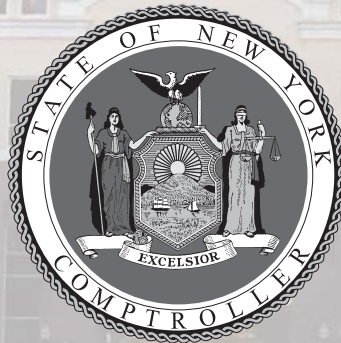




# Federal Stimulus Program Procurement for Local Highway Projects

2009-MS-6



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## Division of Local Government and School Accountability

October 2009

Dear Local Officials:

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

Following is a report of our audit titled Federal Stimulus Program: Procurement for Local Highway Projects. 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 audit's results are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

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

# Introduction

## Background

The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted on February 17, 2009. The Act, informally known as the Federal stimulus program, includes measures designed to modernize our nation's infrastructure, enhance energy independence, expand educational opportunities, preserve and improve affordable health care, provide tax relief, and protect those in greatest need. New York will receive approximately \$1.12 billion for highway infrastructure projects.

ARRA includes several transparency and accountability standards. One of those standards requires each state to certify that it is using Federal taxpayer dollars appropriately. ARRA highway funds can be used on a large, defined system of roadways. This generally includes interstate highways, US routes, State routes, and some rural roads and city streets. The funds also can be used on most highway and/or bridge projects on this same system of roadways. In addition, ARRA highway funds may be used for some transit capital projects or transportation enhancement projects.

As of May 19, 2009, Governor Paterson has certified millions in highway projects statewide.

**TABLE 1: Regional Distribution of ARRA Projects\***

<b>Region</b>	<b>Number of Projects</b>	<b>Total Amounts Approved</b>
Capital Region	4	\$27 million
Central New York	15	\$59 million
Hudson Valley	11	\$77 million
Long Island	6	\$69 million
North Country	9	\$20 million
Rochester Area	10	\$22 million
Southern Tier	32	\$68 million
Western NY	20	\$29 million
<b>Total</b>	<b>107</b>	<b>\$371 million</b>

\* These represent all local projects certified by Governor Paterson as of May 19, 2009. As of July 2009, 11 local governments had projects that had progressed to the point where competitive bids had been awarded or officials intended to use a State contract vendor.

The New York State Department of Transportation (NYSDOT) is the lead agency that will receive ARRA highway infrastructure funds and use them for State projects or distribute them to local

governments to fund locally sponsored projects. After Governor Paterson certifies funding for ARRA highway projects, local government officials submit applications that describe the “shovel-ready” projects to NYSDOT for its review and approval. Upon successful application, local governments enter into contracts with NYSDOT for the project.

Before project work can begin, officials next must seek competitive bids. Generally, the Public Works Department, Purchasing Officer, and/or governing board are responsible for advertising, soliciting and receiving bids, and awarding contracts. After a local government receives the bids, it summarizes the relevant information and prepares a packet containing a proof of advertisement, a summary of the bids received, a verification of the low bidder, a recommendation of award by the municipality, and other required forms (including non-collusion bidding and debarment history certification). This packet is sent to NYSDOT, which then conducts a final review to ensure that the project remains eligible for ARRA funding. The local government also enters into a contract with the vendor to complete the highway-related project. During the life of the project, the local government will submit vouchers for reimbursement to NYSDOT.

