



Town of Dannemora

Town Hall/Highway Garage Capital Project

Report of Examination

Period Covered:

January 1, 2007 — May 31, 2013

2013M-230



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
INTRODUCTION	3
Background	3
Objective	4
Scope and Methodology	4
Comments of Local Officials and Corrective Action	4
TOWN HALL/HIGHWAY GARAGE CAPITAL PROJECT	5
Board Oversight	5
Capital Project Procurement	9
Recommendations	12
APPENDIX A Response From Local Officials	13
APPENDIX B Audit Methodology and Standards	16
APPENDIX C How to Obtain Additional Copies of the Report	17
APPENDIX D Local Regional Office Listing	18

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

December 2013

Dear Town 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 Town Board 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 of the Town of Dannemora, entitled Town Hall/Highway Garage Capital Project. 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 and recommendations 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 Town of Dannemora (Town) is located in Clinton County. The Town has approximately 5,100 residents and provides various services to its residents such as road maintenance, snow plowing, youth recreation, water and sewer. These services are financed mainly by real property taxes, water and sewer rents and State aid. The Town's 2013 budgeted appropriations were approximately \$2 million.

The Town is governed by an elected five-member Town Board (Board) comprising a Town Supervisor (Supervisor) and four Board members. The Board is responsible for general oversight of the Town's fiscal activities and safeguarding its resources. The Supervisor, as chief fiscal officer, is responsible for maintaining accounting records and reporting the Town's financial activity. The Supervisor has an appointed bookkeeper who is responsible for maintaining the accounting records, reconciling bank statements and preparing payrolls and various financial reports.

The Board established a Town Hall capital reserve fund in 1997 for reconstruction and/or repairs of the Town Hall and funded it annually by an appropriation in the general fund budget. During 2008, the Board approved a five-year capital plan to build a structure for a new Town Hall and highway garage (left photo). In May 2008, the Town used capital reserve funds to purchase an unassembled steel building that was stored until the spring of 2010 when construction started. The highway garage section was completed in September 2011 and construction on the Town Hall side (right photo)¹ is planned to be completed in December 2013.



¹ Photos taken April 2013

Objective

The objective of our audit was to examine the Town's management of the Town Hall/highway garage capital project. Our audit addressed the following related question:

- Did the Board properly plan for and provide sufficient oversight and management of the Town Hall/highway garage capital project?

**Scope and
Methodology**

We examined the Board's oversight of the Town Hall/highway capital project for the period January 1, 2007 through May 31, 2013.

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 B of this report.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our recommendations and indicated they have taken or planned to take corrective action.

The 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 Town Clerk's office.

Town Hall/Highway Garage Capital Project

Capital projects are generally long-term and require large sums of money to acquire, develop, improve or maintain various facilities. The Board is responsible for oversight and management of the Town's capital projects, including establishing effective internal controls to help ensure that capital projects are properly planned and managed, project funding is authorized and costs are kept within the approved budget, minimizing the possibility of cost overruns which could have a negative impact on Town finances. In 2008, the Town Board approved a five-year capital plan to construct a new Town Hall/highway garage at an estimated cost of \$602,620. Construction began in the spring of 2010.

Between 2009 and 2013, the Board expanded the scope of this project² and increased the project budget from the original estimate of \$602,620 to \$3,000,000. As of May 2013, project expenditures totaled over \$2.2 million. The remaining work is scheduled for completion in December 2013 and is expected to incur additional costs. Because Town officials did not develop a comprehensive plan at the onset of the project, detailing how the construction would be completed with available Town resources, they did not determine the extent to which they would need to use contract services and did not properly plan and budget for them. Further, they did not monitor expenditures against estimated costs. The Town also did not budget for over \$400,000 in architectural and engineering services and may have incurred unnecessary costs by not complying with certain bidding requirements and not soliciting competitive proposals for architectural services.

Board Oversight

The Board is ultimately responsible for the oversight and management of the Town's capital projects. This responsibility includes establishing adequate controls to ensure that costs charged against projects are appropriate, projects are completed in timely manner, sufficient supporting documentation is available to verify project costs, and any amendments to project plans are valid and subjected to Board review and approval. Additionally, the Board should regularly monitor the project by reviewing periodic progress reports that include the amounts originally budgeted, any authorized amendments, actual revenues and expenditures to date and available appropriations. The Board is also responsible for ensuring that the Town complies with applicable State laws pertaining to competitive bidding.

