Office of the New York State Comptroller

Division of State Government Accountability

New York State Department of Transportation

Oversight of Revenue Contracts and Fees

2009-S-14

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of State Government Accountability

July 1, 2010

Mr. Stanley Gee
Acting Commissioner
NYS Department of Transportation
50 Wolf Road
Albany, NY 12232

Dear Mr. Gee:

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

Following is a report of our audit of the Department's *Oversight of Revenue Contracts and Fees*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

The objectives of our audit were to determine whether the Department of Transportation is maximizing potential revenue opportunities and is monitoring its revenue to ensure all entitled revenue is billed, collected, and promptly deposited in appropriate accounts.

Audit Results - Summary

We found the Department is not maximizing all potential revenue opportunities and needs to improve its monitoring practices to ensure that all entitled revenue is billed, collected, deposited and reported properly.

Our audit identified certain weaknesses in the Department's practices that resulted in unrealized revenue opportunities of approximately $2.8 million for the period April 1, 2006 through March 31, 2009. In addition, the State could have earned approximately $104,000 in interest had this revenue been collected.

The Department could have collected $2.6 million in revenue had it acted on proposed changes to the Signal Maintenance fee. The Department also could have collected a potential $184,200 in Non-Utility Work Permit inspection fees had it provided clear direction on when the fee was to be charged and could have collected up to $4,800 to cover its indirect costs associated with the Rail Safety Program.

The Department also needs to improve its billing methods for the Industrial Access Program revenue contracts. We reviewed six of the 40 Industrial Access Program contracts totaling $1.6 million**.** The Department did not always bill municipalities timely and we found that seven bills were sent an average of seven months after the payments were due. As a result, the Department billed $258,575 late and received $216,000 after the payment due date.

Our audit report contains four recommendations. The Department agreed with most of our recommendations and indicated they have taken or will take action to implement them.

This report, dated July 1, 2010, is available on our web site at: http//www.osc.state.ny.us.
Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The Department of Transportation (Department) collects revenue from numerous sources including fees and revenue contracts. For the period April 1, 2006 through March 31, 2009, the Department reported collecting $189 million in fee-based revenue, which includes fees imposed on trucks registered to transport products throughout the State and other various permit fees. The revenue from these fees supports agency activities such as administrative support services, highway safety, and aviation programs. Of the $189 million in fee-based revenue, we audited $46.3 million collected from seven fees:

- Divisible Load Permit fees ($39.6 million) - charged to obtain permits required for truck loads which can be separated, such as sand, gravel, gas and milk.
- Rail Safety fees ($1.8 million) - annual fees based on a percentage of the gross operating revenues of freight railroads conducting business in New York State to defray the Department's administrative costs for ensuring railroads are operating safely.
- Regional Special Hauling Convenience fees ($1.5 million) - $20 charges for the convenience of obtaining Special Hauling Permits at one of the Department's Regional offices. Special Hauling Permits are needed for transporting large and unusual loads such as manufactured homes and large construction equipment.
- Signal Maintenance fees ($1.4 million) - annual fees assessed to entities that, at their request, have entered into agreements with the State to install and maintain traffic signals at their locations. Entities can include school districts, apartment complexes, shopping malls, and other entities that maintain traffic signals required to improve traffic safety.
- Utility Work Permit fees ($885,000) - charged to utility companies to obtain required permits for performing work within the State right-of-way.
- Non-Utility Work Permit fees ($846,000) - charged to obtain permits for work on highways, culverts and bridges that are under the Department's jurisdiction such as driveway installations and construction of highway improvements. This fee includes the Department's review of permit applications and site inspections.

- Oversize/Overweight Vehicle Violations ($306,000) - fines received from drivers of oversize or overweight vehicles which did not obtain necessary Special Hauling or Divisible Load permits.

In addition, as of March 31, 2009, the Department had 130 active revenue contracts totaling $74.4 million in expected revenue. Of these, 40 were awarded to municipalities for the Industrial Access Program and totaled $12 million.

