

*State of New Jersey*  
*Office of the Inspector General*

Mary Jane Cooper, Inspector General



**Report on Internal Controls and Compliance with  
State Regulations and Executive Orders**

**South Jersey Transportation Authority and  
South Jersey Transportation Planning Organization**

**March 2, 2010**



## State of New Jersey

**CHRIS CHRISTIE**  
*Governor*

OFFICE OF THE INSPECTOR GENERAL  
P.O. BOX 208  
TRENTON, NJ 08625-0208

**KIM GUADAGNO**  
*Lt. Governor*

**MARY JANE COOPER**  
*Inspector General*

March 2, 2010

Honorable Chris Christie  
Governor, State of New Jersey  
State House  
P.O. Box 001  
Trenton, New Jersey 08625

Re: Office of the Inspector General Report on Internal Controls and Compliance  
with State Regulations and Executive Orders for South Jersey  
Transportation Authority and South Jersey Transportation Planning Organization

Dear Governor Christie:

Enclosed is a copy of the report the Office of the Inspector General (OIG) has prepared concerning its review of internal controls and compliance with State regulations and executive orders by the South Jersey Transportation Authority (SJTA) and the metropolitan planning organization SJTA administers, the South Jersey Transportation Planning Organization (SJTPO).

As required by OIG statute, a copy of this report has been sent to Senate President Stephen Sweeney, Assembly Speaker Sheila Oliver, SJTA Executive Director Bart Mueller, and SJTPO Executive Director Timothy G. Chelius.

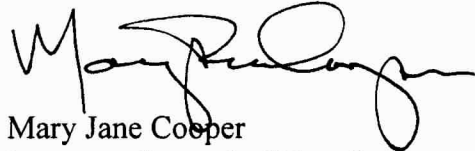
The Honorable Governor Chris Christie

March 2, 2010

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I am available to discuss this report with you at any time.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mary Jane Cooper". The signature is fluid and cursive, with a large loop at the end.

Mary Jane Cooper  
Inspector General of New Jersey

Enclosure

cc: Kim Guadagno, Lieutenant Governor, State of New Jersey  
Stephen Sweeney, Senate President, New Jersey State Senate  
Sheila Oliver, Assembly Speaker, New Jersey State Assembly  
Jeffrey Chiesa, Chief Counsel to the Governor  
James S. Simpson, Acting Commissioner, Department of Transportation  
Deborah Gramiccioni, Director, Governor's Authorities Unit  
Bart Mueller, Executive Director, South Jersey Transportation Authority  
Timothy Chelius, South Jersey Transportation Planning Organization

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## **I. INTRODUCTION**

### **A. Scope of Review**

Executive Order No. 41 (Governor Richard J. Codey 2005) directed the Office of the Inspector General (OIG) to “assess the internal controls that are in place at every authority and to make recommendations concerning what uniform practices and procedures should be established for all State authorities.” OIG accordingly initiated reviews of the internal controls in place at the State’s authorities, including the South Jersey Transportation Authority (SJTA) and South Jersey Transportation Planning Organization<sup>1</sup> (SJTPO), in order to identify reportable conditions that could facilitate or lead to fraud, waste or abuse of state funds, as well as conditions that could inhibit the organization from accomplishing its mission.

OIG’s assessment of SJTA and SJTPO’s internal controls included an analysis of SJTA’s organizational structure, management functions, reporting relationships and operating practices. This required analysis of the Authority’s policies and procedures, expenses, record keeping practices, and compliance with laws, regulations and executive orders. This review encompassed a wide variety of procedural and operational matters, including but not limited to: Compliance with the Open Public Meetings Act, Open Public Records Act, Conflicts of Interest laws and Codes of Ethics. As SJTA modified its internal controls during this review, OIG examined and commented on the modifications.

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<sup>1</sup> SJTA performs administrative functions for SJTPO, including payroll processing, employee benefits, human resources, purchasing and basic accounting functions. As such, SJTA answers for SJTPO with respect to these issues and, thus, references throughout this report to SJTA’s internal controls shall refer to both SJTA and SJTPO.

OIG attended numerous board, committee, and executive meetings and interviewed in excess of 50 SJTA and SJTPO staff, management, department directors, members of the SJTA Board of Commissioners, and former and current Executive Directors of SJTA. OIG reviewed and analyzed more than 20,000 pages of documents, covering seven years of operating practices, including but not limited to enabling legislation, bylaws, board and committee meeting agenda, board meeting minutes, policies and procedure manuals, personnel records, contracts and bidding records, internal and external reports, financial reports, external audit reports, management audits, and professional service contracts and invoices.

## **B. Ongoing Dialogue**

During a year-long review, OIG discovered numerous deficiencies in SJTA's operations and controls. Upon identifying these weaknesses OIG immediately notified SJTA responsible management and the SJTA Director Policy and Planning<sup>2</sup> who was identified as SJTA's contact liaison for OIG. Thereafter, OIG held numerous discussions with SJTA's Director Policy and Planning and responsible managers concerning corrective actions, and many of the deficiencies were corrected. In a number of instances, SJTA revised existing policies or procedures or implemented new policies or

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<sup>2</sup> In 2008, the Director Policy and Planning was promoted to Deputy Executive Director overseeing two operational departments as well as maintaining responsibility for policy and planning. For ease of reference, throughout this report, she will be referred to as the Director Policy and Planning. In 2008, the Director was also made responsible for SJTA's newly formed Internal Compliance Program. OIG recently learned that she has announced her retirement effective March 1, 2010, and that SJTA has begun a reorganization. This reorganization will be discussed as part of OIG's recommendations at the end of this report.

procedures.<sup>3</sup> Where possible,<sup>4</sup> OIG expanded its review to include these new policies and procedures.

According to SJTA's Director Policy and Planning, some deficiencies were not completely corrected during OIG's presence because they require a long term investment of resources to completely remedy. OIG has been informed that as part of SJTA's corrective actions, its Internal Compliance Program was created in March 2008 and functions under the direction of the Director Policy and Planning and is staffed with an administrative analyst. The program is designed to assure compliance with State and federal laws, regulations, and executive orders and all other internal and external compliance issues including any issues raised by OIG's review. Those issues will be highlighted in this report, as well as any that OIG believes should be noted for future monitoring and may not be part of the Internal Compliance Program's monitoring.

When OIG completed its review, OIG provided SJTA executive management with a preliminary draft of OIG's report that identified areas still in need of improvement. SJTA, through the Director Policy and Planning, requested that OIG provide SJTA additional time to report additional corrective actions and respond to the draft report, and OIG accommodated. SJTA ultimately provided a detailed written response that outlined changes, both implemented and proposed, to its policies and practices that were intended to further enhance its internal controls. In large part, SJTA's corrective actions

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<sup>3</sup> As discussed below, the host agency for SJTA is the Department of Transportation (DOT). During OIG's review, a new Chairman of the Board, the DOT Commissioner, was appointed. Many of the changes implemented by the new Chairman were to bring authority practices in line with DOT policies and procedures.

<sup>4</sup> At the time of OIG's review, some of the corrective actions to be taken by SJTA were planned for future implementation.



responded to OIG's observations. As a consequence, OIG modified its report in order to document SJTA's direct responses to OIG's recommendations and SJTA's corrective actions, taken and proposed.<sup>5</sup>

Subsequently, OIG provided a final draft of its report to SJTA's executive management for review. SJTA made a few additional comments that have been incorporated into this report.

### **C. Background – SJTA and SJTPO**

SJTA, established by the Legislature in 1991 by the South Jersey Transportation Authority Act,<sup>6</sup> is an instrumentality of the State located in but not of the Department of Transportation (DOT). It is the successor to the New Jersey Expressway Authority and the Atlantic County Transportation Authority. Its mission is to provide the traveling public with safe and efficient transportation through the acquisition, construction, maintenance, operation and support of expressway, airport, transit and parking projects, and other transportation projects and services in Atlantic, Camden, Cape May, Cumberland, Gloucester and Salem Counties.

SJTA operates the 47-mile Atlantic City Expressway (ACE), Atlantic City International Airport (ACY), as well as parking facilities and related functions at the

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<sup>5</sup> This process contributed a significant amount of time to the issuance of OIG's report. (Some of the delays were caused by factors beyond SJTA's control.) In view of the numerous deficiencies and the efforts undertaken by SJTA to correct those deficiencies, the process has provided SJTA the opportunity to present its corrective actions.

<sup>6</sup> N.J.S.A. 27:25A-1 et seq.

ACY, a commuter parking lot adjacent to the ACE, a parking garage and related commercial space in Atlantic City, and bus management and automobile parking. It also performs traffic management and transportation planning functions for Atlantic County and operates various shuttle services throughout southern New Jersey, including shuttle services for veterans to medical providers and shuttles from offsite parking to ACY and to the Battleship New Jersey.<sup>7</sup>

SJTA is governed by a Board of Commissioners.<sup>8</sup> The Board membership consists of the (i) Commissioner of DOT, who is an *ex officio* voting member; (ii) the Executive Director of the New Jersey Economic Development Authority,<sup>9</sup> who is an *ex officio* nonvoting member, and (iii) seven members appointed by the Governor, six of whom must be residents of southern New Jersey.<sup>10</sup> The appointed members serve for a term of five years and their terms are staggered. The Governor designates the Chair from among the Board members, and the Chair serves at the pleasure of the Governor.

At the start of OIG's review, the Chairman of the Board was a public member, Frank Spencer. In 2007, Governor Jon S. Corzine appointed DOT Commissioner Kris Kolluri Chairman, who served until he resigned from his position at DOT in 2008. Governor Corzine then appointed DOT Commissioner Stephen Dilts Chairman. He

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<sup>7</sup> SJTA is also charged with using transportation facilities to stimulate economic development within its six county service area. To that end, SJTA developed a capital improvement program to expand ACY.

<sup>8</sup> The Commissioners are not compensated but are reimbursed for expenses.

<sup>9</sup> Originally the position held by the Executive Director of the New Jersey Economic Development Authority was held by the Commissioner of Commerce, Energy and Economic Development but in 2008 these duties were transferred to the Executive Director of the New Jersey Economic Development Authority. See N.J.S.A. 52:27C-64; N.J.S.A. 34:1B-212; N.J.S.A. 34:1B-228.

<sup>10</sup> During the course of our review there have been several changes in the individuals holding these positions.

served until January 2010.<sup>11</sup> Public member Mark Summerville has served as Vice Chairman for several years.

SJTA is managed by an Executive Director, appointed by the Board of Commissioners. James Iannone was a former Commissioner (1992 – 1996) and served as Deputy Executive Director from 2002 until his appointment as Acting Executive Director in 2005 when the former Executive Director James Crawford retired. Upon Iannone's retirement in 2006, Bart Mueller was reassigned from Deputy Executive Director to Executive Director and presently serves in that role. Upon Mueller's promotion, Kathleen Aufschneider was appointed Deputy Executive Director and continued as Director Policy and Planning. In 2007 a second Deputy Executive Director<sup>12</sup> position was created and filled by Wade Lawson who also served as Director Tourist Services. In 2007, the chief of staff position was created and first held by Dennis Culnan. In 2009, Culnan was also appointed Deputy Executive Director upon Lawson's retirement and held dual positions until January 2010 when Stephen Dougherty was hired as Chief of Staff.

During OIG's review, in addition to the Executive Director and a Deputy Executive Director, SJTA was also staffed by a Chief Financial Officer, a Chief Engineer

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<sup>11</sup> The current (Acting) DOT Commissioner James S. Simpson will serve *ex officio* as a member of the Board, and Governor Chris Christie will name the Chairperson of the newly constituted Board.

<sup>12</sup> SJTA's enabling statute requires that SJTA conduct a management audit every five years. One of these audits recommended that SJTA created direct reports to the Executive Director rather than having the Executive Director try to manage the departments.

and other consulting engineers. During the course of OIG's review, SJTA also appointed an in-house attorney.<sup>13</sup>

As of January 2010, SJTA had 332 full-time and 171 part-time employees in eight operational departments. Two other directors were responsible for the other operational departments (finance and engineering) and report directly to the Executive Director. SJTA is authorized to retain attorneys, accountants, construction, and financial experts, and employees as it may require.

In 1993, the South Jersey Transportation Planning Organization (SJTPO) was designated by Governor James J. Florio to serve as the responsible Metropolitan Planning Organization (MPO)<sup>14</sup> for Atlantic, Cape May, Cumberland, and Salem Counties. As noted, SJTA provides the administrative service functions for SJTPO, which is governed by a Policy Board.<sup>15</sup> SJTPO's Executive Director manages its day-to-day technical operations and its six full-time and one part-time employees. SJTPO employees are treated as SJTA employees and afforded the same benefits as SJTA employees, including pension and health benefits. SJTPO reimburses SJTA for its expenses from funds

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<sup>13</sup> A report of SJTA staffing, salaries and employee benefits is included in OIG's Summary and Analysis of State Authorities' Employee Benefits Report. On October 23, 2006, OIG issued its first Summary and Analysis of State Authorities' Employee Benefits Report. Follow-up reports were issued on August 20, 2007, December 3, 2008, and February 18, 2010. The reports can be found at: <http://www.state.nj.us/oig/news.html>.

<sup>14</sup> Transportation planning and decision-making for urbanized areas is carried out through MPOs. The MPO was established by the Intermodal Surface Transportation Efficiency Act, 23 U.S.C. 134, for the acquisition of federal highway and transit funds.

<sup>15</sup> The Policy Board's membership consists of one elected official from each county government, one municipal elected official from each county (specifically including the Mayors of the City of Atlantic City and Vineland), and one representative each from the New Jersey Department of Transportation, New Jersey Transit, and SJTA. Each entity designates its representative on the SJTPO Board. SJTA has designated its Executive Director as its representative to the SJTPO Board.

received by way of federal grants. These expenses typically include salaries, fringe benefits, and non-salary direct expenses.

A summary of significant authority operations, highlights of SJTA revenue, expenses, airport operating losses, and unrestricted reserves for the years available during OIG's review, follows.

### Summary of Revenue and Expenses<sup>16</sup>

	2004	2005	2006	2007	2008
<b>Revenue:</b>					
<b>Total</b>	\$ 79,062,630	\$ 82,007,410	\$ 83,676,217	\$ 89,416,482	\$ 91,605,689
<b>Tolls</b>	\$ 57,247,412	\$ 57,970,661	\$ 59,477,706	\$ 61,830,498	\$ 63,476,068
<b>Airport</b>	\$ 4,612,786	\$ 6,357,747	\$ 7,277,153	\$ 8,790,658	\$ 9,142,358
<b>SJTPO</b>	\$ 1,882,426	\$ 2,178,896	\$ 1,832,591	\$ 2,008,293	\$ 2,000,516
<b>Other<sup>17</sup></b>	\$ 15,320,006	\$ 15,500,106	\$ 15,088,767	\$ 16,787,033	\$ 16,986,747
<b>Expenses:</b>					
<b>Total</b>	\$ 67,125,522	\$ 72,499,829	\$ 77,107,811	\$ 85,929,695	\$ 81,879,482
<b>SJTA</b>	\$ 58,219,551	\$ 61,717,870	\$ 65,942,626	\$ 72,369,333	\$ 67,275,476
<b>Operations</b>					
<b>Airport</b>	\$ 7,023,545	\$ 8,603,063	\$ 9,332,594	\$ 11,552,069	\$ 12,603,490
<b>SJTPO</b>	\$ 1,882,426	\$ 2,178,896	\$ 1,832,591	\$ 2,008,293	\$ 2,000,516
<b>Airport Operating Loss</b>	(\$2,410,759)	(\$2,245,316)	(\$2,055,441)	(\$2,761,411)	(\$3,461,132)
<b>Unrestricted Reserves</b>	\$22,635,905	\$ 26,286,027	\$ 31,950,603	\$ 30,065,349	\$ 23,726,506

### Summary of Key Financial Highlights:

	<b>Toll Revenue as Percent of Total Revenue</b>	<b>Airport Revenue as Percent of Total Revenue</b>	<b>Total Revenue Change</b>	<b>Total Expense Change</b>
2004	72.7%	5.8%	--	--
2005	70.7%	7.8%	3.7%	8.0%
2006	71.1%	8.7%	2.0%	6.4%
2007	69.1%	9.8%	6.9%	11.4%
2008	69.3%	10.0%	2.4%	(4.7%)

<sup>16</sup> Source: Annual Independent Auditor Reports for 2004 – 2008 included in SJTA's Annual Report obtained from [www.sjta.com](http://www.sjta.com). The 2009 revenue was not available as of OIG's report.

<sup>17</sup> Other sources of revenue include parking, rentals, concessions, transportation services, and miscellaneous sources.

