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## Maine Turnpike Authority – Strong Planning Process Drives Bond and Toll Decisions; Some Contracting Practices and Expenditure Controls Should Be Improved; Additional Clarity Needed Around Surplus Transfer and Operating Expenses

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Report No. SR-MTA-10

### Issues OPEGA noted during this review:

- Current Definition of Operating Surplus Makes Transfers to MaineDOT Unlikely (pg. 49)
- Nature of MTA's Relationship with Contracted Engineering Firm has Implications for Capital Program and Bondholder Protections (pg. 50)
- Management of Services Contracts Often More Informal than Prudent (pg. 51)
- MTA is Sole Sourcing Services that Could be Competitively Bid (pg. 54)
- MTA's Operating Budget Does Not Include All Operating Expenses (pg. 55)
- MTA's Sponsorships and Donations Suggest Expansion of Mission and Present Risk of Inappropriate Expenditures (pg. 57)
- Policies Governing Expense Approvals, Documentation and Allowable Expenses Not Effectively Implemented, Particularly for Travel and Meal Expenses (pg. 59)

a report to the  
[Government Oversight Committee](#)  
from the  
[Office of Program Evaluation & Government Accountability](#)  
of the Maine State Legislature

January  
2011

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## Agency Response

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In accordance with 3 MRSA §996, OPEGA provided the Maine Turnpike Authority an opportunity to submit additional comments on the draft of this report. The Authority's response letter can be found at the end of this report.

In addition, OPEGA discussed the preceding issues and recommendations with MTA's management in advance. Upon receiving our recommendations, MTA devoted significant attention to developing action plans that would address those issues that are the Authority's responsibility. Details of the proposed actions were shared with OPEGA as MTA sought feedback on whether they would sufficiently address the concerns identified. According to MTA management, some of OPEGA's recommendations have provided further impetus for implementing ideas they had already been considering.

We understand MTA has already begun implementing some actions, and others will be submitted to the Board for review and approval. MTA has sought to strike a balance between fiscal controls and efficient operations, as well as balance between compliance with statute and compliance with the terms of its Bond Resolution. Not all of the proposed actions exactly mirror OPEGA's recommendations, but in our opinion they are reasonable, both in scope and timeframe, for addressing the issues we raised. If effectively implemented, they should strengthen MTA's processes, begin to substantially redefine the relationship with HNTB, and bring additional transparency to MTA's budget and expenditures.

We note that some actions being taken by MTA go beyond the scope of OPEGA's recommendations and will provide for additional improvements and efficiencies. We also observe that MTA's detailed plans have been developed with an eye toward using any new resources, e.g. personnel or technology, most efficiently and effectively for MTA's longer term needs. We see this as an indication that MTA is truly interested in fully integrating the changes in a way that impacts MTA's culture and makes it a stronger organization.

MTA's planned management actions, as provided by its management team, are summarized below. They are numbered to correspond with the issues described by OPEGA in the Recommendations section of the report.

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### **MTA's Relationship with its Contracted Engineering Firm Needs to be Redefined**

MTA's Chief Operating Officer has proposed a detailed action plan that will be substantially implemented in the first half of 2011. The plan formalizes MTA's agreements with HNTB, and provides for transitioning portions of work HNTB has historically performed to either in-house resources or other consultants. It addresses issues identified by OPEGA as well as policies, procedures and staffing requirements MTA considers vital to the successful management of a larger capital program in 2011 to 2015.

When crafting the plan, MTA was mindful of its need to continue to provide timely, cost-effective, safe, quality-driven, and environmentally sensitive projects. Consequently, HNTB will continue to be MTA's primary engineering consultant on 2011 – 2012 projects currently in progress, and until MTA has developed sufficient capacity to manage its procurement of various engineering services differently. Key actions included in MTA's overall plan are:

- A. Establish new contracts with HNTB that have defined durations, scopes of service, terms and conditions and costs.
  1. By June 2011, establish four new general consulting agreements (GCA) with HNTB to reflect the various services MTA expects to procure. These are consulting engineer services<sup>13</sup>, program management services<sup>14</sup>, project engineering services and construction inspection services.
  2. By December 31, 2011, establish a project-specific written agreement defining duration, scope and cost for each 2011 and 2012 project assigned to HNTB under the GCA's for project engineering or construction inspection services.

The MTA Board, with Trustee approval, will award the Consulting Engineer contract and re-approve it every five years. MTA expects to continue awarding this contract to HNTB, with five year terms, until such time as the Board deems it appropriate or advisable to competitively bid the consulting engineer services. The other three services will also continue to be procured from HNTB initially, but MTA expects to reduce the amount of services procured under these contracts as it builds in-house capacity to perform or competitively bid more work.

