the Corning Preserve Project) for the City of Albany. The Port also made a number of improvements that were required by the Federal Maritime Transportation Security Act of

2002, as the Port hired a Security Director and enhanced its security through the installation of fencing, gating, lighting and video surveillance equipment.

The Port is administered by a Board of Commissioners (Board) consisting of five members: four represent the City of Albany and one represents the City of Rensselaer. The mayors of the respective cities nominate Board candidates, and the Governor approves the three-year appointments. The Commissioners serve without compensation, but may be reimbursed for their necessary business expenses.

B. Audit Scope, Objectives and Methodology

Pursuant to the New York State Governmental Accountability, Audit and Internal Control Act of 1987 (Internal Control Act), as revised in 1999, the Port's management is responsible for establishing and maintaining an effective system of internal controls and a program of internal control review. In addition, in accordance with New York State Division of the Budget Policy and Reporting Manual Item B-350, State agencies and public authorities must annually certify their compliance with important provisions of the Internal Control Act, and submit this certification of compliance to the Division of the Budget. We audited the Port's system of internal controls over its financial operations for the period January 1, 2002 through March 31, 2005. The objectives of our performance audit were to assess the adequacy of the Port's system of internal controls over its financial operations and to express an opinion on the annual certifications of compliance for the years ended March 31, 2003 and March 31, 2004. (These were the latest certifications of compliance available during the conduct of this audit.)

To accomplish these objectives, we interviewed Port officials and reviewed applicable policies and procedures governing the following significant financial operations: Board oversight and governance, revenue and collections, cash and investments, payroll, procurement and contracting, equipment and asset management, budgeting and expenditure control, and accounting and information systems. We interviewed Port staff responsible for these financial operations and performed compliance testing to provide reasonable assurance that Port employees follow established policies and procedures.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and do our audit to adequately assess those procedures and operations included within the audit scope. Further, these standards require that we understand the Port's internal control systems and compliance with those laws, rules and regulations that are relevant to the Port's procedures and operations that are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

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 management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

In our opinion, because of the material weaknesses described below, management's annual certifications of compliance for the years ended March 31, 2003 and March 31, 2004 are not fairly stated based on the criteria set forth in the Internal Control Act and the Division of the Budget Policy and Reporting Manual Item B-350. A material weakness is a condition that precludes the entity's internal controls from providing reasonable assurance material errors or irregularities will be prevented or detected on a timely basis, and our audit identified material internal control weaknesses that were not identified in these two annual certifications of compliance.

For example, the Internal Control Act requires covered agencies to assess their internal control systems, identify high risk areas, develop a corrective action plan, implement improvements and monitor results. However, at no point during our 39-month audit period did the Port perform a formal assessment of its internal control systems. In each of its annual certifications of compliance, the Port reported that it continued to evaluate its internal control systems using a "four-step approach," and Port staff provided us with written procedures for this four-step approach. We determined that this approach could be a good management tool if it was followed, but we found that it had not been followed because the Port had not actually performed the type of risk assessments that are described in the written procedures.

For example, in one of the annual certifications of compliance, the Port reported that it performed a vulnerability assessment and hired a Security Director as a result of the assessment. We determined that the "vulnerability assessment" was actually a security assessment and was required under the Federal Maritime Transportation Security Act of 2002 for port security purposes. While the security assessment did address some of the Port's internal controls (those relating to major equipment assets), it did not address most of the Port's internal controls and therefore was not a "vulnerability assessment" as described in the Port's four-step approach to internal control evaluation.

In the absence of such an assessment, the Port was less able to identify internal control weaknesses, and we found that several significant internal control weaknesses were not identified in the Port's certifications of compliance for the years ended March 31, 2003 and March 31, 2004. These weaknesses were in the areas of Board oversight and governance, payroll, procurement and contracting, equipment and asset management, and budgeting and expenditure control. In particular, we question the appropriateness of certain payments made to, or on behalf of, the City of Albany and found that contracts were repeatedly awarded in a non-competitive manner.

(In reply to our draft audit report, Port officials stated that each year the Port identifies an area to assess with the four-step method and, in the past, they have identified specific areas where business process improvements were needed and corrective actions implemented, such as

procurement, maritime fee collection, and security. As a result, the Port issued new procurement guidelines, revised the tariff structure, and improved security.)

Auditor's Comments: While we were aware of these initiatives during our audit, they do not ensure from a comprehensive internal control review. During our audit, the Port's Internal Control Officer, who is responsible for coordinating internal control activities, told us that he was not aware of the four-step method described in the annual certifications of compliance. Additionally, all public benefit corporations are to annually review the appropriateness of established procurement guidelines as required under Section 2879 of the Public Authorities Law and, as acknowledged in their response, port security issues became a major requirement of the Federal government.

1. Questionable Payments Involving the City of Albany

The Corning Preserve is a riverfront park owned by the City of Albany. The property is located approximately one mile north of the Port's operations. The Albany Local Development Corporation (ALDC) is a not-for-profit corporation that undertakes economic development activities in the City of Albany. Members of the City of Albany's Department of Development and Planning provide staff services for ALDC. The City of Albany Industrial Development Agency (CAIDA) is a public benefit corporation that was created to promote economic development in the City of Albany. It provides low-cost financing through industrial or civic facility revenue bonds. CAIDA is administered by the staff of ALDC.

(In response to our draft audit report, Port officials stated the real property on which the Corning Preserve site is owned by New York State.)

Auditor's Comments: The Department of Transportation deeded the Corning Preserve property for public non-proprietary purposes to the City of Albany in 2002 for \$1.

In 2002, ALDC, CAIDA and the Port entered into agreements concerning a riverfront development project at the Corning Preserve. In this project, a 650-foot long pedestrian bridge was built connecting downtown Albany to the Corning Preserve; park areas at the Preserve were landscaped; and sidewalks, an amphitheater, a visitors' center and docks for pleasure boats were constructed at the Corning Preserve.

The pedestrian bridge was expected to cost about \$6.15 million and was financed primarily through a Federal grant. The remaining improvements were expected to cost about \$4.5 million and were financed primarily by bonds issued by CAIDA. The Port was responsible for making these improvements, using the bond proceeds. The Port was also responsible for repaying the bond principal and interest over a 30-year period and maintaining the improvements over the same time period. During this 30-year period, the Port is leasing the improvements from ALDC. When the long-term lease expires in 2033, ownership of the improvements will revert to ALDC.

According to a disclosure note in the Port's audited financial statements for the years ended December 31, 2003 and December 31, 2004, as a result of its participation in the Corning Preserve Project, the Port is expected to pay about \$300,000 a year for debt service and maintenance costs over the 30-year life of the lease (the actual payments could be significantly greater or significantly less, depending on various contingencies, and initial payments will be made from unexpended

CAIDA bond proceeds). However, the Port realizes no direct benefits from the Corning Preserve Project, as no Port facilities were constructed with the bond funds and no revenue will be realized by the Port as a result of the Project. We therefore question whether it was appropriate for the Port to agree to make these annual debt service and maintenance payments.

The Corning Preserve Project is discussed in footnotes to the Port's financial statements; however, the improvements at the Corning Preserve are not reflected on the balance sheet of the Port's audited financial statements, either as assets or as a long-term liability. We believe this further indicates that the improvements are not, in fact, related to the Port's business activities.

The Port is authorized by its enabling legislation to develop port and other commercial activities. However, the Corning Preserve is a public park. It is a recreational facility, not a commercial facility. The Port is also authorized to partner with municipalities in the construction of docks, wharfs, terminals and warehouses. In these instances, the enabling legislation states that the municipalities will construct the facilities and the Port, after public hearings, may share in the construction costs. However, in this instance, the Port constructed the facilities and has committed to pay for most of the construction costs.

