

CONFIDENTIAL

Case #14-0007

**Agriculture and New York State
Horse Breeding Development Fund**

March 20, 2015

Lisa Lee

Gaming Inspector General

Sandy Meadows

Senior Auditor - Office of Internal Audits

Executive Summary

In October of 2014, this Office received two reports regarding the Agriculture and New York State Horse Breeding Development Fund ("the Fund") and its former Executive Director, Michael Mullaney, which raised questions regarding the financial expenditures and practices of the Fund. It was further reported that an audit of the Fund revealed that there were four primary areas of concern. Specifically, purchases made on the Fund's corporate credit card; the absence of health insurance premium deductions from Mullaney's pay; time and leave discrepancies which indicate that Mullaney may have been improperly credited for 17 days of work; and the awarding of a contract post bid deadline to a vendor who may be related to [REDACTED] the Fund's [REDACTED]. Currently, Mullaney is seeking to be paid on the questionable annual leave balances.

Office of Internal Audits ("OIA") was responsible for the exit audit of the Fund and had completed its review in many of the areas when this Office learned of the alleged misconduct. Additionally, OIA was prepared to render its preliminary findings, thus in an effort to ensure the most efficient and effective use of limited resources, it was decided that the health care premium and annual leave issues would be addressed by OIA, and that this Office would conduct a review of the procurement issue. Nonetheless, this Office reviewed relevant documents regarding payroll deductions and time and leave, and questions were posed to individuals interviewed by this Office regarding those matters when appropriate.

It should be further noted that in July of 2014, OIA had completed an audit of the Fund's corporate credit card account (one of the cited areas of concern) and found many deficiencies with the Fund's credit card policies and procedures, internal controls, and practices. Similarly, this Office also reviewed the credit card transactions and related documents. This review did not yield any evidence of misconduct, and instead, noted the same deficiencies found by OIA.

In furtherance of this investigation, Gaming Commission and Fund records were obtained and reviewed, and thirteen (13) interviews were conducted including, but not limited to, current and former employees of the Gaming Commission, the Fund, Yonkers Raceway, and vendors to the Fund. Additionally, Sandy Meadows, Senior Auditor was cross-designated to serve as an auditor with this Office for the sole purpose of assisting with the review of the procurement process and award of contract to [REDACTED] the vendor allegedly related to [REDACTED].

The investigation determined the following:

- 1) [REDACTED] has no familial relationship to [REDACTED] principal owner of [REDACTED]. [REDACTED] purchased the [REDACTED] name from [REDACTED] [REDACTED] on or about 2002. [REDACTED] was one of three principal owners of the business at that time. Both [REDACTED] and [REDACTED] stated that they did not know each other before the sale of the business, and did not maintain any contact following the sale.
- 2) [REDACTED] was not involved in the procurement process, and Mullaney took appropriate measures in seeking guidance from the Commission's Ethics Officer.

- 3) The RFQs issued by Mullaney for T-shirts and Tote bags were seriously deficient in that they did not contain a bid closing date, in violation of the Fund's procurement policy. The RFQs issued by Mullaney only contained a deadline for questions (although the deadline for questions for the T-shirts RFQ had lapsed by time he issued it) and did not specify a bid deadline date.
- 4) Mullaney stated that he was willing to continue to accept bids for consideration even after he formally announced via email that bids were no longer accepted. Mullaney's actions not only violated the Fund's procurement policy but also compromised the integrity of the procurement process. On August 7th, a day after Mullaney formally announced to vendors via email that he was no longer accepting bids he informed [REDACTED] of the NYS Harness Horse Breeders ("HHB") and vendor to the Fund, that he was open to accepting new bids.
- 5) Mullaney failed to retain a Procurement Record as set forth in the Fund's Procurement Guideline. The absence of such record made it impossible to definitively determine who was solicited, who responded, what the responses were, if there were any questions pertaining to the RFQ, the nature of communications with bidders, if any, and justifications for decisions rendered, including granting approvals for changes in items ordered.
- 6) [REDACTED] initial response to the RFQ could have been deemed to be non-responsive but Mullaney permitted [REDACTED] to submit multiple quotes as well provide samples. There is no evidence that the same opportunity was offered to other bidders. Consequently, Mullaney's actions compromised the integrity of the procurement process.
- 7) Prior to awarding the contracts, Mullaney visited [REDACTED] at his Office alone. While Mullaney may have done so in an effort to verify the legitimacy and capability of the vendor, the fact that he had visited alone poses a corruption hazard, and creates the appearance of impropriety.
- 8) The Fund exercised no oversight of the contracts it awarded. There was clearly an absence of communication and coordination of efforts in organizing the 2014 Night of Champions. The Fund could not account for what was received nor could it verify with Yonkers Raceway what was delivered. More importantly, the relationships amongst the relevant parties were so dysfunctional that it impaired the ability of the Fund to operate effectively and efficiently. The dysfunction was such that each party was waiting for the other to fail in their endeavors. A prime example is the lack of communication between the Fund, HHB, and Yonkers Raceway regarding the shortage of t-shirts delivered.
- 9) Both OIA audits of the Fund noted many deficiencies in the Fund's internal controls. This review of the Fund's procurement practices and business records support OIA findings. The absence of operational policies and procedures, as well as the failure to

adhere to existing ones, coupled with the lack of records and proper management of the Fund's operation create serious corruption hazards.