## II. SUMMARY OF CONCLUSIONS

OIG's review of SJTA began in a multimillion dollar authority that lacked controls and meaningful oversight in many important areas. Operating far from Trenton, the entity seemed to have little connection to the procedures that control State Departments and are meant to protect public assets. As discussed in this report, almost everywhere OIG looked, it found either an absence of policies and procedures designed to protect public assets or a lack of compliance with those policies and procedures, and often a disregard for the safety of those assets as well. Instead of the authority being run as a public entity in the Executive Branch, it appeared to be a poorly managed satellite office. For example, well paid top managers were permitted personal use of Authority assigned vehicles – including SUV's. Those managers openly disregarded Executive Orders, Ethics statutes, and even SJTA's own policies. The absence of an inventory system led to the misuse and potential disappearance of assets; and the lack of a procedure for the use of petty cash and the abuse of an Authority issued credit card could cover up missing assets.

Among the worst examples of SJTA's misuse of public funds was its failure to properly manage outside law firms that were paid exorbitant fees for minimal work. Double billing was not detected because no one at SJTA was examining law firm invoices. In one case, the Authority agreed to pay a law firm's retainer directly to a partner through its payroll so that the partner could receive pension credits. The Authority certified to PERS that the attorney was an employee thereby enabling a potential fraud upon the public and contributing to the waste of an uncounted amount of

pension funds. Then the Authority created a false business record so that it could issue the attorney a paycheck.

At first there was resistance to OIG's review. SJTA's then Executive Director even requested one of its outside law firms to provide a legal opinion as to OIG's authority to conduct its review. The firm opined that OIG had the authority, and SJTA requested that another firm conduct the same research. The then Executive Director received the same answer from the second firm, and stopped asking for legal opinions on the subject, but SJTA wasted public funds paying two law firms for legal research apparently hoping to keep its practices from public scrutiny.

As OIG started its review and began to recognize procedural deficiencies, areas of inappropriate conduct, and personnel issues, it made the appropriate SJTA management aware of the problems OIG was finding. At first, although individual managers made corrective actions in their departments, the then Executive Director largely ignored OIG's findings. It was not until a new Chairman of the Board of Commissioners was named and a new Executive Director was appointed that real change began to take place at SJTA. As described herein, OIG found numerous deficiencies in a number of different departments, and SJTA began to make corrective actions responding to each of the findings reported.



A summary of OIG's findings detailed in this report are:

- Inadequate internal controls in numerous areas: Either processes and procedures were inadequate to protect assets or management failed to ensure that staff followed procedures in place to protect assets.
- Management was permitted personal use of SJTA vehicles.
- Failure to have an inventory system.
- Failure to have adequate processes in place led to waste of SJTA assets.
- SJTA failed to manage its outside law firms, paid exorbitant fees for minimal work, and paid erroneous invoices.
- SJTA agreed to pay one firm's retainer through its payroll thereby potentially contributing to a fraud upon the pension system.
- In order to process that attorney's paycheck, SJTA kept a false business record.
- For two years, SJTA management failed to comply with an executive order requiring the appointment of an Ethics Liaison Officer and failed to comply with ethics filing requirements.
- When appointed, SJTA's Ethics Liaison Officer failed to perform the duties of the office; and SJTA's management failed to provide oversight to ensure that the Ethics Liaison Officer did perform those duties.
- SJTA Commissioners were voting on matters when they appeared to have a conflict of interest.
- SJTA did not always comply with Open Public Meeting Act requirements.
- Many of SJTA employee benefits were superior to those afforded to similarly situated non-authority State employees.

These matters are discussed in detail in this report as well as, where appropriate, the corrective actions SJTA has taken.

### **III. INTERNAL CONTROL DEFICIENCIES OBSERVED**

During its review, OIG identified areas of concern with respect to SJTA's internal controls, including its toll revenue collection and audit processes, transportation services, and policies and procedures governing the use of cellular phones, charge cards, and inventory. OIG also identified concerns with SJTA oversight of outside legal consultants, compliance with executive orders, and enforcement of rules prohibiting conflicts of interest and certain outside activities.<sup>18</sup> These concerns are discussed below.

#### **A. Policies and Procedures**

SJTA has standard operating procedures for most operational duties (i.e., road maintenance, safety, airport administration) and various administrative policies and procedures for functional departments (i.e., bus management, human resources, purchasing, and accounting). These procedures describe the manner in which daily operations should be conducted and the parties responsible for these functions. OIG noted three general significant deficiencies: (1) While many of these policies and procedures were adequate, SJTA staff often did not adhere to several of them; (2) Some policies and procedures were outdated and had not been updated for several years, leading to confusion among management and staff regarding acceptable and appropriate authority practices; and (3) Policies and procedures were not in place for all operational functions.

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<sup>18</sup> In conducting this assessment, OIG was guided by an internal control review framework established by the Committee of Sponsoring Organization of the Treadway Commission (COSO). The framework identified components of an entity's operational structure that must be examined: its control environment, risk assessment, control activities, information and communications systems and monitoring.

These deficiencies led to a general disregard among many staff at all levels for the importance of the policies and procedures. Moreover, these weaknesses in the policies and procedures contributed to the continued waste of SJTA resources, in some instances for several years, until the concerns noted by OIG were brought to the attention of SJTA Board and management. Although in many cases, the waste would be difficult to quantify and has not been quantified in this report, available estimates of cost savings resulting from the corrective actions taken by SJTA based on the implementation of OIG's recommendations are noted. A discussion of significant SJTA operating practices and the related policies and procedures follows:

1. Wasteful Expense for Cellular Phones

At the start of OIG's review, SJTA had assigned more than 170 cellular phones to its staff and State Police personnel assigned to patrol SJTA areas, such as the ACE and ACY. The majority of the phones were obtained pursuant to a contract with Verizon Wireless and a lesser amount, assigned to the Transportation Services Department within SJTA, were under contract with Nextel. In both 2006 and 2005, SJTA paid approximately \$110,000 for cellular phone service.

OIG's review revealed that SJTA did not have a formal policy concerning the acquisition, assignment, use, oversight, or inventory of cellular phones. SJTA's Personnel Policies Manual did not specifically address cellular phone usage, and appropriate cell phone usage was only addressed in two memoranda. Furthermore, SJTA did not develop a centralized management approval process for the distribution of cellular phone equipment. As a consequence of the lack of a cohesive policy, there was a

disparity in the types of equipment that were distributed to employees as well as the usage plans assigned to them.

In September 2006, during the course of OIG's review, OIG brought these deficiencies to the attention of SJTA's Director Policy and Planning. Thereafter, SJTA senior management issued a memorandum to all employees that addressed the use of cellular phones and required that employees limit their personal use. The memorandum also addressed safety concerns related to the use of cellular telephones and instructed employees not to use cellular phones while driving authority owned vehicles.

However, neither SJTA's procedures nor practices were modified to include a review of actual cellular phone usage to ensure that there was an ongoing business need to coincide with the assignment of the phone. This was compounded by the fact that invoices for many employee assigned cellular phones lacked detailed calling activity information, thus inhibiting SJTA management's ability to monitor the employees' phone usage. Further, SJTA did not routinely examine whether its calling plans continued to fit SJTA's business needs.

As a result of OIG's review, the following additional issues were identified and brought to the attention of SJTA's Director Policy and Planning:

- SJTA had not implemented formal procedures or provided guidance and direction regarding the cellular phone equipment and calling plans available to its staff. Phones and service were assigned by lower level supervisors without the involvement of SJTA management.
- SJTA had not implemented a well managed plan for the assignment of cellular phones and usage plans. When OIG began its review, SJTA had numerous calling plans, many of which provided for monthly airtime minutes well in excess of actual use and

additional expensive features, such as text messaging and other premium services that were not adequately justified as ordinary and necessary for business purposes. SJTA subsequently entered into an agreement with Verizon Wireless that decreased the number of available calling plans, but a review of a February 2007 Verizon invoice revealed that SJTA continued to have several calling plans, some inconsistent with typical usage offered to employees without special justification. On the other hand, OIG found staff assigned limited calling plans not providing adequate allowable minutes causing SJTA to incur significant additional charges.

- SJTA employees were permitted to purchase telephones and equipment from Verizon stores and request reimbursement for their costs; however, the purchases were not confirmed or inventoried by SJTA. OIG's review revealed that an employee purchased two telephones within the same year, and employees purchased various types of equipment.
- SJTA did not maintain an adequate inventory of its cellular telephone equipment, and its records did not identify the employees to whom cellular telephones were assigned, their phone numbers, or the type of equipment assigned. Therefore, SJTA could not be certain that it properly accounted for the return of equipment upon the termination of an employment. OIG's review of a February 2007 Verizon invoice revealed that at least two former employees had not returned equipment and that SJTA was being charged monthly fees for usage subsequent to the employees' termination. SJTA's Director Policy and Planning told OIG that SJTA was aware that the employee still had SJTA's telephone and was using it. The Director Policy and Planning's explanation was that the employee wanted to keep the same cellular number and that it took time to effectuate transfer the number to his personal account. OIG is not certain that this explanation is credible, but in any event, it is not acceptable. SJTA could have at least refused to issue the employee's final paycheck until after the cellular phone was returned and the invoices issued after the employee's termination were reimbursed.
- During OIG's review, SJTA's Director Policy and Planning was advised of these concerns. To address them SJTA executive management issued a memorandum and advised employees that SJTA telephones and cellular phones are to be used for business purposes only. Thereafter, each employee was provided his or her monthly invoice, instructed to identify all personal calls, and instructed to reimburse SJTA for non-business calls. However, OIG's subsequent review of the invoices revealed that the SJTA department directors did not adequately monitor cellular phone usage to determine that employees were complying with the requirement that cellular phone use was for appropriate business purposes and did not enforce compliance with the reimbursement requirement. While an SJTA staff person monitored whether all employees had turned in an invoice, employees were not required to sign or affirm their review and designation of personal use. Further, the responsible SJTA staff person did not track the non-business costs incurred by the employees or collect the charges associated with non-business use. In addition, not all employees' detailed monthly usage was displayed on the monthly phone bill as this feature was not available for all phones, preventing adequate monitoring and oversight.

OIG's review of monthly invoices also disclosed charges to directory assistance, charges for text messaging beyond the monthly allowance, and charges for downloading ring tones, all expensive additional charges for non-essential use of the cellular service that were not charged to employees.

### Recommendations

1. SJTA's policies and procedures for the assignment of cellular phone equipment should be consistent with Department of Treasury, Circular Letter No. 04-06-OIT, Assignment and Use of Cellular Wireless Devices, effective January 12, 2004. The policy should designate a management level official who shall be responsible for coordinating equipment assignments and service plans in accord with SJTA policy.
2. Cellular phones should be authorized for employee use after review of established eligibility criteria and when there is a documented business purpose and need. Premium features with added expenses, such as ring tones and other downloads, should be prohibited and employee reimbursement of this non-essential expense should be required.
3. Employees should be required to review detailed monthly invoices, identify any non-business calls, and submit the reviewed invoices to their supervisors for approval. Employees should promptly reimburse SJTA for non-business or personal calls in accord with Department of Treasury Circular Letter No. 07-19-OMB/OIT, (\$5.00 Minimum for Toll Statement Generation) effective May 15, 2007.
4. The employee's SJTA manager should regularly review employees' compliance with SJTA policies as well as employees' usage histories and calling plan assignments to ensure appropriate utilization and identify any necessary adjustments to SJTA policy and plan and cellular phone assignments. Failure to comply with the management responsibility should result in personnel consequences.
5. Employees should be prohibited from purchasing equipment directly from the cellular service provider unless pre-approved, and those purchases should only be approved under extraordinary circumstances. All other such purchases should not be reimbursed.
6. SJTA should establish appropriate inventory controls including a process for ensuring that unused equipment is controlled and returned. SJTA should further establish procedures to ensure that equipment is returned from employees whose employment is ending before final pay checks are issued. Telephone numbers assigned to those employees should be immediately removed from the SJTA account.

### SJTA Response<sup>19</sup>

SJTA's Director Policy and Planning reported to OIG that in response to OIG's findings, SJTA has implemented a new policy that provides for, among other things, detailed telephone bills for each employee; uniform calling plan assignments based on job function; management oversight of usage during and after work hours; reimbursement by employees for personal calls; and a centralized inventory of telephone equipment. SJTA's Director Policy and Planning further advised OIG that as part of its newly formed Internal Compliance Program, SJTA will regularly review its calling plans, usage, and equipment assignments and make adjustments as necessary.

OIG's review of SJTA's initial analysis, completed in July 2008, verified that the average monthly cell phone bill had decreased by nearly \$1,200 a month, approximately \$14,000 annually, representing a 10% reduction in the cellular phone bill. This savings does not include the savings associated with safeguarding SJTA phone equipment. In addition, as of OIG's July 2008 review, some employees were reimbursing SJTA for the costs of their personal use of the cell phones. An audit of the cellular phone invoices would verify there was complete compliance.

## 2. Misuse of SJTA Vehicles

SJTA's equipment inventory includes automobiles, special purpose work trucks, and various other types of large and small motorized equipment used for maintenance of

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<sup>19</sup> As noted above, OIG provided SJTA a draft of its report, to which SJTA provided a written response. SJTA's responses are summarized in each section of this final report.

the ACE or the ACY. Vehicle inventory records are maintained by the former Expressway Department, now reorganized with the Engineering Department.

At the commencement of OIG's review in 2006, SJTA provided inventories of vehicles and equipment that identified 21 automobiles or sport utility vehicles that were assigned to directors, executives, and management staff. SJTA's executive management drove vehicles including mid-size, full-size and small and large SUV's. These vehicles were assigned without formal policy and procedures for the types of vehicles and without regard for the travel needs of the individual. At that time, SJTA's Personnel Policies Manual specifically allowed personal use of these authority vehicles. More particularly it provided that:

- All employees who were assigned SJTA vehicles were authorized to use authority-owned vehicles for any "incidental" personal matters within 10 miles of their residence.
- All employees at or above director level were assigned a vehicle and were allowed unlimited mileage, including personal use.<sup>20</sup>
- The Executive Director could assign authority-owned vehicles to employees for business use that was defined as including commuting to employees' work sites.
- Any personal use of an assigned or pooled vehicle in excess of authorized personal use was prohibited.
- Employees who were assigned a vehicle were required to maintain a record of their mileage, including the date, miles driven, and purpose for the travel.
- Unlimited mileage and personal use of authority vehicles was to be accounted for in accord with Internal Revenue Service (IRS) rules and regulations.

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<sup>20</sup> The executive director serving at the commencement of OIG's review declined a vehicle and instead of utilizing an SJTA owned vehicle, the executive director used his personal vehicle and submitted monthly requests for reimbursement for "business" mileage.



These procedures had been in effect for several years and had originally been approved by the SJTA Board of Commissioners. By allowing personal use of authority owned vehicles by executive management, an extraordinary benefit in the public sector, SJTA Board and management permitted uncalculated waste of SJTA assets. Moreover, providing this privilege to executive management demonstrated a disregard for public resources.

In June 2006, after OIG began its review focusing on these procedures, SJTA's Board of Commissioners amended its Personnel Policy Manual prohibiting employees' unlimited personal vehicle usage. SJTA also ceased assigning many of its vehicles to individual employees and instead created a vehicle pool. The SJTA Board further amended its Personnel Policy Manual in August 2007 limiting vehicle assignments to those employees whose business use of vehicles exceeded 800 miles per month, prohibiting all personal use of SJTA vehicles, and requiring all SJTA vehicles be identified with authority seals.

As a result of the June 2006 and August 2007 vehicle policy changes, four automobiles were designated as pool vehicles. Directors were required to assign pool vehicles to staff as needed; and employees were required to complete a sign-in/sign-out sheet and record the use of each vehicle in a mileage log. Also, employees were advised that they would not receive mileage reimbursement for use of their personal vehicles for SJTA business if an available pool vehicle was not used. In March 2008, SJTA issued a directive further eliminating the direct assignment of vehicles to staff.

Notwithstanding SJTA's improved vehicle assignment and use policy, OIG further identified the following areas for improvement:

- Personal commutation mileage allowed by SJTA

As noted, SJTA's revised policy prohibits personal use of vehicles, including commutation to work, and further provides that employees will not be assigned a vehicle unless they have demonstrated business-related mileage exceeding 800 miles per month. However, SJTA's policy also defines "business use" as commencing when the employee enters the ACE. Several directors told OIG that they drive several miles commuting on the ACE to their work destination but those miles were considered by SJTA management as business miles. The employees included those commuting miles in their calculation demonstrating that they drove 800 business miles per month (or sought reimbursement for those commuting miles when using their personal vehicles). Those miles should not be considered business miles merely because they happen to be driven on the ACE.

- Standards for vehicle assignment inconsistent with State policy

SJTA's policy that allows the assignment of a vehicle to those employees who demonstrated historical business mileage exceeding 800 miles per month is inconsistent with the State's vehicle assignment policy. The State policy, Circular Letter 93-04A-DPP,<sup>21</sup> State Vehicular Assignment and Use Policy, effective August 1, 1998, provides that vehicles may be assigned to employees who have a need to travel an average of 1,250 business miles each month. OIG was advised that SJTA policy considered 800 miles to be a reasonable benchmark given the smaller geographic region covered by

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<sup>21</sup> This policy was superseded by Circular Letter 08-16-ADM, which became effective December 10, 2007 and contains the same provisions.