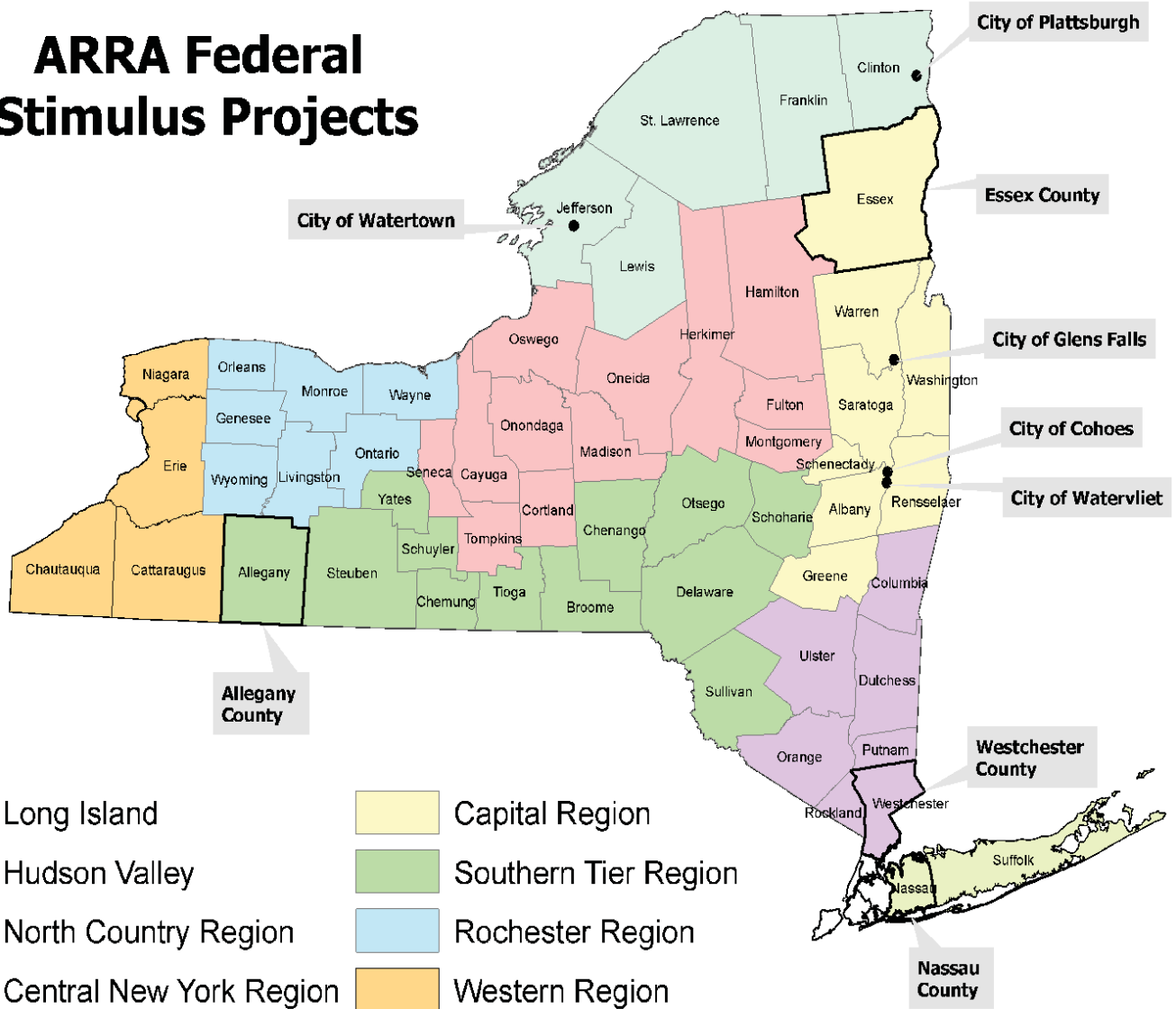
The following map illustrates the nine<sup>1</sup> local governments we selected for audit that had received approval from NYSDOT to start their ARRA projects.<sup>2</sup>

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<sup>1</sup> See Appendix A for details of each municipality and project details.

<sup>2</sup> The regions identified in the map represent the regions designated by the Governor’s Office when awarding ARRA funds.

# ARRA Federal Stimulus Projects



## Objective

The objective of our audit was to answer the following question:

- Are local governments following sound procurement procedures when awarding contracts funded by ARRA funds?

## Scope and Methodology

We examined procurement procedures for ARRA-related highway projects at nine municipalities for the period March 1, 2009, to August 14, 2009. As of the start of our audit in July 2009, 11 local governments had projects that had progressed to where competitive bids had been awarded, or officials intended to use a State contract vendor. Therefore this audit covers almost all of the available projects that were underway at that time.

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

**Comments of Local Officials**

The results of our audit have been discussed with local officials and their comments, which appear in Appendix B, have been considered in preparing this report.

## Procurement Guidance and Compliance

One of the goals of using sound procurement procedures is to foster honest competition so that local governments obtain quality commodities and services at the lowest possible prices. Competitive bidding, one method of fostering such competition, also guards against favoritism, extravagance, and fraud, while allowing interested vendors a fair and equal opportunity to compete.