² The Town initially intended to build the Town Hall/highway garage with internal resources and through cooperative agreements with other towns, but subsequently expanded the project scope to competitively bidding the construction.

Planning and Budgeting — Proper planning of a capital improvement project requires a thorough understanding of the project’s overall scope and cost. Initial estimated costs must be realistic so the Town can properly plan financing and keep the taxpayers informed. The Board should adopt resolutions authorizing the maximum estimated cost at project inception and prepare itemized budgets. The Board may provide additional appropriations for a capital project, as needed, by formally amending the budget.

We examined all available project documentation and accounting records, including Board resolutions, architectural estimates, bid documentation, construction contracts, change orders and project claims. While Board members received periodic abstracts (lists of vendor claims to be paid) of project expenditures from the Supervisor and authorized adequate project financing, they did not request or receive periodic budget-to-actual reports to ensure that estimated costs were not exceeded. As a result, the Board did not approve increases in the project’s total authorized budget amount in a timely manner.

The Board approved a five-year capital plan in September 2008 to spend approximately \$603,000 for the construction of a new Town Hall/highway garage.³ Since the Town did not plan on contracting out these services, labor was not factored into these estimates, nor the cost of architectural services, project bidding and project monitoring.

In May 2008, with concerns over increasing steel prices, the Town purchased a 120- by 90-foot unassembled steel building for \$143,620 without developing any formal architectural plans or receiving professional cost estimates for engineering, site work and construction. (See findings under Capital Project Procurement.) While Town officials told us that the original cost estimates were based on constructing the project with internal Town resources and cooperative agreements with other towns, they could not provide us with any formal, detailed plans on how this was to be accomplished with existing Town resources.

The Town’s old highway garage had a fire on January 1, 2010, which destroyed the building and several pieces of equipment. The Board therefore decided to contract out the site preparation. However, Town officials had not prepared a comprehensive plan for building the Town Hall/highway garage with existing Town resources, and therefore expanded the scope of the project to competitively bidding the entire

³ Comprising \$367,620 for the purchase of the steel building, footers and engineering; \$100,000 for electrical and plumbing; and \$135,000 for utilities and inside finishing

construction. This change caused an ultimate increase of over \$1.3 million in estimated project costs, from \$685,385 to \$2,022,872. Accordingly, the Board increased the project's authorized budget to \$2,000,000.

Table 1 shows the progress of the project from the purchase of the steel building in May 2008 through the end of our audit period. Project costs increased annually since the inception of the project in 2008. In 2011 and 2012, project expenditures exceeded authorized levels and, therefore, the Board increased the authorized budget from \$2,000,000 to \$3,000,000. These increases resulted from an ongoing failure to estimate project costs with reasonable accuracy – both at the onset of the project and during construction – to reflect the true project scope.

Table 1: Town Hall/Highway Garage Capital Project Budget and Expenditures May 2008-May 2013			
Fiscal Year	Architectural Estimates (For Entire Project)	Board-Authorized Budget (For Entire Project)	Cumulative Expenditures at Year End
2008	-	\$602,000	\$154,263
2009	\$ 685,385	\$777,000	\$344,808
2010	\$ 2,022,872	\$2,000,000	\$1,844,566
2011	\$ 2,022,872	\$2,000,000	\$2,134,654
2012	\$ 2,022,872	\$2,000,000	\$2,201,257 ^a
2013	\$ 2,976,541	\$3,000,000 ^b	\$2,209,260 ^c
^a Does not include \$129,088 in unpaid contractor bills ^b Per May 29, 2013 Board resolution ^c As of May 31, 2013, not including \$129,088 in unpaid contractor bills			

As of May 31, 2013, project expenditures have exceeded the originally budgeted amount of \$602,000 by \$1.6 million (267 percent). This significant cost increase occurred because the Board did not identify and properly plan for the necessary contract services and did not obtain comprehensive professional cost estimates at the onset of the project. Additionally, the Board did not take timely action to increase the budget to keep pace with expenditures.

During July 2010, the Board awarded construction contracts totaling \$1,363,722 for the project. However, project expenditures already totaled \$658,135 by the end of July 2010 and the Board did not take any action to increase authorizations, which totaled \$2,000,000 for the entire project with over two years remaining to completion. Even though expenditures continued to grow throughout 2011, 2012 and 2013, the Board did not take action until May 29, 2013 to increase the project authorization to \$3,000,000.

