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April 5, 2013

Ms. Rose A. Sotak, Supervisor
Members of the Town Board
Town of Union Town Hall
3111 East Main Street
Endwell, New York 13760

Report Number: S9-12-19

Dear Ms. Sotak 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 Union (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 Union. 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, despite language in its asphalt contract that the vendors would conduct such testing at no cost 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 the asphalt cement purchases were adequate. Highway officials monitored projects by having an on-site presence, visiting the asphalt vendor, reviewing the daily batch reports, and by comparing the billed invoices to awarded bid prices and the tonnage purchased per delivery tickets. Our tests comparing the tonnage per the asphalt delivery tickets to bid prices and invoices disclosed no discrepancies.

Background and Methodology

The Town covers 35 square miles with 242 miles of highway lanes and has approximately 56,000 residents. The Town's 2012 adopted budget totaled \$18.2 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 \$5.5 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 eight HMA road-surfacing projects.¹ The Town had projects where the vendor delivered and applied HMA to a road site, as well as projects where Town employees picked up the HMA directly from the vendor and did the work themselves. The following table summarizes the Town's asphalt projects for 2011.

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.

2011 Asphalt Project Summary				
Type of Project	Number	Asphalt Ordered (Tons)	Cost of Asphalt	Total Project Cost
Vendor applied	5	2,294	\$ 132,851	\$ 231,064
Town applied	3	2,109	\$ 121,378	\$ 268,781
Total	8	4,403	\$ 254,229	\$ 499,845

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 exercise a contractual clause for testing the product, at the contractor’s expense, to determine it met specifications, and did not obtain the available job mix formula of the asphalt mix.

The Town’s controls over other aspects of the asphalt purchases were adequate. However, the Town’s controls over the prevailing wage laws were not 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, daily batch reports and periodically viewing and testing the actual HMA purchased.

Town officials have the primary duty of monitoring road-surfacing projects. The Town project managers conduct daily visual inspections of the job site, and review HMA, delivery tickets from vendors, and project costs. The Town compares the delivery tickets with the 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,

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

“The County reserves the right to request a representative sample of the commodity at any time. Unless otherwise instructed, the sample shall be furnished within ten (10) days of the request. When tests, analyses, etc. are required by Broome County or ordered by their Engineer, in accordance with the specifications, they shall be performed at the expense of the contractor. Where such work is to be done at a laboratory, the laboratory shall be approved by the Superintendent of Highways, prior to the use of said laboratory.”

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 2,106 tons of asphalt costing \$121,365. 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.

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. Of our three sampled projects, the prevailing wage laws applied to only two of them.³ The Town had not obtained certified payrolls pertaining to road-surfacing projects applied by vendors utilizing their own equipment and operators.

Town officials informed us that this oversight developed as a result of changes associated with the devastating flood the Town experienced in September 2011. The Town Highway Department normally applies HMA. However, due to flood-related remediation, the Town had to have a vendor apply the HMA. Accordingly, Highway Department personnel who monitored these

² Approved by management prior to payment

³ Town employees, not subject to prevailing wage, completed the other project.

projects were unfamiliar with the Law's requirement that vendors submit certified payrolls to Town officials prior to payment.

Recommendations

1. The Town should obtain the core samples contractually allowed to obtain better assurance that the HMA product matches the contract specifications.
2. The Highway Superintendent 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 Town officials' response to this audit can be found on the following pages.

town of union

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Rose A. Sotak

TOWN SUPERVISOR

January 8, 2013

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

[REDACTED]
State Office Building, Room 1702
44 Hawley Street
Binghamton, NY 13901

Dear [REDACTED]

The Town of Union (TOU) would like to thank you for the opportunity to respond to the draft audit report pertaining to our asphalt road-surfacing projects. The Town of Union appreciates the time and effort of the Comptroller's office and employees throughout the review of our road resurfacing projects for the period January 1, 2011 through December 31, 2011.

The draft audit report identifies some deficiencies in internal controls for monitoring asphalt road-resurfacing projects. The majority of the annual road resurfacing projects are performed utilizing TOU Highway Department employees and equipment, with TOU trucks transporting the hot mix asphalt (HMA) from a batch plant directly to our paver.

Although TOU highway supervisors are typically at the location of the project to collect batch tickets for each load, and to monitor the HMA coming from the batch plant, the Town has not requested random testing of the product to verify that the ingredients in the HMA match the ingredients listed on the individual batch tickets. The Town agrees with your recommendation that random testing of material should be performed.

The Town does not agree that core sample testing would be beneficial on TOU resurfacing projects in view of the fact that the Town controls the thickness and quantity of the HMA mat being put down.

The Town does agree with your recommendation of core sample testing on resurfacing projects that are performed by others, under contract with the TOU, to verify that the HMA is consistent with bid specifications.

The Town agrees with your findings that two of three sampled projects performed by contractors were subject to prevailing wage rate laws, and that the TOU failed to obtain certified payroll records prior to payment. As stated in the draft report this oversight was a result of the devastating flood experienced in September of 2011 that required the Town to utilize a vendor to apply HMA at various locations previously scheduled to be completed by the TOU Highway Department in order to complete the 2011 paving program. As such, Highway personnel unfamiliar with Prevailing wage law processed the payment for the work performed without receipt of the required certified payroll.

Thank you again for the opportunity to respond to the draft audit report.

Respectfully submitted,

Roše A. Sotak
Supervisor

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.