



Town of Windsor

Capital Project

2025M-52 | August 2025

Contents

Audit Results	1
Audit Summary	1
Capital Project Findings and Recommendations	3
Finding 1 – The Board may have materially altered the bid specifications for the construction of the new highway garage.	4
Recommendation.	6
Finding 2 – The Board did not require competition prior to the award of a professional service contract.	6
Recommendation.	6
Finding 3 – Town officials did not provide documentation to justify the use of fund balance from the highway fund TOV for machinery, tools and equipment.	7
Recommendation.	7
Appendix A: Profile, Criteria and Resources.	8
Appendix B: Response From Town Officials.	10
Appendix C: Audit Methodology and Standards.	13

Audit Results

Town of Windsor



Audit Objective

Did the Town of Windsor (Town) Board (Board) properly manage its highway garage capital project (Project)?

Audit Period

March 1, 2022 – October 24, 2024.

We extended our audit period forward to December 31, 2024 to document the change in Town Supervisors (Supervisor).

Understanding the Program

The elected five-member Board, composed of the Supervisor and four Board members, is responsible for the general management and control of the Town's operations and finances including overseeing and managing capital projects. The Board must ensure that projects are properly planned, procured and managed, funding is appropriate and costs are kept within the approved budget.

The Town includes the Village of Windsor (Village) which requires the Town to separately account for and use the funds of town-wide (TW) and town-outside-village (TOV) residents. TW funds are used for the benefit of residents of an entire town, including a village. TOV funds are used only for the benefit of residents in the portion of the town outside of the village. Consistent with language set forth in New York State Town Law (Town Law), it has been the view of the New York State Office of the State Comptroller (OSC)¹ that construction costs of a town-owned building is a charge to TW residents rather than TOV residents.

In March 2022, a fire at the Town's highway garage resulted in a total loss of the structure and the equipment stored inside. The Town secured funding totaling \$7.5 million to construct a new highway garage and began reconstruction in 2022 at a total cost of \$6.7 million.

Audit Summary

Although three Project construction contracts totaling \$4.8 million were properly procured, the Board may have made material alterations to bid specifications for two other contracts totaling \$1.2 million, which brings into question whether they were properly awarded. Additionally, although not required by the Town's procurement policy (Policy), the Board could have solicited some type of competition

¹ See, e.g., Opn St. Comp. No. 81-14

and documented the results to help provide assurance that one professional service contract totaling approximately \$382,000 was obtained under the most favorable terms and conditions possible and without favoritism.

When Town officials do not seek or properly document competition, taxpayers have less assurance that purchases are made in the most prudent and economical manner, without favoritism and in compliance with applicable statutes.

Furthermore, Town officials partially funded the Project with \$1.5 million in TOV funds and did not have adequate documentation to support how the funds were used or that the appropriate tax base was charged. Therefore, we question whether TOV fund balance was spent on the construction of the Town-owned highway garage. If the money was expended to pay for the highway garage, it has been the view of OSC that construction costs of a highway garage should be derived from TW funds. Otherwise, when TW funds are not used to construct a Town-owned building, taxpayer inequities can occur as the costs are disproportionately placed on TOV residents.

The report includes three recommendations that, if implemented, will improve the Town's capital project management.

Town officials agreed with our recommendations and, their response is included in Appendix B.

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law (GML). Our methodology and standards are included in Appendix C.

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 provided to our office within 90 days, pursuant to Section 35 of the GML. 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 the CAP available for public review in the Town Clerk's office.

Capital Project Findings and Recommendations

The town board (board) is responsible for the oversight and management of capital projects, including ensuring that projects are properly procured and funded. This includes complying with GML Section 103, which generally requires towns to advertise for competitive bids for purchase contracts exceeding \$20,000 and public works contracts exceeding \$35,000. While town officials are not precluded from negotiating with the lowest responsible bidder, such as to gain cost concessions, the negotiations may not include a material change from the original bid specifications. Instead, under these circumstances, the prudent approach to comply with GML Section 103 is to reject all bids and readvertise using the revised specifications to help ensure the propriety of the procurement process.

