



**New Jersey State Legislature  
Office of Legislative Services  
Office of the State Auditor**

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**Department of State  
New Jersey Public Broadcasting Authority  
and the  
Foundation for New Jersey Broadcasting**

July 1, 2000 to August 31, 2002

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**Richard L. Fair  
State Auditor**

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# New Jersey State Legislature

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Enclosed is our report on the audit of the Department of State, New Jersey Public Broadcasting Authority and the Foundation for New Jersey Broadcasting for the period July 1, 2000 to August 31, 2002. If you would like a personal briefing, please call me at (609) 292-3700.

A handwritten signature in black ink, appearing to read "Richard L. Fair".

Richard L. Fair  
State Auditor

December 4, 2002

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**Department of State  
New Jersey Public Broadcasting Authority  
and the  
Foundation for New Jersey Broadcasting**

*Scope*

We have completed an audit of the Department of State, New Jersey Public Broadcasting Authority (Authority) and the Foundation for New Jersey Broadcasting (Foundation) for the period July 1, 2000 to August 31, 2002. Our audit included financial activities accounted for in the state's General Fund and the Foundation's offline accounts.

Annual expenditures of the Authority were \$18 million. The prime responsibility of the Authority is to establish and operate noncommercial educational television and radio broadcasting stations and to operate one or more public broadcasting telecommunications networks. Annual revenues of the Authority were \$12 million during our audit period. The major components of revenue were funding from the Corporation of Public Broadcasting, funding from a joint project with the New Jersey Department of Labor (Workforce Development), Underwriting, and Studio Rentals.

Expenditures of the Foundation per the fiscal year 2001 certified public accountant's audit report were \$4.5 million. The Foundation was established as a non-profit, education, and charitable organization to sponsor and promote the Authority and its several purposes. Revenues of the Foundation per the fiscal year 2001 certified public accountant's audit report were \$5.3 million. The major component of revenue was contributions.

*Objectives*

The objectives of our audit were to determine whether financial transactions were related to the agency's programs, were reasonable, and were recorded properly in the accounting systems. We

also tested for resolution of the significant conditions noted in our prior report.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

### ***Methodology***

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the State Comptroller, and policies of the Authority and the Foundation. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observation, and through our samples of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal controls. We also reviewed the audit reports for the South Carolina Educational Television Commission and the ETV Endowment of South Carolina, Inc.

A nonstatistical sampling approach was used. Our samples of financial transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample populations were sorted and transactions were judgmentally selected for testing.

To ascertain the status of findings included in our prior report, we identified corrective action, if any, taken by the Authority and the Foundation and walked through the system to determine if the corrective action was effective.

### ***Conclusions***

We found that the financial transactions included in our testing were related to the Authority's and the Foundation's programs, were reasonable, and were

recorded properly in the accounting systems. In making this determination, we noted certain internal control weaknesses meriting management's attention.

We also found that the Authority has not resolved the significant issues noted in our prior report involving purchase procedures and the employee versus independent contractor situation . These issues have been updated and expanded in our current report.

## **Financial Reporting**

**An organization's accounts should include all costs and revenues within an accounting period to reflect accurate financial position and results of operations.**

The Foundation has an annual audit of its financial statements. These financial statements provide management and third parties with information on the financial position and result of operations. Our review of these statements and the operations of the Authority noted numerous instances of costs not being reflected in the accounts of the correct organization (Authority or Foundation). We noted instances where the costs of the Foundation are reflected in the records of the Authority and vice versa. This commingling of costs and operations prevents an accurate picture of individual financial position and operating results. We noted on-air production costs of pledge campaigns, data processing, personnel, facility space and utilities as some of the areas not properly allocated between the two organizations.

### *Recommendation*

We recommend that management of both organizations review their accounting procedures to ensure all costs and revenues within an accounting period are properly reflected in the accounting records of the respective organization.



## **Authority and Foundation Professional Services Contracts**

**Improvements are needed in the management of professional services contracts.**

Our evaluation of the management of professional services contracts focused on the adequacy of the internal controls for project planning, contract development and contract administration. The Authority's contracts reviewed either received a waiver from the Department of the Treasury Purchase Bureau or fell under the Authority's direct purchase authorizations. As a result the Authority did not seek competitive bids for services, although Treasury procedures require them to do so. Our review indicates improvements are

needed in the management of professional services contracts for \$1.4 million of contracts out of the \$2.1 million contracts tested.

### **Project Planning**

Vendors were acquired without seeking competition. As a result, it is unknown whether the amounts paid to these vendors were reasonable because the current market value was not considered. Furthermore, policies and procedures do not require contract approval by either board. Such approval could provide assurances that competitive bids are solicited and received, and that the product or service to be obtained is within the respective mission of either the Authority or the Foundation.

