



Lakeville No. 2 Fire District Oversight of Financial Operations

Report of Examination

Period Covered:

January 1, 2011 — December 27, 2012

2013M-25



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

May 2013

Dear District Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Lakeville No. 2 Fire District, entitled Oversight of Financial Operations. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Lakeville No. 2 Fire District (District) is a district corporation of the State, distinct and separate from the Town of Livonia (Town), in Livingston County, where it is located. The District was established in 1921 and is one of three districts that provide fire protection services to Town residents. The District also has a fire protection agreement to service an area of the Town of Lima.

The Board of Fire Commissioners (Board) comprises five elected members and is responsible for the District's overall financial management. The District's appointed Treasurer is its chief fiscal officer and is responsible for the receipt, custody, disbursement, and accounting of District funds. The District's budgeted appropriations for the 2013 fiscal year are \$211,900.

The District is responsible for providing equipment for the Lakeville Volunteer Fire Department (Department).¹ The Board works with the Department's line officers to determine equipment needs and includes these needs in the District's budget. In April 2011, the District undertook an \$80,000 capital improvement project (CIP) to renovate the District's firehouse and build a storage building on the Department's training facility property. During our fieldwork, the storage building had been completed but renovations to the firehouse were still in progress. The firehouse renovations included converting a truck bay into a member lounge, fitness room, and two offices, and remodeling the kitchen by purchasing and installing cabinets, countertops, and flooring, but renovations to the firehouse were still in progress and in excess of expected costs by \$69,490.

Objective

The objective of our audit was to assess the oversight of the District's financial operations. Our audit addressed the following related question:

- Are District controls adequate to ensure that financial activity is properly recorded and that District moneys are safeguarded?

Scope and Methodology

We examined the internal controls of the District's financial operations for the period January 1, 2011 to December 27, 2012.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such

¹ The Department is an incorporated fire company, distinct and separate from the Town of Livonia and the Lakeville No. 2 Fire District. The Department provides the manpower to support the fire protection services provided by the District.

standards and the methodology used in performing this audit are included in Appendix C of this report.

**Comments of
District Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with District officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, District officials generally agreed with our recommendations and indicated they would take corrective action. Appendix B contains our comments on issues raised in the District's response.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary's office.

Oversight of Financial Operations

District officials have a duty to manage District operations as economically as possible in compliance with statutory requirements which are extremely specific and narrowly limited. The District may purchase apparatus and equipment for the extinguishment and prevention of fires; acquire real property and construct buildings for the preservation of equipment and for social and recreational use by firefighters and District residents; organize, maintain, and equip fire companies; and make any and all contracts for statutory purposes within the appropriations approved by the taxpayers or within statutory limitations.² However, there is no expressed or implied authority to subsidize a private corporation or association, such as a fire company.

We reviewed and compared the Treasurer's records and reports and the District's bank statements, and found that the District's financial transactions were accurately recorded and reported. However, District officials did not ensure that District funds were expended in the best interest of taxpayers or as permitted by statute. District officials did not adequately plan or use a competitive process when procuring goods and services for the recent CIP with an estimated cost of \$80,000. As a result, the District has spent \$149,490 on the uncompleted CIP. In addition, services and materials totaling \$41,790 were rendered by and paid to a construction company with close ties to the District. Furthermore, renovations to the truck bay³ for the exclusive use of the members and expenditures totaling \$22,010 for a storage building on Department property were not permissible by law. Finally, the Board entered into a poorly written memorandum of understanding (MOU) with the Department, which has caused the District to operate outside its authority.

Capital Improvement Project

Acquiring capital assets or financing CIPs often requires significant cost outlays. Prior to the start of a major CIP, a capital plan should be developed to determine the estimated costs of the project, how the project will be financed, and whether the organization has sufficient revenue to meet future operating expenditures. Once a plan is developed, District officials must ensure that an effective procurement process is used to obtain services, materials, supplies,

² In addition to the real property tax cap, which generally limits the growth of the real property tax levy to two percent unless 60 percent of the Board votes to override, Town Law also imposes a spending limitation on the District that would require voter approval to exceed.