In sum, although there was no evidence of criminal conduct, this investigation revealed that Mullaney engaged in procurement practices that were contrary to the Fund's policies and which impaired the integrity of the process. Mullaney issued two Requests for Quotations that were significantly flawed in that they did not contain a bid closing date. Moreover, after Mullaney announced that bids were no longer accepted, he contradicted himself and advised [REDACTED] that he was still willing to consider new bids. The integrity and transparency of the procurement process was further compromised by the absence of a procurement record and clear documentation of the process.

Mullaney also failed to maintain proper documentation of the Fund's operations including expenditures. OIA's audit and this Office's review found that records documenting the Fund's operation were sparse and maintained haphazardly. The problems created by an absence of records were also compounded by the dysfunctional work environment created by Mullaney. Specifically, Mullaney did not speak to his [REDACTED] who is one of two employees of the Fund. Mullaney also did not speak to [REDACTED] [REDACTED] of the Fund's primary vendor, HHB. This lapse in communication is also the reason the discrepancy in t-shirts delivered was not timely or appropriately addressed.

Origin of Case:

On October 10, 2014, Robert Williams, Executive Director, contacted this assigned and advised that a recent review of status reports provided by the Office of Internal Audits ("OIA") indicated that there were several questionable expenses incurred by the Agriculture and New York State Horse Breeding Development Fund ("the Fund") and its' former Executive Director, Michael Mullaney, including the award of a contract to a vendor that may be related to the [REDACTED] for the Fund.

Subsequently, on October 14, 2014, Ron Ochrym, Acting Director for Division of Horse Racing & Pari-Mutuel Betting and Commissioner Mark Gearan's designee on the Fund's board, contacted this assigned and reported some of the same concerns. Specifically, Ochrym stated that an exit audit of the Fund revealed that Mullaney had not paid his health insurance premium and that he was seeking to be paid for annual leave balances to which he may not be entitled.

Nature of Allegation:

Upon the voluntary resignation of Mullaney, an audit of the finances of the Fund conducted by OIA indicated that there were four primary areas of concern. Specifically, the concerns involved purchases made on the Fund's corporate credit card; the absence of health insurance premium deductions from Mullaney's pay; time and leave discrepancies which indicate that Mullaney may have been improperly credited for 17 days of work; and the awarding of a contract post bid deadline to a vendor who may be related to [REDACTED] the Fund's [REDACTED]

Investigative Action:

In furtherance of this investigation, Gaming Commission and Fund records were obtained and reviewed, and thirteen (13) interviews were conducted including, but not limited to, current and former employees of the Gaming Commission, the Fund, Yonkers Raceway, and vendors to the Fund. Additionally, Sandy Meadows, Senior Auditor was cross-designated to serve as an auditor with this Office for the sole purpose of assisting with the review of the procurement process and award of contract to [REDACTED] the vendor allegedly related to [REDACTED]

As noted above, OIA was responsible for the exit audit of the Fund and had completed its review in many of the areas when this Office learned of the alleged misconduct. Since OIA was also prepared to render its' preliminary findings, and in an effort to ensure the most efficient and effective use of limited resources, it was decided that the health care premium and annual leave issues would be addressed by OIA, and that this Office would conduct a review of the procurement issue.² Nonetheless, this Office reviewed relevant documents regarding payroll

¹ Although [REDACTED] he is assigned to assist the Fund with managing its' finances, including bookkeeping, payment of invoices, reconciliation of bank records, and payroll.

² OIA review and preliminary findings indicated that many of the problems noted were directly attributable to deficiencies in internal controls, absence of procedures, lack of staff knowledge, and improper management. See also, [REDACTED] annexed hereto as Exhibit "1" for additional information. This Office's review of the Fund's operation also corroborated these findings.

deductions and time and leave, and questions were posed to individuals interviewed by this Office regarding those matters when appropriate.

It should be further noted that in July of 2014, OIA had completed an audit of the Fund's corporate credit card account (which was one of the cited areas of concern) and found many deficiencies with the Fund's credit card policies and procedures, internal controls, and practices. See, IA #T14-02 annexed hereto as Exhibit "2." Similarly, this Office also reviewed the credit card transactions and related documents. This review did not yield any evidence of misconduct, and instead, noted the same deficiencies found by OIA.

Harness Fund Procurement Policy

According to the Fund's Guidelines for Procurement Contracts ("the Guideline"), which is also incorporated into its' By-Laws, purchases up to the discretionary buying threshold³ must be properly documented and include justification for the selection of the vendor and the reasonableness of the price. Section 6(B)(i) of the Guideline also lists methods for determining reasonableness that may be considered including, but not limited to, informal quotes (e.g., telephone or written); cost to other governmental entities; historical cost or price comparison; or prices that are more favorable than OGS negotiated contracts.

Furthermore, the Fund is to "document in the Procurement Record the basis for the conclusion that the price is reasonable." See, Guideline for Procurement Contracts Section 6(B)(i) annexed hereto as Exhibit "3." The Guidelines also indicate that if the Fund anticipates expending \$5-\$15,000 within a twelve (12) month period on the same type of purchases, the Fund must advertise in the Contract Reporter on a quarterly basis and must consider the vendors who respond to the advertisement.

Lastly, Pursuant to Section 7 of the Guideline, the Executive Director or his designee has the day-to-day responsibility and oversight regarding the awarding and monitoring of procurement contracts.