According to the Port's enabling legislation, the Port can ask a municipality to share in the costs of such a project in proportion to the municipality's benefit from the project. However, the Port has not attempted to determine the City of Albany's share of the benefits from the Corning Preserve Project. We recommend the Port make such a determination and ask the City of Albany to assume a share of the costs that is commensurate with its share of the benefits.

(Port officials replied to our draft audit report that the recent trend for a number of other ports across the country is to become involved in economic development projects in their surrounding areas and that the Port's involvement in the Corning Preserve Project should help mitigate potential negative public sentiment as its commercial activities grow.)

Auditor's Comments: Notwithstanding the Port's statement about economic development trends elsewhere, its business operations are restricted to those authorized in its enabling legislation.

In addition, in accordance with a February 2002 Board resolution, the Port purchased certain parcels of land from the City of Albany. The Port paid the City of Albany a total of \$3 million for the land, which encompassed about 100 acres (about half of the Port's total land holdings in the City of Albany). We question whether the Port needed to purchase this land. At the time of the purchase, the land was located entirely within the existing, fenced-in boundaries of Port business property. Moreover, the land contained buildings that had been occupied for years by Port tenants.

(In response to our draft audit report, Port officials also assert that, because they did not have clear title to the property, the City of Albany could take legal action for any potential damages.)

Auditor's Comments: According to Section 8 of the Port's enabling legislation, "the entire cost of construction of any port facilities within the City of Albany or upon land owned by said City, including the cost of acquiring the necessary real property therefor, shall be borne by the City of Albany." Consequently, any development or land acquisition costs incurred by the Port in connection with this land should be borne by the City of Albany, regardless of whether the Port owns clear title to the land. We recommend the Board review these land sales in light of Section 8 of the Port's enabling legislation, and determine whether the Port should recover the \$3 million that was paid for the land.

We also note that \$3 million may not have been a fair price for the parcels, as the Port did not arrange for an independent appraisal of the parcels' value. Instead, the City of Albany and the Port negotiated the price, and Port officials stated that, based on their analysis of other property recently acquired by the Port, \$3 million was a fair and reasonable price. However, in the absence of an independent appraisal, it is difficult to determine whether \$3 million was, in fact, fair and reasonable. (We also note that, since four of the five Commissioners on the Port's Board represent the City of Albany and are nominated by the Mayor of Albany, it is difficult for land sales between the Port and the City of Albany to be true arm's length transactions.) We recommend the Port obtain independent appraisals before purchasing land.

2. Non-Competitive Contracts

According to the Port's procurement guidelines, except in certain specified circumstances, vendor competition should be sought for purchases above certain dollar levels. If competition is not sought, the reasons should be documented and formal Board approval should be obtained for the lack of competition. However, we found that, on a number of occasions, the Port did not document the reasons for making non-competitive purchases and did not obtain formal Board approval for the lack of competition. We also found that some of these non-competitive purchases were poorly controlled in other ways (e.g., the contractors did not always provide details to support the amounts that were billed to the Port). Following are examples of these non-competitive purchases:

- The Port has paid a lobbying firm \$50,000 a year since 2001. The firm was awarded a sole source contract, which meant no other firms were asked to submit proposals for lobbying services. There was no documentation explaining why the firm was the sole qualified source of lobbying services for the Port and no documentation indicating that the sole source selection had been formally ratified by the Board, as required. We also found the firm's monthly bills contain no details describing the services provided that month and the "contract" itself is not appropriately drawn up to protect the interests of the Port. Each year's contract is a letter from the firm offering unspecified services at a stated price, and asking Port officials to sign the letter indicating acceptance of the offer. In this format, the contract does not specify the rights and responsibilities of the parties, and in particular, does not specify what the firm has to do to receive payment. The Port's Chairman told us the firm was selected because of its political connections and was effective. The Chairman said that the previous lobbying firm, which was paid \$25,000 a year, was not effective.
- In 2003, the Port awarded a retired Albany police officer a three-year sole source contract, at \$50,000 a year, to be the Port's Security Director. There was no documentation explaining

why the contract could not be awarded competitively and no documentation that the sole source selection had been formally ratified by the Board. We further note that the Port provided this Security Director with a vehicle (a \$25,000 Jeep Cherokee) and a cellular telephone, neither of which were required under the contract and neither of which were subject to formal restrictions on personal use. (We also note that the vehicle was not purchased under State contract and was not competitively bid.) The contract required the Security Director to provide the Port with detailed descriptions of his billed services, but no such descriptions were provided. We also note that the Security Director's monthly bills were the same each month, even though he was sometimes away from work for medical reasons. The Port Chairman told us that the Port wanted to hire this individual as an employee due to his qualifications, but the individual preferred to work as a consultant instead. The Chairman also told us that the contract was awarded non-competitively because the Port had to move quickly to meet Federal deadlines for port security and the retired officer might not have been available if there had been a delay in awarding the contract.

- The Port awarded a company a sole source contract costing \$408,594 for the installation of video surveillance equipment at the Port. There was no documentation explaining why the contract was not awarded competitively and no documentation that the sole source selection had been formally ratified by the Board. The Port Chairman told us that the contract was awarded non-competitively because the Port had to move quickly to meet Federal deadlines for port security. The Chairman further stated that the Board selected this particular company because the company had already installed video surveillance equipment for the Port at the Corning Preserve Project and the Board Commissioners believed the equipment items at the two locations were more likely to be compatible if the same company and same equipment were used at both locations. However, if equipment compatibility was an issue, we question why a single contract was not competitively awarded for both locations. We also note that the Port did not use a competitive process when it obtained video surveillance equipment for the Corning Preserve Project. Rather, the Port identified a video surveillance system that could meet its needs, identified a company that could provide this system, negotiated a price with this company (about \$334,000), made the company a subcontractor on the Corning Preserve Project, and paid the company through a change order to the contract with the Project's primary contractor (which was a Port tenant).
- The Port paid a company \$73,810 to purchase and install an electric generator for one of its tenant buildings. The Port solicited no bids from other companies; rather, it simply awarded the contract to this company, which is one of the Port's tenants. There was no documentation explaining why the contract was not awarded competitively and no documentation that the sole source selection had been formally ratified by the Board. Port officials told us the contract was awarded non-competitively because it was an emergency purchase. We acknowledge that competitive bidding may not be appropriate in emergency situations, but note that such circumstances should be documented at the time of the purchase to provide assurance the emergency is genuine.

(Port officials replied to our draft audit report that the generator was billed to the tenant which is a State agency.)

Auditor's Comments: Port officials should have properly documented the purchase after the emergency had been addressed.

- The Port's financial statements must be audited annually by a certified public accountant. Each year, for decades, the Port has selected the same accounting firm for this audit, without seeking these services from other accounting firms. There was no documentation explaining why other firms were not offered the job and no documentation that the sole source selection had been formally ratified by the Board. We note that many businesses and public authorities periodically seek audit services competitively and rotate among accounting firms to help ensure independence and objectivity in annual financial statement audits.

The Port revised its procurement guidelines in August 2004 and the revised guidelines were an improvement, because they allowed fewer types of purchases to be made non-competitively. For example, emergency purchases could be made non-competitively both before and after the revisions, but before the revisions competition could be avoided if it was "in the best interest of the Port" to do so. However, in such circumstances, the reasons for avoiding competition were to be documented and formal Board approval was to be obtained for the lack of competition, and this was not done in the examples cited. In view of the Port's repeated reliance on non-competitive purchases, we recommend the procurement guidelines be further revised to better define what constitutes an emergency and further restrict the circumstances in which competition may be avoided.