Further, Town officials did not monitor the cost estimates in comparison to actual costs. Had the Board's initial estimates included

all aspects of the project, the Town could have avoided the drastic cost increases. Failure to limit expenditures to available, authorized appropriations creates the risk that money may not be available when required for necessary expenditures.

Project Claims Approval — Town Law requires the entire Board to audit all claims against the Town and, by resolution, direct the Supervisor to make payments for approved amounts. A thorough claims audit process verifies that all claims are properly itemized and contain sufficient documentation to determine the nature of the purchases, that the amounts represent actual and necessary expenses, and that purchases comply with statutory requirements. For capital project claims, the Board should also ensure that the architect or project manager certifies that the construction work billed was completed and performed in accordance with the contract documents. An architect's certification for payment should be used to verify that the progress indicated and quality of the work billed is in accordance with the building contract.

We reviewed all 130 project claims paid during our audit period. While the Board reviewed and approved all project claims prior to payment, it did not ensure that the architect certified all construction claims prior to audit and payment or that claims submitted by the architect contained sufficient supporting documentation. Specifically:

- Ten construction claims totaling \$397,645 were not certified by the architect prior to Board audit and payment. Further, while the architect prepared a list of outstanding (unfinished) items for contractors to address, he did not certify the final claims totaling \$51,730 to pay the retained percentage⁴ for three construction contracts.
- Eighteen claims totaling \$221,501 submitted by the architect and engineer⁵ for additional services provided after the completion of the design and construction documents did not contain sufficient detail indicating what those services were.

Without a certification by an architect or a designated project manager, the Board does not have assurance that construction work billed and paid for was actually completed and performed in accordance with the construction contract.

⁴ Moneys held back from final payment to the contractor until the claims are certified to indicate the work was completed

⁵ The architect subcontracted for engineering work on the project and included these costs with his claims to the Town. On occasion, the engineer also billed the Town directly.

Capital Project Procurement

The primary objective of a procurement process is to obtain the best-quality goods and services at the lowest possible price in compliance with Town policies and legal requirements. This helps ensure that taxpayer dollars are expended in the most efficient manner. The Board is responsible for designing controls over the procurement process that help safeguard the Town's assets, ensure the prudent and economical use of its moneys when procuring goods and services and protect against favoritism, extravagance or fraud.

Competitive Bidding — General Municipal Law requires Town officials to competitively bid purchase contracts exceeding \$20,000 and public works contracts involving expenditures exceeding \$35,000.⁶ When procurements are expected to exceed these dollar thresholds, the Board must publicly advertise for sealed competitive bids, open and read those bids received by the time and date indicated and award contracts to the lowest responsible bidder.⁷ The appropriate use of competition provides taxpayers with the greatest assurance that the Town is procuring goods and services in the most prudent and economical manner.

As of May 1, 2013, the Town had held three separate bid openings,⁸ resulting in seven separate contracts totaling over \$1.6 million. We examined all bid solicitation documentation, formal bids received and related resolutions awarding the contracts. While the Board complied with the bidding requirements for general construction, it did not comply with statutory bidding requirements for the purchase of the steel building and significant scope changes to the foundation contract. The bidding for the steel building did not consider all construction options and may not have encouraged sufficient competition. The Town received only one bid, which appears to be a quote received prior to the publication of the bid announcement on May 14, 2008.⁹

Change Orders — A change order is a modification of a construction contract, agreed upon by both the Town and contractor, generally to authorize a change in the scope of work, the schedule for completing the work and/or the contract price. Where the change relates to

⁶ In June 2010, the monetary threshold for purchase contracts increased from \$10,000 to \$20,000. In November 2009, the threshold for public works contracts increased from \$20,000 to \$35,000.

⁷ For purchase contracts made on or after January 1, 2012, local governments may elect to award purchase contracts based on the "best value" instead of the traditional "lowest responsible bidder."

⁸ On May 14, 2008, the Town held the bid opening for the steel building; on November 9, 2009, the bid opening for the foundation construction; and on June 16, 2010, the bid opening for general construction, plumbing, HVAC and electrical.

⁹ The Board minutes indicate that only one bid was received, dated April 24, 2008, sent by email to the former Highway Superintendent and a Board member.

details or relatively minor particulars and is incidental to the original contract, a change order may be issued without competitive bidding. However, no significant change may be made without competitive bidding when it so varies from the original plan or so alters the essential identity or main purpose of the contract as to constitute a new undertaking. Further, because the Board authorizes the construction contracts, it should authorize all changes to those contracts prior to the commencement of the work.