SJTA. The logic of this rationale to support a lower threshold for assignment of vehicles is not clear. Rather than supporting a lower threshold for vehicle assignment, this rationale should support no assignment of vehicles.

- Failure to properly monitor personal vehicle use

All directors are required to maintain diaries recording vehicle use. OIG's review of vehicle diaries for July 2007 revealed that not all directors complied with the reporting requirement. Moreover, the Authority neither provided employees with a standard reporting form nor monitored whether employees maintained diaries. After OIG pointed out to the SJTA Director Policy and Planning that many directors failed to maintain vehicle diaries, the SJTA Chief of Staff created a standard vehicle diary form and required that all employees assigned vehicles immediately begin using the standard form.

- Reimbursements made to employees for commuting in personal vehicles

OIG found instances where employees received mileage reimbursement for commuting to their official work sites in their personal vehicles. SJTA's Director Policy and Planning told OIG that one employee was reimbursed for his commuting mileage because he had performed a work related function while traveling between his home and his work site. However, information concerning the work function was neither documented nor provided to OIG; and OIG was unable to determine that the employee had in fact performed a work function on his way to his work site. Moreover, the employee's travel expense revealed that a portion of his commute was not on an SJTA-operated roadway, potentially indicating that the trip for which he was reimbursed was not work related.

- Improper reporting of taxable fringe benefit associated with personal use of vehicles

When OIG commenced its review, SJTA was not adhering to IRS reporting requirements for employees' personal use of authority owned vehicles. In accord with IRS guidelines, SJTA must designate its employees as either "controlled employees" or "non-controlled employees" in order to account for fringe benefits received by the employee in association with their use of the vehicles. Controlled employees are required to maintain detailed vehicle use diaries summarizing their personal and business use and report their actual personal use, including commutation to work. They are assessed taxable fringe benefits based on this personal mileage.<sup>22</sup> Employees in the position of director or above were classified as controlled employees.<sup>23</sup> All other employees not classified as controlled employees are assessed personal use at a rate of \$1.50 per one way commute. The non-controlled employees are required to record their daily commute on their timesheets. SJTA was not consistently complying with these requirements.

OIG's review revealed instances in which individuals in the position of director or above were assessed the \$1.50 per one-way commute rate rather than the percentage of total miles. This practice is inconsistent with IRS regulations. OIG pointed out to SJTA that it must establish adequate controls to verify that personal use is properly reported and must also implement adequate procedures to verify employees' taxable wages in order to prevent errors from occurring in the future. OIG further pointed out to SJTA that it

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<sup>22</sup> Controlled employees' cost of personal use is included as taxable wages. It is calculated by multiplying the "personal use percent" by the total vehicle expense (annual lease expense, automobile insurance, maintenance, and gasoline). The "personal use percent" is the personal miles expressed as a percent of total vehicle miles driven in the year.

<sup>23</sup> During OIG's investigation, SJTA classified only its Executive Director as a controlled employee; all other staff members are deemed non-controlled employees.

should identify the instances in which fringe benefits were under-reported and make appropriate adjustments where necessary. The SJTA Director Policy and Planning acknowledged the deficiencies.

- Gasoline credit card purchases more costly than State fueling locations

SJTA has fueling locations adjacent to the ACE and at the ACY, where employees can obtain fuel for SJTA owned vehicles. SJTA has purchased this fuel at a reduced rate based on a lower than market rate negotiated by the State. Individuals in director positions and above, however, were provided a Sunoco credit card that could also be used for fuel purchases as needed. OIG's review disclosed substantial fuel charges on the Sunoco card by some of the directors without evidence of an emergent need or a reasonable explanation for obtaining higher-priced gasoline. This resulted in added costs to SJTA because the gasoline charges at Sunoco were at the then-current market rate and not the State's lower, negotiated rate. This use of gasoline credit cards resulting in potential waste of resources was pointed out by OIG to SJTA's Director of Policy and Planning.

- Failure of compliance with policy concerning damage reports

SJTA had a policy, dated July 2004, requiring that reports concerning damage to authority vehicles be submitted to administrative staff and the reporting employee's supervisor. The supervisor was required to meet with the employee and submit a preliminary finding concerning whether the employee was negligent, which in turn would be forwarded to the department director. On February 20, 2006,<sup>24</sup> an official State

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<sup>24</sup> As noted, SJTA revised its vehicle assignment and use policies during the course of OIG's review. At the time of this incident, personal use of Authority vehicles was still permitted. The revised policy limited

holiday, an SJTA employee (non-Director) who was assigned an authority owned vehicle, but was not authorized to use it for personal use, was involved in an accident in a shopping center parking lot.

OIG's review disclosed that notice of the incident by the employee was provided only by way of an e-mail. The vehicle sustained minor damage and SJTA management decided to not make any repairs to the vehicle. The supervisor did not meet with the employee. He claimed that he did not because he deemed the accident an insignificant occurrence. Instead, the employee's supervisor relied upon a police report, in which no ticket was issued to the employee, to determine that the employee was not negligent. OIG was advised that SJTA determined that negligence could not be established because a ticket was not issued to the employee by the police.<sup>25</sup> While apparently negligence for the accident could not be established, neither the employee's supervisor nor any other supervisor considered the employee's apparent unauthorized use of the vehicle of sufficient significance to warrant documenting that an investigation was conducted and that corrective action was or was not warranted. This 2006 supervisor conduct was demonstrative of a disregard for the policies and procedures intended to protect public entity assets.

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the use of Authority vehicles to work related matters but allowed incidental use within ten miles of a residence for individuals holding a position of director or above. It is not clear whether this employee believed she was permitted to use this vehicle on a State holiday and whether she was within ten miles of her home.

<sup>25</sup> The operator of the other vehicle involved in this accident did not file an insurance claim with SJTA.

### Recommendations

1. SJTA should review and revise its vehicle policy and procedures to ensure its current practices are in compliance with Department of Treasury Circular Letters and Department of Transportation rules and regulations. In particular, SJTA should review and revise its policies and procedures in consideration of the regulations of Department of Treasury Circular Letter 08-16-ADM, State Vehicular Assignment and Use Policy, effective August 1, 1998, which authorizes assignment of an individual vehicle when past usage exceeded 1,250 miles per month.
2. SJTA should review its vehicle assignment policy to ensure that vehicles are assigned to those individuals that have an operational need rather than assigning vehicles based on employees' positions within the Authority. The policy should include specific details for the types of vehicle and the eligibility for specific assignments.
3. SJTA should develop an appropriate monitoring and oversight function to ensure that employees are aware of and comply with its policies.
4. Employees should be responsible for maintaining adequate and timely vehicle use logs and SJTA management must regularly review these records.
5. SJTA should clearly define rules and regulations for the determination of "personal use," particularly with respect to commutation, and communicate these to all employees. SJTA should not allow commutation to work when on the ACE to be considered as business mileage.
6. Appropriate measures should be taken to ensure strict adherence to IRS regulations regarding the taxation of personal use and appropriate record keeping. SJTA should comply with IRS guidelines governing the taxation of fringe benefits associated with the use of authority owned vehicles. In doing so, SJTA should be guided by Department of Treasury Circular Letter 08-04-OMB, which provides that controlled employees shall be taxed in accord with a percentage of actual use while non-controlled employees shall be assessed \$1.50 per trip.
7. SJTA should institute cost saving measures and establish a policy limiting the use of gasoline credit cards to emergency purchases only. In addition, SJTA should review and revise its policies and procedures governing fueling consistent with the regulations of Department of Treasury Circular Letter 08-16-ADM, State Vehicular Assignment and Use Policy, effective August 1, 1998, which governs the use of credit cards that have been issued for fuel purchases.

### SJTA Response

SJTA revised its policy governing vehicles twice during the course of OIG's review and claims to have addressed or to be in the process of addressing all of the vehicle related issues identified in OIG's report. The changes include:

- Reporting requirements have been changed to be consistent with the State policy, to assure that personal use is taxed, and to prevent miscalculation.
- Reports are automatically calculated for anyone who has been assigned a vehicle.
- The SJTA Safety Manual addresses employee reporting obligations in the event of an accident while driving an SJTA vehicle. Failure to report an accident is automatically referred for discipline. SJTA has also created an Accident Review Committee that reviews whether accidents were preventable by the SJTA employee, recommends actions for training, and makes suggestions for discipline when appropriate.
- Further, SJTA has also developed a new policy governing the use of gasoline credit cards. Monitoring of all vehicle policies will be included in the Internal Compliance Program and included in supervisor training programs.

### 3. Human Resource, Hiring and Staffing

OIG reviewed SJTA's policies, procedures, and practices for hiring and staffing. For most of OIG's review, the Human Resources Department was the responsibility of the Director Policy and Planning. The Department is responsible for hiring, staffing, general training, and employee development.

SJTA's hiring policies require that appointments to fill all vacant positions be reviewed by the Board of Commissioner's Personnel Committee and approved by the Executive Director. All positions created with the adopted budget and approved restructuring plan must be authorized by the Board. OIG attended several meetings of



the Board's Personnel Committee between 2006 and 2007 and reviewed Personnel Committee agendas and attachments for meetings held during the course of OIG's investigation. OIG identified the following areas of concern:

- SJTA created new positions without the Personnel Committee's formal review and without the Board's authorization for the position or modification of the staffing plan.
- SJTA did not always advertise for open positions preventing the authority from evaluating a larger pool of candidates and perhaps selecting a better qualified individual.
- The Personnel Committee approved positions without adequate documentation, discussion, and justification for the need to fill positions during a hiring freeze.
- Although SJTA's Personnel Policies Manual provides that "[e]ach Authority employee is subject to an annual performance evaluation to be prepared by his/her immediate supervisor," SJTA employees were not consistently provided annual performance evaluations. Promotions and significant salary increases that were awarded to employees may not have been supported by performance, and were not justified by documentation.
- An SJTA employee was assigned "on loan" to the E-Z Pass Interagency Group (IAG).<sup>26</sup> Pursuant to an agreement with IAG, SJTA assigned one of its employees to work for the IAG on a full time basis to perform IAG secretarial duties. SJTA continued to fund the employee's salary and benefits, including enrollment in the State pension system, and the employee retained all of the rights and obligations of a full time SJTA employee. Although the employee continued on SJTA's payroll while performing non-State, non-SJTA functions, the employee was also in line to receive IAG benefits that were not afforded to SJTA employees. It was understood that the employee would return to her prior status as an SJTA employee when her relationship with the organization ended. There is no documented approval of this employment arrangement by the Board.
- SJTA also provided the organization with facility space under terms and conditions and lease rates that appear to be more favorable than those offered to other tenants.
- Employee files did not include all required information including resumes, tax withholding forms, performance evaluations, and authorizations for travel and attendance at outside events.

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<sup>26</sup> IAG, formed in 1990, is a multi-state and multi-agency entity established to facilitate the use of E-Z Pass. At the time of OIG's review, IAG was headed by a former SJTA Executive Director and SJTA was a member.

- SJTA's Personnel Policies Manual had not been updated for several years although there were several new, revised or updated policies in effect. This could result in employees unwittingly following outdated policies.

### Recommendations

1. SJTA should advertise for all open positions to avoid the appearance of impropriety in its hiring practices.
2. SJTA should create a selection committee consisting of management staff to independently evaluate candidates for open positions and make recommendations to the Personnel Committee for new hire selections.
3. SJTA supervisory personnel should prepare annual evaluations for all employees and provide written recommendations for salary increases consistent with the policy set forth in the authority's Personnel Policies Manual.
4. SJTA should evaluate its arrangement with the affiliated entity to determine the benefit that such an arrangement provides to SJTA in lieu of retaining the employee at full time status.
5. SJTA should obtain an opinion from the Division of Pensions and Benefits (Pensions) regarding an employee serving on loan to an outside entity and resultant eligibility for State pension considering the nature of the services provided to the outside organization and whether this qualifies as State employment.
6. The Personnel Policies Manual should be updated and disseminated to all employees.
7. Employee files should be maintained and include all required documentation for State and Federal tax and labor purposes.

### SJTA Response

With respect to SJTA's advertisement of new positions, SJTA replied that it only advertised positions for which no internal candidate or applicant was available. SJTA also advised that it initiated performance reviews for non-union employees (union employees have a separate process dictated by contract). This process includes the

development of Performance Improvement Programs (PIPs) for underperforming employees. SJTA's Human Resources Manager monitors compliance.

With respect to SJTA's special arrangement for an employee who is performing non-SJTA duties, SJTA replied that it is a member of the E-Z Pass IAG, which provides support for the E-Z Pass program. IAG's member organizations pay dues and contribute to the Group in other ways and the assignment of the SJTA employee to IAG was done in this context. The assignment is temporary, and SJTA is being reimbursed for it. The facility currently being occupied by IAG staff is a negotiated rental space.

Finally, SJTA advised that it now places completed forms approving employee attendance at outside events in the employees' personnel files and that its Personnel Policies Manual is being revised. OIG advises SJTA that it should confirm that the appropriate documents are in personnel file by an audit of the files by its Internal Compliance Program.

#### 4. Inadequate Time and Attendance Reporting

OIG's review revealed that SJTA practices for time and attendance reporting were lax, allowing for potential abuses. SJTA did not have a uniform practice for the processing of employee timesheets, and at least three departments within SJTA used different practices. The practices themselves were also lacking in some regards. In particular, OIG identified the following areas of concern:

- There was inadequate oversight of employees' time reports by management level officials. SJTA could not adequately ensure that proper records were maintained or that SJTA's use of timesheets accurately and completely substantiates employee time

and attendance. Without proper supervisory oversight, timekeeping records are of questionable usefulness.

- The official record of employee time and attendance was not reviewed nor maintained by the accounting or payroll offices.
- Although an electronic system is used to document employee time and attendance and to process payroll, in some departments, primarily those in which all employees do not have access to office computers (Expressway, Tourist Services, and Transportation Services), one individual prepared the bi-weekly timesheets for other employees.
- OIG's review of a "Time Entry Edit Report" for one month in 2006 and one month in 2007 revealed that 12 individuals approved their own timesheets at least once, with six having approved their own timesheets during both of these months. Also, there was inadequate segregation of duties. On at least six occasions, an individual with authority for overseeing the payroll process approved employee timesheets. These practices left open the possibility for false representations of attendance records.
- The Transportation Services Department reported employees' total work hours for a two week pay period without identifying the number of hours worked each day during that period. SJTA records, however, appear to indicate that the employees worked just one day during this period; all of the work was performed during that one day. This reporting was handled solely by one individual (located in a remote office) who reviewed, recorded, and maintained the supporting documentation. This employee did not forward the documentation to SJTA's payroll department located at SJTA's main office.
- OIG found time records indicating that a professional services provider was incorrectly identified as an employee working one day per week. SJTA did not have data or documents that supported the representations made in the time records, and other evidence indicated that the individual did not work one day per week but about one day a month. OIG was told that SJTA had agreed to pay the professional service provider through the payroll, and in order for the payroll system to automatically generate a paycheck, an employee was required to show one day's work per week. Thus, the time records were created falsely indicating that the individual worked one day a week so that the system would issue a payroll check for the individual.

### Recommendations

1. SJTA should develop and implement procedures and adequate controls to ensure that appropriate payroll transactions are executed by authorized staff. Procedures should be established for the input of timesheets, approval processes, modifications, and corrections. A process should be developed for the maintenance of source documentation to be used to support the time and attendance of those employees

whose time is entered by anyone other than themselves or their immediate supervisors.

2. Only an employee's immediate supervisor should have authority to approve an employee's time and attendance. Accounting and payroll staff should have authority to execute payroll transactions only for unusual and emergency situations.
3. In no case should an employee approve his or her own timesheet.

#### SJTA Response

SJTA staff explained the evolution of its time and attendance reporting system claiming that it was necessitated, in part, by staff changes and time constraints imposed by entities outside SJTA. Staff further explained that its accounting department required that in every instance where circumstances required that an individual approve his own time report, SJTA procedures now require the individual's department supervisor to submit a signed copy of the employee's timesheet to the payroll department for review and filing. In addition, timecards (for engineering) and supervisor records (for toll takers) are to be kept on site for a minimum of two years. The revised payroll process will be included in SJTA's Internal Compliance Process.

#### 5. Failure to Supervise the Marketing Budget

The SJTA Board annually approves the marketing budget of approximately \$1 million and has designated the Executive Director to negotiate contracts for these advertisements. SJTA utilizes numerous print media and radio advertisements primarily to market the airport. The print advertisements are typically placed in regional and statewide newspapers as well as national and international trade publications. The Executive Director delegates the marketing plan to the Director Marketing and

Communications and often works closely to execute the marketing plan for SJTA. OIG's review identified the following areas of concern:

- SJTA does not have a formal policy concerning marketing and its retention of marketing services and related expenditures.
- OIG found that SJTA entered into a special advertising campaign with a vendor that was not within the Board approved budget guidelines for this expense.
- The Board maintained minimal, if any, oversight for the negotiations of marketing contracts once delegated to the Executive Director.
- The Board is not provided with all relevant details about the marketing plan. By way of example, with respect to one marketing campaign, the Board was not advised that advertisements were obtained in exchange for discounted parking fees or in lieu of these fees. This practice of bartering is outside the budget and allows for inappropriate use of SJTA assets.