Night of Champions - September 2014

The Fund provide purses for the New York Sire Stakes races, which are held at the State's seven pari-mutuel harness tracks, the Goshen Historic Track, and County Fair tracks. There are three tiers to harness racing in New York, namely, Sire Stakes, Excelsior, and County Fair; with the most prestigious and competitive tier being the Sire Stakes. The top horses in each of the eight divisions in Sire Stakes compete in the grand finale of the racing season, also known as Night of Champions. The September 2014 Night of Champions event was held at Yonkers Raceway, and a reported \$1.8 million in purses were being offered that night.

In addition to the purses, the Fund also distributed promotional items to owners, trainers, breeders, and others who were invited to attend a cocktail party in celebration of the evening.

³ The dollar threshold is \$50,000 unless buying from a Preferred Source at which time the threshold is increased to \$100,000.

For the 2014 event, long sleeve t-shirts and canvas tote bags were purchased by the Fund for distribution. Michael Mullaney, the former Executive Director for the Fund, was responsible for the procurement of the promotional items. The t-shirts and tote bags were purchased from [REDACTED], whose principal owner [REDACTED] was allegedly related to [REDACTED]. It was further alleged that the procurement process utilized to award the contract was flawed in that [REDACTED] bid was accepted by Mullaney even though it was submitted after the bid closing date.

Procurement Process

It should be noted that efforts to reconstruct the procurement process utilized by Mullaney was challenging as documents pertaining to the selection of the vendor and justification for the award were sparse, and not maintained in a comprehensive file or "Procurement Record" as set forth in the Fund's Procurement Guideline. Further, communications between Mullaney and [REDACTED] as well as other vendors, were not retained or otherwise properly documented. A review of Mullaney's email account and computer however, yielded a limited number of documents pertaining to the contract. Interviews of Fund staff members also provided limited information, as Mullaney did not consistently include his staff in the process or keep them apprised of developments.

Request for Quotations

On July 31, 2014, Mullaney sent an email to [REDACTED] and requested that she work with [REDACTED] of Harness Horse Breeders of New York State ("HHB"), and vendor to the Fund, to determine what was needed for the Night of Champions event as well as to set forth the terms for the Request for Quotations ("RFQ") to be issued for promotional items.⁴ The email chain between Mullaney, [REDACTED] and [REDACTED] revealed that [REDACTED] advised Mullaney that she had already provided a draft of an RFQ to him in an earlier email and included information on companies interested in bidding. [REDACTED] further indicated that one of the companies listed was provided by [REDACTED] and noted that if the vendor was related to [REDACTED] then the potential for a conflict of interests existed. Mullaney responded to [REDACTED] "We probably don't want anyone's relatives involved. What say you pass along the RFQ, as well as the names of those contacted. Again, we just need specifics on sizes, colors, etc. We will handle the RFQ and ordering. Thanks." See, Email dated July 31, 2014 annexed hereto as Exhibit "4."

RFQ for Tote Bags & T-Shirts

Thereafter, in an email dated August 1, 2014, Mullaney issued a RFQ for 250 tote bags to be delivered to Yonkers Raceway by August 22, 2014. The RFQ noted that any questions regarding the matter must be received by 3 pm on August 5, 2014 but did not specify a deadline for submission of the bid. It is unclear, however, who was solicited for this contract as there is

⁴ HHB is contracted to provide administrative services to the Fund including but not limited to preparing the racing schedule, management and tracking of purses, invoicing and collection of registration fees, management of grants, drafting of eligibility requirements, administering and maintaining website tracking eligible horses, production of Stallion Directory, and organizing annual USTA and Night of Champions Award Banquets.

no documentation, electronic or otherwise, which clearly demonstrates who received the RFQ. See, Email dated August 1, 2014 annexed hereto as Exhibit "5."

The RFQ for the t-shirts was issued in similar fashion. According to the email also dated August 1, 2014, Mullaney issued an RFQ for 400 t-shirts to be delivered to Yonkers Raceway before September 5, 2014. The RFQ noted the deadline for submission of questions to be the same day, specifically by 3pm on August 1, 2014. However, Fund records indicate that the email was sent at 3:48 p.m. and that the deadline for submission of questions had lapsed before any of the vendors even received the RFQ. This RFQ also did not specify a deadline for submission of a bid. Moreover, it is unclear who was solicited for this contract as there is no documentation, electronic or otherwise, which clearly demonstrates who received the RFQ. See, Email dated August 1, 2014 annexed hereto as Exhibit "6."

Subsequent Notice of Deadline for RFQ

As noted above, there were no deadlines for bid submissions contained in either of the RFQs issued by Mullaney. The only evidence that a bid deadline was imposed is contained in an email dated August 6, 2014 which Mullaney sent to nine vendors. The email simply stated:

Good Morning, You may recall that the Agriculture and New York State Horse Breeding Development Fund last week issued RFQs for production of promotional tote bags and t-shirts. Please accept this message as notice that quotations will not be accepted after noon today August 5. Thank you for your interest.

See, Email dated August 6, 2014 annexed hereto as Exhibit "7."

Although the date cited in the email (August 5) had already passed when it was sent, one could reasonably infer that Mullaney meant noon that day to mean August 6, and not August 5. Nonetheless, despite announcing that bids were no longer being accepted, Mullaney informed █████ on August 7, 2014, that he was willing to review other proposals. See, Email dated August 7, 2014 annexed hereto as Exhibit "8."