Another contract in which competitive vendor selection practices were not properly applied was awarded to an engineering firm to design the Corning Preserve Project. The Port used a competitive Request for Proposal (RFP) process in which the firms making proposals were to be evaluated on the basis of five selection criteria, which were defined in the RFP. (Port officials assert that they selected the lowest-priced responsive and responsible bidder for this service.) A total of four firms submitted proposals and the contract was awarded to Firm A, even though it addressed only two of the five selection criteria. We question whether the contract was awarded in accordance with the selection criteria, because another firm (Firm B) addressed all five of the criteria but was not awarded the contract. Port officials told us that cost was the primary consideration in awarding the contract, but cost was not one of the five selection criteria and Firm B submitted a significantly lower bid than Firm A (about \$211,000 compared to about \$245,000). We note that the winning bidder, Firm A, had previously done business with the Port and was also awarded the design contract (by the City of Albany) for the pedestrian bridge at the Corning Preserve.

(In response to our draft report, Port officials indicated that the procurements reviewed predate their 2004 procurement reform. However, we note that, while the initial transactions were prior to 2004, several contracts were renewed or extended since then. As a result, the Port continued to use firms that were not obtained through a competitive process.)

3. Other Internal Control Weaknesses

We identified the following instances in which the Port could either improve its system of internal controls or strengthen its adherence to existing policies and procedures (a summary table addressing specific questions related to each of the Port's basic financial operations is attached to the end of our report):

- One of the Port's eight administrative employees is an attorney. In the past, this was a part-time position that was paid on an hourly basis through a consultant contract. In 2003, the position was put on the Port's payroll as a full-time position. As a consultant, the attorney was paid \$100 an hour for a maximum of 15 hours a month, or a maximum of \$18,000 a year, unless additional time was approved by the Port. As an employee, the attorney (the same individual) receives an annual salary of about \$38,000, full medical and dental benefits, and membership in the New York State Employee Retirement System.

We question the appropriateness of classifying the attorney as a full-time employee, because the individual in the position does not work full-time for the Port. For example, during 2004, the individual's private records (he does not submit time sheets to the Port) show that he worked an average of only 56 hours a month on Port business. We further note that this individual maintains a private law practice, and provides legal services to the Port on an as-needed basis. It thus appears that it would be more appropriate to pay the individual as an hourly consultant, as was done in the past, rather than as an employee. We also note that, since the attorney was incorrectly classified as a full-time employee, the individual has been credited with more years of service (for pension purposes) than he has actually worked. We recommend Port officials contact the New York State Employee Retirement System and correct this error.

- Written business policies help employees perform their jobs in accordance with expectations and requirements. The Port has written policies for certain areas of its operations, but lacks written policies in other areas. For example, the Board's written policies do not address the use of petty cash; the validation of employee leave accrual records; purchasing duties; equipment and asset management; employees' personal use of Port automobiles and cellular telephones; employees' personal use of the Internet on Port computers; and employees' use of Port gasoline and diesel fuel.
- The Board does not periodically review its various policies to ensure that they are consistent with current laws and regulations. For example, the Port's personnel policies have not been updated since 1994 and its procurement guidelines were not reviewed in 2002 or 2003. While the procurement guidelines were amended in 2004, the Port is required by law to review its procurement guidelines annually. The Board is also required by law to review its investment guidelines annually, but has not reviewed the guidelines since 1996.
- The Governor's Guidance for Public Authority Board Governance states that a committee structure should be adopted by Boards of Directors. However, the Port's Board had yet to develop such a structure. Port officials informed us that the Board approved a Committee Charter in June 2005, which is the first step in adopting a committee structure.

- The Port has developed a written code of ethics, but the code is too general to provide sufficient guidance to Board Commissioners and Port employees.
- The Board is supposed to have five Commissioners. However, one Board seat was vacant for a period of two years (from December 2002 to December 2004). In addition, Commissioners are appointed for three-year terms, but three Commissioners continued to serve more than a year after their terms had expired. The terms expired in March 2003, but the Commissioners were not reappointed until December 2004.
- If a Board of Directors is to provide sufficient oversight and governance, Board meetings should be held as scheduled and the meetings should be adequately attended. However, three of the twelve scheduled Board meetings in 2004 were cancelled because of scheduling conflicts. Moreover, at two of the nine meetings that were held, only three Commissioners attended. In addition, the sole Commissioner representing the City of Rensselaer attended only three of the seven meetings that were held after that Commissioner was appointed in June 2004.
- A Board of Directors is expected to keep informed of the organization's financial decisions and provide appropriate oversight. Accordingly, a Board should periodically review the organization's financial operating results and compare them to the approved budget. However, the Port's Board does not regularly perform such reviews.
- The Port has an Internet website which includes a notice of the next scheduled Board meeting. To provide better accountability and transparency and disclosure of public operations, the Port should post the minutes of Board meetings on its website.
- The Board does not formally review and approve contracts for services lasting more than one year, as is required by the Port's procurement guidelines.
- Improvements are needed in certain areas of the Port's controls over cash. For example, the petty cash fund is not properly controlled, outstanding checks are not always written off in a timely manner, cash disbursements are not always approved as required, and Port bank account balances are not always sufficiently collateralized.
- Improvements are needed in certain payroll-related controls. For example, the Port does not have a process for validating the accuracy of employee leave accrual records, time and attendance records are not always signed by the employees and their supervisors, the Port has no policy governing additions to and deletions from the payroll, and certain payroll processing duties are not adequately separated among different employees.
- Purchasing duties are not adequately separated among different employees, as a single employee can authorize a purchase, place the order, and verify its receipt. The Port also failed to comply with certain procurement requirements, as it did not include all of its contracts in the annual Procurement Contract Report that is submitted to the Office of the State Comptroller and did not advertise the Corning Preserve Project in the New York State Contract Reporter.

- The Port did not properly administer a contract for marketing services, as it continued to pay the contractor after the contract expired. In addition, even though the contract capped travel reimbursements at \$15,000, the Port reimbursed the contractor for more than \$20,000 in travel expenses.
- The Port's goal was to hire Minority/Women-Owned Business Enterprises (M/WBEs) for 1 percent of its contracts. The Port met this goal for Women-Owned Business Enterprises, but did not meet the goal for Minority-Owned Business Enterprises. The Port's Master Plan for M/WBEs was accepted by the Department of Economic Development, but the Port's 1 percent hiring goal is very low compared to other public authorities, and we found that the Port does not aggressively seek to contract with Minority or Women-Owned Business Enterprises.
- The Port has inventory control records, but the records do not include all Port assets and are not updated in a timely manner when items are purchased or disposed of.
- We identified a number of weaknesses in the Port's procedures dealing with its computerized accounting and information records. Due to the sensitive nature of these matters, we are not providing details in this report. However, we fully informed Port officials about the weaknesses found during the course of our audit.

(In response to our draft audit report, Port officials generally identified steps to address internal control weaknesses.)

Recommendations

1. *Conduct thorough internal control assessments on a regular basis.*
2. *Ensure that the statements contained in the annual B-350 Internal Control Certification are accurate.*
3. *Restrict Port enterprises to those authorized in the Port's enabling legislation.*
4. *Perform a formal, documented analysis that identifies both the Port's and the City of Albany's share of the benefits from the Corning Preserve Project, and bill the City of Albany for its share of the associated costs.*
5. *Review the Albany land sales in light of Section 8 of the Port's enabling legislation, and determine whether the Port should recover the \$3 million that was paid for the land.*

(In response to our draft audit report, Port officials stated it does not seem equitable for the Port to force the municipality to provide real property, and to build improvements on the property, without being compensated. Port officials added that they will review the enabling legislation with respect to apportionment of development costs and real property acquisition to neighboring municipalities.)

6. *Before purchasing land, obtain an independent appraisal of the land's value.*

7. *Award contracts competitively unless there is a valid reason not to do so. If a contract is not awarded competitively, thoroughly document the reasons for the lack of competition and obtain formal Board approval for the lack of competition before the contract is awarded.*

(In response to our draft audit report, Port officials stated that the new Security Director is a full-time Port employee. They also stated that the vehicle and cellular telephone are essential to the security function. Port officials also assert that it was a good business decision to select the same vendor that did the Corning Preserve work. Port officials stated that the tenant paid for the generator.)