#### Recommendations

1. The SJTA Board should establish a formal policy governing contracts for marketing and related expenditures. The SJTA Board should monitor the type and cost of advertising obtained to assure that it is in compliance with its marketing policies and is reasonably priced.
2. Any agreements that provide for an exchange of or discounted services for advertisements should be presented for Board approval and be based on established criteria authorized by the Board.

#### SJTA Response

In its response to OIG's draft report, SJTA's Director Policy and Planning advised that all of its advertisements are placed in accord with purchasing regulations and its policies and procedures are in accord with the marketing program that is approved annually by SJTA's Board. The plan allowed the Executive Director to place advertisements as "appropriate" during the year given the need to sometimes place advertisements on short notice. In the past, the Board was provided with a monthly oral

report discussing SJTA's advertisements. Going forward, the report will be written. SJTA further noted that the report will also include the cost of the advertisements.

SJTA concurred that the advertisements placed in exchange for discounted or free parking spaces should not occur and has stated that this will not occur in the future.

#### 6. No Policy for the Use of Petty Cash

When OIG began its review, SJTA did not have a policy governing the use of petty cash. The absence of a policy and consistent procedures can result in petty cash being used for inappropriate purposes or to cover waste, loss, or even theft. OIG conducted a limited review of petty cash disbursements made in 2005 and 2006 and found some transactions that did not appear to be typical uses of a petty cash fund and that may have been an inappropriate use of authority funds. Typically, as a best practice, petty cash funds should be limited to emergency purchases that are of small value and not sensitive<sup>27</sup> and that are not subject to other procurement requirements. Some of the disbursements, however, were for office supplies and equipment, some of which should be purchased with other funds in accord with routine purchase practices, and decorations, food for office parties, and a computer table, which were possibly inappropriate purchases.

OIG was subsequently provided with documented policies and procedures for use of petty cash by the Engineering and Central Maintenance Departments, appropriate places for SJTA to start these corrective actions. These are Departments that use small

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<sup>27</sup>Sensitive expenses not appropriate for petty cash purchases include travel, entertainment, and capital assets.

tools or other equipment that can easily be lost or stolen and petty cash can be used to hide the loss. As will be discussed below, adding to OIG's concerns was that SJTA inventory procedures were weak in these areas. These policies and procedures set an imprest balance of \$50 for engineering and \$200 for central maintenance.

### Recommendations

SJTA management should review its petty cash policy to ensure that its procedures adequately define the proper use of petty cash for all departments of the Authority. It should periodically monitor petty cash transactions to ensure that they are appropriate and authorized by the Board.

### SJTA Response

In August 2006, during the course of OIG's investigation, SJTA's Director Finance created and implemented new petty cash policies and procedures. SJTA reported to OIG that these procedures were intended to establish restrictions on the use of petty cash to ensure that petty cash is used only for stated purposes and to detail the responsibilities of the respective custodians of these. Going forward, SJTA's senior accountant is responsible for performing periodic internal reviews of petty cash balances and reporting any findings to the Comptroller for further review and correction. In addition to the periodic review of cash balances, the senior accountant, along with other assigned Accounting Department staff, initiated an ongoing review of vouchers submitted for replenishment of petty cash funds. SJTA conducted an in-house training session concerning these new policies and procedures for the various departments that utilize petty cash funds.



## 7. Improper Use of Procurement “P” Card

In 2004, SJTA entered into an agreement with Citibank that allowed some SJTA employees to purchase items, less than \$500 each and for official use, with a “procurement card” (P-card) that functioned in a manner similar to a credit card.<sup>28</sup> According to the P-card manual it was anticipated that this would reduce paperwork and administrative costs as well as expedite payments to vendors. These explanations are often used to justify the alternate purchasing process which should generally be used for authorized small dollar, non-sensitive items not subject to public advertising. However, the P-card purchases must be carefully monitored because the card is easily subject to abuse.

SJTA’s P-card manual contains explicit instructions to users regarding authorized purchases, acceptable use, management review, monthly reconciliation of the invoice, and supporting documentation requirements for each individual purchase. Each user is required to sign a user agreement. SJTA authorized the issuance of 18 P-cards to designated employees. In 2005, the average total monthly bill for all users was approximately \$3,000. OIG’s review of credit card statements and supporting documentation demonstrated:

- A number of purchases were for equipment parts and supplies for which the routine procurement processes could have been utilized. Some of these purchases were for items that should have been maintained in SJTA’s inventory for routine use and re-ordered as needed, such as small parts for automobiles, computer peripherals, and office supplies. Small dollar purchases cannot be separated as a means to circumvent purchasing regulations and required public advertisement.

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<sup>28</sup> SJTA, not the employee, is responsible for card payments.

- Many of the monthly invoices did not include an authorizing signature by the individual cardholder's supervisor. As noted below, SJTA inventory procedures were weak. Use of the P-card for these types of purchases, especially without proper documentation, can be used to cover-up negligent loss of small items and equipment or even theft.
- Employees did not always submit receipts for purchases when they sought reimbursement for those purchases.

#### Recommendations

SJTA should periodically monitor P-card transactions to ensure compliance, including supervisory review, approval of invoices, and the submission of itemized receipts for all transactions. SJTA should also closely monitor these purchases to ensure proper compliance with State bidding requirements.

#### SJTA Response

SJTA reviewed P-card vouchers for 2007 and found that in accord with SJTA policies, the Department Director or designee had reviewed and approved purchases and supporting documentation was attached to the employee's monthly invoice. The response further states that it is highly unlikely that all purchases made by cardholders during 2005 would be for the same commodity and therefore exceed the bidding threshold of \$29,000.

However, OIG notes that using the P-card to avoid the bidding and procurement process is not the only danger associated with these purchases. As noted above, misuse of the P-card combined with a weak inventory system can disguise waste or worse and significant loss of equipment. While only a limited number of employees are utilizing

the P-card and the total expenditures in 2005 were approximately \$36,000, SJTA has not evaluated the individual purchases to determine the impact of the commodities and purchasing regulations in existence each year.

However, to determine if SJTA has exceeded the public bidding requirement, it is not sufficient to look only at the items purchased with the P-card. SJTA must look at all similar items purchased by SJTA both with the P-card and through the regular process. OIG does not believe that SJTA conducted a detailed analysis of the purchases made with the P-card to determine that the transactions have been made in accord with the purchasing regulations -- the specific commodity codes for each purchase must be aggregated with all SJTA's annual purchases for the same commodity and be publicly advertised in accord with the annual thresholds.

If SJTA management believes the P-card serves a valid purpose, the P-card program should be included for annual review by the Internal Compliance Program in order to determine that the P-cards have not been misused; only appropriate purchases have been made in accord with SJTA policy; and all transactions are authorized, approved by management, and supported with appropriate documentation. SJTA should ensure that the designated employees, department directors and the P-card administrator are adhering to the rules and regulations of the program. Employees found not to be in compliance with the program should be reprimanded. Corrective action should include suspension of P-card privileges, and documentation as to why this discipline was not appropriate in the first instance.

## 8. Inventory of Vehicle Parts and Tools

During its review, OIG observed that an independent auditor had identified weaknesses in SJTA's inventory of vehicle parts and tools, maintained by Director of the Expressway Department.<sup>29</sup> Although department directors are responsible for collecting equipment issued to employees, OIG noted that corrections had not been made in response to the auditor's findings and a formal inventory was still not maintained for these assets.

It should be noted that this was one of the departments that was using the P-card and petty cash to purchase replacement parts. The failure to keep an accurate count of the number of parts and tools can contribute to the failure to notice negligent or intentional loss of equipment. As noted above, this loss can also be disguised by the use of the P-card or petty cash without proper procedures. Thus, significant loss of small parts and tools would likely not be noticed if these items can be easily replaced using the P-card or petty cash particularly when there is not an accurate initial count of these items.

### Recommendations

1. SJTA's inventory control system should include vehicle parts and tools, computer and related peripherals, and cellular phone equipment. It should identify individual(s) responsible for maintaining the inventory, require a perpetual inventory system that tracks items from purchase to ultimate use, and record the assignment of certain tools and the dollar value of the items. The policy should also require periodic audits of inventoried items. The items purchased by use of P-cards and petty cash should be included in the inventory.
2. Employees should be required to return non-disposable items to inventory when their need for the asset is complete or when their employment with the Authority ends and SJTA policy should establish consequences for failure to comply with this mandate. The system should prevent the issuance of a final paycheck if there is an open item logged out to the individual.

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<sup>29</sup> Subsequently, the Expressway Department has been reorganized into the Engineering Department.

### SJTA Response

SJTA's Director Policy and Planning responded that since OIG's review, the Engineering Department (formerly the Expressway Department) has implemented an asset management program. Assets valued at greater than \$100 are tagged and inventoried. All new assets are entered into the inventory along with additional detailed information, including asset location and department or employee assignment as appropriate. Human resources also coordinates with the department directors and employee supervisors for the return of assigned assets before a final paycheck is issued.

OIG notes that many items of value less than \$100, such as drills, HDMI cables, cellular phones, etc., should also be inventoried.

### **B. Weaknesses in Toll Revenue Collection and Audit**

As noted earlier, toll revenues account for a substantial portion of SJTA's total revenue. In 2006, toll revenue was approximately \$60 million dollars, which was more than 71% of the total revenue reported by SJTA in 2006. In 2007, it was almost \$62 million and in 2008 it was nearly \$63.5 million. When OIG undertook its review, toll revenue collection and audit was the responsibility of the Director Information and Toll Technology.

As part of SJTA's audit process, toll audit staff performed a detailed review of the toll collectors' daily receipts. Video equipment records all vehicles at the toll booths and can be used to confirm daily receipts, if necessary. The electronic data recorded at the

individual toll plazas are sent to the server at SJTA's main office several times a day. Information is stored electronically in order to facilitate timely reviews and to provide the necessary information required to adequately resolve and correct anomalies and render discipline as needed.

The staff compared toll collectors' receipts with electronic data reflecting the type, size, and number of vehicles that pass through each toll booth. Any discrepancies that are identified during a toll audit are forwarded to toll supervisory personnel for appropriate action. If there is any indication that a theft may have occurred, New Jersey State Police staff are notified and an investigation is conducted by that agency.

OIG identified the following weaknesses in the toll collection and audit process that had the potential to put toll revenues at risk:

- Independence of auditors

Until July 2007, toll revenue audits were conducted by employees assigned to SJTA's Information and Tolls Technology Department. These employees are members of the same labor organization as the toll collectors whose work they audit, thus creating potential conflicts of interest or at least the appearance of potential conflicts of interests. This relationship is potentially incompatible with the auditors' official duties in that it might reasonably be expected to impair the auditors' objectivity and independence of judgment in the exercise of their duties or may reasonably be expected to create an impression or suspicion among the public having knowledge of this relationship that the

auditors might be engaged in conduct that could violate their obligations as State officials.

- Audits not completed close in time to toll collections

During the course of OIG's review, due to scheduling conflicts, employee staffing, and other issues, audits of toll revenue have been performed less frequently than in the past. In particular, OIG discovered that due to reassignments, the number of staff performing toll revenue audits had decreased by 50%. This reduced number of staffing increased the amount of time it took for SJTA to complete toll revenue audits, detect problems, and resolve and implement appropriate corrective measures. By way of example, two weeks passed before SJTA discovered a discrepancy involving several thousand dollars of toll revenue. SJTA ultimately determined that one employee had misappropriated toll revenue for approximately three weeks beginning with the initial discrepancy that SJTA had discovered two weeks after the first defalcation. SJTA terminated the employee and was fortunate to have been able to obtain full restitution in this case. It would have been preferable to have discovered the discrepancy soon after the misconduct began, before the amount of misappropriated funds was not so significant, and eliminate the criminal conduct as early as possible. It will not always be the case that SJTA will be able to obtain full reimbursement.

- Duties not segregated

Toll collectors were responsible for counting their daily collections and completing a deposit slip. The toll collectors were the only employees at SJTA who actually counted

and reported the daily toll revenue. Supervisory personnel performed a “cursory check” of the collection amounts reported by toll collectors by comparing the amount reported by the toll collectors with an unaudited “estimate” of toll revenue derived from electronic data provided by the Information and Tolls Technology department. This did not allow for segregation of the collection review process nor provide for an independent management count of the toll revenue.

### Recommendations

1. SJTA should develop a corrective action plan to address the identified deficiencies and weaknesses and consider using as models the toll collection process used by the New Jersey Turnpike Authority and/or industry standards, best practices, and benchmarking utilized elsewhere in the toll collection industry.
2. Subject to industry standards and benchmarking, SJTA’s primary concern should be to develop a system where toll revenue is secure and an independent internal count of the toll collector’s receipts is performed by appropriate supervisory personnel.
3. SJTA should develop a process that provides more timely review and responses to unusual or suspect situations and appropriate disciplinary action.

### SJTA Response

SJTA’s Director Policy and Planning advised OIG that in response to OIG’s draft report, SJTA undertook an extensive review of its toll revenue audit process and made changes to its processes in June 2007. As a result, experienced and credentialed management staff in the finance department, separate from the toll collection and toll system maintenance staff, have assumed the toll audit functions. There is a written audit program that each employee follows. Audits of individual collectors are conducted on a daily basis. Audit functions are also documented on a daily basis and summarized and reported on a monthly basis. The monthly reconciliation process is performed



concurrently with the daily toll collector reconciliation and current procedures require that the former months review be completed as close to the beginning of the subsequent month as possible but no later than the 15<sup>th</sup>. Revenue Control Division reports all collections to the Accounting Division and publicly posts management reports.

The SJTA Director Policy and Planning further advised that the SJTA Revenue Control Division has provided training to select toll collectors and all supervisors of the toll collector employees, explaining the auditing and reporting obligations. SJTA added, however, that its procedure for the disposition of toll collections was consistent with that of the New Jersey Turnpike Authority and that having supervisors touch the money lessens the Authority's ability to hold the collector completely accountable for the money.

### **C. Internal Control Deficiencies in Transportation Services**

SJTA's Transportation Services Department operates and manages the Authority's parking facilities and parking shuttles including those in Atlantic City and at ACY and promulgates and enforces the rules and regulations guiding the motorbus industry in Atlantic County. The Transportation Services Department, under the direction of a Deputy Executive Director also provides several transportation services, including bus transportation to private and government employers, clients of Transportation Services, in southern New Jersey to increase employment opportunities in areas underserved by the available local transportation services. For several years, this department has been operating at a loss. In 2008, its revenue was approximately \$2.2 million and its operating expenses were about \$2.3 million. However, as described

below, its internal control processes were so deficient, it is not possible to determine all of the reasons for the losses or what can be done to bring the operations into the black.

In addition to not having formal policies and procedures regarding the accounting and administrative functions of Transportation Services, OIG found other internal control deficiencies with respect to both the processing of client invoices and segregation of duties with regard to transportation services,<sup>30</sup> as follows:

- Client invoicing

The Transportation Services Department handled and processed client invoices and customer receipts. It prepared its own invoices and collected receivables without the full involvement of the SJTA Finance Department and without timely management review, approval, and oversight. This practice bypassed the typical accounting function of the Finance Department and the internal control systems that had been designed to prevent fraud, waste, and abuse. As a result, the financial transactions were not recorded in the official accounting records in a timely manner. Moreover, the Transportation Services Department used a manual system that was not linked electronically to SJTA's main office.

- Duties not segregated

Only one employee in the Transportation Services Department was responsible for creating invoices and receiving payments from clients, a fundamental internal control

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<sup>30</sup> As noted above, SJTA provides transportation services for employees of various employers in southern New Jersey, including shuttle services at the Battleship New Jersey and Atlantic City Airport, and operates parking facilities in Atlantic City and at the Atlantic City Airport.

deficiency. Functions should be segregated to avoid conflicts, minimize the potential for mistakes and theft, promote timely detection of improprieties, protect the integrity in the financial reporting process, and safeguard assets. Responsibility for the custody of assets should be kept separate from the accounting for those assets.