The monitoring of the Department's revenue is decentralized to the various programs both in the Central Office and the regional offices that generate revenue. The Department's Revenue Unit includes eight staff members who are responsible for reporting the revenue and, in some cases, billing, collecting and depositing revenue.

Audit Scope and Methodology

Our audit determined whether the Department was maximizing potential revenue opportunities and was monitoring to ensure all entitled revenue is billed, collected and promptly deposited in appropriate accounts. Our audit period was April 1, 2006 through March 31, 2009.

To accomplish our objectives, we interviewed Department officials and reviewed Department documents and records. We also reviewed relevant laws, regulations, policies and procedures and Department analyses for establishing, billing, collecting and depositing revenue. The majority of the Department's revenue, $4.8 billion, is reimbursement from the Federal Highway Administration, which we address in a separate audit. Approximately $500 million is from Federal grants for transportation projects, revenue received from other State agencies, property damage claims and escrow deposits from public authorities and localities. The Department also has $189 million in fee-based revenue. To evaluate the Department's management of its revenue, we selected a judgmental sample of seven fees totaling $46.3 million of the $189 million in fee-based revenue. Six fees were selected based on the level of revenue reported as received on the State's Central Accounting System. The Non-Utility Work Permit fee was selected at the request of Department staff. In addition, there were 130 revenue contracts totaling $74.4 million for our audit period. Of these, 40 were Industrial Access Program contracts and we judgmentally selected six of these based on the low amount of revenue collected versus the contract amount reported on the Central Accounting System. None of the Department's contracts required visits to contractors for compliance testing.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits 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 V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department of Transportation officials for their review and comment. Their comments were considered in preparing this final report, and are included at the end of the report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Transportation 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 therefor.

Contributors to the Report

Major contributors to this report include Carmen Maldonado, Joel Biederman, Deb Spaulding, Nicole Van Hoesen, Jennifer Bachinsky, Robert Horn, and Sue Gold.

Audit Findings and Recommendations

Maximizing Revenue

The Department has an obligation to ensure it collects all possible revenue due from fees. During our audit period the Department collected $46.3 million from seven fee categories. We found the Department appropriately billed, collected and deposited revenue for four of the seven fees. However, the Department did not use all available methods for maximizing revenue and did not collect all funds due from fees for the remaining three fee categories (Signal Maintenance, Non-Utility Work Permit Inspection and Rail Safety fees). If it had, the Department could have collected an additional $2.8 million from its fees and earned approximately $104,000 in interest had this revenue been collected.

The Department has not changed its annual Signal Maintenance fee of $1,251.62 since its inception in 1993. The Department's Traffic Signal Section's 2006 cost analysis showed the cost to maintain one traffic signal is $3,200 for labor and materials. Therefore, the fee does not cover the Department's cost for maintaining signals. The Traffic Signal Section proposed amending its regulations to increase the fee to $3,200 and include a three-percent escalation clause for subsequent years. Had the Department pursued this proposal, it could have collected an additional $2.6 million in revenue during our audit period.

Department officials stated they worked on revising the fee from 2006 to December 2008, at which time they were ready with the proposed regulations. However, the Governor's Office draft Executive Order 17 was introduced and it states that agencies should consider the impact of increased fees on local governments and taxpayers. Department officials stated the consensus reached with the Governor's Office was not to increase the fee due to the economy and the impact of the fee increase on affected entities. They did not provide any documentation to support this decision. Department officials said they will revisit the idea of increasing the fee in spring 2010. However, we believe the Department has not made reviewing or increasing the Signal Maintenance fee a priority. The fee hadn't been reviewed in 13 years and then it took three years to revise it. As a result, the Department lost an opportunity to raise revenue.

Following the issuance of a Non-Utility Work Permit, Department staff performs various inspections. If the total inspection time exceeds one hour after a permit is issued, the permittee is billed by the Department for the rest of the time incurred. We reviewed permits at ten regional offices and found that six of them did not properly record inspection times. Based on the 614 permits issued by these six offices, at an estimated inspection cost of $300 per permit, we estimate that the Department did not collect approximately $184,200 in revenue from these permits during our audit period.