We found that the local governments followed sound procurement procedures when awarding contracts funded by ARRA funds. Specifically, six of nine local governments audited adhered to bidding laws and appropriately awarded their ARRA highway projects to the lowest responsible bidders. The remaining three local governments (Allegany County, and the Cities of Watertown and Plattsburgh) have indicated that they intend to use State contract vendors for their projects. Participating in a State contract is a statutory exception to competitive bidding. In addition, while we noted one opportunity for improvement, the local governments had taken reasonable measures to ensure that only responsible vendors were awarded contracts. Westchester County had awarded a contract to a vendor that did not provide disability benefits coverage to its workers as required by law.

### Competitive Bidding

General Municipal Law (GML) generally requires local governments to advertise for competitive bids when procurements exceed certain dollar thresholds. Purchase contracts involving expenditures in excess of \$10,000 and contracts for public work involving expenditures in excess of \$20,000 are subject to competitive bidding under the law. GML further requires that municipal contracts be awarded to the “lowest responsible bidder.”

We reviewed 12 ARRA projects at nine local governments totaling approximately \$30.8 million.<sup>3</sup> We found that the local governments competitively bid nine of 12 projects and plan to use State contract vendors for the remaining three projects (addressed in the next section). For the nine projects that were competitively bid, we reviewed bid documents and supporting documentation and found that the project contracts were awarded in accordance with GML. We found that all projects received

<sup>3</sup> The table in Appendix A describes each project.

multiple bids (eight of nine projects received three or more bids<sup>4</sup>), and the local governments awarded the contracts to the lowest bidder. Lastly, each awarded vendor provided the required documentation (e.g., non-collusion agreement and proof of bonding).

Some examples of the local bid and contract award processes reviewed during our audit include the following:

- Westchester County advertised for bids for its Odell Avenue Bridge Project in an official newspaper on January 31, 2009. County officials received nine bids and opened them on March 11, 2009. The contract was awarded to the lowest bidder for about \$2.2 million. The successful bidder provided a \$2.2 million performance bond in accordance with the terms and conditions of the specifications.
- Nassau County advertised in its official newspaper for bids for its project to resurface County roads – Phase 1 on May 15, 2009. County officials received seven bids for this project and opened them on June 9, 2009. The contract was awarded to the lowest bidder for about \$3.2 million. The successful bidder provided a performance bond totaling \$321,500 (10 percent of the project bid), that was consistent with the terms and conditions of the specifications.

## State Contracts

In lieu of seeking competitive bids, GML authorizes local governments to participate in State-awarded (e.g., Office of General Services [OGS]) contracts. After seeking competition, OGS awards contracts for commodities, services, and technology products. Local governments and school districts may participate in many of these contracts, purchasing at the same prices and under the same terms as the State does. For example, OGS contracts include awards for paving materials, mixed concrete, and milling services.

Local officials in Allegany County, the City of Watertown, and the City of Plattsburgh told us that they intend to use OGS State contract vendors to complete their ARRA highway projects. However, as of August 14, 2009, none of these local governments had an actual relationship with a State contract vendor (e.g., no executed contracts or purchase orders). Officials told us that the vendors were still negotiating their paving schedules with

<sup>4</sup> The other project received two bids.

NYSDOT, and therefore, were not ready to schedule additional dates for local government projects. Because these projects have not progressed to a point where we are able to verify a contractual relationship, our conclusion, that the local governments will comply, is based on verbal assertions that officials will use the State contract vendors and a review of document plans submitted to NYSDOT.

## **Responsible Vendors**

It is important that local government officials award contracts subject to competitive bidding to the lowest responsible bidder after public advertisement for sealed bids.<sup>5</sup> Vendor responsibility generally means that a vendor has the integrity to justify the award of public dollars and the capacity to perform the requirements of the contract fully. It is the local government's duty to evaluate the responsibility of a prospective contractor. A responsibility determination, where the local government determines that it has reasonable assurances that a vendor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting the local government against failed contracts.

With the exception of one improvement opportunity, our review of the nine projects competitively bid disclosed that local government officials have employed reasonable measures to ensure that the vendors awarded contracts are responsible. These measures included obtaining performance bonds and enlisting the assistance of NYSDOT to review vendor responsibility.

As part of our audit, the Bureau of Contracts' Vendor Responsibility Team<sup>6</sup> completed the same standard review for the vendors awarded contracts by the local governments that it performs for all State-awarded ARRA projects. The Vendor Responsibility Team noted an exception for one vendor; Westchester County awarded a contract to a vendor that lacked New York State Disability Benefits coverage for its employees as required by law. In addition to failing to protect workers, vendors that do not comply with coverage requirements are at a competitive advantage because of lower operating costs, which

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<sup>5</sup> Certain exceptions exist in statute but do not apply to ARRA highway contracts.