³ District officials were unable to separate the cost of the truck bay renovation from the rest of the project.

or equipment of the desired quality and specified quantity at the lowest overall cost in compliance with applicable laws and properly established Board requirements. General Municipal Law (GML) requires District officials to adopt a written procurement policy for purchases and public works contracts below the competitive bidding thresholds.⁴ The appropriate use of competition provides taxpayers with the greatest assurance that goods and services are procured in the most prudent and economical manner and not influenced by favoritism, extravagance, or fraud.

The District did not use a competitive process when procuring goods and services for its recent CIP at an estimated cost of \$80,000.⁵ The District did not competitively bid the firehouse renovations as required and has spent \$127,480 on the firehouse renovations for the period January 1, 2011 to July 13, 2012, with additional expenditures expected to complete the work. A large portion of the renovations, totaling \$41,790, was completed by a construction company owned by a former District Commissioner and Department member. The hiring of this construction company without a competitive process gives the appearance of favoritism. Furthermore, since the renovation of the truck bay into a lounge/fitness room is for the exclusive use of the District's firefighters and not available for public use, it is not allowable by law. The District also paid two vendors a total of \$22,010 for the building of a storage building on Department property without first seeking competition.

Because District officials did not seek competition for the project work, there is no assurance that the District is purchasing the desired goods and services at the lowest cost and free from the influence of favoritism or corruption.

Memorandum of Understanding

Fire districts are established for the purpose of providing fire protection and responding to certain other types of emergencies. In furtherance of these purposes,⁶ they are authorized to enter into contracts, and to purchase or lease and improve real property for fire district purposes. Best practices for managing contracts include negotiating the terms and conditions in contracts, ensuring compliance with the terms and conditions, and documenting and agreeing on any changes that may arise during its implementation or execution. Written contracts must specify the mutually agreed-upon terms and conditions of the parties involved, such as the duration and description of goods and services to be provided, and compensation.

⁴ GML Section 103 sets competitive bidding thresholds at \$20,000 for purchases and \$35,000 for public works contracts.

⁵ According to the legal notice, the Board adopted a resolution for the use of \$80,000 from the building reserve fund to fully fund the cost of the CIP.

⁶ Town Law Section 176 (9) and (14)

All provisions should be clearly defined, and no provision can cause the District to act outside its legal authority.

The District and Department entered into a memorandum of understanding (MOU) during the spring of 2011 for the District's use of the Department's facility⁷ for training, social, and meeting purposes. Because neither the District nor the Department could provide us with a signed copy of the MOU, the exact date of implementation is uncertain. However, we did note that the District Commissioners approved the MOU at their April 13, 2011 meeting and the Department membership approved its President's signing of the MOU on June 13, 2011. While the District has the authority to enter into an agreement for the use of the Department's facility, several aspects of the MOU are questionable or problematic because it is poorly written. The District is responsible for paying for certain Department operating expenditures, such as utilities, taxes, and insurance, in exchange for use of the Department's facility. However, the MOU does not assign a value to or limit the amount of operating expenses to be paid by the District. The Board did not perform a cost-benefit analysis to determine if the amounts actually expended by the District for the Department's operating expenditures, totaling \$24,269,⁸ were reasonable in relation to its actual use of the facility. As a result, District funds may have been unnecessarily expended, causing the District to make a gift to the Department. Furthermore, we question the District's authority to pay operating expenditures, such as utilities for the Department's social events including weekly Bingo events and the Exempt Club's⁹ bar operation.¹⁰ In addition to the utilities, the District paid the Department's insurance premiums¹¹ totaling \$21,390. Although the District may insure itself against loss from use of the Department's property for District purposes, it lacks the authority to purchase insurance to protect the Department and Exempt Club against loss from use of the property.¹²

The MOU states that the District may share the expenses of maintenance repairs and capital improvements to the Department's facility, but is not required to do so. Although fire districts have authority to lease real property and to improve it for fire district purposes, such as the "preservation, protection, and storage of fire

⁷ Training grounds and a banquet hall

⁸ Operating expenditures paid by the District for the period January 1, 2011, to August 23, 2012

⁹ A benevolence association connected with the Department

¹⁰ Opns Atty Gen [Inf] No. 90-64

¹¹ The insurance premiums were for general liability, physical damage, and liquor liability.

