



THOMAS P. DiNAPOLI
COMPTROLLER

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
110 STATE STREET
ALBANY, NEW YORK 12236

STEVEN J. HANCOX
DEPUTY COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY
Tel: (518) 474-4037 Fax: (518) 486-6479

April 5, 2013

Ms. Sandy Zutes, Acting Supervisor
Members of the Town Board
Town of Pittsford Town Hall
11 S. Main Street
Pittsford, New York 14534

Report Number: S9-12-21

Dear Ms. Zutes 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 Pittsford (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 Pittsford. 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 generally 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 nor does it test the hot asphalt mix products received. The Town's asphalt contract does not contain language that would provide for the testing of the asphalt materials supplied to the Town. Without such documentation and procedures, the Town cannot be certain the asphalt products provided are the same products bid and billed for by the vendor. Additionally, the Town did not obtain and review vendor certified payrolls to monitor compliance with prevailing wage laws.

The Town's controls over other aspects of asphalt cement purchases were adequate. Highway officials monitored projects by having an on-site presence, visiting the asphalt vendor, comparing the billed invoices to awarded bid prices, and by reviewing the daily batch reports and the tonnage purchased per delivery tickets. Our tests comparing the tonnage per invoices to bid prices disclosed no discrepancies.

Background and Methodology

The Town covers 23 square miles with 202 miles of highway lanes and has approximately 29,500 residents. The Town's 2012 adopted budget totaled \$15 million.

The Town is governed by a five-member Town Board. The Town's Commissioner of Public Works (Commissioner) is in charge of maintaining the Town's roads. The Highway Department's budget was approximately \$2.4 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 nine HMA road-surfacing projects.¹ The Town had projects where the Town employees picked up the HMA and a vendor, assisted by Town staff, applied the HMA. In 2011, the vendor applied, in accordance with the Commissioner's directions, 4,046 tons of asphalt relating to projects totaling \$320,489.

Section 220 of the New York State Labor Law (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 conducting core sample tests to verify that the HMA is consistent with bid specifications. The Town did not test the product to determine it met specifications, nor is there language in the asphalt contract that provides for material testing. Further, the Town did not obtain the available job mix formula of the asphalt mix. Last, the Town did not monitor the payment of prevailing wages and did not receive certified payrolls, which is required by Law.

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 Commissioner has the primary duty of monitoring road-surfacing projects. The Town project managers do conduct daily visual inspections of the job site, and review HMA, delivery tickets from vendors, and project costs. The Town compares the delivery tickets and the bid specifications to 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, the Town asphalt contract does not provide for sampling and testing and Town officials did not require these tests. The Town purchases its materials from the Monroe County contract, and thus

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.

feels it is the County's responsibility to ensure the quality of the HMA product. The Monroe County contract, however, contains the following language:

"Orders placed against this contract between any subdivision or district will be contracts solely between the Contractor(s) and those entities. Monroe County will not be responsible for, nor will it have any liability or other obligation for, such contract between the Contractor(s) and any third party."

Additionally, the Town did not obtain and review the job mix formula 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 three asphalt road-surfacing projects completed during our scope period, which used 2,665 tons of asphalt costing \$171,938. Positively, we found that the tonnage and named product from the invoiced amounts charged to the Town matched the bid prices.

Prevailing Wages – The 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 Monroe County asphalt contract, the terms and conditions of which are extended to all political sub-divisions purchasing under it, states:

"Contractor agrees to comply with the provisions of the New York State Labor Law relating to the payment of prevailing wage rates to the extent that such rules may be applicable to the Contractor."

Town officials charged with monitoring projects told us that, because the Town purchases HMA products and services subject to the Monroe County contract, they believed the County assumed responsibility for compliance with the State's prevailing wage laws. The New York State General Provisions of Laws Covering Workers on Public Work Contracts, however, contain the following language:

"Every contractor and subcontractor shall submit to the Department of Jurisdiction (Contracting Agency), within thirty (30) days after issuance of its first payroll and every thirty (30) days thereafter, a transcript of the original payrolls, subscribed and affirmed as true under penalty and perjury. The Department of Jurisdiction (Contracting Agency) shall collect, review for facial validity, and maintain such payrolls."

² Approved by management prior to payment

Of our three sampled projects, the prevailing wage laws applied to all three. The Town had not obtained certified payrolls pertaining to these projects.

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 Town Commissioner of Public Works should obtain the job mix formula from the asphalt vendor to help ensure that the HMA received is what the Town contractually agreed to purchase.
3. The Town should obtain and review certified payrolls as required by Law.

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 response of Town officials to this audit can be found on the following pages.



December 26, 2012

Office of the State Comptroller
State Office Building
Room 1702
Binghamton, NY 13901-4417
Attn: Ms. Ann Singer

Re: Town of Pittsford
Asphalt road-surfacing projects
S9-12-21

Dear Ms. Singer:

The following are the recommendation for the Town of Pittsford from the above referenced audit. These responses should also be considered as our Corrective Action Plan.

Recommendation #1

The Town should revise its bid specifications with an option for obtaining core samples, to obtain better assurance that the HMA product marches the contract specifications.

The Town of Pittsford uses a Monroe County contract when purchase asphalt materials. Therefore, the County has control over the wording of the bid specifications. The town will request that Monroe County include core sampling language in future contracts. The Town believes that the cost/benefit would not be reasonable for us to perform the core sampling on its own.

Recommendation #2

The Town Commissioner of Public Works should obtain the job mix formula reports from the asphalt vendor to help ensure that the HMA received is what the Town contractually agreed to Purchase.

The Commissioner of Public Works will request job mix formula reports from the vendor. These reports will be made part of the payment process and scanned into the Town's financial system.

Recommendation #3

The Town should obtain and review certified payrolls as required by law.

The Commissioner of Public Works will obtain certified payroll reports from the contractor or subcontractor as required by law.

I would like to thank the staff of the Comptroller's Office for their professionalism and consideration while completing this audit.

Respectfully,

Sandra F. Zutes
Supervisor
Town of Pittsford

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.