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April 5, 2013

Mr. James Dougherty, Supervisor
Members of the Town Board
Mr. Jay Linn Card, Superintendent of Highways
Town of Shelter Island Town Hall
38 North Ferry Road
P.O. Box 970
Shelter Island, New York 11964

Report Number: S9-12-17

Dear Mr. Dougherty, Members of the Town Board, and Mr. Card:

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 bid specifications, and demonstrate compliance with the requirement for submission of certified payrolls under prevailing wage law. We included the Town of Shelter Island (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 Shelter Island. 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 was unable to monitor asphalt road-surfacing projects to ensure that the asphalt cement products purchased complied with the bid specifications because the bid specifications did not specify a type of asphalt cement desired. While the vendor's bid documents did specify the type of asphalt being provided, the Town does not obtain the job mix formula and the daily batch reports, nor does it test the hot asphalt mix products received, despite language in its asphalt contracts that the vendor would conduct such testing at no cost 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 having an 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 Superintendent of Highways signs an approval for payment. Our tests comparing the tonnage 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 wage rates.

Background and Methodology

The Town covers 12.5 square miles with 51.52 miles of highway lanes and has approximately 2,300 residents. The Town's 2012 adopted budget totaled \$11 million.

The Town is governed by a five-member Town Board. The Superintendent of Highways (Superintendent) is in charge of maintaining the Town's roads. The Highway Department's budget was approximately \$1.7 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 one HMA road-surfacing project.¹ The Town had one project where the vendor delivered and applied HMA to a road site. In 2011, the vendor applied, in accordance with the Superintendent's directions, 1,800 tons of asphalt relating to the project at a cost of \$141,000.

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 ensuring that bid specifications contain the type of asphalt materials it intends to purchase. The Town can then obtain the job mix formula and the daily batch reports and conduct 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, and did not obtain available vendor reports of ingredients in batches of the asphalt mix.

The Town's controls over 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, and reviews HMA, delivery tickets from vendors, and project costs. The Town compares the delivery tickets with orders and billed invoices to verify accuracy.

The Town has limited assurance that the HMA products are consistent with bid specifications primarily because the bid specifications are silent as to the type of asphalt desired. Town officials do perform visual inspections of the HMA and visit asphalt vendors. However, despite

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.

a contractual provision allowing the Town to request core samples, Town officials did not request them. The Superintendent felt that, based on his on-site presence and his experience and knowledge with asphalt, there was no reason to exercise the contract provisions for testing. The contracts between the Town and asphalt vendor contain the following language:

“The Superintendent of Highways reserves the right to test materials before and after bid opening, before and after delivery to the job site, and to base acceptance or rejection on such tests. The procedure for sampling and testing under the terms of this proposal shall be in accordance with the Standard Methods established by the State of New York.”

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 selected the Town’s only asphalt road-surfacing project completed during our scope period, which used 1,800 tons of asphalt costing \$141,000. Positively, we found that the tonnage and named product from the delivery tickets matched the bid prices and invoiced amounts charged to the Town.

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 Town’s contract with the asphalt vendor states:

“Certified payroll must be presented with invoice. There will be no bills paid without certified payroll.”

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. The prevailing wage laws applied to our sample project. The Town had obtained the project’s certified payrolls, and the Superintendent of Highways had signed an approval for payment indicating his review. We reviewed a certified payroll from the applicable project and found that the seven employees paid by job classification were paid consistent with the applicable prevailing wage rates.

Recommendations

1. The Town should revise its bid specifications to identify the specific type of asphalt to be purchased.

² Approved by management prior to payment

2. The Town should obtain the core samples contractually allowed to obtain better assurance that the HMA product matches the contract specifications.
3. 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.

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 pages.



Office of Superintendent of Highways

Jay Linn Card Jr.

Superintendent of Highways / Commissioner of Public Works

Town of Shelter Island

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October 2, 2012

Ms. Ann Singer
Regional Office Binghamton
State Office Building,
Room 1702, 44 Hawley Street
Binghamton, New York 13901-4417

Re: Report Number S9-12-17

Dear Ms. Singer,

We would like to thank the Office of the State Comptroller for including us in your audit. This process assessed our ability to account for our tax dollars and evaluated our operations. Three key issues were identified in the audit results, which require some small corrections to our procedures.

Our internal performance with regards to prevailing wages appears to be consistent with the regulations set by New York State labor Law and no changes are required.

Our Project monitoring and material verification have been corrected.

1. It has come to our attention that our bid specifications shall contain specifications for a specific type of asphalt being purchased. The languages specified in the audited bid documents were very general and not specific enough as to the type of asphalt to be purchased. This was pointed out to us at the time of the audit and corrected in the 2012 asphalt bid, prior to the summary findings and recommendations. At this time we consider the action to be corrected.
2. Our bid specifications detailing the Highway Superintendent's right to test the materials before and after delivery to the work site and evaluate them against the standards set by the State of New York are contained in our bid documents. Being a small town with a very small budget allowance for asphalt projects in general, core sampling places a financial burden on the town. Legal proceedings can be initiated and core samples taken when needed. In general, the Town has had very good working relationships with the vendors who supply asphalt to the Town. We will recommend samples be taken from the trucks prior to being applied to the project and held till such time as the sample is deemed to no longer be needed. We reserve the right to test as needed, at the discretion of the Superintendent of Highways.
3. We will improve our procedures by obtaining the job mix formula and daily batch reports from the asphalt plant for each day and batch. This will be evaluated before material is applied to our road surfaces, and before the invoices are paid. We agree that this procedure will improve our operations and will institute it as part of our policy.



Office of Superintendent of Highways

Jay Linn Card Jr.

Superintendent of Highways / Commissioner of Public Works

Town of Shelter Island

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We consider ourselves lucky to have been part of this audit and look forward to making our operations as efficient as possible. Please do not hesitate to be in touch should you wish to discuss any aspect of our response.

Sincerely,

Jim Dougherty
Town Supervisor

Jay Linn Card Jr.
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 selected the Town's one project 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.