In addition, towns are required to adopt written policies and procedures governing the procurement of goods and services, such as professional services, that are not subject to the competitive bidding requirements. Such policies and procedures help ensure the prudent and economical use of public money, as well as help guard against favoritism, improvidence, extravagance, fraud and abuse.

More details on the criteria used in this report, as well as resources we make available to local officials that can help officials improve operations (Figure 5), are included in Appendix A.

In March 2022, a fire at the Town's highway garage resulted in a total loss of the structure and assets stored inside (Figure 1). The demolition and rebuilding of the highway garage (Figure 2) were included in the approximately \$6.7 million Project. Other costs that contributed to the overall Project cost but were not included in our audit testing were financing (\$174,000), site demolition (\$60,000), third-party inspection (\$43,000), electrical service (\$31,000) and other services for minimal amounts.

Figure 1: Old Highway Garage (March 2022)^a



a) Photos taken by Town officials after the fire in March 2022 and used by OSC auditors with permission from Town officials.

Figure 2: New Highway Garage (August 2024)^b



b) Photos taken on August 21, 2024 by OSC auditors with permission from Town officials.

Finding 1 – The Board may have materially altered the bid specifications for the construction of the new highway garage.

We reviewed the five Project construction contracts officials awarded to construct the Project – each of which exceeded the competitive bidding thresholds set forth by GML – to determine whether each contract was properly bid. The contracts totaled approximately \$6 million. The Board bid three of the five Project construction contracts totaling approximately \$4.8 million in accordance with GML Section 103. However, as detailed below, the Board may have made material changes to two of the five Project bid specifications (electrical and mechanical services) during the bidding process, which brings into question whether the two Project construction contracts, totaling \$1.2 million, were awarded in accordance with GML.

Town officials originally published the bid notice for the five Project construction contracts in April 2023. The bid specifications listed electricity as the heating method for the new highway garage, affecting how prospective bidders would submit both the electrical and mechanical bids. Four electrical and two mechanical vendors submitted sealed bids by the deadline for the Project and Town officials conducted a bid opening that announced the amounts bid by the six responding vendors. The initial low offers for the electrical and mechanical bids totaled \$718,000 and \$562,000, respectively.

During the bidding process, the former Supervisor² and two Board members, after discussions with industry professionals, questioned whether using electricity to heat the new highway garage would be too costly. Based on these discussions, the Project engineer was directed by the Supervisor and two Board members to explore a propane-based heating method for the new highway garage. The Board directed the Project engineer to also contact the lowest responding bidders for electrical and mechanical services and requested both bidders revise their bids to include propane as the heating method. The Project engineer, upon instruction from the Board, informed the lowest electrical and mechanical bidders of the requested change to the original specifications. However, the remaining initial bidders of the Project did not receive notice that Town officials were amending the original Project design, which limited competition.

Based on the request from the Project engineer, the lowest electrical and mechanical bidders submitted revised bids totaling \$657,000 and \$495,000, respectively, or a combined \$128,000 less than the initial bids. However, we could not determine the extent of the change to the two contracts because Town officials did not provide a detailed schedule of costs associated with removing the electrical heating components and adding propane heating components to the revised bids. Therefore, we were unable to determine the exact cost of adding propane heating components to the revised bids.

The former Supervisor and two Board members told us that substantial delays would have occurred had Town officials rebid the modification made to the heating method for the new highway garage (Figure 3). Additionally, the former Supervisor told us he was satisfied with the net savings from the revised bids and overall lower cost of the completed Project.