The Department inspectors should report inspection time on a permit inspection form to the Department's Revenue Unit for billing. However, we found that regional offices were not given clear directions on billing for inspections. Further, the Department's procedures for issuing permits, its permit agreement form and its inspection time reporting form provide conflicting information on whether to charge permittees for more than four hours or more than one hour.

Department officials said that staff responsible for conducting permit inspections reside in regional offices that report to Central Office units other than the Safety Programs and Technical Operations Bureau, which oversees the Non-Utility Work permits. The Department's Revenue Unit is aware that some regional offices never submit the permit inspection forms, which detail inspection time that is billable to the permittees, or do not timely submit checks received for performing permit inspections. We determined that the Department has not assigned responsibility for monitoring the regions. Therefore, no one is monitoring trends in revenues, other than limited oversight provided by the Revenue Unit. However, the Revenue Unit's knowledge of the fees required to be collected by the Department is limited, and as a result, it cannot effectively monitor that all fees are billed and collected.

We note that, in addition to performing inspections, regional offices also collect funds for permit applications. Four of the regional offices were not depositing checks received for permit applications in a timely manner. According to staff at four regional offices, checks are not deposited until the permit is actually issued. We reviewed the cash receipt logs for our audit period, and found 283 checks totaling $177,339 were sent to the Revenue Unit more than 90 days after the four regional offices received the checks. Not depositing checks timely increases the risk that funds may be misappropriated or lost.

The Transportation Law states that the annual fee for the Rail Safety Program shall be sufficient to cover the Department's cost of administering and enforcing its rail safety and related duties. This includes the Department's direct costs (e.g., personal service, maintenance and operations, retirement contributions, etc.) and indirect costs (e.g., billing railroads). We found the Department properly billed the railroads for direct costs but not indirect costs such as the time Revenue Unit staff spent billing the railroads.

The Department did not collect the indirect costs because program management didn't communicate with the Revenue Unit that these costs needed to be billed and collected. However, in March 2009, the Revenue Unit realized that indirect costs were not being billed and established a project identification number to track these costs so they could be billed in the future. The Department estimated its indirect costs to be about $1,600 annually. Therefore, the Department should have collected an additional $4,800 during our audit period had it billed for its indirect costs.

Based on our findings, we believe the Department should assess all revenue fees to determine whether they are being properly billed and collected to maximize potential revenue opportunities.

Late Billings

Forty revenue contracts totaling $12 million were awarded to municipalities for the Industrial Access Program. These projects include design, acquisition of property, public access roads, rail construction or reconstruction, curbing, sidewalks, or similar work to facilitate the right of entry to economic development projects. Industrial Access Program contracts are administered as a 60-percent grant and a 40-percent interest-free loan for a maximum of $1 million with a five-year term. Municipalities must repay the Department within a five-year period after the acceptance of the construction project.

We reviewed six of the 40 Industrial Access Program contracts totaling $1.6 million**.** During our audit period, the Department's Revenue Unit should have sent out 14 billing letters for these six contracts. While the Department did send all the letters, we found that seven of them were sent an average of seven months after the payments were due. As a result, the Department billed $258,575 late and received $216,000 after the payment due date.

The Department has no standard timeframe or deadline for billing and no written procedures for monitoring payments under these contracts. As a result, funds are not billed and collected timely and there is an increased risk that payments will be late.

We also identified several discrepancies in how Industrial Access Program revenue was recorded by the Revenue Unit. The Revenue Unit uses a tracking log to note all billings and receipts for each Industrial Access Program contract. However, we found three instances where money that was deposited was not on the log and one instance where the incorrect amount was on the log, showing more money on the log than was deposited. Even though all of the money was accounted for, the Department does not have an accurate record of these funds unless it goes into each contract file and reviews bank records. These errors increase the possibility that funds could be misused without Department officials' knowledge.

Recommendations

1. Assess fees charged to ensure they are sufficient to cover the Department's cost to maintain facilities such as increasing the Signal Maintenance Fee.

   (Department officials responded they will pursue the implementation of a regulation to increase the annual signal maintenance fee to align with the actual costs of maintaining the signals.)