Bids Received

As a result of the lack of a comprehensive procurement record/file, this Office could not definitively determine which of the nine vendors responded to either of the RFQs. A document titled Promotional Tracking created August 6, 2014 by Mullaney merely indicated that nine vendors were solicited for the t-shirts and tote bags and that four bids were received for each item. The document did not state which vendor responded, what date they responded, or the price quote that was submitted. See, Document annexed hereto as Exhibit "9."

Documents obtained from the Fund demonstrate that four vendors submitted bids for the tote bags, and are as follows:

<u>DATE</u>	<u>VENDOR</u>	<u>PRICE</u>
N/A	[REDACTED]	\$2870.00 (\$11.48 x 250) + \$275.00 S&H = \$3,145.00
August 5, 2014	[REDACTED]	\$3715.00 (\$12.90 x 288) + \$65.00 (Screen and proof charge) + \$259.00 S&H = \$4039.20 ** It is unknown why quantity is 288 and not 250. If calculated at 250 x \$12.90 = \$3,225.00 + \$65.00 + \$259.00 =\$3,549.00
August 6, 2014 @ 11:38 am	[REDACTED]	\$2087.50 (\$8.35 x 250) + \$105.35 S&H = \$2192.85
August 6, 2014 @ 9:57 am	[REDACTED]	\$2160.00 (\$8.64 x 250) + \$213.23 S&H = \$2373.23

Based on the bids submitted, and absent any documentation regarding justification of the bid and price, [REDACTED] appears to have been the lowest bidder and should have been awarded the bid. Nonetheless, in an email dated August 8, 2014, Mullaney advised [REDACTED] of [REDACTED] "on arrival of certification that [REDACTED] is] a federally recognized "women owned business. Please accept this as notification that the Agriculture and NYS Horse Breeding Development Fund has awarded you the contract..." See, Email dated August 8, 2014, annexed hereto as Exhibit "10." [REDACTED] did not provide a certification to the Fund, but he had previously emailed a screen shot of the company's profile as it appeared on GSAContractswon.com, a website which lists vendors to the federal government, to Mullaney. See, Email dated August 6, 2014 annexed hereto as Exhibit "11."

As it pertains to the t-shirts, documentation for only three bids was found even though Mullaney's Promotional Tracking document indicates that four responses were received. The three vendors that responded are as follows:

<u>DATE</u>	<u>VENDOR</u>	<u>PRICE</u>
August 6, 2014 @ 11:05 a.m.	[REDACTED]	Short Sleeve T-shirts: \$1790.71 (\$4.477 X 400) + \$172.66 S&H = \$1963.37 Long Sleeve T-Shirts - \$3112.66 (\$7.781 X 400) +

⁵ In [REDACTED] email to Mullaney, which contained his bid, [REDACTED] apologized for the late submission and stated that [REDACTED] During [REDACTED] interview with this Office, however, he explained that he had read the RFQ quickly and thought that the deadline for questions was the bid deadline and it was not until he had reviewed the email during his interview did he realize that there was no bid deadline listed.

<p>August 4, 2014</p>	<p>[REDACTED]</p>	<p>\$190.42 S&H = \$3303.08</p> <p>Short Sleeve T-shirts: \$1668.00 (\$4.17 X 400) + \$104.63 S&H = \$1772.63</p> <p>Long Sleeve T-Shirts - \$2320.00 (\$5.80 X 400) + \$128.00 S&H = \$2448.00</p>
<p>August 6, 2014 @ 10:12 am</p>	<p>[REDACTED]</p>	<p>Short Sleeve T-shirts: \$1328.00 (\$3.32 X 400) + \$0.00 S&H = \$1328.00</p> <p>Long Sleeve T-Shirts - \$2324.00 (\$5.81 X 400) + \$0.00 S&H = \$2324.00</p>

[REDACTED] initially submitted a quote just for the short sleeve t-shirts which included only one color and a single print on one location. Thus, [REDACTED] response could have been deemed to be non-responsive since the RFQ specifically requested quotes for both short and long sleeve t-shirts and indicated that logos were to be printed on the back as well as the front of the shirt. Nonetheless, on August 6, 2014 at 3:30 p.m., Mullaney emailed [REDACTED] and requested a quote for long sleeve t-shirts and [REDACTED] initially responded that it would cost \$5.61 per t-shirt. [REDACTED] also added that he did not have the color that the Fund sought, but did have something similar. Mullaney then requested to see samples of the shirt. [REDACTED] indicated that he would send samples to the Fund's office via mail and that it would take two days to arrive, but that he would also drop by the Fund's office to show a sample of their printed work the next day. There is no evidence that other vendors was asked to provide samples, or that other vendors were given the opportunity to do so.

On that same date, Mullaney informed [REDACTED], [REDACTED] and [REDACTED], a member of the Fund's Board, via email that bids were no longer being accepted for the promotional items and that he wanted to see the products of one particular vendor before committing to an award. Further, Mullaney inaccurately represented that this particular vendor's quote was "significantly under the competition for both bags and shirts [sic]." See, email dated August 6, 2014 annexed hereto as Exhibit "12." The following day, on August 7, 2014, [REDACTED] brought samples to the Fund and thereafter revised his quote to \$5.81 per t-shirt. On August 8, 2014, [REDACTED] was awarded both bids. See, Exhibit "10." On August 19, 2014, [REDACTED] emailed Mullaney and advised that there was a problem with the stock for the tote bag selected, and that he could substitute a similar bag, which was more expensive, for the same price. Later that day [REDACTED] sent Mullaney another email advising of shipping and delivery dates for the tote bags and t-shirts. On August 20, 2014, Mullaney merely responded "Wow. Great job [REDACTED]" See, Email chain annexed hereto as Exhibit "13."