Figure 3: Electrical and Mechanical Bids

Service	Bidders	Initial Bid	Revised Bid
Electrical	Highest	\$975,000	Not Contacted
	Third Lowest	\$758,000	Not Contacted
	Second Lowest	\$734,000	Not Contacted
	Lowest	\$718,000	\$657,000
Mechanical	Highest	\$598,000	Not Contacted
	Lowest	\$562,000	\$495,000

While Town officials were not precluded from negotiating with the lowest responsible bidders, such as to gain cost concessions, the negotiations should not include a material change from the original bid specifications. Here, changing the design of the heating system from electrical to propane may have resulted in the Town materially changing from the original specifications of the Project, without giving each vendor an opportunity to submit a bid that incorporated the change to the Project. Had a material change from the original bid specifications occurred, there would be an increased risk that the integrity of the procurement process was impaired because all vendors were not provided an opportunity to provide a bid with the amended specifications. To avoid this problem, Town officials should have rejected all bids and readvertised using the revised specifications for the heating system of the new highway garage.

2 The former Supervisor served as Supervisor for the duration of our audit period and until December 31, 2024. Starting January 1, 2025 a new Supervisor was elected and the former Supervisor was elected as a member of the Board.

Recommendation

1. The Board should ensure compliance with GML Section 103 by not materially departing from the original bid specifications if negotiating with the lowest responsible bidder.

Finding 2 – The Board did not require competition prior to the award of a professional service contract.

The Town's Policy did not require Town officials to solicit alternative proposals or quotations or competitive bidding when obtaining professional services. As a result, the Board elected to not solicit for alternative proposals for engineering and project management services related to the construction of the highway garage totaling approximately \$382,000. Instead, the Town contracted with the Town's annually appointed engineering firm for services related to the Project.

When we discussed the professional service contract with Town officials, three Board members told us the Town used the same engineer for more than five years and had a strong working relationship with the engineering firm. Additionally, according to the former Supervisor and three Board members, they thought the contracted price for engineering and project management was a discounted rate compared to similar services. However, they lacked documentation to support this claim. While we acknowledge that the Town's Policy does not require that competition be sought when awarding professional service contracts, soliciting this service through some form of competition may have confirmed the former Supervisor and three Board members claim that a discounted rate was received and could help provide assurance that quality services are obtained under the most favorable terms and conditions possible and without favoritism. Furthermore, seeking competition can increase Town officials' awareness of other service providers who could offer similar services at a more favorable cost.

Recommendation

2. The Board should update the Policy to include requirements to solicit some type of competition for professional service contracts, such as the use of a request for proposal process and how the proposals will be evaluated.

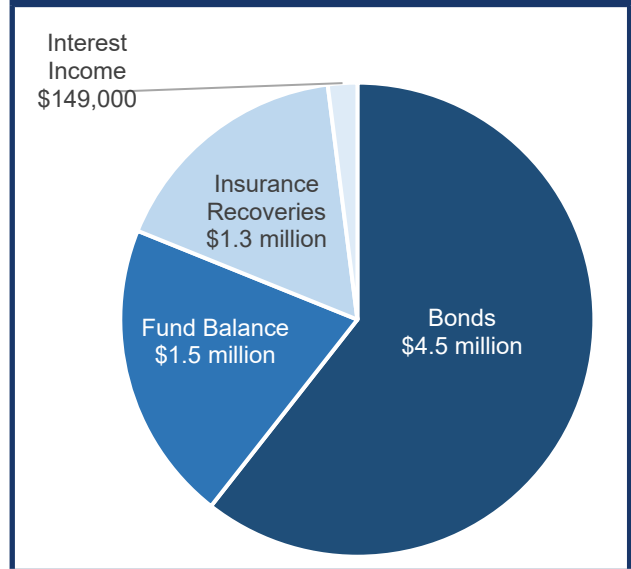
Finding 3 – Town officials did not provide documentation to justify the use of fund balance from the highway fund TOV for machinery, tools and equipment.

The Board funded the Project, with a total of \$7.5 million,³ from a variety of sources including bonds, fund balance, insurance recoveries and interest earned on idle cash (Figure 4). More specifically, the Board committed \$1.5 million in fund balance from the highway fund TOV. These funds were accumulated to benefit residents in the portion of the Town outside of the Village.

