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April 5, 2013

Mr. Kenneth D. Runion, Supervisor
Members of the Town Board
Town of Guilderland Town Hall
5209 Western Turnpike
P.O. Box 339
Guilderland, New York 12084

Report Number: S9-12-23

Dear Mr. Runion and Members of the Town Board:

A top priority of the Office of the State Comptroller is to help town officials manage their resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support town operations. The Comptroller oversees the fiscal affairs of towns 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 Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard town assets.

In accordance with these goals, we conducted an audit of 10 towns throughout New York State. The objective of our audit was to determine whether towns are monitoring asphalt road-surfacing projects to ensure vendors provide the asphalt products in accordance with the bid specifications, and demonstrate compliance with the requirement for submission of certified payrolls under prevailing wage law. We included the Town of Guilderland (Town) in this audit. Within the scope of this audit, we examined the Town's process for monitoring road-surfacing projects for the period January 1, 2011 through December 31, 2011. Following is a report of our audit of the Town of Guilderland. 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 report of examination letter contains our findings specific to the Town. We discussed the findings and recommendations with Town officials and considered their comments, which appear in Appendix A, in preparing this report. Town officials agreed with our findings and recommendations and plan to initiate corrective action. At the completion of our audit of the 10 towns, we prepared a global report that summarizes the significant issues we identified at all of the towns audited.

Summary of Findings

The Town can improve its controls and monitoring of asphalt road-surfacing projects by obtaining assurance that the asphalt materials purchased meet contract specifications. The Town does not obtain the job mix formula, the daily batch reports, nor does it test the hot asphalt mix products received. Additionally, the Town's asphalt contract does not contain language that would provide for the testing of the asphalt materials supplied to the Town. Without these documents and procedures, the Town cannot be certain the asphalt products provided are the same products bid and billed for by the vendor.

The Town's controls over other aspects of the asphalt cement purchases and the prevailing wage laws were adequate. Highway officials monitored projects by their on-site presence, by visiting the asphalt vendor, and by comparing the billed invoices to awarded bid prices and the tonnage purchased per delivery tickets. Town officials also review the contractor's certified payrolls, and the Highway Superintendent signs an approval for payment. Our tests comparing the tonnage and prices charged per the asphalt delivery tickets to bid prices and invoices disclosed no discrepancies. We also verified that the employees paid by job classification were paid consistent with the applicable prevailing wages.

Background and Methodology

The Town covers 54 square miles with 163 miles of highway lanes and has approximately 35,000 residents. The Town's 2012 adopted budget totaled \$36.1 million.

The Town is governed by a five-member Town Board. The Highway Superintendent (Superintendent) is in charge of maintaining the Town's roads. The Highway Department's budget was approximately \$4.2 million in fiscal year 2012.

Hot mix asphalt (HMA) is a combination of different sized aggregates and asphalt cement, which binds the mixture together. HMA is generally composed of 93 to 97 percent (by weight) of aggregate and 3 to 7 percent of asphalt cement. Higher quality materials, such as non-recycled asphalt (also called, "virgin asphalt") produce higher quality mixtures, but they tend to be more costly. Within the variances allowed by bid specifications, the vendor should produce an asphalt batch using an associated job mix formula that creates the desired HMA product. Vendors, often using automated plants, then produce daily batch reports that identify the "ingredients" actually used to prepare each specific batch of HMA that is loaded into the delivery trucks. In addition, when a vendor delivers HMA (onsite or by making it available for pickup at the plant), the product is accompanied by a delivery ticket that specifies the type of product and quantity delivered.

Core sampling is a method used to test the quality of HMA. Typically, an independent firm obtains samples of the HMA purchased for highway projects and tests it to assess whether the product matches contract specifications. Core samples allow the testers to determine things such as the size of the aggregate and type of asphalt used. However, the method does not allow testers to determine the percentage of recycled asphalt material in the HMA.

In 2011, the Town had two HMA road-surfacing projects.¹ The Town had projects where the vendor delivered and applied HMA to a road site. In 2011, the vendor applied, in accordance with the Superintendent's directions, 6,176 tons of asphalt relating to the projects at a cost of \$364,366.

Section 220 of the New York State Labor Law requires that contractors under a "public work" contract pay certain of their employees the "prevailing" rate of wages and supplements set for the locality in which the work is performed.

To complete our objective, we interviewed Town officials and reviewed policies and procedures, vendor invoice/claim packets, and the awarded contracts to determine the Town's process for monitoring the asphalt product received, and the payment of prevailing wages by the contract vendor.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix B of this report.

Audit Results

The Town can improve its controls and monitoring of asphalt road-surfacing projects by obtaining the job mix formula and the daily batch reports and by conducting core sample tests to verify that the HMA is consistent with bid specifications. The Town did not test the product to determine if it met specifications, nor is there language in the asphalt contract that provides for material testing. Further, the Town did not obtain available vendor reports of ingredients in batches of the asphalt mix.

The Town's controls over other aspects of the asphalt purchases and the prevailing wage laws were adequate.

Project Monitoring and Material Verification – A good system of internal controls over road-surfacing projects includes procedures to provide reasonable assurance that the HMA purchased meets bid specifications. The Town must verify that the project costs are accurate and supported, and that the quality and quantity of applied surface material is consistent with bid specifications. Effective procedures should include obtaining the job mix formula and daily batch reports and periodically viewing and testing the actual HMA purchased.

The Superintendent has the primary duty of monitoring road-surfacing projects. The Superintendent conducts daily visual inspections of the job site, where he reviews HMA products, delivery tickets from vendors, and project costs. The Town compares the delivery tickets with bid specifications, orders, and billed invoices to verify accuracy.