<sup>6</sup> The State Comptroller's Bureau of Contracts' Vendor Responsibility Team (Team) improves the quality and consistency of responsibility determinations by State agencies. The Team solicits and maintains information from State agency procurement staff and the business community about vendor responsibility. It also works to standardize the criteria by which responsibility determinations are made at the State level.

can allow them to submit lower bids than the vendors that fully comply with requirements.

We notified Westchester County officials of this issue. Subsequent to our fieldwork, Westchester County officials received proof of the required coverage from the vendor.

## APPENDIX A

### ARRA PROJECT DETAILS

The following table summarizes the ARRA projects and municipalities included in the audit.

Local Government	Project Description	Awarded Vendor	ARRA Award	Vendor Project Bid
Allegany County	Resurfacing County Route 12	State Contract – A. L. Blades and Sons, Inc.**	\$800,000	\$800,000
City of Cohoes	Bridge Ave. bridge replacement	ING Civil, Inc.	\$9,175,493	\$6,660,000
Essex County	Highway reconstruction County Route 84	Peckham Road Corp.	\$4,632,100	\$3,061,424
City of Glens Falls	Highway rehabilitation Bay St.	Kubricky Construction	\$2,894,000	\$2,595,596
Nassau County	Highway resurfacing Phase 1	Carlo Lizza & Sons Paving, Inc.	\$4,500,000	\$3,215,000
Nassau County	Highway resurfacing Phase 2	Carlo Lizza & Sons Paving, Inc.	\$4,500,000	\$3,585,000
City of Plattsburgh	Highway resurfacing Oak & North Catherine Streets	State Contract – Kubricky Construction**	\$500,000	\$500,000
City of Watertown	Paving Arsenal and Washington Streets	State Contract – Barrett Construction**	\$500,000	\$500,000
City of Watervliet	Highway reconstruction 19th St.	Green Island Contracting, LLC	\$7,650,000	\$5,794,194
Westchester County	Replace Odell Ave. bridge	PCI Industries Corp.	\$3,140,000	\$2,211,927
Westchester County	Upgrade highway signals	Verde Electric Maintenance Corp.	\$400,000	\$1,136,486*
Westchester County	Highway traffic data sensors on Bronx River	Verde Electric Maintenance Corp.	\$500,000	See*
Westchester County	Rustic guide rail replacement	Mohegan Associates	\$1,100,000	\$738,860
Westchester County	Lighting on Bronx River Pkwy.	Verde Electric Maintenance Corp.	\$300,000	See*
		<b>TOTALS</b>	<b>\$40,591,593</b>	<b>\$30,798,487</b>

\* These projects were combined and bid as one project.

\*\* No formal relationships have been established yet between the local government and the State contract vendors.

## **APPENDIX B**

### **RESPONSE FROM LOCAL OFFICIALS**

We provided a draft copy of this report to each of the nine municipalities that we audited and requested responses. We received only one response letter, specifically, from the City of Watertown. The remaining eight municipalities, while given the opportunity, chose not to respond to our report within the designated timeframe.

The following comments were excerpted from the response that we received:

“The City of Watertown has reviewed the draft audit report...and agrees with the information included in relation to the City’s ARRA highway projects. As the report states, the City intends to use an Office of General Services’ state contract vendor to complete our ARRA highway projects. The City has a tentative schedule with the vendor to pave Arsenal Street by the end of September 2009 and Washington Street during the 2010 construction season.”

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

We reviewed the procurement process used by nine local governments to award ARRA highway project contracts, and interviewed applicable local officials to obtain an understanding of that process. We reviewed each ARRA Federal stimulus highway project for compliance with bidding laws. Specifically, we reviewed project applications, solicitation of bidding, advertisement of bids, documentation supporting bidding summaries and subsequent awards and required documentation. For projects that intend to use State contract vendors, we interviewed local officials to obtain their representations as to using the State contract.

We interviewed local officials and reviewed the New York State's Department of State's Corporations website to identify potential conflicts of interest in awarding ARRA highway projects contracts to vendors. Further, we reviewed contract awards to ensure that vendors were responsible by viewing required documentation from the vendors (i.e., non-collusion agreements and bonding) and providing each vendor name to the Division of Contracts and Expenditures (Bureau of Contracts) in the Office of the State Comptroller. This Division reviewed each of the vendors awarded contracts by the local governments.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## APPENDIX D

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