### **Contract Development**

Contract terms were vague and unclear, using verbs such as: to help, to assist, to advise, work with, etc. In most cases, neither deliverables nor milestones were expressed nor was there a definitive scope or objective(s). Additionally, contracts did not contain performance clauses or retainage provisions. This was because management viewed the vendor as the “expert” and did not see nonperformance as a real possibility. Payment terms were periodic with advances stipulated to the vendor at the time of contract signing and prior to the commencement of work. Executing contracts in this manner does not ensure the receipt of an acceptable product nor does it provide recourse in cases of nonperformance. In two cases totaling over \$300,000, no formal contract existed.

### **Contract Administration**

Contract administration is the ongoing review and management of the contractor’s performance. It should compare performance against scope of services specified in the contract, review expenditures and ensure compliance with contract requirements. We found that there was no effective

independent oversight or monitoring of many of the contracts by either management or the respective boards of the Authority or the Foundation. We found instances of Foundation contracts where the product was not acceptable, however, the vendor was still paid. In other cases, we found instances for both the Authority and the Foundation where vendors' products or evidence of services were not provided to us after numerous requests. Additionally, we found instances where the terms of the contract had been changed to benefit the vendor. The current contracting process does not assure that the product or service will be provided and if the product or service is not provided or not satisfactory, that someone will be held accountable.

***Recommendation***

We recommend that the respective boards of the Authority and the Foundation establish written policies and procedures to govern the professional service contracting process. Specific issues that should be addressed are obtaining the service through competition; requiring the scope and objective be defined for the services to be rendered; allowing payments to the vendor only at times where established deliverables or milestones have been achieved; and performing oversight and monitoring of the vendor's activities by management who authorizes the payments. We further recommend that the boards exercise greater oversight over professional services expenditures made by staff by subjecting them to periodic review and approval.



**Arts Council Grant**

**G**rant activities of the Foundation should be defined by the Board of Trustees and confined to its mission.

During our audit period, the Foundation received \$1.6 million in grant monies from the New Jersey State Council of the Arts (NJSCA). This project, Discover Jersey Arts, is a statewide marketing campaign intended to expand public participation in

the arts, increase appreciation and support for them, and cultivate new and diverse audiences at arts and cultural events in the state.

Our review of the grant activity found that this project benefits the NJSCA, using the Foundation as a conduit for the funds. The Foundation merely received the money and paid the expenses incurred by the NJSCA. In addition, the Authority received no benefit from this grant. It is the NJSCA that provided managerial and operational control over the activities of this grant, not the Foundation. Moreover, the advertising firm performing the work was engaged with neither formal contract nor competitive bid. Paid in excess of \$1 million, this vendor was selected due to his reputation and prior volunteer services provided to NJSCA.

This grant was outside the Foundation's mandate, "...to sponsor activities and raise funds for the support and promotion of the Authority and its several purposes". Furthermore, the project was included in the Foundation's financial statements for fiscal year 2001, resulting in an overstatement of revenues from contributions totaling \$1 million. As a result, an additional \$80,000 in federal funds may be granted to the Authority to which they are not entitled.

### *Recommendation*

We recommend the Foundation limit their activities to areas outlined in their enabling legislation. Furthermore, the Board of Trustees should establish policies governing the administration of grants including defining those circumstances when to accept a grant.



### **Consultants/Employees**

During the period 1999 through 2002, the Authority employed 26 consultants to supplement their staff since additional authorized positions were not available. Although the individuals were paid as

**The Authority  
should properly  
classify the individuals  
it employs.**

vendors, it appears that they were, in effect, employees of the Authority. The conclusion that these individuals were employees was further supported by the fact that 18 consultants officially became state employees when positions were created. Paying employees as consultants is in violation of the Department of the Treasury Circular Letter 97-18-OMB in addition to federal and state income tax, unemployment tax, and disability tax regulations. As such, the state may be subject to additional penalties and fines. Management has not resolved this situation which was addressed in our prior audit report.

The individuals in question performed their duties on the Authority's premises and were provided the resources to fulfill their assignments. Moreover, individuals represented themselves as employees of the Authority in correspondences, business cards and published material. Furthermore, individuals were devoting full time to Authority activities thereby restricting them from performing other gainful work. Individuals were paid an hourly rate supported by either a state agency timesheet or statement of hours worked. They performed the work themselves and the Authority established the methods used to accomplish the work. Their product was an integral part of the Authority's activities. Therefore, the work performed by the individuals was united within the operation showing they were subject to direction and control of the Authority. During the contractual approval process of one case, the Attorney General's office voiced "severe doubts" of the consultant's independence. In another case, one consultant was responsible for hiring another consultant.