### Recommendations

The internal control weaknesses noted by OIG at the Transportation Services Department require immediate corrective action to protect the integrity of the financial reporting process and to properly safeguard significant assets. All financial transactions should be properly reviewed, approved, and authorized by appropriate staff in accord with Board approved policy and procedures. As such, OIG recommends:

1. Employees performing financial accounting functions, those responsible for initiating financial transactions, and those given access to authority assets should be segregated to maintain the independence of the transaction and to safeguard assets.
2. SJTA should review its current accounting process for its offsite locations to ensure that all financial transactions are completed by authorized Finance Department employees in a timely manner and in accord with approved policy and procedures. As appropriate, the information technology system should be configured to allow the creation of simultaneous financial transactions from all offsite locations. Any such transactions should be appropriately and timely reviewed, approved, and authorized by appropriate personnel.
3. All vendor payments should be forwarded to SJTA's depository bank or the Finance Department in accord with approved policy and procedures but certainly not to an individual within the organization who has the ability to initiate the recording of financial transactions or to anyone who can make any adjustments to financial records.
4. Original contracts and invoices should be maintained by the Finance Department at SJTA's administrative office in accord with established record retention and management policies to ensure compliance with State, federal, and other statutory requirements.

5. SJTA should consider regularly performing an independent review and verification of the financial transactions initiated by the staff at the Transportation Services Department.

#### SJTA Response

SJTA's Director Policy and Planning reported to OIG that in response to OIG's draft report, SJTA revised its Transportation Services accounting processes. The revisions include the reassignment of a Finance Department staff member to the Transportation Department; segregation of the financial accounting functions from the functions associated with initiating and authorizing financial transactions; review, approval, and authorization of financial transactions in accord with Finance Department procedures; real time access by staff in remote office locations to SJTA's financial server; and regular review of transactions by Finance Department staff. Further changes include amendments to the process for depositing vendor payments and consolidation of the contract approval and financial transaction review and verification processes.

OIG recommends that SJTA's Internal Compliance Program include review of the accounting processes at Transportation Services.

#### **D. Deficiencies in Purchasing, Competitive Bidding, and Request for Quotations Process**

SJTA's Purchasing Department is guided by its written purchasing regulations, policies and procedures and reports to the Director of Finance.

OIG reviewed SJTA's General Purchasing Guidelines, which incorporated the requirements of the Local Public Contracts Law (LPCL)<sup>31</sup> and the "Pay to Play" Law<sup>32</sup> regarding relevant requirements for purchasing, competitive bidding, quotations, and professional services. OIG reviewed a random selection of procurements made after receiving competitive bids and Request for Quotations (RFQs), including contracts awarded to professional service consultants that resulted from Requests for Proposals (RFPs), to determine whether policies and procedures were followed; to assess the internal controls regarding the acquisition and procurement process; and to ensure that purchases and contract awards were made in accordance with State rules and regulations and provide the highest degree of transparency and open and fair competition.

Also, refer to the section later in this report regarding Executive Order No. 37 (Corzine 2006) for additional comments.

#### 1. Professional Service and Consultant Contract Awards

OIG reviewed the selection and award of professional service and consultant contracts. This included a review of the invoices submitted by the consultants to determine whether the services were provided in accord with the terms and conditions of contracts and agreements. OIG identified several weaknesses in the award, administration, and monitoring of these contracts that exposed SJTA to substantial waste of assets. These weaknesses include the following:

- Some professional services were obtained without formal, written contracts.

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<sup>31</sup> N.J.S.A. 40A:11 et seq.

<sup>32</sup> N.J.S.A. 19:44A et seq.

- Other services were obtained by means of contracts that were vague or inadequate and relevant information, such as the scope of work, deliverables, period of performance, project milestone due dates, work product, and compensation details were missing or not clearly stated.
- OIG found vendor invoices that did not include sufficient detail to determine whether the services performed were in accord with the terms and conditions of the contracts.
- OIG found that the SJTA Board did not adequately monitor contract compliance and that SJTA's contract monitoring practices did not ensure formal review and monitoring of contract compliance. For example, consultants performed work before receiving formal notice to proceed from SJTA. Also, in at least two instances observed by OIG, consultants performed work before the Board authorized the contract award and before the expiration of the Governor's veto period.
- For several years, some department directors approved services obtained from vendors and authorized the Finance Department to issue payments to consultants that exceeded the Board-authorized contract amounts. No other department at SJTA detected the improper payments until alerted by OIG.
- Contracts were often extended for extensive periods and were not periodically reviewed or updated to ensure appropriate and competitive terms and conditions beneficial to SJTA.
- Agreements for parking spaces at Atlantic City surface and garage parking lots and office space facilities were executed without a formal policy and consistent rate structure. Review of recent contracts revealed inconsistent terms and conditions, including insurance requirements that may present liability concerns for the SJTA. These arrangements were entered into without the Board's involvement.
- Change orders were issued for existing contracts notwithstanding that the work authorized by the change orders appeared to be new work outside the scope of initial contract award. It appears that the change order process was used to circumvent the required competitive bidding process. In one instance, services had been performed for work under a change order before the Board authorized the change order and before the expiration of Governor's veto period.

### Recommendations

1. There should be written contracts that clearly detail the terms and conditions of the services to be provided, deliverables, project milestones, and compensation details. Signed copies of these contracts should be maintained with appropriate SJTA staff.

2. Formal notice to proceed should be issued to the vendor only after Board authorization and expiration of the Governor's ten-day review and veto period. Employees who authorize work to proceed before these dates should be disciplined.
3. Invoices should be carefully reviewed on a timely basis to ensure that services provided are in accord with the terms and conditions of contracts and that work began after the Board approved the contract and the Governor's ten-day review period has expired.
4. SJTA should implement a formal contract monitoring system that includes review of vendor payments to ensure that payments are issued in accord with terms and conditions of contract awards and only after a formal authorization to proceed has been issued. In addition, SJTA should ensure that payments do not exceed the amounts authorized by the Board.
5. SJTA should periodically review contracts to ensure that contracts are re-bid at appropriate times in accord with Local Public Contracts Law. The review should also examine the terms and conditions of the contracts to ensure that the services received are competitively priced.
6. The Board should establish formal policies and procedures for the negotiation of parking and office space contracts, including standard terms and conditions, insurance provisions to minimize SJTA liability, standard rates to prevent discriminatory or preferential pricing, and compliance with executive orders.
7. All current contracts should be reviewed to ensure they contain consistent terms and to ensure their compliance with directives issued by the Board of Commissioners and with executive orders.
8. SJTA should develop a formal change order process that should include review by a management committee, to ensure that contracts are modified in accord with Authority and State purchasing regulations.

## 2. Vendor Payment History

OIG examined a sample of the disbursements made by SJTA's Department of Finance in 2005 and 2006 to vendors to assess the adequacy of internal controls for vendor payments. In particular, OIG sought to determine whether payments issued to vendors were made:

- only when authorized and approved by management and the Board of Commissioners;
- in accord with State and authority policy and procedures;
- for authority business properly supported by sufficient documentation; and
- only after the services had been approved, received in accord with contract terms and conditions and accepted by authorized SJTA personnel.

OIG selected a representative sample of vendors to whom disbursements were made, including various consultants, professional organizations, charities, engineering firms, contractors, attorneys, and advertising agencies as well as vendor's invoices and supporting documentation and accounting records maintained by SJTA in support of the disbursements. OIG also reviewed the management approval and authorization process for accounts payable, including Board oversight and monitoring activities.

The review disclosed that there was minimal Board oversight of vendor payments and contract compliance, and that Board members were provided with minimal information about the transactions, including travel, entertainment and contract change orders, for which they were asked to approve payment. Rather, the Board received only selected contract and professional service invoices for legal services, construction, and the appointment of professional service providers and did not request additional documentation. Moreover, the Board did not adequately ensure that vendors' performance was within the contract parameters or, at a minimum, ensure that executive staff performed an appropriate review.



OIG observed the following examples of problematic disbursements:

- Payments were made to various organizations, associations or charities, including municipal and county agencies and trade organizations, with no formal policy governing these disbursements. Some of these payments were for advertisements or membership fees to professional associations for SJTA employees. It is not clear that these payments were authorized or appropriate.
- Payments were made for sporting events, golf outings, a fishing tournament, and banquets that benefited organizations, government agencies, or other entities. There was no record of whom, if anyone, attended the events or whether attendance was associated with a legitimate SJTA business purpose. These payments appear to be inappropriate and not authorized by Board action.
- In a few instances, SJTA personnel negotiated parking contracts with organizations as partial payment for advertisements. There was no formal policy regarding the negotiation of these contracts or whether tax consequences were avoided as a result of these arrangements.
- Receipts and supporting documentation were not always available or were sometimes inadequate. Many travel expense reports did not provide sufficient details of the attendees and purpose of the trip. For example, in one instance, SJTA paid for a Board member and the member's spouse to attend a seminar. While SJTA staff claimed to believe that the Board member reimbursed the Authority for the spouse's expenses, they were unable to locate information to substantiate this.

### Recommendations

1. SJTA should implement procedures for staff review of vendor payments to ensure that expenses are posted properly and that supporting documentation is included for all payments.
2. SJTA should establish a policy governing when payments to organizations, associations, and charities are permitted and a process for the review and documentation of these payments. SJTA's policy should be consistent with the State's policy and procedures for these types of expenditures.
3. SJTA should establish a policy governing payments on behalf of employees for memberships to professional associations. At a minimum, the policy should identify those memberships (the membership should be relevant and beneficial to the Authority) that will be paid by the Authority and provide for an approval process. SJTA's policy should be consistent with the State's policy and procedures.
4. SJTA should discontinue paying for an employee's or Board member's attendance at sporting events, golf outings and related events and/or associated conferences and

seminars. Payments on behalf of non-SJTA employees or spouses and Board members should be prohibited.

5. Executive Order No. 37 (Corzine 2006) imposes several new contracting and procurement requirements on authorities Boards and staff, and SJTA should incorporate these requirements into its policies. Refer to the discussion of SJTA's compliance with this executive order later in this report.

### SJTA Response

The SJTA's Director Policy and Planning responded to OIG that SJTA's purchasing processes are governed by N.J.A.C. 19:2-7 and N.J.S.A. 27:25A-8, which are incorporated in the Authority's Purchasing Manual. The manual specifically establishes a policy for change orders. In particular, the Board of Commissioners must approve changes in excess of 10% of the original contract. Further, change orders related to capital budget-related contracts that are less than 10% are also reported to the Board of Commissioners on a monthly basis. SJTA further advised that it has implemented many of OIG's recommendations, as follows:

- A contract monitoring process established in mid-2007 provides an analysis of contract awards and actual services rendered. This analysis is provided to the Board.
- The Internal Compliance Program will include monitoring of the bidding, purchasing, and contract award process.
- Additional training efforts are being developed to ensure that Authority management and other staff receive training in purchasing regulations, contract monitoring, and compliance regulations.
- Vendor evaluation criteria and selection processes were included and utilized in recent RFPs for Authority professional service consultants and these processes will continue to be utilized.
- Recent board resolutions have included specific details of contract awards eliminating much of the ambiguity of consultant services being obtained.

SJTA also implemented a contract monitoring process in 2007 after OIG staff expressed concern to SJTA executive management about unauthorized expenditures for

vendor payments. The revised process allows for timely Board action with respect to any contract reaching the authorized contracting threshold and should prevent any unauthorized expenditures.

#### **E. Weaknesses in Payroll Processing**

OIG conducted a limited analysis of payroll transactions from 2002 through 2006 to determine the accuracy of employee pension deduction withholdings and the reliability of SJTA's reports to Pensions. SJTA processed its payroll checks on a bi-weekly basis, with 26 paychecks per employee being paid annually. To calculate pension deductions, SJTA multiplied annual salaries by the pension contribution rate; it did not automatically compute pension deductions based on the actual wages paid in each paycheck. The calculation was manually entered into the system and employees' pension deductions were generally withheld from 24 of their 26 paychecks.

Further, SJTA estimated the annual wages of its part-time employees when calculating pension deductions. OIG was told that this was necessary because the part-time employees had flexible work schedules. SJTA was not able to provide OIG with detailed explanations of these estimates and calculations. OIG analyzed pertinent payroll records and discovered, however, that the actual wages earned by some of the part-time employees differed from the estimated wages that were used to determine pension deductions, resulting in understated wages and inadequate pension deductions.

Moreover, the payroll system did not automatically adjust the pension deductions when employees received pay increases. OIG learned that in at least one instance, a part-time employee's pension deduction was not adjusted after he had been awarded a salary

increase. In addition, this information was incorrectly reported to Pensions, resulting in underreported wages and pension deductions. As a result of the inadequate calculation of employee wages and pension deductions, the employer's share of pension contributions was also understated. (This error was also eventually corrected with lump sum payments).

In another case, SJTA underreported a salary to Pensions. The report was made as part of SJTA's ongoing obligation to report its employees' salaries to Pensions, which uses this data to compute an employees' pension upon retirement. The Authority reported only half of the amount actually paid to the individual. This would present problems upon the employee's retirement.

#### Recommendations

1. SJTA should implement controls to ensure that pension deductions are properly calculated for each employee for each pay cycle. These controls should also ensure that the Authority's certifications of wages and pension deductions, submitted to Pensions on a quarterly basis, are accurate.
2. Past employee pension deductions should be reviewed and corrections, as necessary, should be processed in accordance with Pensions' rules and regulations.
3. SJTA should implement controls to ensure that salaries are properly reported to Pensions.
4. Employees should receive training and understand the ramifications of certifying data to Pensions.

#### SJTA Response

SJTA has implemented a process that uses the previous quarter's gross wages as a baseline "quarterly salary" to compute and withhold pension deductions. When the

quarter has ended, the Accounting Department performs a “true-up calculation” to determine if any additional pension withholding adjustments are necessary.

#### **F. Inadequate Management of Outside Legal Services**

SJTA has authority to retain legal counsel<sup>33</sup> and has utilized several law firms to provide general counsel, special counsel, and labor attorney services. SJTA entered into agreements with the firms that authorized two forms of payment to them: a flat payment (retainer) of \$30,000<sup>34</sup> for specified work and an hourly rate (or rates) for all other work. SJTA paid its general, special, and labor counsel \$768,000 in 2005 and \$798,000 in 2006 through the hourly and retainer payments.

OIG examined SJTA’s relationships with and management of its legal counsel and observed several weaknesses with respect to SJTA’s oversight of counsel. In particular, the Authority inadequately monitored the work performed by counsel; did not have a detailed retainer agreement; did not require properly detailed invoices before issuing payments; and failed to identify and/or handle inappropriate and inadequate bills submitted by the firms.

##### **1. Minimum Work Required for Substantial Retainers**

Although each firm received an annual \$30,000 retainer, there was no formal contract, agreement or engagement letter between SJTA and the firms that set forth the

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<sup>33</sup> Most authorities rely on the Attorney General for legal representation, but approximately 12 authorities that have revenue, including SJTA, have statutory authority to retain outside counsel.

<sup>34</sup> In September 2006, the retainers were reduced to \$10,000 to each of the three firms. This is discussed *infra*.

work that was required of the firms on behalf of SJTA. Instead, Board minutes memorialized the work that was expected of the firms in exchange for their retainers. According to Board minutes, the firms were required to provide only minimal services for their \$30,000 retainers: preparation for and attendance at monthly Board and Finance Committee meetings -- which amounted to less than a day's work -- and other limited, discrete tasks.

In September 2006, after OIG questioned the reasonableness of this arrangement, SJTA entered into formal agreements with general counsel and two special counsel firms<sup>35</sup> for a one year term<sup>36</sup> resulting in an immediate reduction of retainer fees from \$90,000 that year to \$30,000. The agreements established the terms of the firms' compensation and the hourly rates for their partners and associates and reduced the retainers to \$10,000 each (from \$30,000 each). The new lower retainer was paid for essentially the same work that was previously required for the \$30,000 per firm retainer as described in the Board minutes. The new agreements, however, imposed a new requirement that the firms meet monthly with SJTA's Chief of Staff and also provide regular reports to the Board. Thus, SJTA documents indicate that the firms were required to perform more work for a substantially reduced annual retainer.

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<sup>35</sup> In the past, SJTA had also employed labor counsel; however, OIG was told that SJTA intended to phase out its use of labor counsel and assign this work to either their general or special counsel.

<sup>36</sup> During its September 2007 meeting, the Board extended these agreements for three months and other extensions were issued through 2008. New appointments of outside counsel were not made until 2008.

2. Former Executive Director Failed to Adequately Monitor Outside Legal Services

OIG reviewed invoices submitted by the law firms for services rendered from 2002 through August 2007 and found that SJTA's monitoring and oversight of its outside law firms was inadequate. Until January 2007, SJTA's prior Executive Director was the only staff reviewing legal invoices and was the only individual charged with assuring the reasonableness of monthly invoices. He provided only cursory oversight of the assignment of work to firms and of the invoices prior to submitting the invoices to the Board recommending approval for payment. OIG's review of the legal invoices indicated that this insufficient review resulted in waste of SJTA assets. In addition to his likely contribution to allowing excessive legal bills and wasteful spending reflected on the invoices to go undetected and to continue, he permitted several supervisory employees to consult with outside counsel and assign work to them without prior Board or Executive Director approval. In addition, these employees were not then required to review invoices to assure that they had in fact requested the work reflected on the invoices. Also, the billing rates for expenses such as photocopying, travel, and other reimbursable costs, were not established, and SJTA apparently did not monitor these costs.