Auditor's Comments: We are pleased to see that Port officials revisited the process for obtaining the services of a Security Director. However, their response does not address our issue regarding the absence of a competitive process to award the initial contract for the Corning Preserve Project.

8. *Ensure that all contractors provide details supporting the amounts that are billed for services rendered to the Port.*
9. *Execute a formal contract with the lobbyist. Include in the contract the lobbyist's performance expectations, the roles and responsibilities of each party, and other contract terms and conditions.*

(In response to our draft audit report, Port officials stated that there is now a contract with the lobbying firm and the consultant is required to provide billing details.)

10. *Use a competitive selection process for the Port's annual financial audit.*
11. *Revise the procurement guidelines to better define what constitutes an emergency and further restrict the circumstances in which competition may be avoided.*

(In response to our draft audit report, Port officials stated the emergency procurement process now conforms to the State's procurement guidelines.)

12. *Award contracts in accordance with the selection criteria established beforehand, and do not award contracts to non-responsive bidders.*

(In response to our draft audit report, Port officials stated that they publicly advertised for this service and the Board interviewed all four firms, selecting the lowest-price responsive and responsible bidder. The RFP identified the following selection criteria for this contract: relevant experience of the firm and the project team, qualifications of personnel, ability to meet desired schedules, how the firm would add value to the project, responsiveness to the RFP, and understanding the scope of services and approach to provide the desired results.)

Auditor's Comments: We did not see any evidence in the proposal submitted by the firm awarded the contract addressing experience, qualifications or how they would add value to the project.

13. *Either treat the attorney as a consultant who is paid on a hourly basis in accordance with a contract, or require the attorney to work in conformance with normal employee working conditions (e.g., to work in a supervised office environment, to work in accordance with an established work schedule, and to submit time sheets accounting for these scheduled work hours).*

(In response to our draft audit report, Port officials stated that the attorney is now a part-time employee and submits time sheets.)

14. *Work with officials of the New York State Employee Retirement System to determine whether the attorney has in fact been an employee (rather than a consultant) since he was placed on the Port's payroll. If it is determined that the attorney has been an employee, adjust the attorney's credited years of service to reflect the amount of time that was actually worked by the attorney while he was on the Port's payroll.*

(In response to our draft audit report, Port officials advised the attorney's retirement credits were corrected.)

15. *Develop written policies and procedures for all the Port's business practices including, but not limited to, the use of petty cash; the validation of employee leave accrual records; payroll additions and deletions; purchasing duties; equipment and asset management; employees' personal use of Port automobiles and cellular telephones; employees' personal use of the Internet on Port computers; and employees' use of Port gasoline and diesel fuel.*

(Port officials replied to our draft audit report that they are reviewing each identified area and will promulgate written policies as appropriate.)

16. *Review and approve procurement and investment policies annually. Periodically review other policies and procedures to ensure they comply with current laws and regulations.*

(In response to our draft audit report, Port officials stated that they are reviewing these guidelines.)

17. *Adopt a committee structure for Board business.*

(In response to our draft audit report, Port officials stated that early guidance from the Governor's Office precluded any of the Port Commissioners from serving on committees because they were not independent. However, this restriction has been removed under the law enacted January 2006 and they have implemented a committee structure.)

18. *Develop an appropriately detailed code of ethics for Board Commissioners and Port employees.*
19. *Ensure that the parties responsible for nominating and appointing Board Commissioners are notified promptly about vacancies and are notified in advance about expiring Commissioner terms.*
20. *Take steps to improve attendance at Board meetings and reduce the number of cancelled meetings.*
21. *Regularly provide the Board with reports comparing the Port's financial operating results to budgeted amounts.*

(In response to our draft audit report, Port officials stated that its new accounting system now enables them to provide the Board with budget versus actual comparisons in graphical format.)

22. *Post Board meeting minutes on the Port's Internet website.*
23. *Annually submit all multi-year contracts for the Board's review and approval.*
24. *Establish appropriate accountability over petty cash transactions by assigning a single custodian for the fund, maintaining proper account records, and securing the funds.*
25. *Establish a policy to write off checks that have been outstanding for a certain amount of time.*
26. *Properly collateralize funds in all Port bank accounts.*
27. *Comply with the procurement guidelines that call for the business manager's prior approval of purchases.*
28. *Monitor the accuracy of employee leave accruals.*
29. *Require all employees to sign time sheets and require supervisors to attest to their accuracy.*
30. *Separate payroll-related duties so that the same employee does not submit payroll information to the payroll processing service, receive completed payroll checks, and use the signature stamp of the Chief Financial Officer.*
31. *Separate purchasing-related duties so that the same employee does not authorize purchases, place orders, and verify the receipt of goods.*
32. *Prepare a Procurement Contract Report that is complete and accurate.*

33. *Advertise the opportunity to bid on upcoming Port contracts in the New York State Contract Reporter and document such advertising.*
34. *Do not pay for contract services after contracts formally expire.*
35. *Develop an aggressive action plan to increase the extent to which Minority and Women-Owned Business Enterprises participate in Port contracts.*

(Port officials replied to our draft audit report that they comply with Article 15-A of the Executive Law regarding minority/women-owned business enterprises.)

Auditor's Comments: We did not question compliance with the law. However, we encourage Port officials to make an effort to increase its goals regarding M/WBE participation in contracts.

36. *Create and maintain a comprehensive inventory of Port equipment and maintenance parts.*
37. *Establish a system for reporting equipment acquisitions and dispositions to the Operations Manager.*
38. *Implement the recommendations detailed during the audit for strengthening system security and improving disaster preparedness.*

A draft copy of this report was provided to Albany Port District Commission officials for their review and comment. Their comments have been considered in preparing this final report, and are included as Appendix A. Although they did not respond directly to each of the recommendations, Port officials state that most of the recommendations have or will be implemented.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Albany Port District Commission shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this examination were Gerald Tysiak, Roger C. Mazula, Brandon Ogden, Kathleen Hotaling, and Sharon Salembier.

We wish to thank the management and staff of the Albany Port District Commission for the courtesies and cooperation extended to our auditors during this examination.

Yours truly,




Carmen Maldonado
Audit Director


cc: Lisa Ng, Division of Budget
Frank Keane, General Manager


**ALBANY PORT DISTRICT COMMISSION
INTERNAL CONTROLS OVER FINANCIAL OPERATIONS**


A colored “traffic light” legend is included in the table below to assist management in focusing an appropriate level of attention on the issues summarized in the table. As part of our examination, we sought answers to a series of questions and reviewed selected Port records related to certain basic financial operations. Our questions in each area, along with a summary of the Port’s activities and our comments concerning these activities, are included in the table.



Legend:




	Activities/Comments contain matters that should be of immediate concern to management.		Activities/Comments contain matters which management should consider correcting.		Activities/Comments do not contain issues that require management’s immediate consideration.
--	--	---	--	---	--