***Recommendation***

We recommend that the Authority implement reforms to bring their labor practices into compliance with established rules and regulations.



## **Auditee's Response**

### **PREAMBLE**

As state in the New Jersey Public Broadcasting Authority Act of 1968, NJN was established as follows: *“Public broadcasting includes all aspects of non-commercial radio and television, open and closed circuit, including the production and dissemination of public and community affairs, educational, cultural and instructional information to the public at large within the State.”*

Three decades later, NJN is still the state's only statewide broadcast television network that fully connects and covers the state. NJN now operates four analog television stations, two digital television channels, an ITFS network, a seven-station radio network, online services including streaming video, and extensive community outreach programs. NJN is available to millions of children and adults over the air without a fee and on all New Jersey cable systems, satellite dishes, and the Internet (through streaming).

The purposes of the NJN Foundation for New Jersey Public Broadcasting (Foundation or NJN Foundation), as contained in its Enabling Legislation, Certificate of Incorporation and Bylaws, are *“to sponsor activities and raise funds for the support and promotion of the New Jersey Public Broadcasting Authority and its several purposes.”*

As state funding sharply decreased in the 1990's, the Authority established the NJN Foundation to increase and diversify the Authority's revenue streams to ensure the stability and growth of this valuable state asset. Today, a public/private partnership provides millions of dollars to support the Authority's operating budget. Revenue from the corporate and business community, foundations and individuals more than doubled from \$3.6 million in 1995 to \$8.2 million in 2002.

The organizational structure of the Authority as “in but not of” the state, the services it provides to the public and private sectors, and its relationship with the NJN Foundation are unique within the State governance structure. It is within this context that we seek to clarify the roles and responsibilities of the Authority and the NJN Foundation as set forth in the Enabling Legislation, Memorandum of Understanding (MOU), and each organization's Bylaws.

### **RESPONSE**

#### **Scope and Methodology**

##### **Independent Audits report financial transactions properly recorded**

The Authority and the Foundation are committed to maximizing their operational effectiveness, as well as advancing their goals and missions. To that end, the Authority and the Foundation engaged Independent Certified Public Accountants to conduct an independent audit of each

organization in FY 2000 and FY 2001. Their Unqualified Audit Opinions indicated that the financial statements fairly presented the results of the operations of the two organizations.

**OLS Audit reports financial transactions properly recorded**

The OLS Audit of the Authority and Foundation, covering the period July 1, 2000 to August 31, 2002 also concludes that “the financial transactions included in our testing were related to the Authority’s and the Foundation’s programs, were reasonable, and were recorded properly in the accounting systems.”

**Foundation raised \$8.34 million in Audit period FY 2001**

*In addition* to the \$5.3 million in revenues raised by the Foundation as referenced in the OLS Audit, the NJN Foundation also raised \$3,040,000 in Project and General Underwriting support. The \$3,040,000 is included in the footnotes of the Independent Certified Public Accountant’s Audit Report.

**Financial Reporting**

**Authority contracts were budgeted and in compliance with MOU**

**Audit Statement:** “Our review of these statements and the operations of the Authority noted numerous instances of costs not being reflected in the accounts of the correct organization (Authority or Foundation).

**NJN Response:** The MOU between the Foundation and the Authority provides oversight for Foundation expenditures, including those for professional services. The MOU has budget procedures that must be followed by the Foundation. For unbudgeted items the MOU states “unbudgeted individual expenditures exceeding \$10,000 shall require approval of the Foundation Board’s Finance Committee. Unbudgeted individual expenditures exceeding \$50,000 shall require approval of the Foundation Board of Trustees.” In addition, costs absorbed by the Foundation for the Authority are covered by the MOU or have been moved to Foundation to reduce the Authority’s costs.

**Authority and Foundation Professional Services Contracts**

**Authority follows state policies and procedures, including those for professional services.**

**Audit Statement:** “The Authority’s contracts reviewed either received a waiver from the Department of the Treasury Purchase Bureau or fell under the Authority’s direct purchase authorizations. As a result the Authority did not seek competitive bids for services, although Treasury procedures require them to do so.”

**Response:** There is inconsistency in the above comments. The first sentence states that the Authority received Treasury approval; the next sentence implies that the Authority did not follow

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Treasury procedures. In fact, Treasury provides a waiver system with guidelines to permit agencies to hire, engage, and contract with outside vendors when the competitive bidding process does not serve its intended purpose. Waivers have to be approved by Treasury, the Purchase Bureau and the Attorney General's office prior to the agency being able to use them. In the majority of cases cited by OLS auditors, the Authority used waivers under the Treasury guidelines and so the required Treasury procedures were followed. The Foundation follows the policies and procedures appropriate for an independent 501(c)(3) non-profit organization and where applicable, as specified in the MOU between the Foundation and the Authority.