The former Supervisor and three Board members told us that the TOV fund balance was used towards a portion of the Project related to machinery, equipment or tools and the amount spent was a conservative estimate. Although the purchase of machinery can be a highway fund TOV charge,⁴ Town officials did not provide documentation that supported the fund balance was spent on machinery or other appropriate TOV charges.

Therefore, we question whether TOV fund balance was spent on the construction of the Town-owned highway garage. If so, it has been the view of OSC⁵ that construction costs of a highway garage should be derived from TW funds. Otherwise, when TW funds are not used to construct a Town-owned building, taxpayer inequities can occur as the costs are disproportionately placed on TOV residents.

Figure 4: Project Funding Sources



Recommendation

3. The Board and Town officials should ensure the Town uses appropriate funding sources for future capital project funding.

³ The funding sources exceeded the final Project cost of \$6.7 million because initial Project estimates ranged as high as \$7.9 million and the Board wanted funds available if necessary.

⁴ See Appendix A, Criteria – Capital Project Procurement

⁵ Supra, Note 1.

Appendix A: Profile, Criteria and Resources

Profile

The Town is located in Broome County. The Supervisor is the Town's chief financial officer and is responsible for performing accounting functions, including maintaining capital project accounting records and providing monthly financial reports to the Board.

Criteria – Capital Project Procurements

A board is responsible for the oversight and management of capital projects, including ensuring that projects are properly procured and funded. The board should comply with GML Section 103, which generally requires towns to advertise for competitive bids for purchase contracts exceeding \$20,000 and public works contracts exceeding \$35,000. While a town is not precluded from negotiating with the lowest responsible bidder, such as to gain cost concessions, such negotiations may not include a material change from the original bid specifications. Instead, under these circumstances, the safer approach is often to reject all bids and readvertise, using the revised specifications, to help ensure the propriety of the procurement process.

In addition, GML Section 104-b requires towns to adopt written policies and procedures governing the procurement of goods and services, such as professional services, that are not subject to the competitive bidding requirements. Such policies and procedures help ensure the prudent and economical use of public money, as well as help guard against favoritism, improvidence, extravagance, fraud and abuse. Written procurement policies and procedures also provide guidance to officials involved in the procurement process and help ensure that competition is sought in a reasonable and cost-effective manner.

The Town includes the Village which requires the Town to separately account for and use the funds of TW and TOV residents. TW funds are used for the benefit of residents of an entire town, including a village. TOV funds should be used only for the benefit of residents in the portion of the town outside of the village.



Consistent with language set forth in Town Law Section 220(2), it has been the view of OSC⁶ that construction costs of a town-owned building is a charge to TW residents rather than TOV residents. However, it has been the view of OSC that, in accordance with New York State Highway Law Sections 142(4) and 277, expenditures associated with highway machinery and equipment may, by board option, be a TOV expenditure.

⁶ Supra, Note 1.

Additional Capital Project Resources

Figure 5: OSC Publications

OSC *Local Government Management Guides* available on our website to help officials understand and perform their responsibilities.

Capital Projects Fund	Seeking Competition in Procurement
	
https://www.osc.ny.gov/files/local-government/publications/pdf/capital-projects-fund.pdf	https://www.osc.ny.gov/files/local-government/publications/pdf/seeking-competition-in-procurement.pdf

In addition, our website can be used to search for audits, resources, publications and training for officials: <https://www.osc.ny.gov/local-government>.

Appendix B: Response From Town Officials



Town Of Windsor

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August 13th, 2025

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Binghamton Regional Office
44 Hawley Street – RM 1702
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Response: OSC Examination of the Town of Windsor’s Capital Project 2025M-52

We would like to take the opportunity to thank the Office of the State Comptroller (“OSC”) in conducting an examination of the Town of Windsor’s Capital Project 2025M-52. This letter serves as the official response to the OSC preliminary draft report.

