



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



MINUTES

GOVERNANCE COMMITTEE MEETING NO. 7

January 21, 2009

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 9:30 a.m.

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

Present:

Chairman John L. Buono, Governance Committee Member (ex officio)
Kevin Plunkett, Chair, Governance Committee
Erin Crotty, Governance Committee Member
Brandon R. Sall, Governance Committee Member

In addition, the following staff were present:

Michael R. Fleischer, Executive Director
Kevin Allen, Acting Director, Audit and Management Services via telephone
Wendy Allen, Deputy Chief of Staff
John Bryan, Chief Financial Officer
Kimberly Chupa, Public Information Specialist
Diane Galuski, Director, Bureau of Management Analysis and Projects
Harry Lennon, Senior Investigator
Katherine McCartney, Deputy Counsel
Sharon O'Connor, General Counsel

Also in Attendance:

John Armstong, Assistant Television Engineer, New York Network

Scott Fein, Partner, Whiteman Osterman & Hanna LLP

PUBLIC SESSION

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

Ms. Warner recorded the minutes as contained herein.

Mr. Plunkett wished everyone a Happy New Year and wished the new President luck, stating that January 20th was a historic day.

Item 1

Approval of Minutes of Governance Committee Meeting No. 6

After full discussion, on the motion of Mr. Plunkett, seconded by Mr. Sall, without any objections, the Governance Committee approved the minutes of Governance Committee Meeting No. 6, held November 19, 2008.

Item 2

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

Mr. Bryan stated that this item seeks the Governance Committee's approval to advance the Thruway and Canal Procurement Policies to the full Board for consideration. The Public Authorities Law requires that the Authority submit these Policies, along with a detailed summary of all procurement activities, to the NYS Division of the Budget each year. These Policies cover procurements (for both goods and services) with a value of \$15,000 or more and no changes are being recommended by staff. Contingent on the Committee's approval, these two Policies and the full Procurement Report will be considered by the entire Board at the March Board meeting.

The Policy sets forth how the Authority procures non-engineering goods and services. Goods and services worth up to \$15,000 can be obtained using the Authority's own procedural rules. In general, service procurements are awarded to the most responsible vendor based on best value. Goods are awarded to the most responsible bidder based on the lowest overall cost. Ms. O'Connor added that the statute requires that the Board annually adopt guidelines to provide for this competitive process. The procurement of services is distinguished from the Authority's statutory obligations with regard to construction on the Thruway where selection is based on the straight low bid without the opportunity to evaluate other factors in determining who the contractor will be.

Mr. Sall inquired if there is any preference given to New York State businesses. Ms. O'Connor responded negatively, stating that the Authority is not permitted to do that. Mr. Bryan indicated that there is the Omnibus Procurement Act which states that for procurements over \$1 million there must be more due diligence relative to New York suppliers.

Chairman Buono inquired about MWBE issues. Mr. Bryan stated that the Authority has, for years, requested legislative changes to the \$15,000 threshold that would allow the Authority to procure services and goods from MWBE businesses up to the level that state agencies are allowed, which is \$100,000. The Authority cannot do that per the statute. When the threshold was increased for state agencies a number of authorities were left out and it has never been fixed. Chairman Buono expressed his surprise that with the creation of the Executive Orders regarding MWBE's more isn't being done to correct that. Mr. Bryan and Ms. O'Connor responded that staff has been working on this issue with the Dormitory Authority, among others, to develop legislation that would address some of these issues moving forward.

Mr. Bryan clarified for Mr. Plunkett that the Office of the State Comptroller (OSC) requires the Authority to submit all contracts over \$50,000. Mr. Fleischer corrected that statement indicating that the Board set the policy that the Comptroller would approve contracts over that amount, the Authority is not required to obtain Comptroller approval of its contracts. Chairman Buono inquired if there are authorities who do not submit contracts to the Comptroller's Office for approval. Ms. O'Connor responded affirmatively.

After full discussion, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the Governance Committee approved and authorized submission of the Thruway Authority/Canal Corporation Procurement Contracts Policies to the Authority/Corporation Board for consideration.

Item 3

Discussion of the Governance Committee's Functions and Performance

Mr. Fleischer introduced Ms. Galuski of the Authority's Bureau of Management Analysis and Projects to provide a powerpoint presentation summarizing the activities of the Committee.

Ms. Galuski stated that the Governance Committee was established to promote honest and ethical conduct by Authority/Corporation Board Members, Executive staff and employees and enhance public confidence in the Authority/Corporation.

As required by its Charter, the Governance Committee is responsible for conducting an annual self-evaluation of its functions and performance. To assist in the fulfillment of this requirement, the following presentation was delivered to the Committee:

Presentation

Purpose of the Committee:

As required by statute, the purpose of the Governance Committee is to:

- Keep the Board informed of current best practices in corporate governance;
- Review corporate governance trends for their applicability to the Authority/Corporation;
- Update the Authority/Corporation's corporate governance policies; and
- Advise those responsible for appointing members to the Boards on the skills, qualities and professional and educational experiences necessary to be effective Board Members.

Meetings:

The Governance Committee held its first meeting in April 2007 and has had five subsequent meetings to date. The Committee is required to meet a minimum of twice a year, with the expectation that additional meetings may be required to fulfill all obligations and duties. Following a Governance Committee meeting, the Governance Committee Chair provides a report of its actions and recommendations to the Board at the next regular Board meeting.

Accomplishments:

The following details the Committee's accomplishments for 2008.