	QUESTION	PORT ACTIVITIES	COMPTROLLER’S COMMENT
	Board Oversight & Governance:		
	Does the Port’s Board of Commissioners function in a manner that promotes an ethical business climate within the organization and encourages and supports full compliance with all applicable laws, rules and regulations?	<p>The Governor issued guidance on Board governance that requires public authorities like the Port to train Board members on legal, fiduciary, and ethical responsibilities; separate oversight from executive functions; establish a coordinated committee structure with detailed responsibilities; and create a transparent business environment by making certain financial information readily available to the public.</p> <p>The Board has a code of ethics.</p> <p>The Board reviews maritime and leasing activities at its monthly meetings, and took action to comply with the Federal Maritime Transportation Security Act of 2002.</p>	<p>Port officials acknowledged they are not yet in compliance with the Governor’s guidelines, but are working to develop committee structures. The officials informed us that the Board approved a Committee Charter in June 2005.</p> <p>The code of ethics is too general to provide sufficient guidance in the area of ethics.</p> <p>The Board does not periodically review its policies to ensure that they are consistent with current laws and regulations. For example, personnel policies have not been updated since 1994.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
		<p>The Board is required by Title 4, Section 2879 of the Public Authorities Law to review and approve procurement guidelines annually, and is required by Title 7, Section 2925 of the Public Authorities Law to review and approve investment guidelines annually.</p>	<p>The procurement guidelines were not reviewed in 2002 and 2003, but were amended in 2004. The Board does not annually review and approve investment guidelines.</p>
	<p>Has the Board of Commissioners established appropriate internal controls that promote the economic, efficient and effective operation of the Port consistent with its statutory public benefit mission and that provide for transparency and accountability in pursuing its strategic business objectives?</p>	<p>The Board consists of five Commissioners who are nominated by the mayors of Albany (4 members) and Rensselaer (1 member) and are then appointed by the Governor for three-year terms.</p> <p>The Board schedules monthly meetings. The Board met nine times during 2004 (three meetings were cancelled).</p> <p>In order to make informed financial decisions and provide appropriate oversight, the governing boards should routinely review actual operating results and compare them to the approved budget.</p> <p>Board meetings are open to the public and are announced on the Port's Internet website. Meeting minutes are prepared for each meeting.</p> <p>Port officials report in their Internal Control Certifications that the Port uses a four-step process for evaluating internal controls.</p> <p>The Port's procurement guidelines require contracts with a duration of more than one year to be reviewed and approved annually by the Board.</p>	<p>The Board had one vacancy from December 11, 2002 until December 17, 2004. Also, the terms of three Commissioners expired well before they were reappointed in December 2004.</p> <p>Of the nine meetings held during 2004, two were attended by only three Commissioners. The representative of the City of Rensselaer was appointed to the Board on June 15, 2004, and he missed four of the next seven Board meetings. Port officials advised us that three meetings were cancelled because of scheduling conflicts.</p> <p>The Board does not regularly review operating results and compare them against the approved budget.</p> <p>Board meeting minutes are not posted on the Port's Internet website. Such an action would improve public accountability.</p> <p>Port staff did not formally evaluate the Port's internal controls during our audit period using the four-step process or otherwise.</p> <p>The Board does not annually review contracts for services with a duration of more than one year.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
		<p>In 2002, the Port entered into agreements with the Albany Local Development Corporation (ALDC) and the City of Albany Industrial Development Agency (CAIDA). The agreements related to a large riverfront development project at a park owned by the City of Albany (the Corning Preserve). As part of the agreements, CAIDA issued \$4.4 million in bonds to finance part of the project and the Port used the bond proceeds to make certain improvements at the park. The Port also agreed to repay the bond principal and interest over a 30-year period, and to pay the operating and maintenance costs related to the improvements over the same period (these debt service and other payments are expected to total about \$300,000 annually). The Port is leasing the improvements for this 30-year period, after which time ownership of the improvements reverts to ALDC.</p>	<p>The Port is authorized by its enabling legislation to develop port and other commercial activities. However, the Corning Preserve is a recreational facility, not a commercial facility. We therefore question whether it was appropriate for the Port to participate in this project. The Port is also authorized to partner with municipalities in the construction of docks, wharfs, terminals and warehouses. In these instances, the enabling legislation states that the municipalities will construct the facilities and the Port may share in the construction costs. However, in this instance, the Port constructed the facilities and committed to pay most of the construction costs. According to the Port's enabling legislation, the Port can ask the City of Albany to share in the costs of the project in proportion to its benefit from the project. We recommend such a request be made.</p>
	<p>Revenue & Collections:</p>		
	<p>Do the Port's internal controls provide assurance that revenues are billed timely and accurately and are recorded properly in the accounting records?</p>	<p>The Port receives revenue from tenant leases; maritime activities such as wharfage, dockage, and a percentage of stevedoring fees; grants; and interest from investments.</p> <p>The Port prepares bills for 8 of their 33 tenants: all others pay according to the terms of their leases. The Port prepares invoices to shippers for wharfage and dockage. The Port directly invoices the stevedoring company based on the percentage of revenue stated in the contract.</p>	<p>Based on our audit tests, we conclude that the Port timely bills tenant and maritime customers and maintains accurate revenue records.</p>



	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
	<p>Do the Port's internal controls provide assurance that revenues are being collected timely?</p>	<p>Shippers that have not previously done business with the Port must pay fees in advance. All other shippers pay after the Port bills them. The Port's Bookkeeper and Chief Financial Officer notify customers when their payments are overdue. The General Manager reviews the receivables monthly and prompts follow-up on the accounts most overdue.</p> <p>Port invoices provide for a 1.5 percent finance fee per month if bills are not paid within 30 days.</p>	<p>During our examination, we found that 8 accounts out of 19 were more than 30 days overdue, in the aggregate amount of \$38,341. The most delinquent receivable (\$1,575) was 53 days overdue.</p> <p>The Port does not charge the finance fees on delinquent payments.</p>
<p>Cash & Investments:</p>			
	<p>Do the Port's internal controls provide assurance that cash and investments are properly safeguarded, accounted for, and deposited into the appropriate accounts?</p>	<p>The Port has a \$200 petty cash fund. All Port employees have access to the petty cash. They take needed money out of the cash box and write a receipt for the expense.</p> <p>The Port's receptionist logs in and restrictively endorses the checks received. She gives them to the Bookkeeper, who prepares a deposit slip and forwards it to the Chief Financial Officer, who makes the bank deposits. The Bookkeeper prepares the bank reconciliation and the Chief Financial Officer reviews it. Bank accounts are reconciled monthly.</p> <p>The Port has investment guidelines that were last approved by the Board in 1996.</p> <p>The Port has accounts in the same bank with a total balance exceeding \$100,000.</p>	<p>The administration of the Port's petty cash account is lax. There is no single custodian in charge of petty cash. The Port does not keep a log listing the petty cash expenses. The cash box is kept in an unlocked file cabinet during business hours. Furthermore, since all Port staff has access to petty cash, there is little, if any, accountability for any lost money. We attempted to reconcile the account but could not, because the Port does not maintain a petty cash log. At that time, cash on hand plus expense receipts (which should always equal \$200) totaled \$413.13.</p> <p>There is an appropriate separation of duties related to the receiving, deposit, and recording of cash. However, in the January 2005 bank reconciliation, we found two checks were outstanding for more than two years without being written off.</p> <p>The investment guidelines should be reviewed and approved annually by the Board.</p> <p>During 2004, there were times when the money in the operations and payroll accounts were not properly collateralized.</p>


	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
	<p>Do the Port's internal controls provide assurance that cash disbursements are properly authorized and recorded?</p>	<p>The Port requires the Business Manager to approve all invoices before payment.</p> <p>All disbursements are recorded in the accounting records by the Book-keeper when the invoices are paid.</p>	<p>In practice, the Business Manager does not approve payment of all invoices.</p> <p>The disbursements we tested were all properly recorded.</p>
Payroll:			
	<p>Do the Port's internal controls provide assurance that employee time and attendance records are accurate and that leave time is accounted for and recorded properly?</p>	<p>The administrative secretary maintains the leave accrual records for all eligible Port employees.</p> <p>Port security staff is paid hourly and security employees hand in time sheets weekly.</p> <p>The Port employs regular maintenance staff. Maintenance employees complete time sheets and the Operations Manager signs off on the time sheets.</p>	<p>The Port does not have a process for validating the accuracy of employee leave accrual records. We found minor errors in employee leave accrual records.</p> <p>Security staff do not sign time sheets and neither do their supervisors.</p> <p>The maintenance staff do not sign their time sheets attesting to their accuracy. The Operations Manager does not always approve the time records by initializing the records (e.g., 3 of the 14 time sheets tested were not signed by the Operations Manager).</p>
	<p>Do the Port's internal controls provide assurance that payroll changes (e.g., additions, deletions, and overtime) are processed accurately and timely?</p>	<p>The Port's payroll is prepared by a payroll service. The Port's Bookkeeper is responsible for adding and deleting employees to and from the payroll records.</p> <p>The Bookkeeper is responsible for adding and deleting employees from the Port's payroll. She submits the information to the payroll processing firm that completes the Port's payroll. She receives the checks from the payroll service and places them in envelopes for mailing to employees. She also controls the signature stamp authorizing payment.</p> <p>The Port's attorney used to be paid as an hourly consultant for a maximum of \$1,500 per month. However, in January 2003, the attorney was hired by the Port and put into a full-time position. The attorney now receives \$38,000 a year and full employee benefits (e.g. health, dental, and retirement). During 2004, the attorney's private records show he spent an average of only 56 hours per month on Port business.</p>	<p>The sample of employee payroll changes we reviewed during our audit period were processed accurately and timely. However, there are no written addition/deletion policies.</p> <p>These duties should be separated among more than one employee. At a minimum, the signature stamp should be maintained by the Chief Financial Officer, who should verify that all employees being paid are on the Port's payroll.</p> <p>We question whether the attorney is truly a Port employee or whether he actually functions as an independent contractor. He does not submit time sheets, maintains an outside legal practice, and provides legal services to the Port on an as-needed basis. Since the attorney does not actually work as a full-time employee, his years of service (for pension purposes) have been overstated.</p>