OIG's review of invoices revealed that the former SJTA Executive Director had intentionally requested duplicate services from two of its law firms in an apparent attempt to block OIG's review. In response to OIG's initial steps to conduct its Executive Order No. 41 review of the Authority's internal controls, the prior SJTA Executive Director requested that two of SJTA's law firms complete similar research projects regarding

OIG's statutory authority to conduct the review and whether SJTA should comply with OIG's request for information. (Both firms advised SJTA that OIG had the authority to conduct the review and that SJTA should comply with OIG's request). The prior Executive Director spent SJTA funds apparently hoping to keep the Authority's activities from public scrutiny.

In January 2007, OIG questioned the former Executive Director's limited and ineffective oversight of outside law firms retained by the Authority. In response, the SJTA Board directed its newly appointed Chief of Staff, who was not an attorney, to manage the Authority's use of outside legal counsel. The Chief of Staff, who reported to a newly appointed Executive Director, was charged with overseeing the assignment of work to outside counsel, monitoring the services provided by the firms, and reviewing and approving legal invoices. Further, OIG was advised that in January 2007, as part of this new process of monitoring outside counsel, SJTA issued a letter to each of the firms that represented SJTA detailing the specific duties that would be required for the \$10,000 retainer, including that each firm attend a monthly meeting with the Chief of Staff to provide detailed project status reports.

### 3. Chief of Staff Failed to Adequately Monitor Outside Legal Counsel

The newly appointed Chief of Staff also failed to adequately oversee SJTA law firms. OIG reviewed copies of project status reports submitted by three outside counsel firms for January and February 2007 and found the reports did not provide SJTA with sufficient information to monitor the firms' work. One firm's report lacked specificity about the matters the firm was handling. The reports provided by the other two firms



failed to provide necessary status updates (estimated completion dates, actual hours expended, and estimated hours and/or cost to complete). In addition, OIG reviewed invoices from the firms for January and February 2007 and found duplicate billings. OIG found these deficiencies in the invoices and called them to the attention of the Chief of Staff for appropriate action.

OIG thereafter monitored the firms' invoices and monthly status reports for March through August 2007 and found that SJTA's Chief of Staff's monitoring and oversight of the law firms and their invoices remained inadequate. OIG's review of SJTA records indicated that the Chief of Staff did not perform his required duties. He neither conducted monthly meetings with the law firms nor obtained the required monthly status reports from the law firms before approving invoices. In particular, OIG found:

- The Chief of Staff routinely authorized payments that were based upon incorrect invoices and forwarded those invoices to the Board of Commissioners for Board approval of payment.
- The invoices submitted by outside counsel continued to lack detail and did not substantiate the services that were purportedly rendered pursuant to the retainer agreements. Despite notable deficiencies, the Chief of Staff did not reject the invoices.
- In many cases, the firms used bulk billing, grouping together a variety of work for different matters without distinguishing between the matters and the work that had been performed. One single entry purported to represent 60 hours of work on various, unrelated activities. This bulk billing made it impossible for the Chief of Staff to determine whether SJTA was being billed for appropriate services, being overbilled, or being billed more than once for the same services. The Chief of Staff did not reject or question this entry.
- Firms billed hourly for matters covered by the retainer. This duplicate billing was not noticed by the Chief of Staff, and he approved the invoices for payment. For example, invoices for January and February 2007 revealed charges billed at the

hourly rate for monthly meeting preparation and attendance at monthly meetings, matters that were expressly covered by the retainer and not to be billed separately. OIG identified these billing discrepancies and advised the Chief of Staff of the need for immediate corrective action. The Chief of Staff thereafter notified the firms to adjust their subsequent invoices for the duplicate charges. The firms did not dispute the need for a credit and complied.

- One firm charged a higher than the agreed upon hourly rate for one partner from September 2006 through August 2007, overbilling SJTA by approximately \$3,000. The Chief of Staff had not identified the over-billing. OIG identified the overbilling pointing out the discrepancy to the Chief of Staff, and OIG requested a reconciliation of the legal invoices.
- The Board was not advised when corrections were ultimately made to legal invoices. Therefore, the Board was not aware of the law firms' improper billing and the Chief of Staff's inattention to his responsibilities.

SJTA's failure to promptly and properly review invoices caused it economic loss.

Several billing errors that OIG discovered were after payment was made, and therefore SJTA suffered a reduction in cash flow for several months until it could make adjustments to correct the excessive and duplicative bills. Further, but for OIG's involvement, it is questionable that SJTA would have found any of the incorrect billing. Since OIG was examining selective and current invoices, a 100% review by SJTA of past invoices that OIG had not reviewed would likely uncover further discrepancies.

### Recommendations

1. Adequate monitoring and oversight should be conducted in a manner that best utilizes the resources of SJTA. Given the amount of time required to ensure that firms have billed the Authority in accord with the terms and conditions of the retainer agreement, in addition to the review of all other invoices, SJTA should consider the cost effectiveness of continuing retainer agreements.
2. SJTA should assign a responsible management staff member with knowledge and expertise in reviewing legal services to provide oversight of legal expenses. This individual should have knowledge of the matters being handled by outside counsel in order to properly evaluate the time that is billed to the authority.

3. It is imperative that invoices are reviewed in a timely manner and that the firms are properly notified of discrepancies. SJTA should also ensure that prompt remedial action, including the recovery of payments improperly made by the Authority, is taken.
4. The law firm's monthly reports should follow a standard format and provide specific descriptions of the matters, tracking or identification numbers, names of the attorney(s) assigned to the matters, hours spent on the matters that month and for the year to date, targeted completion date, and projected time required to complete the assignment. Responsible management staff should be assigned to monitor case status, cumulative hours, and amounts expended and forecast to completion so as to allow for a cost benefit analysis of each matter. Law firms that do not pay proper attention to billing practices resulting in repetitive duplicate and overbilling should be excluded from further contract awards.

#### SJTA Response

SJTA's Director Policy and Planning advised that in January 2007, after OIG brought these problems to SJTA's attention, it established an enhanced process for reviewing the work and invoices of its outside counsel. OIG was also advised that the Chief of Staff had issued a letter to the Authority's law firms addressing the duplicate billing and advising them that going forward, the firms were required to submit more detailed bills and status reports that would be reviewed by an SJTA attorney to ensure that "each charge is explained and is part of an approved assignment." This review also examined the firms' progress with respect to ongoing projects. The reviewing attorney was required to consult with the Department Directors for whom the legal work is being performed and with the law firm to resolve outstanding questions. The invoices are then reviewed by the Deputy Executive Director before being submitted to the Board. Any unexplained or unauthorized charges will not be submitted to the Board and will not be paid. OIG was also advised that SJTA has eliminated the use of retainers, and its designation of certain legal services as "retainer services."

### OIG Response

Due to the very serious weaknesses, SJTA Internal Compliance Program should examine this process at least one year from the date of this report to assure that it is being utilized successfully. OIG requests that SJTA provide OIG a detailed report of the results of the review.

#### 4. Special Treatment of Outside Counsel

During its review, OIG identified concerns regarding SJTA's arrangements with outside legal counsel, Michael A. Angelini, Esq., of Angelini, Viniar & Freedman, L.L.P., and Angelini's enrollment in the State pension system based on his work for SJTA. In particular, a question arose concerning whether Angelini was, in fact, an employee of the Authority, and thus eligible to be enrolled in the Public Employee Retirement System (PERS), or whether he should instead be considered an independent contractor. Upon examining Angelini's work history, OIG found that he had been retained by numerous State, county and local government entities, many simultaneously, over a period exceeding 25 years. OIG accordingly undertook a review of Angelini's relationships with the other entities to determine whether in fact the relationships had the characteristics of employer-employee relationships or independent consultant relationships. OIG found that while these government entities reported his compensation to Pensions as salaries, evidence indicated a substantial question as to whether he was eligible for those pension credits as well. On December 15, 2009, OIG issued a full report on this matter to the Governor, President of the State Senate and Speaker of the State Assembly.

The report can be found online at:

[http://www.state.nj.us/oig/pdf/Report\\_of\\_Investigation\\_Professional\\_Services\\_Provider\\_Enrollment\\_in\\_PERS.pdf](http://www.state.nj.us/oig/pdf/Report_of_Investigation_Professional_Services_Provider_Enrollment_in_PERS.pdf)<sup>37</sup>

The law firm served as outside counsel to SJTA from 1991 through 1994, during which it was paid a retainer of \$18,000 per year to attend SJTA Board meetings and an hourly rate for additional legal work. Angelini told OIG, however, that he had worked out an arrangement with SJTA enabling him to be paid the firm's retainer through SJTA's payroll so that he could receive pension credits. SJTA reported these payments to Pensions as if they were salary.

Angelini's firm was re-appointed SJTA outside counsel in 2002 and retained this contract until 2006. The firm was one of three firms hired by SJTA to serve as outside counsel at that time. SJTA records indicate that the SJTA Board approved annual retainers of \$30,000 for Angelini's firm and the two other firms for 2002 through 2005. The retainer was reduced to \$10,000 for all three of the firms in 2006 when, as discussed earlier in this report, OIG questioned the reasonableness of a \$30,000 retainer for a minimal amount of required work (preparation for and attendance at Board meetings), and shortly thereafter, SJTA changed the retainer amount to \$10,000 (for the same or more work).

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<sup>37</sup> The report fully details all of the evidence obtained by OIG during its review of all of the entities for which Angelini worked and for which his "salary" was reported to Pensions. The report also makes recommendations for reform and refers its facts and findings to the Division of Pensions; Division of Criminal Justice, Department of Law and Public Safety; State Ethics Commission; Division of Taxation, Department of the Treasury; Department of Labor and Workforce Development; Division of Local Government Services, Department of Community Affairs; and the Office of Attorney Ethics for their review and to determine whether any further action is warranted.

Invoices from the law firms, SJTA records, and other evidence indicate that the firms hired by SJTA all billed SJTA in the same manner and were paid by SJTA in essentially the same manner for the additional legal work that was not covered by the retainer. The firms submitted monthly invoices at the agreed upon hourly rates, and SJTA paid the firms directly. However, those documents also indicate that SJTA and the Angelini firm treated the retainers differently from the retainers paid to the other firms. The other firms were paid a lump sum retainer payment at the beginning of the retainer period, but SJTA did not pay the lump sum retainer amounts directly to Angelini's law firm. Instead, Angelini asked SJTA representatives to pay him the retainer as a salary (the same arrangement he had with the Authority between 1991 and 1994), and SJTA agreed to pay the firm's retainer in a *pro rata* amount to Angelini through SJTA's payroll and report these payments to Pensions as Angelini's salary.

Of the law firms that were retained by SJTA, this was the only case in which the firms' retainer was paid to a firm's partner through SJTA's payroll system. Attorneys in the other law firms that were hired at the same time that Angelini's firm was and received a retainer for attending Board meetings were not paid as employees. OIG was told by the former SJTA Executive Director that he understood that the arrangement to pay Angelini the firm's retainer through SJTA's payroll was done so that Angelini could be enrolled in PERS and receive pension credits.

Evidence gathered during OIG's investigation, however, indicated that Angelini was not an SJTA employee but that he was an independent contractor, and consequently, that he could not be eligible for enrollment in the State pension system. For instance,

OIG's investigation revealed that many conditions of Angelini's work were inconsistent with an employee-employer relationship. OIG found that neither Angelini nor SJTA kept records of the time he spent at SJTA facilities. He kept his own schedule, generally working less than one day a month at SJTA facilities, that day being for the monthly Board meetings and Board Committee meetings. Angelini was not provided paid vacation, holiday, or sick time, or other paid time off. If he worked on additional legal work that was required by SJTA but not covered by the retainer, he billed those additional services separately through the law firm.

Other work conditions indicated that Angelini was an independent contractor and not an SJTA employee. For instance, Angelini was neither required to report to a supervisor nor to supervise other SJTA employees. He was neither assigned an office, required to report to an SJTA job site, given a job description, provided with office equipment (i.e. computer, telephone, etc.), nor required to participate in ethics or other training as SJTA employees were. SJTA neither conducted a performance evaluation for Angelini nor provided him with SJTA identification credentials. Angelini did not receive health benefits from SJTA, and unlike SJTA's actual employees who decline health benefits, he did not receive a cash payment in lieu of these benefits.<sup>38</sup>

In addition, Angelini did not perform all of the functions required for payment of the retainer. The SJTA Board resolutions provide that the \$30,000 retainer (which Angelini claimed as his own) was to be paid for attendance at Board and Board Committee meetings. However, the Board minutes reflect that of the 42 meetings held

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<sup>38</sup> During the years at issue here, SJTA employees were permitted to waive receipt of SJTA-provided health benefits. Those employees who waived their benefits received a cash payment.

between 2003 and 2006, Angelini attended 33 meetings and considered it appropriate to send another member of his firm in his place to the eleven other meetings. Angelini continued to claim -- and SJTA continued to pay him -- the retainer payments minus pension deductions through SJTA payroll even when the work was done by another person.

Additional evidence indicates that Angelini's relationship with SJTA was not an employer-employee relationship. When, in 2002 through 2006, Angelini and his firm were retained by SJTA to be outside counsel, his primary occupation was as a partner in a law firm where he had an office; engaged in the firm's business; solicited clients for the firm; invoiced untold hours worked for the firm; and supervised firm staff. In addition, between 2002 and 2006, Angelini's other legal work for multiple other public entities (also reported to Pensions) included work as Chief Counsel for the Gloucester County Board of Social Services; Solicitor for West Deptford Township; Solicitor for the Borough of Paulsboro; Municipal Prosecutor for the Borough of Clayton; Solicitor for the Township of Mantua; and Counsel for South Jersey Port Corporation.

Moreover, as a State government employee, he would have been required to have sought and obtained permission to work for other entities. The evidence provided to OIG does not indicate that Angelini felt it necessary to ask permission from the entities for which he was already providing legal services to take on these new positions and simultaneously provide legal services to them as he would if he considered any of the entities to be his employers.



Having identified the above-referenced evidence and issues, OIG examined Angelini's work history with other government entities and found that he had similar payment and pension enrollment arrangements with several. Information supplied by Pensions revealed that at various times since 1981, the following eleven government entities in addition to SJTA retained Angelini to provide them legal services and reported the payments they made to Angelini to the State pension system as salary thereby enabling him to earn pension credits for the work he performed for them: East Greenwich Township; Monroe Township; Clayton Borough; the County of Gloucester; Oaklyn Borough; West Deptford Township; Borough of Paulsboro; Gloucester County Board of Social Services; Mantua Township; South Jersey Port Corporation; and Gloucester County Improvement Authority. Moreover, Pension records revealed that Angelini was simultaneously retained by more than one of these government entities—as many as seven at once in 2003—with a total maximum “salary” in one year from multiple entities of just over \$213,000 in 2005.

#### 5. False Attendance Record

During OIG's investigation of Angelini's relationship with SJTA, OIG found evidence of false recordkeeping by SJTA. As was noted in OIG's report, SJTA maintained time reports indicating that Angelini was working at SJTA one-day-a-week although all other evidence indicates that he did not work one-day-a-week for the retainer payments. The evidence indicates that SJTA created and maintained the false record indicating that amount of time because that was the minimum amount of time necessary for an employee to work for SJTA for the system to automatically process a payroll check and, thus, enable him to be enrolled in PERS. Thus, the false record was created to

enable Angelini to be enrolled to be paid through SJTA's payroll, to be enrolled in PERS, and to receive pension credits.

## **IV. COMPLIANCE WITH EXECUTIVE ORDERS, ETHICS REQUIREMENTS AND THE OPEN PUBLIC MEETINGS ACT**

### **A. Compliance with Executive Orders**

As part of OIG's review of the internal control systems at SJTA, OIG reviewed SJTA's compliance with Executive Orders that address the need for monitoring and oversight of the State's authorities. The Executive Orders include: No. 10 (Governor James E. McGreevey 2002); No. 122 (Governor James E. McGreevey 2004); No. 134 (Governor James E. McGreevey 2004); No. 41 (Governor Richard D. Codey 2005); No. 1 (Governor Jon S. Corzine 2006); and No. 37 (Governor Jon S. Corzine 2006). OIG found several deficiencies detailed below.

1. SJTA Management Failed to Ensure Compliance with E.O. No.10 (McGreevey 2002) and E.O. No.1 (Corzine 2006)

Executive Order No. 10 (McGreevey 2002), effective February 28, 2002, mandated that each authority appoint an Ethics Liaison Officer (ELO) who is required to attend quarterly meetings with the State Ethics Commission (SEC)<sup>39</sup> and to ensure that the requirements of the Conflicts of Interest Law and E.O. No. 10 (McGreevey 2002) were understood and followed. E.O. No. 10 requires certain government officers and employees to file annual financial disclosure forms. The Conflicts of Interest Law provides general standards required of State officers or employees prohibiting interests that conflict with the discharge of their duties. One specific standard of the Conflicts of Interest Law specifically prohibits a State officer or employee from undertaking any

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<sup>39</sup> The SEC was formerly called the Executive Commission on Ethical Standards.

employment or service "...which might reasonably be expected to impair his objectivity and independence of judgment in the exercise of his official duties."

