



**NEW YORK STATE THRUWAY AUTHORITY
NEW YORK STATE CANAL CORPORATION**



MINUTES

GOVERNANCE COMMITTEE MEETING NO. 11

September 22, 2010

Minutes of a meeting of the New York State Thruway Authority/Canal Corporation Governance Committee, held in the Board Room at Administrative Headquarters, 200 Southern Boulevard, Albany, New York 12209.

The meeting began at 10:25 a.m.

The following Members of the Governance Committee were present, constituting a quorum:

Present:

Chairman John L. Buono, Governance Committee Member (ex officio)

Donna J. Luh, Governance Committee Member

Brandon R. Sall, Chair, Governance Committee

Richard N. Simberg, Governance Committee Member

In addition, the following staff were present:

Michael R. Fleischer, Executive Director

Kevin Allen, Director, Bureau of Purchasing

Wendy Allen, Deputy Chief of Staff

John Bryan, Chief Financial Officer

William Estes, General Counsel

Jonathan Gunther, Assistant Counsel

J. Marc Hannibal, Director, Audit and Management Services
Judith Jeffers-Taylor, MWBE Program Liaison
Harry Lennon, Senior Investigator
Katherine McCartney, Deputy Counsel
Tracie Sandell, Assistant Director, Audit and Management Services
Michael Sikule, Director, Office of Investments and Asset Management
Elizabeth Yanus, Assistant Secretary

Also in Attendance:

John Armstrong, Television Engineer, New York Network
Murray Bodin, private citizen
Steven J. Kantor, Managing Director, First Southwest Company
Stanley Kramer, Partner, Hawkins Delafield & Wood, LLP
Melissa Pangburn, Senior Budget Analyst, NYS Division of Budget
Angela M. Rodell, Senior Vice President, First Southwest Company
Tom Wood, Assistant Chief Examiner, NYS Division of Budget

PUBLIC SESSION

Mr. Sall, Committee Chair, called the meeting of the Governance Committee to order.

Ms. Yanus recorded the minutes as contained herein.

Item 1

Approval of Minutes of Governance Committee Meeting No. 10

After full discussion, on the motion of Ms. Luh, seconded by Mr. Simberg, without any objections, the Governance Committee approved the minutes of Governance Committee Meeting No. 10, held April 1, 2010.

Item 2

Review and Approve for Board Action a Revised Thruway Authority/Canal Corporation Whistleblower Policy

Mr. Hannibal reported that in October 2004 the Boards of the Authority and Corporation adopted Resolutions establishing a Whistleblower Policy. In April 2008 the Boards revised the Whistleblower Policy to incorporate statutory language included in Section 75-b of the Civil Service Law. Revisions to the policy are currently being recommended to comply with recent changes to the Public Authorities Law.

Chapter 506 of the Laws of New York, 2009 added additional whistleblower protections to the Public Authorities Law. Revised to incorporate this provision, the proposed Policy contains the statutory language that the Authority shall not fire, discharge, demote, suspend, threaten, harass or discriminate against an employee because of the employee's role as a whistleblower, insofar as the actions taken by the employee are legal.

In response to an inquiry from Mr. Simberg, Mr. Hannibal advised that the policy revisions would not have a significant effect on day-to-day operations. He explained that the new language is broader than the 2008 statute and offers greater protection to the whistleblower.

After full discussion, on the motion of Mr. Simberg, seconded by Ms. Luh, without any objections, the Governance Committee approved the revised Whistleblower Policy and authorized its submission to the Authority and Corporation Boards for consideration.

Item 3

Review and Approve for Board Action a Revised Thruway Authority/Canal Corporation Procurement Contracts Policy

Mr. Bryan reported that the Authority/Corporation's Procurement Contract Policy was being amended to comply with recent statutory changes.

Under the current Public Authorities Law, a procurement contract at the Authority and the Corporation is defined as any written agreement for the acquisition of goods or services in the amount of \$15,000 or more. It has been determined that under this law any procurement equal to or over \$15,000 has to be pursued through a competitive process.

Chapter 174 of the Laws of 2010, signed by the Governor in July 2010, amends this law to allow the Authority and Corporation to purchase goods or services from small business enterprises (SBEs) and certified minority and women-owned business enterprises (MWBEs), or goods or technology that are recycled or remanufactured, in an amount that does not exceed \$200,000 without pursuing a competitive process. This law further expands the list of elements that must be included in the Authority/Corporation's procurement guidelines. Both changes will result in an increase in participation of SBEs and MWBEs in Authority/Corporation procurements and will aid in the Authority/Corporation's goal to utilize more environmentally friendly products.