¹² Town Law Section 176 (19); Opn 60-351, 9 Op St Comp, 1953, p. 379; Opn 60-114, and Opn 81-214

apparatus and equipment,” the term of a lease must be of sufficient length to ensure a fire district a reasonable and proper return on its expenditure. Because the District does not have a lease with the Department and used money from a capital reserve fund to construct the storage building on Department property, the payment of \$22,010 to build the storage building constitutes a gift of public funds.

Because the District entered into a written MOU with the Department that lacks clear and concise language and includes provisions outside of the District’s authority, the District has paid expenditures that it lacks the authority to pay and has no assurance that it is not paying more than necessary for use of the Department’s facility.

Recommendations

1. The Board should properly plan any future capital projects to determine the estimated costs of the project, how the project will be financed, and whether the project is permissible by law.
2. The Board should ensure that District officials comply with all applicable laws as well as their own policies and procedures when procuring goods and services. Competitive bids or quotes should be solicited when applicable and supporting documentation should be maintained.
3. The Board should properly negotiate future contracts and ensure that contracts contain clear contract language that thoroughly details all parties’ rights and responsibilities.
4. The Board should ensure that the District is operating within its legal authority.
5. The Board should recover the cost of constructing the building on Department property or consider entering a lease for the use of the District’s property.

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

The District officials' response to this audit can be found on the following pages.

April 20, 2012

Edward V. Grant
Chief Examiner
Powers Building
16 W Main Street
Suite 522
Rochester, New York 14614-1608

Dear Mr. Grant:

The Lakeville Fire District submits this statement in response to the audit by the State Comptroller. We thank the Comptroller for its review and its suggestions, and we recognize that the Comptroller seeks to protect the interests of the residents of the Fire District. The Commissioners of the Fire District share the same concern. We understand that this letter is not required to be a list of the corrective actions the District plans to take, but we believe we can include our general plans for action in this letter. In that regard, we believe that the corrective actions we propose herein will bring the Fire District firmly in compliance with the best practices of public service.

We fully understand the concerns of the State Comptroller. Although we disagree with some of the findings and statements therein, the Fire District will nonetheless improve its practices in the future. We disagree with the blanket statement that, “District officials did not ensure that District funds were expended in the best interest of taxpayers or as permitted by statute.” Although the practices we used could be and will be improved to avoid the appearance of favoritism and to ensure the lowest cost is received from a responsible bidder, the District is of the belief that the funds were spent in the best interest of the taxpayers. Further, the few examples cited by the Comptroller do not recognize many of the other efforts taken by the District to protect the interests of the taxpayers.

See
Note 1
Page 14

We also disagree with certain statements contained in the report, as follows:

- We do not agree that “district officials did not adequately plan for the proposed project”. The District prepared a 5-year strategic plan that outlined and prioritized the work to be done. Commissioners evolved this plan via an open and transparent process over an extended period of time, and included consultation with a variety of stakeholders. In addition, a capital budget plan was developed to finance the strategic plan.
- The District did issue a Request For Proposals for renovation work up to \$80,000, but only had two responses. One of these individuals withdrew prior to submitting a full proposal. Although there may have been an appearance of favoritism, there was in fact no favoritism.

See
Note 2
Page 14

See
Note 2
Page 14

- Since there was only one remaining respondent, the Board decided to approach the needed updates project by project. Thus, it was not an \$80,000 project for one contractor.
- Whenever possible, the District obtained estimates from various vendors. In many instances, no one in the community was interested in providing estimates on such small projects. The District was not deficient in not documenting the contacts that were made with other contractors.
- In terms of the CPI itself, the board planned for costs to the best of its ability. The building that was being renovated was 60+ years old and as is the case with any such facility, the District found it difficult to plan for unknown issues that might be discovered during the renovation of an old building.

See
Note 3
Page 14

See
Note 4
Page 14

In retrospect, it is now apparent that a better approach would have been to architect the resolution for the CIP to split funds allocated from the Reserve Fund amongst the projects. This would have made it obvious that some of those projects were below the threshold required for public bidding. Thus, not all of the projects would have required bidding, although the District as mentioned above did seek proposals for the project, there simply were not enough interested bidders.