According to the Town's original project agreement with the contractor who was to construct the garage foundation, the excavation and site clearing was to be handled by the Town. However, due to the January 1, 2010 highway garage fire, the dump trucks and a front-end loader that would have been used on the project were destroyed, so Town officials decided to use a contractor to perform these services. While the Board approved the change order for \$69,269 to include the excavation and site clearing work, this was a significant scope change to the original contract to construct a foundation, increasing the contract from \$103,900 to \$173,169, and therefore should have been competitively bid.¹⁰ Further, the contractor subcontracted the work to another company and charged the Town an additional \$9,035 mark-up over the \$55,234 charged by the excavation subcontractor. Since the Town did not break ground on the project until April 2010, sufficient time was available to seek bids for the excavation and site clearing work rather than executing a change order with the contractor.

In addition, while the architect and/or the Supervisor generally approved change orders, 23 proposed change orders, totaling \$101,606,¹¹ were not approved by the Board as required. The Supervisor said he was unaware that Board approval was necessary and believed his approval was sufficient. The lack of competitive bidding for significant project changes and the Board's approval of related change orders greatly increase the risk of paying excessive amounts for the work provided under the terms of the contract. Therefore, it is essential that the Board maintains control over change order activity and monitor project progress.

Professional Service Contracts — An effective procurement process includes confirming that vendors/consultants are eligible to provide necessary services, issuing requests for proposals (RFPs) or otherwise seeking competition when selecting providers of professional services, and requiring written contracts detailing contract terms and deliverables (such as the contract period, services to be provided

¹⁰ The change order comprised \$55,234 for the subcontractor, the contractor's markup of \$9,035 and \$5,000 for survey/layout.

¹¹ The project had 25 change orders totaling \$175,597.

and the basis for compensation for these services) before services are provided. Written contracts also help to protect the Town in the event that contractors default on their obligations or make excessive claims. Further, since the Board authorizes the professional contracts, it should also authorize all changes to those contracts.

The Town's procurement policy does not address competitive bidding or require Town officials to seek competition when procuring professional services. The Town did not solicit competitive proposals or quotes prior to obtaining architectural and engineering services totaling \$478,534, of which one firm was paid over \$401,000.

On October 6, 2008, the Board approved an architectural contract for design development and construction documents for a fee of \$99,150 without soliciting or receiving any proposals from other architects. On April 13, 2009, the architect submitted a contract amendment to increase the scope of his work on the design development and construction documents, for an additional \$60,150. While the contract amendment indicates that it was discussed with two Board members and the Board approved the subsequent claims containing the amended contract fee, we found no indication that the amended contract was properly approved by the entire Board.

While the architect's claims for preparing construction plans and documents as contracted were sufficiently documented, subsequent claims for bid processing and construction administration services were vague and not properly supported. For example, claims that listed dates¹² and hours billed for bidding and negotiating services or construction administrative services did not show what services were specifically provided and the percentage of their completion. Since there was no updated contract for these additional services, it was difficult for the Board to monitor and control these charges. Town officials told us it was unclear what these bills were specifically for, and they fired the architect in July 2011.¹³ Because the Town did not renegotiate a contract with the architect for additional services at specific fees, the Board did not control the ultimate costs of these services, which totaled \$401,334 paid to the architect (\$300,000 over the original contract). Further, by awarding a professional service contract without the benefit of competitive proposals or quotes, the Board cannot assure taxpayers that the Town is procuring services at the lowest reasonable cost from qualified service providers.

¹² Some dates were for periods of time that should have been included in previous billings.

¹³ In 2012, the Town contracted with another architectural firm to complete the design plans. As with the prior architect, proposals and/or quotes were not solicited.

Major capital projects require Town officials to adequately plan and contract as necessary, monitor progress and implement necessary changes to ensure the project is completed in an adequate, timely and cost-effective manner. The Town officials' failure to adequately oversee the project for the construction of the new Town Hall/highway garage contributed to the escalating and excessive costs associated with the project.