It should be noted that [REDACTED] had submitted a bid of \$2192.85 for the tote bags which is \$255.15 less than what [REDACTED] quoted. Therefore, the Fund could have purchased the tote bags from [REDACTED] and t-shirts from

██████████ and saved on the difference. ██████████ however, would have been the lowest bidder if the Fund was seeking to purchase the promotional items from just one vendor. Absent any documentation regarding justification though, it is unclear why Mullaney decided to award both contracts to ██████████

Delivery to Yonkers Raceway

Individuals interviewed provided varying accounts of what items were delivered to Yonkers Raceway, and when. According to the terms of the RFQ, both the tote bags and the t-shirts were to be delivered to Yonkers Raceway before September 5, 2014. On August 19, 2014, ██████████ informed Mullaney that the tote bags would arrive at Yonkers Raceway by August 22, and that the t-shirts would arrive on August 28th. See, Exhibit "13."

The requisite number of tote bags was delivered to Yonkers although witnesses could not definitively state when they were delivered. Shipping records provided by ██████████ indicate that the tote bags were timely delivered and arrived at Yonkers Raceway on August 21, 2014. There is a dispute, however, regarding how many t-shirts were delivered the following week.

In sum, the contract called for 400 t-shirts to be delivered, but the Fund claims that there was a shortage of approximately 128 X-Large t-shirts (valued at \$743.68 (\$5.81 X 128) in the shipment. ██████████ produced shipping records that indicate that 6 boxes reportedly containing 400 t-shirts were delivered to Yonkers Raceway and signed for on August 28, 2014. Since the t-shirts were shipped directly to Yonkers Raceway, no one from the Fund could attest to the shipment, and Yonkers Raceway could not provide any insight as to what was delivered.⁶

More troubling though is the lack of communication between all the parties involved in the event, namely, the Fund, HHB, and Yonkers Raceway. When the shortage was noted by ██████████ Yonkers Raceway employee, she informed ██████████ of HHB.⁷ ██████████ reported that she advised ██████████ to contact Mullaney directly regarding the problem since he was responsible for the procurement. Contrary to what ██████████ reported, ██████████ stated that she was informed by ██████████ that she ██████████ would advise the Fund of the problem. When asked why she did not contact Mullaney at the outset, ██████████ responded that she only exchanged emails with Mullaney once or twice early on and did not maintain communication with him. ██████████ added that since she usually dealt with ██████████ on such matters, she called ██████████. Needless to say, no one informed the Fund of the shortage prior to the event so that remedial action could be taken.

⁶ The items in question were received by Yonkers Raceway personnel, briefly stored, and then transported to its Public Relations office for handling. Although the tracking document produced by ██████████ indicated that someone named ██████████ signed for the boxes, ██████████ Yonkers Raceway, did not recognize the name. Thus, no one involved with the event could affirmatively state when the items were delivered and what was received.

⁷ Although Yonkers Raceway and ██████████ are not under any obligation to prepare and distribute promotional items, ██████████ has routinely volunteered to undertake the task for the Night of Champions events. In the past, Yonkers Raceway also added its own promotional items to the gift bags and did so again for the 2014 event.

Approximately four days after the event, █████ suggested to █████ that she contact █████ and tell █████ of the problem. The fact that the Fund had to be prompted to address the matter is troubling in itself as it demonstrates a complete lack of management and oversight. Moreover, by this time Mullaney had resigned from the Fund and it was left to others to reconstruct what transpired and agreed upon as no one else in the Fund was consistently involved in organizing the event or the related procurement. The delay in reporting the problem prevented anyone from being able to conclusively determine if the boxes were indeed delivered, missing, or misplaced since tracking records for the boxes had been discarded by this time and █████ could no longer make a meaningful inquiry with UPS.

Key Interviews

According to █████ of HHB, the Night of Champions event was historically organized and managed by HHB. She explained that HHB, in consultation with the Fund, would prepare the RFQ, solicit vendors, and with the approval of the Fund, place the orders. The items purchased would be delivered directly to Yonkers Raceway and the public relations department personnel for Yonkers Raceway (i.e., █████) would prepare gift bags to be distributed to guests. █████ stated that she helped Mullaney draft the RFQ and provided names of interested vendors. She further stated that Mullaney sent emails to her and █████ requesting that they work on the procurement together but they were never tasked to do anything.

█████ recalled being included in an email chain involving █████ and learning that Mullaney was holding off on awarding the contract so he could examine samples █████ was bringing to him. She added that the opportunity to submit samples should have been offered to other vendors as well. █████ cited problems with the bid closing date, believing that █████ bid was submitted late, but added when she asked Mullaney if other vendors could still submit a bid, he responded in the affirmative. █████ further stated the items initially selected were substituted for inferior products by █████.

█████ stated that she believed that █████ was a friend of █████ although he denied this. She further stated that █████ had sought payment on half of the █████ invoice (HHB had agreed to pay one-third of the cost of the t-shirts since the HHB logo was also printed on the t-shirt) from HHB because he knew that the Fund's payment to █████ was under review and payment from the Commission would be delayed. She added that although HHB agreed to share the costs, the issue of missing t-shirts remained unresolved. Thus, absent an agreement on the outstanding balance, HHB would not remit their portion.