See
Note 3
Page 14

The first corrective action taken by the District was to hire legal counsel experienced in fire district affairs. The Fire District has retained attorney Bradley M. Pinsky of Syracuse. Mr. Pinsky represents more than sixty fire districts throughout the state and teaches the required six hour course for fire district commissioners. He regularly drafts policies for fire districts and consults in these matters. We have arranged for Mr. Pinsky to review the districts' policies, including but not limited to its procurement policies. We have arranged for Mr. Pinsky to review the minutes of the fire districts meetings in order to evaluate the District's future actions.

Mr. Pinsky has reviewed the District's procurement policy. Although the District had such a policy, the policy is deserving of some improvements. The Commissioners will review the amended policy and will ensure that all of its future purchases comply with the policy. All future purchases which exceed the bidding threshold will be bid as required both by law and by the policy.

The District disagrees with the statement that the uncompleted CIP has cost \$149,000 at the date of the audit. The projects were closed out in fiscal year 2011 at a cost of \$96,173. The books were closed on December 31, 2011 with a net income of \$235. Although the District disagrees with the statements regarding the extent of the cost overrun on certain projects, future projects will be governed by very specific bidding specifications to define the complete scope of the project. The project will then be secured by a contract which caps the costs to the price bid.

See
Note 5
Page 14

The District will also ensure that all capital projects in the future will be separated from other projects and bid and contracted as distinct projects. Expenditure of funds from reserve funds which are for different purposes will be placed in separate resolutions.

We also understand your concern about the District's relationship to those who performed services for the District's renovation projects. Although these individuals had a prior relationship with the District, they were very well suited for the job and they were the only interested bidders on the project. However, we recognize that projects over \$35,000 should be bid and then the District can choose the contractors based upon the lowest responsible bidder as required by General Municipal Law 5-A. We will ensure that those who perform work for the district are the most appropriate recipients of the work. In this instance, we would have selected the same contractors, but the District does understand the "appearance." We simply believe that the report should give credit to the actual facts.

See
Note 6
Page 14

That being said, the District will review and educate all commissioners on its conflict of interest policy and will ensure that the district commissioners are required to disclose all potential conflicts at the beginning of each year. We will seek to avoid conflicts with contractors. We do not believe that there were any conflicts or awards based upon any past relationships, but again, we recognize that there was the appearance of favoritism.

We do, however, dispute your allegation that the expenditure of funds on a member room was impermissible. As you cited, Town Law Section 176(14) empowers the fire district to lease space for the social and recreational use of the firefighters and the residents of the fire district. We are confident that the purposes of the member room in the District's fire house fit well within the boundaries of the law. However, we believe that there should be a written lease which makes clear that the space is utilized for fire district purposes and will be available for the permitted purposes as stated in Town Law 176(14). We have asked our attorney to draft such a lease which will protect the District's interests and ensure that the space is used in accordance with the permitted purposes. Of course, the social room is also available to the public, in accordance with other purposes permitted by law.

See
Note 7
Page 14

With regard to the shed, which is actually a building, we believe that your concern is that the District constructed a storage shed on land not owned by the District. However, the land owned by the Department was the most suitable land for the placement of the building. The storage needs of the District to house equipment to support the emergency response needs of our community required additional space, and the cost to expand or replace the existing fire hall building would have been many times greater than it was to construct this storage building. Thus the District believes it was in fact acting in the best interests of taxpayers. That being said, the District will obtain a long term lease of the land for the placement of the shed with the fire department. Our attorney will draft this lease with the goal of protecting the District's interests. Our attorney has advised that the lease will require the Department to repay the pro-rata cost of the shed to the District if the lease is for some reason terminated. The lease will ensure that the

District obtains a lease for at least the useful life of the shed, pursuant to Local Finance Law Section 11. We do not anticipate that there will be any payment from the District to the Department for its use of the land.

As to all present agreements, these will be rewritten by our attorney to protect the District's interests. The District will obtain a commercially reasonable square foot lease agreement and will allocate the district's share of expenses based upon its square foot usage. The District will ensure that it is only paying for those costs which are directly related to the District's use of the space. All such expenses will bear a direct relation to the percentage of leased space. The Lease will allocate the cost of operating the building between the Department, the District and if necessary the Exempt Club.