SJTA's March 2005 Personnel Policies Manual includes the "Code of Ethics" adopted by the SJTA Board of Commissioners and a detailed discussion of the Conflicts of Interest Law both of which all employees are required to comply with as a condition of continued employment. SJTA's Code of Ethics adopts the general standards of the Conflicts of Interest Law including the prohibition against outside employment and activities that conflict with official SJTA duties. SJTA Employees are instructed to notify their supervisors prior to commencing any outside work. Employees who have any outside employment and/or business interest are required to disclose these activities annually to the Authority. The Manual instructs employees to seek guidance from a supervisor or the SJTA ELO regarding any questions or concerns about a particular outside activity before engaging in the activity.

In 2006, Executive Order No. 1 (Corzine 2006) rescinded but in many ways duplicated E.O. No. 10 (McGreevey2002). E.O. No. 1 provides that each authority shall appoint an ELO who shall be charged with ensuring that the authority employees understand and comply with the Conflicts of Interest Law and the terms of the Executive Order including the filing of financial disclosures required of designated employees.

Pursuant to the Conflicts of Interest Law,<sup>40</sup> the SEC established The Uniform Code of Ethics in 2006 mandating that State officers and employees not engage in outside activity or employment when that activity or employment may impair the employee's ability to properly perform the employee's official duties. To this end, a State officer or employee must obtain the approval of the employing entity's ELO before engaging in the requested outside activity or employment.

SJTA's Board of Commissioners and executive management failed to ensure the Authority's compliance with Ethics requirements and more particularly E.O. No. 10 (McGreevey 2002) and E.O. No. 1 (Corzine 2006).

SJTA did not appoint an ELO until December 2004, nearly three years after the position was initially required by Executive Order No. 10 (McGreevey 2002). After the ELO was appointed, SJTA executive management did not provide sufficient direction to the ELO; did not emphasize the importance of compliance with executive orders or ethics requirements to the staff or to the ELO; and performed no oversight of the ELO's performance to ensure employee compliance with the Conflicts of Interest Law. While OIG's review found significant failure of SJTA's ELO to properly discharge her duties, SJTA executive management at best were unaware of the many employees who were failing to comply with the disclosure requirements of the ethics laws and executive orders. Indeed, as of 2005, the former Executive Director and other management staff

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<sup>40</sup> N.J.S.A. 52:13D-23 directed the State Ethics Commission to promulgate a uniform ethics code to govern and guide State officers and employees in the Executive Branch with regard to their compliance with the Conflicts of Interest Law.

failed to disclose their own outside activities, some of which were elected political office positions in municipal and county governments.

OIG's review revealed that SJTA's ELO attended training sessions conducted on a regular basis by the State Ethics Commission (SEC) and received required training materials, including the "Ethics Liaison Officer's Manual." An SEC representative advised OIG that since SJTA's ELO was appointed, SEC periodically provided materials detailing the ELO's duties and responsibilities and conducted in-person group training sessions, usually on a quarterly basis, with SJTA's ELO. Despite her training, the evidence gathered during OIG's review revealed that SJTA's ELO failed to properly perform her responsibilities.

More particularly, SJTA's ELO did not ensure compliance with the mandate of SJTA's Code of Ethics and SEC's Uniform Code of Ethics to obtain permission for outside activities and employment prior to engaging in the activity. OIG selected 90 of SJTA's total of approximately 348 employees from all levels and disciplines for review to determine whether they had compensated employment from employers other than SJTA in 2005 or 2006. This review found that several employees, including executive and senior management staff, received compensation from outside employers in addition to the compensation they received from SJTA or who engaged in otherwise reportable outside activities. The outside employment included work for Atlantic City casinos, which is prohibited by the State Conflicts of Interest Law,<sup>41</sup> and employment in the

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<sup>41</sup> N.J.S.A. 52:13D-17.2, effective 1981. The law prohibits any State officer, employee or member of his or her immediate family from holding employment at a casino. The SEC may grant a waiver, upon the request of the employee, if in SEC's judgment the employment would not interfere with the responsibilities

transportation and parking industries, which at a minimum, appear to be in conflict with the duties and responsibilities of the positions they held at SJTA that engages in same type of activities.

A substantial number of the employees were engaging in compensated or had outside activities and most had not filed the requisite disclosures and therefore had also not requested and obtained the approvals or waivers. The following chart summarizes OIG's findings:

	<b>Total</b>	<b>Total Outside Employment / Other Activity</b>	<b>Atlantic City Casino Employment</b>	<b>Other</b>	<b>Approval Obtained</b>
<b>2005</b>	90	14	4	10	3
<b>2006</b>	90	11	2	9	5

When asked about OIG's findings, the SJTA ELO admitted that she knew that some SJTA staff held elected local government positions. The SJTA ELO acknowledged to OIG that she did not enforce the required reporting and approval process and had not established a process to ensure compliance. Rather, the SJTA ELO advised that she allowed compliance with the Conflicts of Interest Law and State ethics rules and requirements to be based on the "honor system." The SJTA ELO told OIG that SJTA employees had received training from the SEC; had received pertinent ethics materials upon the commencement of their employment; and had received annual updates regarding ethics issues. Therefore, she believed that SJTA employees knew the rules and filing requirements and concluded that it was their responsibility to comply with the requirements and not hers to assure that they did. The SJTA ELO further advised OIG

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of the State officer or employee and would not create a conflict of interest or reasonable risk of the public perception of a conflict of interest.

that she did not believe that it was the SJTA ELO's responsibility to "police" the staff or request that employees submit outside activity disclosure forms even if she was aware of their outside activity and that they had not voluntarily submitted the forms.

The SJTA ELO had not sought clarification from the SEC about her duties and responsibilities and whether they included assuring compliance with ethics rules, regulations and laws or permitted her to ignore violations even when she was aware of employees' unreported outside employment. The SJTA ELO's failure to affirmatively ensure compliance with the State's reporting and approval requirements allowed the circumvention of the law and was an apparent dereliction of the SJTA ELO's official responsibilities. By not requesting employees with known outside employment to provide forms seeking approval while remaining in the SJTA ELO position, she created the appearance that her responsibilities were being carried out, that SJTA employees were being monitored, and that as far as she was aware, SJTA employees were complying with ethical requirements, when in fact, that was not the case.

## 2. ELO Failed to Disclose her own Outside Activity

As it turned out, OIG learned during its investigation that in addition to failing to ensure that SJTA staff complied with the disclosure requirements, the ELO did not comply with the ethics law disclosure requirement. In spring 2007, as OIG was reviewing SJTA ELO processes, SJTA's upper management issued a direction that all employees file outside activity forms.<sup>42</sup> In response, the SJTA ELO filed an outside activity form on March 23, 2007, requesting to serve in a voluntary position as the

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<sup>42</sup> SJTA's 2007 directive that all employees comply with this filing requirement is discussed below.



treasurer in the re-election campaign of a councilman in a local community, a position specifically prohibited for a State employee by the State Conflicts of Interest Law and the Uniform Code of Ethics.<sup>43</sup> Despite the specific prohibition in the Conflicts of Interest Law that a State employee serve as a campaign treasurer, a few days after the SJTA ELO filed the request to engage in the outside activity, on March 26, 2007, her request was approved by the alternate SJTA ELO. Later, when the alternate SJTA ELO learned that State employees could not serve as campaign treasurers, the alternate SJTA ELO rescinded the approval.

In an interview, the SJTA ELO advised OIG that she had held the voluntary position for several years. She claimed that she did not file the outside activity form because she was *uncertain* about whether employees were required to report voluntary and unpaid positions.<sup>44</sup> Essentially, her explanation was that she ignored the directions in the Executive Order to inquire of the SEC when uncertain about what ethics regulations require for voluntary and unpaid positions, and that she ignored directions to ask when uncertain in general about what the law requires. The SJTA ELO's explanation is implausible and unacceptable.

### 3. ELO Approved Spouse's Outside Activity

The SJTA ELO's spouse was also an SJTA employee. The spouse was employed outside SJTA in another public position for several years while working for SJTA but did not submit an outside activity form requesting approval to hold the position for many of

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<sup>43</sup> The Conflicts of Interest Law specifically prohibits a State employee from serving as a campaign treasurer. N.J.S.A. 52:13D-16(b); Uniform Ethics Code.

<sup>44</sup> OIG is not aware that these prohibited positions are paid positions on the local level.

those years. Obviously the SJTA ELO was aware that her spouse held the position while working for SJTA, but she never required him to complete the outside activity form.

In December 2006, the spouse finally submitted a form requesting approval to engage in the outside activity. The SJTA ELO approved her husband's outside employment the day after he submitted the form. In view of the obvious conflict and the presence of an alternate SJTA ELO, the SJTA ELO should not have reviewed or approved her spouse's outside activity form. This clearly presented a conflict of interest and is particularly significant since the conflict was created by the Authority's chief ethics officer, who should have been most sensitive to these matters. The SJTA ELO's improper actions were apparently not recognized until OIG brought them to the attention of the Director Policy and Planning.

In March 2007, the spouse submitted a revised but incomplete outside activity form; several questions on the form were not answered and necessary details were not provided. The spouse's immediate supervisor, who is required to sign the form before it is presented to the SJTA ELO, and the alternate SJTA ELO both approved the outside activity request despite the absence of required information. The alternate SJTA ELO should not have approved an incomplete form but should have returned it to be completed by the employee.

Given the lapses by the SJTA's chief ethics officer and the alternate ethics officer, it is imperative that executive level personnel establish a mechanism to ensure the integrity of the ethics program and the highest degree of compliance with the Conflicts of Interest Law.

#### 4. Failure to Provide Consistent Employee Training

Neither SJTA nor the SJTA ELO ensured that newly hired employees received ethics orientation training in a timely manner. SJTA provided ethics orientation training to full-time employees in January 2006 and March 2007 and part-time employee sessions were held in December 2005 and August 2007. Therefore, some newly hired employees may not have received training for up to eleven months after beginning employment. There are training modules or sessions that can be utilized for new employees.

#### Recommendations

Ethics programs must be implemented and reinforced from the top down in order to promote an organizational culture that encourages ethical behavior and a commitment to compliance. It is apparent that SJTA's executive management and Board had not communicated to the SJTA ELO its commitment to a strong code of ethics and the importance of her position. An effective ethics program includes multiple layers of management who are involved with and fully understand the program. OIG offers the following recommendations to enhance SJTA's continued compliance with the State's ethics rules and regulations.

1. Executive management should oversee the implementation and effectiveness of the ethics compliance program and actively monitor compliance with applicable laws, rules and regulations, including but not limited to the Conflicts of Interest Law and Executive Orders.
2. SJTA should strengthen its ELO position and stress to all employees that they must adhere to ethical standards. There should be timely ethics training (close in time to commencement of employment) and ethics training should be reinforced by way of periodic updates.

3. The SJTA ELO should obtain and retain the required annual filings from all employees, regardless of whether they hold outside employment, engage in other reportable activities, or are part-time or seasonal employees.
4. SJTA should report violations of the State ethics rules and regulations to the SEC and render any disciplinary action in accordance with SEC's instructions.

#### SJTA Response

Since OIG provided SJTA with its draft report, SJTA has revised its ethics compliance policies and has been deemed by the State Ethics Commission to be in compliance with State requirements. SJTA's reforms include: development of a process to obtain all of the required disclosures from all employees and Commissioners and to track their disposition, including a process to address any reports of outside work by employees; consultation with the State Ethics Commission when questions arise; training for the SJTA ELO and alternate SJTA ELO; in-house training for SJTA management and new employees; discussions concerning conflicts of interest during interviews; and provision of disclosure forms to all employees as they begin their employment.

SJTA advised OIG that the SEC audited SJTA's program, including the corrective actions it took in response to OIG's investigation, and issued its approval of the program. SJTA further advised that it was developing an Internal Compliance Program that would include mechanisms to monitor the SJTA ELO's activities and overall compliance with E.O. No. 1 (Corzine).

SJTA also advised OIG that its ethics program is under greater oversight from the Director Policy and Planning.

5. Failure to Timely Comply With E. O. No. 122 (McGreevey 2004)

Executive Order No. 122 (McGreevey 2004)<sup>45</sup>, effective July 23, 2004, required Boards of Commissioners of all State authorities, boards, and councils to, among other things, create an Audit Committee to oversee the performance of the entities' internal audit and internal control functions and the entities' compliance with legal, regulatory, and ethical requirements.

According to SJTA's Director Policy and Planning SJTA did not have an Audit Committee and SJTA's Finance Committee served as its audit committee until April 2006. There were no separate Audit Committee meetings (of the Finance Committee) before April 2006. Until that point, SJTA had not identified separate duties or responsibilities for an Audit Committee other than those already established for the Finance Committee.

The Finance Committee did not maintain minutes of its meetings; but it appears that Audit Committee matters may have been discussed at some Finance Committee meetings since those meeting agendas reflect that audit related matters were discussed during the Finance Committee meetings. There is no evidence to substantiate that internal controls were addressed at Finance Committee meetings on an ongoing basis as required by E.O. No. 122. Indeed, as discussed in this report, there were several deficiencies in SJTA's internal controls. Given these deficiencies, and the absence of an Audit Committee dedicated to internal control oversight, it appears that SJTA did not sufficiently meet its internal control oversight obligations pursuant to E.O. No. 122.

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<sup>45</sup> E.O. No. 122 was supplemented by Executive Order No. 37 (Corzine 2006). The above-referenced provisions of E.O. No. 122 remain in effect.

### Recommendations

1. SJTA should ensure that its Audit Committee is proactive in assisting the Board in overseeing the development and performance of the authority's internal audit and internal control functions, in addition to its other duties required by E.O. No. 122.
2. SJTA should consider using Treasury's Internal Control Questionnaire referenced in Circular Letter No. 03-08-OMB<sup>46</sup> as a tool for the assessment of internal controls.

### SJTA Response

While SJTA believes it has been and continues to be in compliance with E.O. No. 122, in response to OIG's recommendation, it performed a risk assessment, using Treasury Circular No. 03-08-OMB as a guide, to assist its Board in assessing internal control risks.

OIG commends SJTA for its efforts to address and remedy the deficiencies noted by OIG but reminds SJTA that it is critical to continually monitor the internal controls and properly perform a thorough risk assessment to ensure that its internal compliance program is functioning effectively.

OIG has noted that several authorities do not have an internal audit function reporting to the Board's Audit Committee. In part the authorities do not have enough work to support an internal auditor who is completely independent of management. The authorities should consider sharing an independent auditor who reports to the Governor's Authority's Unit, the Comptroller's Office, the Inspector General's Office, or some entity that provides independence from the authority management but allows it access to review

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<sup>46</sup> Treasury Circular Letter No. 03-08, "Annual Internal Control Reporting" requires that all state executive agencies use Treasury's Internal Control Questionnaire to perform their annual assessment of internal controls.

the authorities' books and records, internal controls, and processes and report to authority audit committees.

6. Missing Documentation for E.O. No. 134 (McGreevey 2004)

Executive Order No. 134 (McGreevey 2004), codified by N.J.S.A. 19:44A-20.13-20.24 (P.L. 2005, C.51), prohibits State entities and authorities from entering into contracts valued at more than \$17,500 with any business entity that has solicited or made any contributions of money, or pledges to contribute, to a candidate committee and/or election fund of any candidate or holder of the public office of Governor, or to any State or county political party committee. The Executive Order and the statute also require authorities to have business entities entering into contractual relationships with State entities report all political contributions to specified entities for the preceding four years. These reports are subject to review by the State Treasurer who shall disqualify business entities from bidding for or being awarded a contract if any reported contribution, or other impermissible act, poses a conflict of interest in the awarding of any contract.

SJTA has developed a policy and established procedures designed to ensure that it purchases only goods and services from vendors that have not made disqualifying political contributions. Nonetheless, in one instance there was no evidence that SJTA received the required certification as part of the bid package submitted by a bidder for a contract in excess of the \$17,500 threshold. There is also evidence that, in specific instances, SJTA did not transmit the required certifications to the State Treasurer (State Review Unit) for confirmation whether contributions made by prospective contractors

were permissible in accordance with E.O. No. 134 and N.J.S.A. 19:44A-20.13- 20.24.

Therefore, it is possible that SJTA has entered into contracts in violation of the law.

### Recommendations

1. Current policies and procedures governing purchasing must be strengthened in order to eliminate the risk and exposure found by OIG. SJTA's recently enacted Internal Compliance Program should include appropriate monitoring and review of the bidding and purchasing activities.
2. Management should review and approve pre-award vendor selections to ensure that only eligible vendors have been selected and that all purchases are made in accordance with SJTA and State bidding and purchasing rules and regulations.