- B. Develop a formal project management process during the first half of 2011 where MTA Engineering Department will assign and manage all engineering work.
  1. By June 30, 2011, create and fill a new staff position to assume project management responsibilities. These responsibilities involve: managing all consultant resources, including HNTB; managing the RFP process for new design projects and studies; providing additional review of plans and specifications; and providing the MTA with capacity to perform some assessment work in-house.
  2. By the end of 2011, implement a formal in-house process for selection and assignment of consultants to perform project development and design work, prior to project initiation. For each project, MTA will decide whether to assign work directly to HNTB under the established

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<sup>13</sup> Scope of services for the Consulting Engineer Services contract will include fulfilling Bond Resolution functions; high-level planning and assisting with 20-Year Plan as requested by the MTA; providing advice and counsel to the MTA board and executive management team; acting as day-to-day traffic engineer; and forecasting functions.

<sup>14</sup> Through this contract, HNTB will continue to assist MTA's engineering group with some administrative functions. Scope of services will include managing the library of specifications and standards details for construction contracts; assisting with administration of the overall capital and reserve maintenance program, as well as the coordination of projects; performing some design work as assigned by MTA; and providing full project management on some projects, especially complex projects in HNTB's area of expertise.

GCA or to solicit proposals from other MaineDOT pre-qualified firms and select one or more of those firms to perform work. MTA expects that projects under \$100,000 will continue to be directly assigned to HNTB for efficiency reasons, but it will begin competitively selecting the consultants for larger projects. In 2011, the Authority intends to competitively bid the engineering services for at least one major 2012 construction project.

- C. Use resources other than HNTB to assume some of the construction inspection responsibilities:
1. By July 1, 2011, hire two additional MTA construction inspectors (one senior-level resident engineer and one resident engineer to join the three existing MTA technician-level inspectors. MTA has performed a preliminary cost/benefit analysis and has determined that, in the long run, the two additional inspectors are warranted and the new positions will cost less than consultant resources.
  2. Due to immediate needs and their high level of experience and success working for the MTA in this area, HNTB will still have a contract to perform construction inspection. However, by April 2011, MTA will solicit proposals from other engineering firms pre-qualified by MaineDOT to fill additional inspector openings created by the larger 2011-2015 capital program. MTA expects to establish contracts with other firms as a result of these proposals. MTA engineering staff will manage those consultant inspectors directly.

### 3

#### **MTA Should Improve Contract Management for Professional Services**

MTA has begun development of a contract management database and related procedures that is expected to be complete in April 2011. This contract management system will provide for centralized tracking and review of all contracts. The database will be used to determine when contracts are due for updating or reconsideration, and to help assure those contracts get timely attention.

Once development of the contract database software is complete, MTA will begin populating the database with information on all its current contracts. In conjunction with this process, MTA will be identifying all contracts that are out of date or do not have the specific terms and conditions recommended by OPEGA. MTA will take action to update and strengthen those contracts as they are identified. MTA expects to be completed with the review of all contracts, and to have the database fully populated, by October 1, 2011.

MTA will also establish a formal contract management and administration policy for all contracts by fall 2011. The policy is expected to clarify the roles and responsibilities associated with monitoring professional services contracts to assure acceptable contractor performance, and adherence to contract terms and conditions.

In response to OPEGA's recommendations for management of HNTB contracts, MTA intends to establish new contracts as described in Action 2 above. In addition, MTA will require that HNTB provide additional detail for reimbursable expenses on each invoice, similar to what HNTB is required to provide on its

invoicing to MaineDOT. MTA is also considering the most cost-effective way to periodically audit HNTB's expenses. Initially, MTA expects to hire its external auditors to conduct this audit, with the first audit performed by spring 2012. This work may eventually be conducted under an in-house internal audit program.

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#### **Controls Over Sole Sourcing Should be Strengthened**

MTA staff will draft a formal policy on sole sourcing consistent with OPEGA's recommendations for standard criteria, written justification and Board review of sole source arrangements. Staff expects to submit the draft to the Board's Finance and Audit Subcommittee by the summer of 2011. Staff will work with the Subcommittee to finalize the policy and present to the full Board for approval. Assuming Board approval is obtained, MTA expects to implement a policy in the autumn of 2011. In conjunction with this effort, MTA will establish written guidelines on the Request for Quotations process for professional services.

MTA will also begin conducting a regular review of sole source contracts to determine if their sole source status remains appropriate as part of the contract management system described above in Action 3.