When possible, the Board will plan future capital projects based upon the needs of the District. The plan will include the projected estimated cost. Depending on the amount of funding needed, the District will determine whether financing will be obtained from reserve funds, bonding, cash on hand, or other sources. All projects will be within the District's legal authority.

The District and its attorney are also reviewing other policies and procedures which can be improved, regardless of the fact that your office found no other issues with the District's operations. Simply stated, the District wants to maintain the public's trust.

We again thank your office for reviewing our affairs and submitting your comments and recommendations.

Patricia Chiverton

Patricia Chiverton, LVF District

APPENDIX B

OSC COMMENTS ON THE DISTRICT'S RESPONSE

Note 1

We concluded that the District's process for obtaining goods and services was not in the best interest of the taxpayers because District officials did not seek competition for the CIP work. As a result, there is no assurance that the District purchased the desired goods and services at the lowest cost and free from the influence of favoritism or corruption. We provided four recommendations to District officials to improve this process.

Note 2

Throughout the audit process, we repeatedly requested supporting documentation for the CIP, such as plans, budgets, bid solicitations, requests for proposals, and contracts, from multiple District officials. However, we were never provided with any of this information.

Note 3

GML requires that purchase and public work contracts that exceed \$20,000 and \$35,000, respectively, during a fiscal year be publicly advertised for bids and awarded to the lowest responsible bidder. Competitive bidding is required when it is known or may be reasonably expected that the aggregate amount to be spent will exceed these bidding thresholds in the fiscal year. Therefore, breaking the CIP into various phases does not avoid the competitive bidding requirements.

Note 4

District officials may not limit potential vendors to only those within the community because it renders the competitive process ineffective, which District officials affirm in their response. Furthermore, they did not provide our examiners with any potential vendor contact documentation.

Note 5

Renovations to the firehouse were ongoing and incomplete during our on-site fieldwork in July and August 2012. At that time, we documented District expenditures totaling \$149,490 on the uncompleted CIP.

Note 6

Our report accurately conveys our audit findings and is based on facts.

Note 7

The District's response combines two unrelated findings (i.e., one regarding the lounge/fitness room and the other regarding the use of the Department facility). The renovation of the firehouse's truck bay

into a lounge/fitness room, or “member room,” for the exclusive use of the District’s firefighters is not allowable by law. If District officials would like further clarification on this issue they should direct their attorney to contact OSC Legal Services.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to evaluate the District's internal controls. To accomplish this, we performed an initial assessment of internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial condition, cash receipts and disbursements, claims auditing, control environment, payroll and personal services, information technology, and purchasing.

During the initial assessment, we interviewed District officials; reviewed pertinent documents such as meeting minutes, independent audit reports, financial records and reports, and policies and procedures; and assessed the adequacy of the accounting system.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud. We then decided on the reported objective and scope by selecting for audit the area most at risk. We selected Board oversight of financial operations for further audit testing.

To accomplish the objective of the audit and obtain valid audit evidence, our procedures included the following:

- We interviewed District officials and reviewed Board minutes to gain an understanding of the District's operations.
- We selected 33 percent of all cash disbursements for review by randomly selecting a month from every quarter for the period January 1, 2011, to August 23, 2012 (January, April, July, and October 2011, and March and June 2012). We reviewed 196 disbursements totaling \$115,450 to determine if they were proper District expenditures.
- We selected and reviewed 22 reimbursements totaling \$2,220 to determine if they were properly supported.
- We compared financial reports to accounting records and bank statements.
- We reviewed the District's MOU with the Department to determine if the payment of the Department's operating expenditures totaling \$24,269 was allowable by statute.
- We reviewed the District's CIP expenditures totaling \$149,490 to ensure compliance with GML and the District's procurement policy, as well as for potential conflicts of interest, by requesting supporting documentation related to the expenditures.
- We requested and reviewed the District's insurance policy and a detailed breakdown of the premium costs.

- We verified the District's statutory spending limit calculations for 2011, 2012, and 2013.
- We verified the District's tax cap calculation for 2012.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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