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**TRULY IMPERTINENT QUESTIONS:  
BIDDING CONTRACTS AT NYRA**

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# **TRULY IMPERTINENT QUESTIONS: BIDDING CONTRACTS AT NYRA**

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## **Truly Impertinent Questions: Bidding Contracts at NYRA**

1. Jim Odatto wrote of the Albany Times Union disclosed the NYRA website issue two years ago. He wrote in July of 2003, "The New York Racing Association is paying the company of a daughter and son-in-law of Chairman Barry K. Schwartz tens of thousands of dollars annually to service NYRA's Web page.

For more than five years, Firstborn Multimedia Corp. of Manhattan has designed and maintained NYRA's Web site, according to a source familiar with NYRA's expenses." NYRA would not comment on at that issue at that time of this article.

This being the case, why does it take the State Comptroller two years to disclose the illegal nature of this contract? His office has had access to this document for years. Why does the story break now?

2. Who's right? Barry Schwartz in the Blood-Horse says that the initial contract for his son-in-law's Web contract was bid saying, "The original contract was bid, and he got it." Why can't we find out the facts on this contract? If everything was okay, why didn't NYRA comment on this issue in 2003, and why is NYRA now bidding the Web contract out now according to today's Times-Union?

3. If NYRA broke the Racing Law in these no-bid contracts, shouldn't the Comptroller be suggesting that NYRA be subject to administrative punishment by the Racing and Wagering Board?

4. What about the VLT contract between NYRA and MGM? The Comptroller's office states that "the comptroller's auditors did not investigate the MGM contract because it was inactive during the time of the audit." Can this be less than fatuous? The Comptroller's job is to review the NYRA contracts for compliance with bidding requirements, but you don't look at the one contract that's probably larger than the combined worth of all the other contracts.

NYRA per the Times Union on June 16 admitted to awarding the MGM contract without advertising for bids. The "contract is still unsigned by both parties ... [C] losing of the deal is imminent." (N.B. The MGM contract was signed on June 16.) How can this make sense? MGM Mirage did considerable work on the project in 2003 before the word broke of the federal prosecution. The Federal Monitor's June 2004 report states that "MGM has advanced funding for the VLT project." Would MGM do this work based on an unsigned contract? If the contract wasn't bid properly, how can NYRA and MGM sign the deal now? Moreover, doesn't the deferred prosecution agreement state that if by May of 2005 VLT's are not operational at

Aqueduct that NYRA “agrees to make all commercially reasonable and legally permissible efforts to enter into contractual arrangements with other entities to enable the operation of VLT’s at Aqueduct Racetrack?” If the MGM deal wasn’t even signed until June 16, how could NYRA go ahead and sign the MGM contract without violating the deferred prosecution agreement?

5. What about the federal prosecution? Under the deferred prosecution agreement, NYRA is supposed to demonstrate “future good conduct and full compliance with federal, state and local laws.” Now that the Comptroller has found and NYRA has acknowledged violations, what happens next? Can the US Attorney find that NYRA is in full compliance with the deferred prosecution agreement given this record of violations?

6. Whatever became of :

- a) the Governor’s trustees? The Governor may have not wanted to see NYRA get indicted in 2003 , but he has hardly been an unabashed supporter of NYRA. He: (a) proposed the law requiring bidding on major NYRA contracts, (b) has stated his support for the belief that the State owns the NYRA properties, (c) in 2004 proposed legislation putting NYRA in large measure under the control of a State-appointed board, and (d) in 2005 supported the notion of a large fee (generally mentioned as \$250 million) as the prerequisite to obtain the NYRA franchise. But where are his six trustees?
- b) Getnick and Getnick? Some of the NYRA contracting violations appear to have taken place during their watch, and they haven’t filed a public report in over a year.
- c) SafirRosetti? Wasn’t the security consulting firm of SafirRosetti supposed to have made the necessary management improvements at NYRA? An August 14, 2003 story from the Albany Times Union notes that SafirRosetti “will oversee all aspects of NYRA's business practices to ensure the nonprofit company operates efficiently and with integrity.” Again, the deferred prosecution agreement states SafirRosetti’s “fulltime presence at NYRA to ensure proper implementation and follow-through on such recommended revisions and improvements.” Why would there be a need for further reforms at NYRA if there had been compliance with the SafirRosetti recommendations? Finally, was NYRA’s contract with SafirRosetti properly bid? See the Albany Times Union of August 14, 2003, “NYRA Allegedly Violated State Law.”
- d) NYRA’s audited financial statements which are supposed to be made available under the deferred prosecution agreement to the public?
- e) the last audit of the Comptroller on NYRA’s franchise fee? Was there ever a final determination made on the Comptroller’s belief that NYA owed up to \$15.3 million?

- f) transparency? The hallmark of the new NYRA was to be transparency, but the fact is that we wouldn't even need to raise any of these NYRA questions if there had been any measure of transparency at NYRA.