	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
	Procurement & Contracting:		
	<p>Do the Port's internal controls provide assurance that purchases are authorized, received, and recorded properly?</p>	<p>The Port has developed procurement guidelines which set forth, by dollar amount, authorization and competition levels expected. However, the Port has not established written purchasing procedures.</p> <p>The Port is required to submit a procurement contract report to the Office of the State Comptroller every year.</p> <p>The Port has used the same outside accounting firm for its annual audits for decades.</p> <p>The Port's procurement guidelines require advertising of upcoming contracts in the New York State Contract Reporter.</p> <p>The Port's procurement guidelines related to hiring Minority/Women-Owned Business Enterprises state: "M/WBE enterprises shall be given full opportunity to compete in all types of procurement contracts. Notification will be sent to appropriate vendors/suppliers as noted in the MBE/WBE Directory."</p>	<p>The Port should have written purchasing procedures that include each employee's responsibilities in the purchasing process, including initiating, approving, ordering, receiving, and recording a purchase. We found that a single person can authorize a purchase, order the item, and verify its receipt.</p> <p>The Port's contract reports for 2002 and 2003 did not list all Port contracts. For example, the reports failed to list a \$6,000 public relations contract, a \$50,000 marketing contract, a \$50,000 lobbying contract, and a sole source contract for barge container services (the dollar amount depended on the number of trips and the size of the loads).</p> <p>There is a trend among businesses and at public authorities to periodically seek audit services competitively and rotate among accounting firms to help ensure independence and objectivity in the annual financial statement audits.</p> <p>The Port had no documentation showing that it advertised the Corning Preserve Project in the New York State Contract Reporter.</p> <p>The Port did not send the required Master Plan to the Department of Economic Development that describes their methods of contracting with M/WBEs between 1995 and 2002. In the 2003-04 Federal fiscal year, the Port set very small M/WBE goals: to hire such firms at 1 percent for all contracts for commodities and services. The Port met its 1 percent goal for Women-Owned Business Enterprises firms, but it did not meet its 1 percent goal for Minority-Owned Business Enterprises that year. We conclude that the 1 percent goal is low compared to other public authorities and that the Port does not aggressively seek to contract with M/WBEs.</p>


	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
		<p>The Port's procurement guidelines also stipulate that notification of upcoming procurement contracts should be submitted to the Commissioner of the Economic Opportunity Commission for advance notice of the opportunity for these groups to send bids or proposals to the Port timely.</p> <p>The Port's procurement guidelines require competitive procurement through an RFP process and Board approval unless competition is waived through formal resolution by the Board.</p>	<p>On a number of occasions, the Port did not document the reasons for making non-competitive purchases and did not obtain formal Board approval for the lack of competition. We also identified purchases that were inappropriate or questionable for other reasons. Following are examples of these non-competitive and otherwise questionable transactions:</p> <p>The Port obtained a Security Director through a three-year, \$50,000 a year, contract that was awarded without competition. The Security Director was provided with a vehicle and a cellular telephone, which were not covered by the contract. The vehicle was not purchased under State contract and was not competitively bid.</p> <p>The Port awarded a lobbying firm a \$50,000 a year contract. The contract was awarded without competition. Port officials stated that the firm was selected because of its political connections.</p> <p>The Port contracted with a firm to install video surveillance equipment at the Port. The contract, which cost \$408,594, was awarded without competition. The same firm was awarded a non-competitive contract to install video surveillance equipment at the Corning Preserve.</p> <p>The Port paid one of its tenants \$73,810 to purchase and install an electric generator for one its tenant buildings. The Port solicited no bids from other companies. Port officials stated this was an emergency purchase, but there was no documentation to confirm this.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
		<p>The Port paid the City of Albany a total of \$3 million in two separate purchase agreements to buy approximately 100 acres of land within the Port's existing, fenced-in business property. Port officials told us they purchased the land because the Port did not own clear title to the property and needed clear title to develop the property.</p>	<p>The Port hired the engineering firm for the Corning Preserve Project through a Request for Proposal (RFP) process. The RFP included five separate criteria that interested firms were expected to address. The proposal from the winning firm (which had previously done business with the Port) addressed only two of the five criteria. Although this firm's proposal could have been considered "non-responsive," Port officials told us that cost, which was not one of the five criteria, was the primary consideration in their selection process. However, another firm addressed all five selection criteria and had a lower cost proposal.</p> <p>The Port had a contract for marketing services for the period March 1, 2001 through March 1, 2004. The contract was not renewed or extended, but monthly bills for services continued to come to the Port after the contract had expired and the Port paid these bills. For example, the Port paid the contractor \$4,167 in November 2004 and \$4,675 for travel expenses in December 2004 (which the Port recorded as business lunches). The marketing contract capped travel reimbursements at \$15,000, but the Port paid more than \$20,000 in travel expenses.</p> <p>There was no independent appraisal of the land value. We therefore question whether the purchase price was fair and reasonable. We also question whether the Port needed to purchase the land from the City of Albany because, according to Section 8 of the Port's enabling legislation, the entire cost of construction of any port facilities within the City of Albany or upon land owned by the City of Albany, including the cost of acquiring the necessary real property therefor, shall be borne by the City of Albany. Moreover, the Port already had tenant-occupied buildings on the land.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
	<p>Do the Port's internal controls provide assurance that purchases are reasonable and necessary and made in an economical and efficient manner?</p>	<p>The Port's procurement guidelines indicate that various levels of competition are required based on the amount the goods or services are expected to cost. The level of competition ranges from three verbal quotes to three written quotes to sealed bids. Sealed bids are required for goods or services expected to cost more than \$15,000.</p>	<p>We identified several instances in which the Port did not follow these guidelines, as was previously noted.</p>
<p>Equipment & Asset Management:</p>			
	<p>Do the Port's internal controls provide assurance that equipment acquisitions and dispositions are authorized and recorded properly, and that a comprehensive inventory of equipment is maintained?</p>	<p>The Port had equipment and fixed assets valued at \$21,868,845 on December 31, 2003. The Port records equipment acquisitions in its accounting records as the equipment is purchased. The Port records dispositions at the end of its fiscal year.</p> <p>The Operations Manager maintains a manual inventory listing of Port vehicles, furniture, and equipment. The last physical inventory was conducted January 2004.</p> <p>Port security uses a vehicle which was donated to the Port from the Albany Housing Authority in the Fall of 2004. The Port is responsible for the maintenance and repair of this vehicle.</p>	<p>The Port does not have written policies and procedures for equipment and asset management. The Port does not have a policy for placing inventory control tags on all inventory items. Notwithstanding, the Operations Manager has attempted to establish control records for items under his control responsibility. The inventory control records maintained by the Operations Manager do not include all inventory items, such as the security vehicle and Port assets installed in leased buildings. Inventory records are not updated timely when equipment items are purchased or disposed because the Port does not have a system of reporting equipment acquisitions or dispositions to the Operations Manager.</p> <p>The Port does not have comprehensive inventory records for maintenance parts. In addition, the records maintained by the Operations Manager did not match the financial records. For example, a generator installed for one tenant was on the financial records but not on the Operation Manager's inventory.</p> <p>The Port did not know if the vehicle was donated or loaned, nor did the Port record the vehicle in its inventory or financial records. Port officials did not purchase insurance for the vehicle until after it was damaged in an accident and the Port paid for repairs.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
	<p>Do the Port's internal controls provide assurance that equipment is secured properly and used as intended?</p>	<p>To comply with security provisions of the Federal Maritime Transportation Security Act of 2002, the Port installed a security system including fencing, lighting and video surveillance cameras. Activity within the secured area is monitored. Port officials stated that the security system and cameras were installed by June 30, 2004.</p> <p>Most of the Port's major equipment items are in the secured area of the Port. The Port owns ten service vehicles and automobiles. Three of the automobiles are assigned to specific individuals.</p> <p>The Port has eight cellular telephones and nine computers (six of which are assigned to specific employees). Two of the computers are used to run the Port's security system and one is a laptop computer used to perform diagnostics on the large mobile crane.</p> <p>The Port buys diesel fuel and unleaded gasoline from the City of Albany under State contract prices to sell to the stevedoring company and for use in Port service vehicles and automobiles.</p>	<p>One of the Port vehicles is a \$25,000 2004 Jeep Cherokee, which was assigned to the security director. However, the security director's agreement did not include a provision for such a vehicle.</p> <p>The Port does not have written policies and procedures regulating employees' personal use of the Port's vehicles, the Internet, or its cellular telephones.</p> <p>The Port has not established policies and procedures for the distribution of unleaded gas and diesel fuel to prevent its unauthorized use.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
Budgeting & Expenditure Control:			
	Do the Port's internal controls provide assurance that the Port's annual budget is prepared accurately and timely?	The Port prepares annual operating and capital budgets. The Board reviews and approves the budgets in December or January. As part of the Board's 2004 budget review, Port management provided a 2003 comparative budget that differed from the prior year's approved budget.	Port's management prepared, and the Board approved, the operating and capital budgets timely. However, we found mathematical errors in the 2002, 2003, 2004, and 2005 approved budgets. Furthermore, the budget that passed in the prior year was not accurately carried forward to the current year's budget presentation.
	Do the Port's internal controls provide assurance that actual operating results are monitored against budgeted estimates and that appropriate revisions to current and future budgets are made as warranted by these operating results?	The Board does not periodically review operating results and compare them against the approved budget.	The Port does not regularly provide reports comparing operating results to budgeted amounts. The Port's accounting system is capable of producing this type of report, but Port staff do not use this function. Port officials told us they did not know their financial information systems could provide them with meaningful comparisons.
Accounting and Information Systems:			
	Do the Port's accounting and information systems provide assurance that management has access to timely, accurate and relevant information?	<p>The Port uses a computerized accounting system to process its business transactions. The only two people who have access to these records are the Bookkeeper and the Chief Financial Officer. They prepare monthly accounting reports. The Chief Financial Officer stated that he reviews the reports. The General Manager regularly reviews the aging of accounts receivable reports.</p> <p>The Port has a video security information system for video surveillance.</p>	<p>There are detection controls in place to ensure the accuracy of entries to the financial system. There are no controls in place to assure the timely entry of accounting information. For example, equipment dispositions are sometimes deferred to year end. However, our observations of the entries, payment, and collection activities show the Port is entering financial information timely.</p> <p>The Port's security system records activity at the Port as it occurs. The system can be accessed by the date or time and the recorded tapes can be reviewed.</p>