- Revisions were made to the Charter to better align the Authority/Corporation Charter with the Model Governance Committee Charter developed by the New York State Authority Budget Office.
- The Real Property Management Policies and Standard Operating Procedures, the Personal Property Disposal Policies and the Procurement Contracts Policies are statutorily required to be presented annually to the full Board and were therefore presented to and approved by the Governance Committee prior to Board action.
- The Authority Budget Office advised that as a best practice, public authorities should adopt a policy on the Prohibition of Extension of Credit in the Form of a Personal Loan, restating the requirements of Section 2824(5) of the Public Authorities Law. The adopted resolution tracks the pertinent statutory language.
- The Whistleblower Policies were revised to track statutory language.
- The Affirmative Action/Equal Employment Opportunity Policies were revised primarily to indicate that they should be in accordance with Federal and State Affirmative Action and Equal Employment Opportunity laws, rules and regulations.
- The FOIL Rules and Regulations were revised to incorporate the most current FOIL provisions. While not specifically required by the Charter, this item was

presented to the Governance Committee as a good governance practice since FOIL pertains to the public's right to access Authority/Corporation records.

- As a standing item at each meeting, the Executive Director reported on any ethics violations and updated ethics-related publications; and
- A new Intranet ethics webpage was reviewed and approved. The link to the ethics webpage is prominently displayed on the Intranet home page for easy employee access to ethics-related publications. Clicking on the link will bring you to the guidelines for ethical conduct in all Authority/Corporation operations. The ethics webpage provides contact information and offers direct links to policies, publications and videos. The links are arranged by subject and provide easy access to the most current ethics-related material.

Resources, Best Practices & Benchmarking:

In an effort to ensure that the Committee members have the materials needed to perform their duties, staff has provided them with reference materials and the expertise of outside entities has been enlisted where appropriate.

- The Governance Committee Reference Manual was assembled, and is kept updated, to provide Governance Committee Members with the most current version of the Charter and governance-related policies and publications.
- The ABO and Outside Counsel help keep staff apprised of governance trends and practices.
- Staff also benchmarked with outside entities (such as, Dormitory Authority, Metropolitan Transportation Authority) when preparing policies and other documents.

Looking ahead, suggested Items for the Governance Committee's 2009 Work Plan include:

- Updating the Code of Ethics Policies: staff is updating both the Board Member and Employee Code of Ethics Policies which will be presented at a later meeting.
- Conducting an Annual Review of Governance Committee Charter

- Development of Board Member Qualifications: this is required by statute and is intended to advise the appointing authority on the skills, qualities and professional or educational experiences necessary to be effective Board Members.

Summary:

At the last meeting in November, outside counsel provided feedback on the Committee's performance. Outside counsel compared compliance reviews conducted by the ABO on other public authorities to the policies and practices of the Authority/Corporation and reported that we are in conformance with the PAAA. Outside counsel also reviewed, on a random basis, minutes of both the Governance Committee and Board meetings and reported that these minutes comport with the requirements of the PAAA.

Ms. Galuski concluded by stating that the Committee has accomplished a great deal since its formation, and this presentation was intended to assist the Committee in fulfilling its requirement to conduct an annual self-evaluation of its functions and performance.

End of Presentation

Mr. Plunkett thanked Ms. Gaulski for her presentation and thanked staff members, stating that the Committee's function and performance are directly related to the effort and expertise of the administrative staff. He added that this is a fluid type of process where each year the Committee is going to look at areas where they can improve upon the benchmarks that have already been set.

After full discussion, on the motion of Mr. Plunkett, seconded by Mr. Sall, without any objections, the Governance Committee accepted the presentation on the Governance Committee's Functions and Performance.

Item 4

Review and Discuss as Necessary the Following Items: Ethics Violations, if Applicable; and Ethics-Related Publications, if Applicable

Ethics Violations

Mr. Fleischer reported that Public Officers Law Section 73-a requires certain employees to file an annual financial disclosure statement with the NYS Commission on Public Integrity (Commission). The deadline for filing is May 15 each year. Employees are reminded of this requirement via an annual bulletin on the topic and a memo from the General Counsel, as well as receiving direct correspondence from the Commission.

A Thruway employee who was required to file a financial disclosure statement failed to file by the May 15, 2008 filing deadline. The Commission notified the Authority Personnel office on December 5, 2008 and Personnel immediately contacted the employee and advised the employee of the need to file. The employee has since filed and paid the penalty that was assessed by the Commission.

Ethics-Related Publications

Mr. Fleischer reported Two Executive Instructions were revised since the Governance Committee last met in November.

- The **Ethics Law “Revolving Door” Restrictions** is issued annually to remind all Authority/Corporation employees of the restrictions placed upon former Authority/Corporation employees, as well as the restrictions placed upon current employees when dealing with former employees.
- The **PC, E-Mail and Internet Use Policy** was issued in December to all Authority/Corporation employees.

Ms. Crotty inquired as to how many hits the Authority's Ethics web page receives. Mr. Fleischer responded that staff would find out and report back. Ms. Crotty stated that she is curious to see how many people are looking to the Ethics webpage to obtain information. Mr. Bryan responded that most staff members get a hard copy of the information as well. Ms. O'Connor added that the Legal Department receives a number of requests for information regarding outside activities.

After full discussion, on the motion of Ms. Crotty, seconded by Mr. Plunkett, without any objections, the Governance Committee accepted Mr. Fleischer's reports on ethics violations and ethics-related publications.

Item 5

Other Business

Mr. Plunkett stated the Committee members received an attorney-client memorandum from Scott Fein of Whiteman Osterman & Hanna LLP.

Adjournment

There being no further business to come before the Governance Committee, on the motion of Mr. Sall, seconded by Ms. Crotty, without any objections, the meeting was adjourned at 9:48 a.m.