This response also addresses the corrective actions taken, or to be taken (if any), by the Town of Windsor to address the recommendations provided by OSC and serves as the Corrective Action Plan (CAP)

Finding 1: Heating System Change and GML § 103 Compliance

The Town appreciates the Comptroller’s attention to procurement compliance under General Municipal Law § 103 and offers the following response to clarify the rationale for the heating system specification change in the highway garage project.

After bids were received but before contract award, the Town, in consultation with its retained engineer, determined that substituting a propane-fired heating system for the originally specified electric radiant system would improve energy efficiency and reduce long-term operating costs. The revised design reduced the project cost by approximately \$128,000, or 1.9 percent of the total \$6.7 million project budget.

The change involved substituting one specified system, an electric HVAC system, with another functionally equivalent propane fueled HVAC system. This was a standard, code compliant alternative that any qualified mechanical contractor could have installed and the Town determined it fell within the category of a design alteration rather than a new undertaking. It affected only a single internal system and did not alter the size, function, or purpose of the facility. The Town implemented the change through negotiations with the same lowest responsible bidders identified in the competitive process. No new bidders were introduced, no disqualified bidders were revived, and rankings remained unchanged. The substitution produced measurable taxpayer savings.

The Town also considered pressing external factors, including the ongoing cost of operating from a temporary facility and the need to complete the highway garage before the upcoming winter season. Reinitiating the bid process at that stage would have delayed construction, risked inflationary cost increases, and potentially allowed prior unsuccessful bidders to resubmit bids with insight into initial pricing, undermining the integrity of the original process. Based on all of these factors, the Town, with legal advice, concluded that the technical equivalence of the change did not constitute a material deviation from the specifications and that proceeding by change order was a reasonable and lawful course of action consistent with GML § 103, which does not prohibit all post-bid changes, only those that fundamentally alter the nature or scope of the contract in a way that compromises competitive integrity.

The Town acknowledges the Comptroller's concern that any post-bid change carries potential procurement risk and understands the importance of safeguarding public confidence in the bidding process.

Going forward, the Town will evaluate any post-bid changes with input from its engineer, attorney, and relevant staff to determine whether the change could materially affect the scope, cost, or competitive structure of the contract, and will document that assessment before taking action. In light of the Comptroller's feedback, the Town will err on the side of caution and rebid affected scopes when the materiality of a proposed change is uncertain. The Town will also work with its design professionals to identify cost-saving alternatives earlier in the design process to minimize the need for post-bid modifications. The Town remains committed to complying with GML § 103 and to delivering essential capital projects in a transparent, efficient, and fiscally responsible manner that serves the best interests of its residents.

Finding 2: Professional Services Procurement (Engineering Contract)

The Town acknowledges the Comptroller's finding that the engineering contract for the highway garage project was awarded without a competitive process. We appreciate the opportunity to clarify the legal framework as the board understood it, explain the Town's rationale, and outline changes we will implement going forward.

Under New York State law, professional service contracts, such as those for engineers, architects, or attorneys, are not subject to the competitive bidding requirements of General Municipal Law § 103. This exception recognizes that professional services are awarded based on qualifications and experience, not solely on price. At the time, the Town's procurement policy mirrored this standard and did not require a formal RFP for such services.

We understand, however, the Comptroller's broader recommendation: introducing competition for large professional service contracts promotes transparency and may yield greater value. The Town will review its procurement policy with the intent to incorporate procedures for soliciting proposals or quotes for engineering or architectural services on major capital projects or projects outside of professional service contract parameters. We will also ensure the basis for future selections is documented in Board records to ensure accountability.

Finding 3: Use of TOV Highway Fund Balance for the Highway Garage Project

The Town understands and appreciates the Comptroller's concern that Town-outside-Village (TOV) highway funds should be used only for the benefit of residents in the portion of the Town outside the Village, and that construction costs of a town-owned building have historically been viewed by OSC as a town-wide (TW) expense. At the same time, New York State Highway Law §§ 142(4) and 277 expressly allow, at the Board's option, the use of TOV highway funds for expenditures associated with highway machinery, tools, and equipment.