In addition to an increase in the discretionary procurement limits for SBEs, MWBEs and for recycled or remanufactured goods, the law requires the Authority/Corporation to:

- provide notice to professional and other organizations that serve MWBEs providing the types of services procured by the Authority/Corporation;
- maintain and regularly update lists of qualified, certified MWBEs that have expressed an interest in doing business with the Authority/Corporation;
- establish appropriate goals for participation by MWBEs in procurement contracts awarded by the Authority/Corporation;
- conduct procurements in a manner that will enable the Authority/Corporation to achieve the maximum feasible MWBE penetration into its procurements; and
- delegate to the Executive Director the authority to appoint one or more senior staff to oversee the Authority/Corporation's various MWBE programs.

The Authority/Corporation has already instituted many of the statutory requirements. By the time the law becomes effective in mid-October, the Authority/Corporation will have implemented the remaining elements.

The Committee's approval was requested to revise the Procurement Contracts Policy to bring it into compliance with Chapter 174 and expand delegations necessary to effectuate them.

After full discussion, on the motion of Ms. Luh, seconded by Mr. Simberg, without any objections, the Governance Committee approved the revised Procurement Contracts Policy and authorized its submission to the Authority and Corporation Boards for consideration.

Item 4

Report on the Following Items

- a. Ethics violations, if applicable**
- b. Ethics-related publications, if applicable**
- c. Responses to Governor's Office memoranda**
- d. Performance evaluations of the Thruway Authority and Canal Corporation Boards**

Mr. Fleischer reported to the Committee on the following Items:

a). Report on Ethics-Related Violations

For the calendar year 2010 to date, the Authority/Corporation has not referred any cases to the New York State Commission on Public Integrity.

b). Report on Ethics-Related Publications

Six Executive Instructions were revised since the Governance Committee last met in April:

Acceptance of Gifts was revised.

Ethics Law "Revolving Door" Restrictions was reissued. It is issued annually to remind all Authority and Corporation employees of the restrictions placed upon former Authority and Corporation employees, as well as the restrictions placed upon current employees when dealing with former employees.

Ethics Law Restrictions on Communications Related to Post-Government Employment Opportunities was reissued.

Financial Disclosure is issued annually to required filers. It was updated to reflect the 2009 filing requirements with respect to the income threshold amount and filing dates.

Procurement of Authority/Corporation Surplus Property by Authority/Corporation Employees was updated to incorporate language that complies with the revised Thruway and Canal Personal Property Disposal Policies, as approved by the respective Boards on April 1, 2010.

Recording of Lobbying Contacts Related to the Influence of Rules and Regulations and/or Rate Making Proceedings was issued in accordance with the Public Authorities Law, which states that a record must be made of any contact by a lobbyist to a member, officer or employee of the Authority/Corporation.

c). Report on Responses to Recent Memoranda from the Governor's Office

A July 29, 2010 memo regarding *Status Report on RFPs* directed all state agencies and public authorities to submit a list of Request for Proposals (“RFPs”) that are outstanding or are expected to be issued this year. In response, the Authority/Corporation provided a list of RFPs for non-engineering personal service solicitations that are in process or are anticipated to be issued by year-end.

A July 26, 2010 memo from the Governor's Office of Employee Relations about the Office of Taxpayer Accountability shared services initiative requested state agencies to complete a survey regarding training and development activities. Accordingly, the Authority submitted its responses on September 7, 2010.

d). Performance evaluations of the Thruway Authority and Canal Corporation Boards

Pursuant to the corporate governance principles embodied in the 2009 Public Authorities Reform Act, and in support of the Authority/Corporation's stated mission, the Authority/Corporation's governing Board is required to conduct an annual self-assessment in order to measure its performance against its mission statement, goals and values, and the expectations of those served by the Authority/Corporation and New York State as a whole.

To comply with this requirement, a draft questionnaire is being developed that is intended to be used as an instrument for ultimately improving governing practice and performance. The draft questionnaire will be provided to the Committee for consideration by the end of the year.

The Governance Committee accepted the reports as presented by Mr. Fleischer.

Adjournment

There being no further business to come before the Governance Committee, on the motion of Ms. Luh, seconded by Mr. Simberg, without any objections, the meeting was adjourned at 10:51 a.m.