Additionally, █████ commented on the Fund's operation and stated that working with the Fund has been challenging these past few years. She cited numerous factors including the frequent turn over in executive administration, the absence of knowledgeable staff, a lack of communication, and poor record keeping practices by the Fund. Moreover, the fact that Mullaney refused to speak to her made the task all the more difficult.⁸

⁸ █████ stated that Mullaney refused to speak with her after she told him that she could not help him prepare the Fund's annual report. █████ explained that she had requested financial information from Mullaney which he failed to provide. As the deadline for the report loomed closer, █████ was not confident that she would be able to produce the report and advised Mullaney of such.

██████████ stated that HHB had historically managed the Night of Champions event including the purchasing of promotional items, and she would usually assist with the set up and greeting of the guests. For the 2014 event, however, Mullaney insisted on issuing the RFQ, and although she was asked to work with ██████████ in organizing the event, she did not know the terms of the RFQ, who was solicited, or who responded. ██████████ stated that she only learned of who was awarded the RFQ when the vendor came to the Fund's office with samples. She added that she knew the vendor, ██████████ as she had met him a year earlier. At that time, ██████████ had informed ██████████ that ██████████ was his "buddy." According to ██████████ she advised Mullaney that the Fund needed to use a MWBE certified vendor thus, they opted not to use Souders that year.

██████████ also echoed that the bid ██████████ submitted was late, and although she did not see the RFQ, Mullaney had verbally informed her of the bid closing date so she could anticipate delivery of the items. ██████████ stated that only 180 of the 250 tote bags were prepared for distribution because of a shortage in t-shirts. She explained that she had discussed the problem with ██████████ who initially agreed to provide 75 more t-shirts but then reneged, purportedly because he had a conversation with ██████████ who advised him that it was unfair for him to bear the cost of the missing t-shirts. The issue of the missing t-shirts remains unresolved.

██████████ stated that although she was ██████████ she was marginalized and excluded from much of the Fund's activities. In fact, ██████████ reported that Mullaney did not speak to her.⁹ She added that Mullaney did not maintain any records documenting the operation of the Fund and that she took it upon herself to make copies of any correspondence or documents that she came across.

This Office also interviewed ██████████ ██████████ of ██████████ regarding the contracts he was awarded, as well as his relationship to ██████████ stated that he and ██████████ had been in the business for 27 years and acquired the ██████████ name on or about 2003.¹⁰ He purchased the business from ██████████ and ██████████ ██████████ explained that he did not know any of the principal owners prior to purchasing the business, and that he was approached by ██████████ regarding the sale. He stated that he did not maintain any contact with the ██████████ or ██████████ following the purchase and did not meet ██████████ until he was awarded the 2014 Night of Champions contracts.

██████████ stated that in 2013, ██████████ contacted him and advised that the Fund was seeking to purchase 4000 hats, and asked if he was interested in bidding. ██████████ further stated that he submitted a bid but was not awarded a contract. More recently, ██████████ contacted him again and asked if he was still interested in bidding for a contract to provide promotional items to the Fund. ██████████ informed him that Mullaney was responsible for the procurement and that he

⁹ ██████████ stated that for the first six months her relationship with Mullaney was good but started to deteriorate thereafter. She explained that Mullaney was upset with her because she would not comply with his directive to keep ██████████ out of the Fund's office and instead, told Mullaney that he should tell ██████████ himself if he did not want her there.

¹⁰ According to New York State Department of State records, the initial corporate filing date for ██████████ was April 8, 2002.

should speak directly to him. [REDACTED] contacted Mullaney and subsequently submitted a bid. Following his submission, he provided samples of his product and Mullaney visited him at his office. [REDACTED] speculated Mullaney was simply trying to verify that his business was legitimate.

When questioned about the changes in product and prices quoted, [REDACTED] stated that there was an issue with the stock for the tote bag initially selected thus he substituted the item with a more expensive tote bag at his own expense. As for the increase in cost for the t-shirts, [REDACTED] explained that the t-shirt ultimately selected was of a better quality than originally sought so the quoted price was adjusted to reflect such. More importantly, all the cited changes were made with Mullaney's approval.

When asked about the discrepancy in the number of t-shirts delivered to Yonkers Raceway, [REDACTED] produced invoices and packing slips from his manufacturer and print shop, as well as delivery tracking slips that indicated six boxes containing 400 t-shirts were delivered, and not just the four boxes that [REDACTED] recalled receiving. [REDACTED] speculated that two boxes which contained the missing 128 t-shirts were probably misplaced at Yonkers Raceway.

[REDACTED] expressed his frustration with being made aware of the shortage days after the event when his ability to trace the "missing" boxes was compromised because Yonkers Raceway personnel had already discarded the tracking slips for the boxes they acknowledged receiving. [REDACTED] stated that he spoke with [REDACTED] and [REDACTED] in an effort to determine what happened to no avail. Reportedly, [REDACTED] was aware of the shortage but never reported it to Mullaney because she claimed it was not her responsibility to do so. [REDACTED] initially negotiated replacing 75 of the missing t-shirts with [REDACTED] but reneged after reportedly speaking with [REDACTED] who advised him that he should not bear the cost of the Funds negligence.¹¹ [REDACTED] added that he offered to split the cost of the missing t-shirts with the Fund but has not received a response from [REDACTED]. To date, [REDACTED] invoices for the tote bags and t-shirts have not been paid by the Fund.

[REDACTED] stated that he has been assigned to assist with the Fund on a part time basis since February 2013. [REDACTED] where he is responsible for reviewing quarterly and year end reports for NYRA and OTB, and for monitoring simulcast rights. [REDACTED] does not possess any special certifications, nor does he have any experience with accounts receivable, accounts payable, or audit functions.