In this case, the new highway garage was designed to house, maintain, and protect the full fleet of TOV-owned highway machinery, including plows, loaders, and sanders purchased with and maintained by the TOV highway fund. Project plans identified dedicated areas and systems in the facility for the storage, servicing, and safeguarding of this equipment. The Board, acting in good faith, determined that a conservative portion of the project cost could reasonably be associated with these machinery-related purposes and therefore funded from the TOV highway fund balance.

The Board's intent was to ensure that TOV taxpayers contributed only to the portion of the facility directly tied to the equipment that serves them, consistent with the "associated with" language in the Highway Law. We recognize that additional documentation, such as an engineer's cost allocation, would have further substantiated this rationale.

Going forward, the Town will work with its engineer, accountant, and counsel to clearly document the functional share of any capital project cost assigned to TOV purposes, ensuring alignment with both Town Law § 220(2) and Comptroller guidance, while preserving transparency and taxpayer equity.

Respectfully,

Tim Harting, Supervisor
Eric Beavers, Deputy Supervisor
Gary Hupman, Council Member
Mark Odell, Council Member
Daniel Colwell, Council Member
Town of Windsor

Appendix C: Audit Methodology and Standards

We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We interviewed Town officials and employees and reviewed policies and Board meeting minutes to gain an understanding of operations related to the Project.
- We reviewed bid records, invoices and associated disbursements for all five Project construction contracts totaling \$6 million, which included the public works contracts exceeding \$35,000 related to the construction of the new highway garage, to determine whether the Board complied with competitive bidding requirements.
- We interviewed Town officials and discussed the awarding of one professional service contract (engineer and project management) totaling approximately \$382,000 to determine whether the service was procured in accordance with the Town's Policy. We selected this contract from a population of six professional service contracts totaling \$475,500 based on the significant amount disbursed to this vendor in relation to the Project cost.
- We reviewed Town accounting records and bank statements to determine the funding sources of the Project. We interviewed Town officials, reviewed invoices and requested documentation to support the appropriateness of using \$1.5 million in fund balance as a funding source for the Project.

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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or relevant population size and the sample selected for examination.

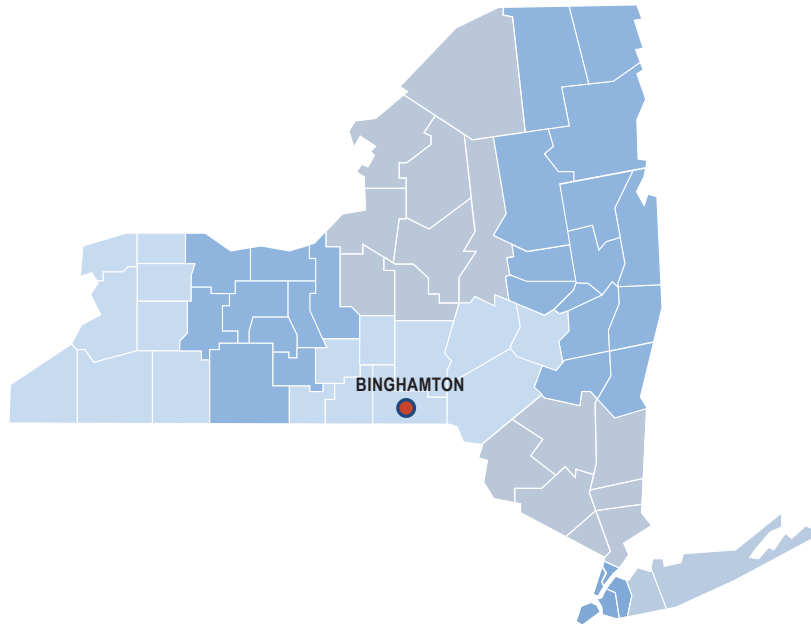
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