	QUESTION	PORT ACTIVITIES	COMPTROLLER'S COMMENT
	Do the Port's internal controls provide assurance that the accounting and information systems are secure and that the information is recoverable in case of system failure?	<p>The Port backs up the accounting financial systems to tapes daily.</p> <p>Access to the financial records requires computer user ids and passwords.</p> <p>Access to the computers after working hours is restricted by employee identification cards.</p>	<p>We identified a number of weaknesses in the Port's procedures dealing with computerized accounting and information systems. Due to the sensitive nature of this matter, we are not providing details about these weaknesses in our public report. However, we fully informed Port officials about the weaknesses during the course of our audit.</p> <p>Overall, building security limits access to the computers.</p>

ALBANY PORT DISTRICT COMMISSION

ALBANY—RENSSELAER

FRANK W. KEANE, GENERAL MANAGER

ROBERT F. CROSS, CHAIRMAN

March 30, 2006

Ms. Carmen Maldonado
Auditor Director
Office of the State Comptroller
Division of State Services
State Audit Bureau
123 Williams Street- 21st Floor
New York, New York 10038


Dear Ms. Maldonado:

Thank you for your letter of March 3rd providing your office's draft audit report. Enclosed is our response which, for your convenience, mirrors the organization of the draft audit report.

First, let me express the Albany Port District Commission's appreciation for the professionalism exhibited, and the work conducted, by you and your staff during the conduct of the audit. As you are already aware, we agree with the large majority of your findings concerning the need to improve work processes/controls and as a result, have either modified existing policies or implemented new procedures or policies.

The Albany Port District Commission is one of the economic drivers in the upstate region accounting for approximately \$114 million total economic activity. Revenue for 2005 is at an all-time high, while at the same time, expenses decreased for the same period. In the last year alone, overall tonnage has increased by 19 percent and longshore hours have gone up by 68 percent.

We look forward to continuing to work with your office in moving forward. Please call me with any questions.

Sincerely,

Robert F. Cross
Chairman

RFC/lw
Cc: Robert Barnes, Division of the Budget



PORT OF ALBANY

106 Smith Blvd.
ALBANY, N.Y. 12202 • (518) 463-8763
FAX NO. (518) 463-8767
E-MAIL: portofalbany@portofalbany.com

Appendix A

ALBANY PORT DISTRICT COMMISSION

C. Audit Results.

The Albany Port District Commission (“APDC” or “Port”) respectfully disagrees with the Comptroller’s finding concerning self-assessments. Each year the APDC identifies a particular area, or set of processes, to assess in conformance with the four step method that was developed in 2001 in conjunction with the Division of Budget. During past years, the Port has identified areas where business process improvements were necessary and implemented corrective actions. In recent years, the Port has assessed its operations and determined the following areas needed improvement: procurement, maritime fee collection, and security. As a result of such internal reviews, the Port issued new procurement guidelines, revised its entire tariff structure to make foreign ship owners, agents and other parties engaged in maritime business more responsible for the payment of fees to the Port, and implemented a number of security improvements. In 2002, the APDC determined that port security was the area of most importance to examine.¹ As a result of such assessment, significant changes were made to the APDC’s security operations.

1. Questionable Payments Involving the City of Albany.

Corning Preserve.² The APDC respectfully disagrees with the Comptroller’s interpretation of the Port’s enabling legislation. The APDC, as well as a significant number of other ports across the country, have realized that simply remaining behind the Port’s fenceline is extremely counterproductive. Such actions assist with the economic development of the surrounding area, increase regional commercial activity and ensure that Ports can continue to operate the maritime industry in a community, rather than being considered by the public as industrial blight. The APDC’s involvement with the development of the Corning Preserve should serve to mitigate any potential negative sentiment from the community as the Port’s commercial activities continue to rapidly grow. Furthermore, there is nothing hidden about the financial aspects of this transaction – they are disclosed each year on the APDC’s audited financial statement which has been provided each year to the Comptroller.