2. Clarify instructions and train staff for permit inspection billings. Collect the approximately $184,200 we identified that was due from these permits for our audit period.

   (Department officials responded they agree with the part of the recommendation which calls for clarifying instructions and training staff. They do not agree with collecting the approximately $184,200 due from these permits because it is an estimate.)

   Auditor's Comment: We acknowledge that the amount in our report is estimated, but Department officials can use their records to calculate the amount due.

3. Assess all revenue formally, including the fees and contracts noted in this report, to determine whether they are being properly monitored, billed and collected, and determine whether potential revenue is being maximized from these fees.

   (Department officials responded they agree with the recommendation and have taken action to implement it.)

4. Develop procedures for billing and monitoring payments for Industrial Access Program contracts. Procedures should include, but not be limited to, ensuring the log accurately reflects all payments.

   (Department officials responded they expect to have draft procedures for the Industrial Access Program (IAP) billings and collections by the end of April 2010. In addition, they anticipate that all active IAP contracts will be entered into the automated billing software by the end of April as well.)

Agency Comments

STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
WWW.NYSDOT.GOV

STANLEY GEE
ACTING COMMISSIONER

DAVID A. PATERSON
GOVERNOR

April 2, 2010

Ms. Carmen Maldonado
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Re: Draft Report 2009-S-14
Oversight of Revenue Contracts and Fees

Dear Ms. Maldonado:

Thank you for the opportunity to respond to the subject report. Below is the Department of Transportation's (Department) response.

Recommendations

Recommendation 1: *Assess fees charged to ensure they are sufficient to cover the Department's cost to maintain facilities such as increasing the Signal Maintenance Fee.*

Response: We agree with the recommendation. The Office of Traffic Safety and Mobility will pursue the implementation of a regulation to increase the annual signal maintenance fee to align with the actual costs of maintaining the permit signals.

Recommendation 2: *Clarify instructions and train staff for permit inspection billings. Collect the approximately $184,200 we identified that was due from these permits for our audit period.*

Response: We agree with the first part of the recommendation. The Office of Traffic Safety and Mobility will be incorporating new guidance into the Department's Manual of Administrative Procedures by the end of August 2010. We will investigate and resolve the discrepancy in our guidance relative to the maximum duration of inspection services performed before billing the permittee. We will also reinforce the guidance via a separate issuance.

While we agree with the intent of the second part of the recommendation, it is not feasible for the Department to implement it. The $184,200 referenced in the recommendation is an estimate that was based on the number and type of permits and an average number of inspection hours per permit. Since this calculated average is not reflective of actual inspection hours incurred on each permit, billing for this average fee would result in under-billing or over-billing of individual permit holders depending on the actual number of inspection hours incurred.

Recommendation 3: *Assess all revenue formally, including the fees and the contracts noted in this report, to determine whether they are being properly monitored, billed and collected, and determine whether potential revenue is being maximized from these fees.*

Response: We agree with the recommendation. When a potential for maximizing a reasonable return exists, program area staff will review and assess fees as time permits. The Accounting Bureau will continue to work with the Department's program areas to assist them in this endeavor. An example of this was the review of the billing methodology used by the Rail Safety Section for the calculation of the Rail Safety Fee. The collections of indirect costs were identified as missing and procedures were put in place to rectify this oversight. These indirect costs will be included in all future Rail Safety Fees billed by the Department.

Recommendation 4: *Develop procedures for billing and monitoring payments for Industrial Access Program contracts. Procedures should include, but not be limited to, ensuring the log accurately reflects all payments.*

Response: We agree with the recommendation. The Accounting Bureau expects to have draft procedures developed for the Industrial Access Program (IAP) billings and collections by the end of April 2010. In addition, we anticipate that all active IAP contracts will be entered into our automated billing software (AccPac) by the end of April 2010 as well. This will ensure timely and accurate billings based on the schedule of payment dates in each contract. Checks received will also be recorded in this database which is able to produce accurate billing and receipt information.

Should you need further information, please contact Michael J. Fazioli, Director of Accounting, at 518-457-9767.

Sincerely,

Stanley Gee

Stanley Gee
Acting Commissioner