[REDACTED] stated that he was not informed specifically of what his duties would be at the Fund nor did he receive any training, although he did meet with the Fund's former accountant for about a week to discuss practices. [REDACTED] explained that his current responsibilities include recording deposits, managing accounts payable, preparing the annual report to the Comptroller's Office, preparing quarterly payroll reports, and is also involved in the WMBE initiative for the Fund. He credits himself with making the Fund more efficient and for streamlining practices, although he could not say whether the financial practices of the Fund were the norm or consistent

¹¹ [REDACTED] denied ever advising [REDACTED] of such and stated that she merely informed him of the items she received and directed him back to the Fund to address the issue of payment.

with the Commission's or the former Racing and Wagering Board since he has never worked in such a capacity.

██████████ was also asked about the Fund's practice as it related to Accounts Payable and he stated that as long as Mullaney approved the expenditure he paid it even in the absence of supporting documents. When questioned further about controls to ensure that expenditures were legitimate, ██████████ stated that there were none and commented that as long as the expenditure was approved by the executive director, he didn't think it was problematic. Although ██████████ lacked experience in this area, it is disconcerting to find that ██████████ was not concerned that the person making the expenditures was also approving its payments. Additionally, ██████████ stated that he was not involved in procurement for the Fund and was unaware of any policies and procedures to ensure separation of duties or a system of checks and balances. ██████████ statements clearly demonstrate the absence of internal controls and the lack of necessary knowledge and skills to properly maintain the Fund's fiscal operations.

As it pertains to the 2014 Night of Champions event, ██████████ stated that in an effort to keep with the Governor's goal to "Buy NY" he suggested ██████████ which he knew to be a local vendor, to Mullaney. He explained that HHB routinely purchased promotional items from an out-of-state vendor that had ties to the organization.¹² Further, he stated that he knew of ██████████ because his father, ██████████ was formerly a principal owner of the business until 1999, when he sold his interest to ██████████ ██████████ stated that his father received payments from ██████████ for two years as a result of the sale, but thereafter his family had no financial interest in the company, nor did they remain in contact with ██████████ ██████████ added that he might have met ██████████ once or twice during contract negotiations.

According to ██████████ Mullaney asked him to provide contact information for ██████████ which he obtained via an internet search. He called ██████████ to alert him that Mullaney would be contacting him and indicated that this would be a good opportunity for his company. ██████████ reportedly recognized the ██████████ name and thanked him for the recommendation. ██████████ denied providing ██████████ with any assistance or guidance with the bid. ██████████ stated that he received a call from ██████████ advising that he was awarded the bid, and thereafter one or two more calls about the outstanding invoices.

██████████ stated that when ██████████ and ██████████ had commented that ██████████ was a relative, he explained to them he did not know him and had only met him once or twice prior. He further stated that the matter became a running joke within the Fund and that even a board member had commented about it to him. ██████████ stated that Mullaney had asked him if he would benefit from ██████████ receiving the contract and he informed Mullaney in no uncertain terms that he would not. Mullaney even obtained an opinion from the Commission's Ethics Officer which upset him because he did not have a relationship with ██████████ or ██████████ and deemed the opinion unnecessary. This Office was able to confirm that ██████████ the former Ethics Officer for the Commission, rendered an opinion that there were no conflicts as ██████████ was not involved in the procurement process.

¹² ██████████ could not recall the name of the vendor, but a review of contracts that the Fund awarded in the past indicate that ██████████ the principal owner of ██████████ MA., is a NYS registered harness horse breeder. Additionally, ██████████ has regularly entered horses in the Sire Stake races since 2007.

This Office also conducted a search of the Lexis-Nexis Accurint database in an effort to determine if there were any other commonalities between [REDACTED] and [REDACTED]. That search yielded negative results.

Lastly, [REDACTED] stated that he has communicated with [REDACTED] and/or [REDACTED] (the billing company for [REDACTED] regarding the outstanding invoices. He was able to determine after conversations with others in the Fund and Commission that the invoice was under review as there is a dispute as to what was received. [REDACTED] stated that he had advised [REDACTED] of the same.

It should also be noted that efforts to interview Mullaney were made to no avail. When Mullaney, who is currently employed in Florida, was reached by telephone, he declined to speak with this Office further without having the opportunity to consult with an attorney. Mullaney was advised to contact this Office again after either speaking to, or retaining counsel. To date, Mullaney has not contacted this Office.

The Role of the Executive Director

A review of the job description for the Fund's Executive Director position and the contractual obligations of HHB reveal that many of the Executive Director's responsibilities are currently being fulfilled by HHB. According to the 2014 contract, HHB is responsible for:

- Coordinating and implementing promotional activities;
- Coordinating and conducting educational seminars;
- Coordinating trade show/exhibits;
- Development of annual Stallion Directory for NYSS eligible stallions;
- Planning and implementing the Night of Champions Reception;
- Planning and implementing the Fund's Annual Awards Banquet;
- Mailing of payments;
- Collection of payments;
- Stallion registrations;
- Mares bred list;
- Breeders Awards;
- Residents Mares;
- Shipped semen reports;
- Scholarship races;
- Sire Stakes races;
- Advertising;
- Website;
- Statistics; and
- Consulting services.