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#### **MTA Should Provide Detail on All Operating Expenses as Part of Legislature's Statutory Review and Approval of Budget**

MTA's Board and management strongly believe that protecting its ability to pay certain operating expenses is critical to maintaining the desired bond ratings. Consequently, MTA intends to continue budgeting for operating expenses that are critical to complying with bondholder expectations in the Reserve Maintenance project budget that is not subject to the Legislature's approval. MTA is committed, however, to improving the transparency of all its operating expenses, and assuring that any expenses excluded from the operating budget submitted for legislative approval are appropriately limited. To this end, MTA will take several actions:

1. Expand information provided to the Legislature in the budget materials. Beginning with the budget for 2013 submitted in fall of 2011, budget materials will include:
  - detail by expense category for all operating expenses, regardless of the fund they are budgeted to, with indication of which are included in the operating budget for the Legislature's approval and which are not; and
  - a summary of total actual versus budgeted operating expenses by expense category across all MTA departments and funds.
2. Review all operating expenses currently funded by the Reserve Maintenance Fund and identify those that are not critical to complying with Bond Resolution terms. In the future, these expenses will be funded from the Revenue Fund and will be included in operating budgets presented for legislative approval. MTA staff have already begun this review. The Board has requested that bond counsel also participate in this process and provide an opinion.
3. Audit expenses paid for by the Reserve Maintenance Fund annually, thereafter, to assure any that should be submitted for Legislature's approval are captured in the operating budget considered by the Legislature. MTA is

assessing whether to establish an in-house internal audit program that would be assigned this responsibility.

4. Update accounting reference codes for expenses and standardize use of these codes across departments by winter 2011-12.

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**MTA Should Formalize Criteria and Processes for Sponsorships and Donations**

MTA staff will draft a formal policy on sponsorships and donations consistent with OPEGA's recommendations. The policy, which will include criteria and process for guiding expenditures of this type, will be submitted to the MTA Board for review and approval in the autumn of 2011. Assuming Board approval is obtained, the policy will be implemented by January 1, 2012.

In addition, MTA intends to develop annual budgets for sponsorships and donations that specify the amounts MTA expects to contribute to particular organizations each year. An accounting code will be established to capture sponsorship and donation expenditures, and regular monthly reports will be generated for monitoring actual expenses against the budget. MTA expects to have the first budget prepared for the calendar year 2013 and implement the monitoring process in 2012.

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**MTA Should Clarify and Ensure Adherence to Approval and Documentation Requirements for Expenses, in Particular Travel and Meal Expenses**

MTA has identified a number of written policies and procedures that will be updated or established to clarify the Authority's expectations regarding approval, documentation and appropriateness of expenditures. MTA will update its Purchasing Policy, including the approval matrix, field purchasing policy, invoice authorizations and purchasing card policy by November 1, 2011. In addition, policies and procedures covering the following will also be current and in place by that time, and will include proper controls to minimize risk of inappropriate expenditures:

- travel;
- company paid meals;
- company credit cards;
- payroll reimbursement and cell phone reimbursement; and
- petty cash and the revolving checking account.

MTA will distribute the policies and discuss their requirements with all MTA supervisors at the regular quarterly Supervisors' meetings. Management has already sent memos on approval and documentation requirements for travel and meal expenses to all credit card holders and those supervisors that have Open Purchase Orders for these types of expenses. The agenda for the March 2011 Supervisors' meeting will include a review and discussion of the Travel Policy. Other policies and procedures will be distributed and scheduled for discussion as they are finalized.

MTA is also considering the most cost-effective way to audit for compliance with various policies and procedures. Options include requiring review of expenses by MTA's Controller, requesting that external auditors incorporate specific testing into their annual audit or establishing an in-house internal audit program as described below.

In the course of addressing issues raised by OPEGA, MTA identified several additional opportunities to strengthen its internal control framework. MTA intends to act on these opportunities by the end of 2011:

Establish a system for tracking status of MTA policy documents using the same database framework and process as the system being developed for contract management. This tracking system will provide for identifying when policies need to be reviewed for updates, and will assign responsibility for those reviews and updates to particular individuals. As part of the process of populating the policy database, MTA will review all policies and update them as necessary.

Update or establish additional written policies and procedures to govern employee job training and internships, protection of whistleblowers, network access, computer usage, and union negotiations.

Develop a formal internal audit program within MTA that may include establishment of an internal audit position. MTA will seek assistance from a consultant in designing a program that has sufficient independence and resources. MTA envisions that capacity for handling whistleblower complaints would also be built into the internal audit program.

Replace a soon-to-be-vacant position with a Project Engineer position. Responsibilities of the new position will include: creating and administering proposed future asset and fleet management systems; tracking and managing performance measures in Operations & Maintenance; and providing general project coordination. The new position will replace an existing position in the budget.

## Acknowledgements

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OPEGA would like to thank the management and staff of both the Maine Turnpike Authority and the Maine Department of Transportation for their cooperation during this review. We would also like to thank the management and staff in the Legislature's Office of Program and Fiscal Review, Office of Policy and Legal Analysis, and Law and Legislative Reference Library for their assistance in providing information.

Additionally, we would like to acknowledge the New Hampshire Bureau of Turnpikes and the New York State Thruway Authority for taking the time to respond to our survey requesting performance data.

Lastly, we appreciate the technical expertise and perspective that Edwards Angell Palmer & Dodge brought to this project.