### SJTA Response

SJTA acknowledged that certain required documentation was missing from bid files and that it was unclear whether the mandatory reviews and approvals of the documents were obtained. SJTA stated, however, that it believed the materials were submitted and misplaced. SJTA advised that all requirements and approvals were obtained for the renewals of the contracts at issue. SJTA also noted that the State Review Unit, and not SJTA, is responsible for reviewing disclosure forms to determine if proposed vendors are disqualified.

SJTA further advised that it made adjustments to its Purchasing staff "in order to eliminate risk or exposure and ensure that policies and procedures would be adhered to." SJTA has incorporated the requirements of P.L. 2005, C. 51 into its purchasing manual. In addition, SJTA stated that management reviews and approves vendor selections prior



to making recommendations for Board approval, while noting that any approval would be pending the approval of the State Review Unit.

OIG recommends that SJTA's Internal Compliance Program include appropriate review of its purchasing and bidding function including compliance with relevant executive orders.

#### 7. Timely Filing of E.O. No. 41 (Codey 2006) Documents

Executive Order No. 41 (Codey 2006) requires the executive director of a State authority to certify annually in writing to the Governor's Authorities Unit, by deadlines established in E.O. 41, that the authority has complied with the enumerated provisions of E.O. No. 1 (Corzine 2006), E.O. No. 122 (McGreevey 2004) and N.J.S.A. 19:44A-20.13-20.24 (P.L. 2005, C.51). OIG's review determined that SJTA submitted the required certifications of compliance mandated by E.O. No. 41 to the Governor's Authorities Unit. However, some of the certifications were not submitted by the due dates specified in the executive order.

#### Recommendation

SJTA should assign responsibility for E.O. No. 41 compliance and certifications to appropriate staff, such as in-house counsel or a compliance officer, to ensure that all requirements are met as mandated in the Executive Order.

### SJTA Response

SJTA stated that all financial disclosures were filed within “allowable timeframes” and that no fines have been issued for late submissions. The compliance mandates are now tracked by the Internal Compliance Program.

#### 8. E.O. No. 37 (Corzine 2006)

Executive Order No. 37 (Corzine 2006) established enhanced operational and procurement procedures for all State authorities. Executive Order No. 37 (Corzine, 2006) imposed a number of duties on authority Boards of Directors including:

- Exercising direct oversight over the Chief executive officer, chief financial officer, and other senior authority management;
- Ensuring that appropriate financial controls are in place and that an audit committee has been appropriately impaneled;
- Maintaining required procurement policies and procedures;
- Ensuring compliance with pay-to-play legislation;
- Establishing appropriate personnel practices;
- Establishing policies necessary to implement provisions of government ethics laws;
- Requiring management to comply with Open Public Meeting notices; and
- Disclosing Board members’ and their family members’ business relationships with the authority.

The provisions are designed to ensure that authorities award contracts to vendors in a manner that is fair and transparent with the intent to ensure that the authorities are obtaining quality products and services at the best possible value. Although compliance with this Executive Order by SJTA had not been fully accomplished, evidence and

documentation reviewed by OIG indicated that SJTA has developed an action plan for implementation to ensure compliance with all provisions of Executive Order No. 37 (Corzine 2006).

### Recommendations

The broad reaching mandate of E.O. No. 37 (Corzine) covers many areas including purchasing and administrative requirements that require coordination among several operating departments at SJTA. Based on the comprehensive changes and significant administrative efforts required by SJTA management to ensure compliance, OIG recommends:

1. The Board of Commissioners should be formally notified of all changes in State regulations, executive orders and laws that impact daily operations.
2. The Board of Commissioners should formally adopt an action plan and monitor its implementation for satisfactory performance. The plan should assign responsibility for monitoring performance and compliance.

### SJTA Response

SJTA advised that, upon the issuance of E.O. No. 37 (Corzine), it developed a “compliance matrix” that “is being monitored each month by the Finance Department and is included in the Internal Compliance Program” that SJTA was then in the process of developing.

## **B. Board Member Conflict of Interest and/or Appearance of Impropriety**

Pursuant to the Conflicts of Interest Law, Board members are prohibited from acting on matters that conflict with their responsibilities to the State.<sup>47</sup> Despite this, OIG identified potential conflicts of interest involving SJTA Board members.

OIG attended monthly SJTA Board and committee meetings, including executive sessions, and reviewed minutes of Board meetings from fall 2005 to spring 2007. OIG identified several matters that the Board members discussed and voted on despite the fact that those Board members were directly involved or closely associated with those matters. By way of example, on more than one occasion, more than one Board member voted on matters pertaining to municipalities where the Board member held an elected position or with which the Board member had entered into a contract.

### Recommendations

1. OIG recommends that all SJTA executive management and Board members attend appropriate “refresher” ethics training concerning conflicts and review the Conflict of Interest Law, Uniform Code of Ethics and SJTA’s own code of ethics to ensure future compliance with their ethical and fiduciary duties.
2. The Board should designate an SJTA official to monitor Board meetings and votes to ensure that Board members properly recuse themselves from matters where potential actual or apparent conflicts exist. SJTA must also ensure that Board members file the personal disclosure statements required by E.O. 37 (Corzine 2006).

### SJTA Response

SJTA advised that it has designated its outside General Counsel to monitor Board meetings and documentation to ensure that Board members recuse themselves when there is a potential conflict. Further, all Board members are required to file personal disclosure

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<sup>47</sup> N.J.S.A. 52:13D-15 et seq.; N.J.S.A. 52:13D-12(a) provides “[p]ublic officials must ... avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated...”.

statements, which are reviewed by the General Counsel. This is used to develop a list of matters for which members must be recused. This replicates a process established by a former Chairman, who identified all matters from which he would be recused.

OIG recommends that when there is a question regarding whether a matter may present a question of a conflict or an appearance of a conflict of interest, the voting member of the Board with the potential conflict either recuse himself or herself from the vote, or that the vote be held until the SEC can render an opinion on the matter.

### **C. Public Meetings**

SJTA is subject to the New Jersey Open Public Meetings Act (OPMA), which guarantees public access to public meetings.<sup>48</sup> OPMA requires adequate public notice of meetings and that each public body keep reasonably comprehensive meeting minutes recording, among other things, the time and place of the meeting, the members who were present, the subjects that were considered, the actions that were taken, and the vote of each member. OPMA also requires that the minutes be promptly made available to the public. OPMA allows a public body to exclude the public from a meeting only for enumerated reasons. The public body must first adopt a resolution setting forth reason, the general nature of the subject matter to be discussed, and, as precisely as possible, when and how the privately discussed matter may be disclosed to the public.

OIG attended monthly Board and Committee meetings, including executive sessions, and reviewed minutes of Board meetings from fall 2005 to the spring 2007. The public was generally permitted to attend SJTA's monthly Board meetings. However,

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<sup>48</sup> N.J.S.A. 10:4-6 et. seq.

SJTA did not maintain what could be described as reasonably comprehensive meeting minutes. After attending several Board meetings and thereafter reviewing the minutes of those meetings, OIG noted that the minutes did not reflect the actual detailed discussions held at the meetings and lacked specificity concerning the matters and actions that were discussed. On many occasions, particularly with respect to consultant contracts, the minutes lack details of the substantive terms and conditions of the contracts.

Moreover, at Board meetings, executive management shared inaccurate information with Board members. For example, while in attendance at one Board meeting, OIG witnessed inaccurate comments made by the former Executive Director in response to a Commissioner's inquiries regarding a vehicle vendor contract, tow providers and new hires.

Although the Board is required to approve monthly payments of bills, the Board was not provided sufficient information regarding financial transactions that would have enabled members to properly evaluate and scrutinize vendor invoices and payments. Only minimal documentation relating to the vendors was provided to Board members. As such, substantive issues are not properly or adequately being discussed at Board meetings, hindering Board members' ability to satisfy their responsibilities and fiduciary duty to the public. In fact, these failures resulted in several issues, noted earlier in this report, including a lack of contract monitoring, that resulted in vendors performing work and receiving payment before the Board voted to award the contract as well as vendors being paid more than the Board authorized contract amount.

In addition, on many occasions, before it adjourned to executive session, the Board did not adopt the proper resolution and specify the general nature of the subject matter to be discussed in executive session or disclose when the anticipated release date of the closed session minutes would be made available. The Board also did not release the minutes of the executive sessions in a timely manner.

Further, SJTA did not always limit its meeting attendance to authorized personnel when discussions included sensitive and confidential information. OIG raised concerns to SJTA regarding the OPMA and executive sessions, and SJTA has since amended its practices. As such, OIG observed changes to the Board meeting agendas and Board meeting minutes that enhanced the authority's compliance with OPMA.

### Recommendations

1. SJTA should endeavor to strengthen communication between its departments and information sharing to facilitate transparent operations.
2. SJTA should continue to improve its meeting minutes to ensure that the minutes contain sufficient detail concerning the actions that were discussed or taken by the Board. Also, committee and executive session meeting minutes must continue to be maintained in accord with the OPMA.
3. SJTA should ensure that only matters authorized by the OPMA for executive session are discussed in executive session. Resolutions to enter executive session must fully set forth the basis for going into executive session. Attendance at meetings where sensitive information is being discussed should be limited to those personnel with the need to know.

### SJTA Response

SJTA stated that, while it “conducts its business” in compliance with OPMA and it has not been the subject of a complaint (by either state officials or members of the

public), “meeting documentation and conduct” have been revised pursuant to a directive issued by former Chairman Kolluri. As such, descriptions of agenda items have been expanded; the wording of resolutions to go into executive session has been amended; and executive and public sessions are held in accord with OPMA. SJTA noted that a revised process for “timely review and release of” executive session minutes was pending approval.



## **V. EMPLOYEE BENEFITS**

OIG's review included a comprehensive review of the policies and procedures regarding employee benefits as well as analysis of the various benefit programs and payments issued to employees. The OIG review of SJTA included a review and analysis of employee benefits. This review included the documentation to support employee leave recorded in the official time and attendance records, overtime payments, and other benefit payments made to employees.

As of 2009, the Executive Director's salary is \$156,133. The Deputy Executive Directors' salaries are \$134,754 and \$134,398. The Directors' salaries range from \$105,000 to \$98,000.

On October 23, 2006, the OIG issued its Summary and Analysis of State Authorities' Employee Benefits Report. Follow-up reports were issued on August 20, 2007, December 3, 2008, and February 18, 2010. This report includes all appropriate changes and modifications as provided by the authorities in response to OIG's previous report and recommendations as well as subsequent requests. SJTA offers employee benefits that in many instances are more generous than those offered to State employees. The detailed discussion of SJTA's employee benefits is included in OIG's benefit report.

During the course of OIG's review several areas warranting improvement were brought to the attention of SJTA's Director Policy and Planning, some of which have resulted in significant cost savings including:

- Employee longevity pay. Employees received an annual stipend for each anniversary milestone reached, once the baseline anniversary was met. This practice was discontinued during the course of OIG's review.
- Health benefit waiver. Employees can receive cash in lieu of obtaining authority health benefits. The cash payment was reduced from 50% to 25% of the current annual premium during the course of our review resulting in significant savings.

OIG conservatively estimates that SJTA realized cost savings of at least \$500,000 by reducing these employee benefits.

## **VI. RECOMMENDATIONS**

### **A. Organizational Changes**

As OIG was preparing to issue this report, OIG also learned that the Deputy Executive Director who had been responsible for Policy and Planning, the Internal Compliance Program, and much of the internal oversight at SJTA would be retiring as of March 1, 2010. Most of the significant policy and procedural reforms and corrective actions referenced in this report have occurred under the leadership of the current Executive Director but have been carried out by the retiring Deputy Executive Director. SJTA will lose a substantial amount of institutional knowledge, particularly in regards to the problems that were found, individual accountability, and corrective actions taken. The retiring Deputy Executive Director was SJTA's liaison with OIG, and as far as OIG is aware, was involved in effecting all of the corrective actions that have occurred in response to OIG's findings.

OIG also learned that SJTA is in the midst of a significant reorganization that includes relocating the Internal Compliance Program that formerly reported to the retiring Deputy Executive Director (who will not be replaced) into the Finance Department. Moreover, the Internal Compliance Program, on which so many of the corrective actions rely, will be staffed by only one person, the Administrative Analyst who worked for the retiring Deputy Executive Director. The Analyst is responsible for assuring timely SJTA compliance with approximately 60 mostly time sensitive requirements, including compliance with State and federal laws, regulations, and executive orders, and assuring

that the Authority undertakes corrective actions in response to any issues raised by annual financial audits, risk assessments, and statutorily mandated management audits as well as those identified by OIG's review. Under the restructuring, the Analyst will report on a day-to-day basis to the Chief Financial Officer, who already has a full array of important responsibilities. OIG believes that, rather than diminishing the scope of the Internal Compliance function, it should be made more robust.

OIG has been informed that since the time of its review, the SJTA Board of Commissioners has formed an Audit Committee separate from the Finance Committee, thereby rendering the Authority more fully compliant with Executive Order No. 122 (McGreevey 2004). To meet OIG's concerns regarding the weakening of the Internal Compliance Program, the SJTA Executive Director also informed OIG that the Audit Committee is responsible for oversight of the Internal Compliance Program. The Audit Committee is increasing its meetings from twice a year to quarterly and will focus two meetings entirely on the Internal Compliance Program and report its findings to the full Board.

An attorney currently working at SJTA is responsible for reviewing all new laws, regulations, and executive orders and advising the Administrative Analyst of those that apply to SJTA and the actions required of SJTA in order to be in compliance with them. In turn, the Administrative Analyst is responsible for meeting with senior staff and other experts as required to develop parameters for compliance and monitoring and inclusion in the internal compliance program.

It is encouraging that the Analyst will report to the Audit Committee and hopefully the Audit Committee will assure that there is no reluctance by staff to provide full and timely compliance with the requirements imposed by the various laws, regulations, and executive orders. This will provide some assistance to the Administrative Analyst in completing an important, and what appears to be monumental, task for even the most competent administrator backed by a well meaning Board.

## **B. Continued Monitoring**

Notwithstanding the oversight role that the Audit Committee will provide to the Internal Compliance Program, it does not relieve the concerns raised by the change in organization, the departure of the Deputy Executive Director, and the role of the Internal Compliance Program at SJTA. This report details numerous problems in an entity that as of 2008 was responsible for more than \$90 million of public funds. SJTA provided during the time of OIG's review and continues to provide a variety of services over a widespread geographical area. Despite significant financial resources, management studies, ample and well compensated staff, a Board with several law firms at its disposal, it is not clear that the significant internal control problems OIG found would have been uncovered and corrected but for OIG's review. Some of the responsible managers and many of the employees who were present during the prior SJTA administration are still employed by SJTA, and without robust oversight, old practices could re-emerge.

These concerns as well as possible methodologies for enhanced and continuing oversight have been discussed with the Executive Director. He agrees that a continuing monitoring relationship would be a management tool that would provide him with a

mechanism to assist in ensuring that SJTA's activities are performed in an economical, effective, ethical, and efficient manner in order to help guard against fraud, waste, abuse, and mismanagement, and to identify opportunities for cost savings.

### **C. Independent Internal Auditor**

Although E.O. No. 122 (McGreevey 2004) does not require an authority to have an internal auditor, both best practices concerning internal controls and E.O. No. 122 highlight the importance of an independent internal auditor and a complete internal audit.<sup>49</sup> An independent authority with the size and diversity of workforce and operations, wide-spread physical operations, and responsibility for a substantial amount of public funds such as SJTA, would benefit from an independent internal auditor who is responsible for the Authority's internal control functions as well as subsequent oversight of any recommended corrective actions.

In order for the internal audit to be completely independent, the internal auditor should not report to management. OIG has recommended to the current Executive Director that SJTA have an independent internal auditor who reports to the Audit Committee, and the current SJTA Executive Director agreed that it would be a benefit to SJTA and the Board to employ a review mechanism along these lines.

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<sup>49</sup> E.O. No. 122 provides that if an authority does have an internal auditor, the Audit Committee shall meet regularly with the auditor, and the internal auditor shall regularly make reports to the Audit Committee. More particularly, E.O. No. 122 requires an authority's Audit Committee to assist the Board oversee the "performance of the Authority's own internal audit and internal control functions" and to "review actions taken as a result of internal audit findings" if the entity has an internal auditor.

OIG is aware of other authorities that are without an independent auditor either because the authority does not have an internal auditor or because the authority's internal auditor is linked to management and thus is not truly independent. One way to accomplish true independence for the internal auditor is to create a group of internal auditors in the Executive Branch who are responsible for performing the internal audit function for all authorities, or at least for those that are responsible for a significant amount of public funds. In addition to better assuring fully independent audits of the State's authorities, this would provide the Board a mechanism to perform their oversight duties. The Executive Branch Authorities Auditor Group could reside in the Comptroller's office, Treasury, the Governor's Authority's Unit, or some other entity that could provide these auditors independence from the managers they audit.