Purchase of Property. The APDC did not have title to the referenced properties. It would have been negligent on the part of the Port to continue to develop and use the land without clear title. Future commercial developments were in jeopardy and existing leases/uses were threatened – as existing leases with tenants on the subject property expired, financing for new tenants with capital-intensive projects required clear title. Simply stated, without clear title, no further development or improvements were possible on these properties. Additionally, due to the lack of title, the tenants of the property and the municipal owner could have taken legal action against the APDC and potentially hold the APDC liable for significant damages.

¹ Although this assessment was required by federal law, it was also the area selected by the Commission to review as a result of the terrorist events of September 11, 2001.

² Please note that the real property comprising the Corning Preserve is owned by New York State, not the City of Albany.

ALBANY PORT DISTRICT COMMISSION

Please note that the APDC will again review the provisions of its enabling legislation with respect to apportionment of development costs/real property acquisition to neighboring municipalities. It does not seem equitable, as stated in the audit, that the APDC, as a state entity, can force a municipality to provide real property to the APDC, then force the municipality to build improvements on said real property for the Port, and not receive any compensation for such taking or services.

2. Non-Competitive Contracts

The APDC agrees with the Comptroller that in five (5) instances identified (all procurements before August 2004 – new procurement guidelines were issued in August 2004), its procurement documentation needed improvement. The Port is encouraged, however, that during the three (3) year time period reviewed by the Comptroller, the APDC conducted approximately 180 other procurements which were not identified as deficient.

As a result of its own assessment in 2004, the APDC revised its procurement guidelines in August 2004 to better define procurement practices. Among many other changes, the “best interests of the Port” rationale to justify non-competitive procurements was removed. Current procurement practices, including emergency procurements, as detailed in the APDC Procurement Guidelines, are now in conformance with the state’s procurement guidelines.

Lobbying Contract. The cited decision to hire the lobbying consultant, although discussed extensively by the APDC Board/management and approved by the Board, did lack documentation justifying such decision. Additionally, the contract has been modified to include specific terms and conditions and the reports/invoices submitted by the consultant are required to provide details concerning performance against such terms.

Security Services Contract. The cited decision to hire the security consultant in August 2003, although discussed by the APDC Board and management during July/August 2003 and approved by the Board, did lack documentation authorizing such procurement decision and documenting the sole-source justification due to the unique qualifications and experience of the individual consultant. In July 2003, the APDC learned of significant time constraints to both engage a security officer and develop a detailed security plan for the entire Port Facility. In accordance with federal regulations issued in July 2003, the Port’s security plan had to be developed and submitted to the U.S. Coast Guard for review no later than December 31, 2003 – if this six month deadline was missed, no ships would have been allowed to enter the Port of Albany – such result would have been catastrophic to the Port’s operations. Additionally, it was required that the Port’s Facility Security Officer (“FSO”) be identified and involved with the development of the Port’s security plan. It was imperative to engage an experienced security professional immediately – one who possessed the necessary knowledge of the Albany Port, substantial experience in the security industry, and with an ability to work within the network of federal, state and local law enforcement officials that interact with

ALBANY PORT DISTRICT COMMISSION

the Port on security matters.³ Note that the equipment provided to the Facility Security Officer (FSO) – cellular phone and unmarked vehicle (which are owned by, and maintained at, the APDC) – are essential to the FSO’s security functions.

The cited contract has been terminated and the FSO is now a full-time employee of the Port.

Video surveillance equipment. Port officials in conjunction with the general contractor and the architect/engineer of the Corning Preserve Project did interview a number of video surveillance security firms and examined their relevant systems and prices. Following such review, a vendor was selected – in connection with such selection, the vendor agreed to install the surveillance equipment at the same prices that had been charged on the Corning Preserve Project, provide consulting to the Port at no cost, and assist Port officials with selection of the camera locations within the Port. It would have been negligent, perhaps even reckless, in terms of system costs, installation/maintenance/operation (both short-term and lifetime system costs), safety, and security for the Port to select a different vendor than the one who had installed the surveillance system at the Corning Preserve.

Electric generator. Due to a specific request from a tenant, an emergency generator was procured to ensure the tenant’s continuity of operations in event of a power outage. It should be highlighted that the APDC incurred no costs associated with this procurement – the tenant paid all costs.

Auditing firm. The cited decision to select the accounting firm to perform the APDC annual audit did lack documentation justifying such procurement.

A/E services for Corning Preserve. The APDC strongly disagrees with the Comptroller on this finding. The A/E services were publicly advertised in major media and multiple bids were received. Following a review of all bids, the four most qualified bids were reviewed by the entire Board, and then the entire Board conducted interviews with these four bidders. Following such detailed review of the bids and conducting oral interviews, the Port selected the lowest-price responsive and responsible bidder.

3. Other Internal Control Weaknesses

1. In early 2005, the APDC independently determined that the APDC general counsel’s retirement credit was being reported incorrectly as full-time. Such error was corrected and the APDC corrected any previously reported retirement credit to ensure no over-credit was provided. Additionally, the APDC corrected this employee’s classification from full-time to part-time and the employee is required to submit timesheets.

* ³ The APDC sees no relevance to the Comptroller’s “findings” that “prior to his retirement, the officer’s duties included providing security to the Mayor of Albany” or that “this Security Director . . . passed away in August 2005.” These comments do not seem to be in keeping with the professionalism with which the audit was conducted.

* State Comptroller’s Note: Report edited based on response from Port officials.

ALBANY PORT DISTRICT COMMISSION

2. The Port is reviewing each of the identified areas and will promulgate written policies for employee guidance as appropriate. Note that subsequent to the audit, the APDC has issued new, or revised existing, written policies in the areas of petty cash, validation of leave accrual records, purchasing, Port vehicle use, asset management and fuel use. It is important to note that there was no indication of any malfeasance with respect to these internal controls or cash controls.

3. The personnel and procurement guidelines are currently being reviewed and will be modified as necessary. Additionally, the investment guidelines were reviewed during late 2005.

4. The APDC could not initially adopt a committee structure because none of the APDC Commissioners were qualified as "independent" as defined in the initial guidance. Following modification of the Public Authority's Board Governance guidance, the APDC implemented its committee structure.

5. The APDC will review its existing policy and modify as necessary.

6. The APDC will continue to work with the various officials involved with the Board nomination and appointment process to keep vacancies and expired terms to a minimum.

7. The 2004 meetings referenced were not cancelled due to an expected non-quorum, but rescheduled due to conflicts.

8. Real-time "operating results" have always been tracked/monitored by staff and reported to the Board during each monthly Board meeting. In the past, differences between the budgeting, accounting and bookkeeping software applications prevented actual comparisons from being displayed graphically, however, the actual financial data was explained and discussed at the Board meetings. Currently, due to acquisition of a new bookkeeping application, "actual" vs. "budgeted" results are provided in a hard copy/graphical format to Board members.

9. The APDC now posts minutes of its meetings on its website.

10. In accordance with the revised APDC Procurement Guidelines, multi-year contracts are reviewed and approved by the Board.

11. See note 2 above.

12. Modifications have been made to existing policies to address the cited concerns.

ALBANY PORT DISTRICT COMMISSION

13. Modifications have been made to existing policies to address the cited concerns. Note that the Corning Preserve Project was widely advertised in major media and multiple firms indicated interest and/or submitted bids.

14. This decision, although discussed and approved by the Board, did lack the proper board resolution ratifying such procurement decision.

15. The Port is extremely serious in its duties ensuring that minority/women-owned business entities are afforded every opportunity to compete for procurements or, alternatively, be provided opportunities in a sub-contractor role with other vendors. The Port works directly with minority/women-owned businesses in ensuring opportunities are known and, in accordance with Article 15-A of the Executive Law, the Port makes available to all prospective bidders a current copy of the directory of certified businesses.

16. The Port's inventory control procedures will be reviewed and modified as necessary.

17. The Port will review the cited concerns and modify existing procedures as necessary.