The Town has limited assurance that the HMA products are consistent with bid specifications. Town officials do perform visual inspections of the HMA and visit asphalt vendors. However,

¹ We did not include micro surfacing projects in our audit. Micro surfacing is a mixture of polymer-modified asphalt emulsion, aggregate mineral filler, and water, and has a watery consistency during mixing and application. The micro surfacing is continuously mixed and applied with specialized equipment.

the Town's asphalt contract does not provide for core sample testing and the Town officials did not do so. Without core sample testing to validate the quality and composition of the vendor's HMA products, the Town risks purchasing asphalt products that fail to meet its bid specifications.

Additionally, the Town did not obtain and review the job mix formula or the daily batch reports from the vendor that detail asphalt mix ingredients. Without additional procedures to validate the quality and composition of the vendor's HMA products, the Town risks purchasing asphalt products that fail to meet its bid specifications.

To test the Town's current monitoring controls, we judgmentally selected the Town's two asphalt road-surfacing projects completed during our scope period, which used 6,176 tons of asphalt costing \$364,366. Positively, we found that the tonnage from the delivery tickets and bid award pricing matched the invoiced amounts charged to the Town.

Prevailing Wages – Section 220 of the New York State Labor Law requires that contractors under a “public work” contract pay certain of their employees the “prevailing” rate of wages and supplements set for the locality in which the work is performed. Contractors are required to submit to the locality, every 30 days, a certified payroll. The Town is also required to set forth in the contract that the filing of certified payrolls is a condition to the payment of moneys due and owing for work done. It is the Town's responsibility to collect and perform a facial review of the contractor's certified payroll² for each project. The Town's contract with the asphalt vendor states:

“As a contractor for the Town of Guilderland, I do hereby acknowledge the New York State Labor Law with regard to prevailing wages. As a contractor for the Town of Guilderland I have full knowledge of New York State Labor Law, Article 8 (Section 220-223) and Article 9 (Section 230-239), specifically.”

Town officials charged with monitoring projects told us they review the contractor's certified payroll by comparing the rate paid with the State's prevailing wage rate for each category of worker. In addition, the assigned Town project manager visits the project site daily and has an understanding of the number of contracted workers on the site performing various functions. On our two sampled projects, the Town had obtained the project's certified payrolls, and the Highway Superintendent had signed an approval for payment indicating his review. We reviewed a certified payroll from each of the applicable projects and found that the 22 employees paid by job classification were paid consistent with the applicable prevailing wage rates.

Recommendations

1. The Town should revise its bid specifications with an option for obtaining core samples to obtain better assurance that the HMA product matches the contract specifications.
2. The Highway Superintendent should obtain the job mix formula and the daily batch reports from the asphalt vendor to help ensure that the HMA received is what the Town contractually agreed to purchase.

² Approved by management prior to payment

The Town 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 Town Board to make this plan available for public review in the Clerk's office.

Our Office is available to assist you upon request. If you have any further questions, please contact Ann Singer, Chief of Statewide and Regional Projects, at (607) 721-8306.

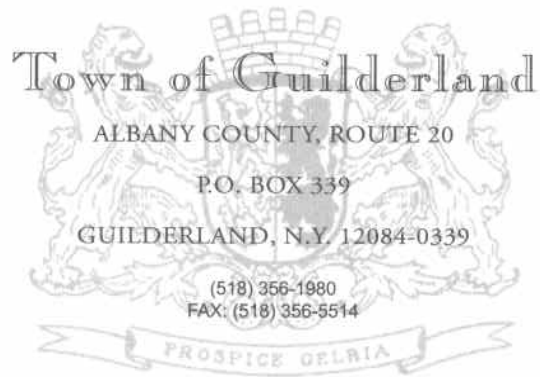
Sincerely,

Steven J. Hancox, Deputy Comptroller
Office of the State Comptroller
Division of Local Government
and School Accountability

APPENDIX A

RESPONSE OF TOWN OFFICIALS

The Town officials' response to this audit can be found on the following page.



KENNETH D. RUNION
SUPERVISOR

November 26, 2012

Office of the State Comptroller
State Office Building
44 Hawley Street
Binghamton, NY 13901

Attn: Ms. Ann Singer

Dear Ms. Singer:

This letter is in response to the preliminary draft findings related to the Monitoring Road Surface Projects audit recently conducted by your office.

The audit covered the period of January 1, 2011 through December 31, 2011. It should be noted that the Town's current Superintendent of Highways did not take office until January 1, 2012. Our former Superintendent of Highways retired on January 3, 2011. Therefore, your audit covered a period during which the Town was without an elected Superintendent of Highways.

Our newly elected Superintendent of Highways has found the comments and findings contained in the preliminary draft findings to be extremely helpful. He has taken steps to implement the recommendations contained in the report. In addition, future contracts will be amended to provide for the testing of asphalt materials supplied to the Town.

We appreciate the professionalism exhibited by the Comptroller's office during the audit process.

Very truly yours,

Kenneth D. Runion
Town Supervisor

Cc: Steven Oliver, Superintendent of Highways

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

We reviewed the Town's policies and procedures for monitoring hot asphalt mix purchased and payment of prevailing wages. As part of this process, we reviewed the applicable contracts, bid specifications, and claim/voucher packets. We non-bias judgmentally selected three projects for testing to ensure the materials matched the bid specifications for quantity and product type. We conducted detailed testing of project documentation, interviewed Town and Highway Department officials, and reviewed other documentation related to the objective for the audit scope period. We utilized the New York State Department of Transportation for consultation on asphalt composition, efficacy of core sample testing and project monitoring.

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.