The obligations stated above encompassed more than half of the stated duties of the Executive Director. See, Executive Duties and 2014 HHB contract annexed hereto as Exhibit

“14.” The overlapping duties of the Executive Director and HHB raise questions about the efficiency and economy of such an arrangement.

Internal Audit Reports [REDACTED] & T14-02

As noted earlier, OIA has examined and reviewed much of the Fund’s operation and determined that there were serious deficiencies with the Fund’s fiscal and operational policies and internal controls. This Office’s review of the Funds practices corroborate those findings (i.e., appropriate documentation, separation of duties, etc.) and note that significant corruption hazards exist if left uncorrected. Moreover, the dysfunctional relationships amongst the staff and its primary vendor, HHB, further contribute to these risks since there is a clear absence of communication and common purpose throughout the Fund. Both OIA reports (T14-02 and [REDACTED]) contained recommendations made to the Fund which would address many of the concerns.

Findings:

This investigation determined the following:

- 1) [REDACTED] has no familial relationship to [REDACTED] of [REDACTED]. [REDACTED] purchased the [REDACTED] name from [REDACTED] father in or about 2002. [REDACTED] was one of three principal owners of the business at that time. Both [REDACTED] and [REDACTED] stated that they did not know each other before the sale of the business, and did not maintain any contact following the sale.
- 2) [REDACTED] was not involved in the procurement process, and Mullaney took appropriate measures in seeking guidance from the Commission’s Ethics Officer.
- 3) Both RFQs issued by Mullaney were seriously deficient in that they did not contain a bid closing date, in violation of the Fund’s procurement policy. The RFQs issued by Mullaney contained a deadline for questions only (although the deadline for questions for the T-shirts RFQ lapsed by time he issued it) and did not specify a bid deadline date.
- 4) Mullaney continued to accept bids for consideration even after he formally announced via email that bids were no longer accepted. Mullaney’s actions not only violated the Fund’s procurement policy but also compromised the integrity of the procurement process. On August 7th, a day after Mullaney formally announced to vendors via email that he was no longer accepting bids he informed [REDACTED] that he was open to accepting new bids.
- 5) Mullaney failed to retain a Procurement Record as set forth in the Fund’s Procurement Guideline. The absence of such record made it impossible to definitively determine who was solicited, who responded, what the responses were, if there were any questions pertaining to the RFQ, the nature of communications with

bidders, if any, and justifications for decisions rendered, including granting approvals for changes in items ordered.

- 6) [REDACTED] initial response to the RFQ could have been deemed to be non-responsive but Mullaney permitted [REDACTED] to submit multiple quotes as well provide samples. There is no evidence that the same opportunity was offered to other bidders. Consequently, Mullaney's actions compromised the integrity of the procurement process.
- 7) Prior to awarding the contracts, Mullaney visited [REDACTED] at his Office alone. While Mullaney may have done so in an effort to verify the legitimacy and capability of the vendor, the fact that he had visited alone poses a corruption hazard, and creates the appearance of impropriety.
- 8) The Fund exercised no oversight of the contracts it awarded. There was clearly an absence of communication and coordination of efforts in organizing the 2014 Night of Champions. The Fund could not account for what was received nor could it verify with Yonkers Raceway what was delivered. More importantly, the relationships amongst the relevant parties are so dysfunctional that it impaired the ability of the Fund to operate effectively and efficiently. The dysfunction was such that each party was waiting for the other to fail in their endeavors. A prime example is the lack of communication between the Fund, HHB, and Yonkers Raceway regarding the shortage of t-shirts delivered.
- 9) Both of OIA's reviews of the Fund noted many deficiencies in the Fund's internal controls. This Office's review of the Fund's procurement practices and business records supports OIA findings. The absence of operational policies and procedures, as well as the failure to adhere to existing ones, coupled with the lack of records and proper management of the Fund's operation create serious corruption hazards.

Conclusions & Recommendations:

As a result of the above findings, it is recommended that this case be closed as partially substantiated. This investigation revealed that Mullaney engaged in procurement practices that were contrary to the Fund's policies and which impaired the integrity of the process. Mullaney issued two Requests for Quotations that were significantly flawed in that they did not contain a bid closing date. Moreover, after Mullaney announced that bids were no longer accepted, he contradicted himself and advised [REDACTED] that he was still willing to consider new bids. The integrity and transparency of the procurement process was further compromised by the absence of a procurement record and clear documentation of the process.

Mullaney also failed to maintain proper documentation of the Fund's operations including expenditures. OIA's audit and this Office's review found that records documenting the Fund's operation were sparse and maintained haphazardly. The problems created by an absence of records were also compounded by the dysfunctional work environment created by Mullaney. Specifically, Mullaney did not speak to [REDACTED] who is one of two employees of

the Fund. Mullaney also did not speak to [REDACTED] [REDACTED] of the Fund's primary vendor, HHB. This lapse in communication is also the reason the discrepancy in t-shirts delivered were not timely or appropriately addressed.

Accordingly, the following is recommended:

- 1) All personnel involved in procurement should receive proper training regarding Fund procurement practices and policies;
- 2) The Fund should adopt additional policies and procedures as recommended by OIA to ensure transparency and accountability (i.e., permissible contact, proper documentation);
- 3) The Board should negotiate a settlement with [REDACTED] to resolve outstanding balances;
- 4) The Board should evaluate the roles of the Executive Director vis-à-vis its primary vendor HHB and determine what would be most effective and efficient for the operation of the Fund; and
- 5) This matter should be properly documented in Mullaney's personnel file in the event he seeks employment with the Fund again.