### **Contract Administration**

**Audit Statement:** "We found instances of Foundation contracts where the product was not acceptable; however, the vendor was still paid."

**Response:** The Foundation did find that a vendor's deliverables were not acceptable at one point during the contractual relationship and withheld payment until it received the agreed deliverables. In this case, the Foundation exercised due diligence in not advancing payment until it was satisfied that the terms of the contract had been met.

**Audit Statement:** "We found instances where the terms of the contract had been changed to benefit the vendor."

**Response:** Initially the Authority agreed to pay a vendor \$10,000 for a half-hour production. The production subsequently became a one-hour documentary and the Authority contracted with the vendor to pay an additional \$10,000 for the longer production.

### **Arts Council Grant**

**Audit Statement:** "This grant was outside the Foundation's mandate....."

**Response:** The Foundation's purposes, contained in its Enabling Legislation, Certificate of Incorporation and Bylaws, are "to sponsor activities and raise funds for the support and promotion of the New Jersey Public Broadcasting Authority and its several purposes." The Authority's purposes include "public broadcasting" which is defined to include "all aspects of non-commercial television and radio... including the production and dissemination of public and community affairs, education, cultural and instructional information to the public at large..." (N.J.S.A. 48:23-2).

The Foundation's collaboration with the New Jersey State Council on the Arts in the *Discover Jersey Arts* (DJA) program supports the purposes of the Foundation and the Authority, as quoted above, by providing non-commercial dissemination of public and community affairs, educational and cultural information; and further provides significant benefits to both organizations.

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**Audit Statement:** “....Furthermore, the project was included in the Foundation’s financial statements for fiscal year 2001, resulting in an overstatement of revenues from contributions totaling \$1 million. As a result, an additional \$80,000 in federal funds may be granted to the Authority to which they are not entitled.”

**Response:** The DJA grant meets the guidelines as set by the Corporation for Public Broadcasting. The Board leadership, Finance Committee and management all concurred that the DJA grant was within the scope of the Foundation and that we would have been remiss in not applying for federal dollars associated with the revenue properly recorded in the results of the Foundation. We take great offense in saying that we may have overstated revenue. In fact, had we not included this revenue it would have been against generally accepted accounting principles.

### **Consultants/Employees**

#### **Deputy Attorney General affirms NJN compliance in conversion of Independent Contractors.**

The Authority’s Independent Contractor conversion is dependent upon the State Treasurer and other agencies for approval process. As noted by the Auditors, the conversion process is a statewide issue and OLS is currently reviewing the situation in all agency audits.

**Audit Statement:** “During the contractual approval process of one case, the Attorney General’s office voiced ‘severe doubts’ of the consultant’s independence.”

**Response:** The Deputy Attorney General did have a valid concern as the independent contractor was working on several projects simultaneously for the Authority. In fact, the Authority also had this concern and took immediate action by setting up a special process to assure that proper payments were being made. This individual routinely works on projects outside of the Authority which can be documented attesting to the individual’s status as an independent contractor.

**Audit Statement:** “One consultant was responsible for hiring another consultant.”

**Response:** In fact, a consultant may only *recommend or refer* someone as a consultant or an employee. The hiring process for the Authority goes through the Deputy Director of Finance and Administration. In this instance, a consultant *recommended* a person as a consultant for a project. The Deputy Director of Finance and Administration approved the hiring for the budgeted position.

**Audit Statement:** “We recommend that the Authority implement reforms to bring their labor practices into compliance with established rules and regulations.”

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**Response:** The Authority has been and continues to address these issues. Eighteen contractors were in the process of conversion during the previous audit in 1998, and as noted in the Audit are now Authority employees. This group included on-air talent and other key service providers. The conversion involved pensions and benefits and required many meetings to obtain the proper approvals and comply with the procedures of several state agencies involved.

Six other independent contractors cited by OLS have been in the process of conversion for several months and the Authority is still waiting for approvals from various state agencies and departments. The last two individuals cited by the OLS Audit clearly are independent contractors by all federal and state guidelines.

The Authority is extremely sensitive to these issues and continues to strictly monitor the hiring of independent contractors in the Authority with a review of the contracts by the Deputy Attorney General, the Authority Deputy Director for Finance and Administration, and Manager of Human Resources to ensure proper employment classification of those providing services to the Authority.