Recommendations

1. The Board should approve a detailed capital project budget including all anticipated costs and require periodic financial reports that show actual expenditures compared to the approved budget.
2. The Board should closely oversee the remaining project construction or designate a professional to oversee the project and report to the Board.
3. The Board should require an architect to certify that construction work is completed prior to audit and payment of claims.
4. The Board should ensure that bids are sought and contracts awarded in compliance with legal requirements.
5. The Board should approve all change orders prior to the commencement of work.
6. The Board should consider revising its procurement policy to address methods to be used to solicit competition for professional service contracts, such as requests for proposals.
7. The Board should ensure that professional service providers submit proper itemization and support for claims, showing the specific contracted services provided, prior to approving payment.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.

TOWN OF DANNEMORA

Supervisor's Office

1168 COOK STREET, PO BOX 658

DANNEMORA, NEW YORK 12929

TEL. (518) 492-7541 X 101/103

FAX (518) 492-7314

www.townofdannemora.org

November 25, 2013

Mr. Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
Division of Local Government Accountability
One Broad Street Plaza
Glens Falls, New York 12801-4396

Re: Town of Dannemora Town Hall/Highway Garage Capital Project
Draft Report 2013M-230

Dear Mr. Leonard,

On behalf of the Town Board, I would like to thank your staff for their time in providing the Town with a review of its financial practices. As always, your staff was helpful and professional during the audit process.

The Town Board generally agrees with the findings and recommendations. Many of the recommendations have been implemented with Phase 2 of the Town Hall/Garage Capital Project. While we respect the comments made by your staff, the Town Board believes it is important to note that the Town's financial position remains strong. It is also noteworthy that many of the early on decisions were made by the previous administration of 2008 and 2009. I agree with the report that the early on figures were underestimated and that it was impossible to use municipal shared services. As briefly mentioned in the audit report, the devastating Town Garage fire on 1/1/2010 left us with many unexpected costs and derailed our 5-year capital plan. The Town Board further openly admits it relied too heavily on its then engineering/architect firm.

Please find below the Town Board's responses to the audit draft recommendations.

Recommendation 1: *The Board should approve a detailed capital project budget including all anticipated costs and require periodic financial reports that show actual expenditures compared to the approved budget.* Prior to the departure of the auditor, the Town adjusted its total project costs of the Building Project. Regular budget-to-actual reports are presented and reviewed by the Town Board.

Recommendation 2: *The Board should closely oversee the remaining project construction or designate a professional to oversee the project and report to the Board.* Prior to the start of Phase 2, the Town Board retained a different engineering firm than was used during Phase 1. This engineering firm was also contracted as the Town's Clerk of the Works for construction of Phase 2. This local engineering firm has closely monitored all steps of the remaining project and regularly reports to Town Board. The firm also attends board meetings so that project updates are a matter of public record.

Recommendation 3: *The Board should require an architect to certify that construction work is complete prior to audit and payment of claims.* All claims during Phase 2 of the Building Project have been certified by our new engineers.

Recommendation 4: *The Board should ensure that bids are sought and contracts awarded in compliance with legal requirements.* All bids during Phase 2 of the Building Project were awarded by General Municipal Law with the assistance of our new engineers.

Recommendation 5: *The Board should approve all change orders prior to the commencement of work.* All change orders during Phase 2 of the Building Project have been brought forth to the Town Board at regular meetings and approved accordingly.

Recommendation 6: *The Board should consider revising its procurement policy to address methods to be used to solicit competition for professional service contracts, such as requests for proposals.* The Town Board updated its Procurement Policy in May of 2013. The Board is again reviewing the policy and adding additional provisions for professional service contracts. We will be happy to forward the updated policy to your office upon completion.

Recommendation 7: *The Board should ensure that professional service providers submit proper itemization and support for claims, showing the specific contracted services provided, prior to approving payment.* The Town relied heavily on the former engineering firm to ensure all paperwork was processed correctly. During 2010, the Town began to notice problems in several areas. As previously stated, the Town's current engineering firm has greatly assisted the Town throughout Phase 2 and also in correcting issues that were outstanding from Phase 1.

The Town Board will certainly use the audit as a learning experience and a tool to provide even more accountability to our taxpayers.

Sincerely,

Americo "Ves" Pivetta
Town Supervisor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Town assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial oversight, cash receipts and disbursements, purchasing, payroll and personal services and information technology.

During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions and reviewed pertinent documents, such as Town policies and procedures manuals, Board minutes and financial records and reports.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud, theft and/or professional misconduct. We then decided on the reported objectives and scope by selecting for audit the area most at risk. We selected the Town's management of the Town Hall/highway garage capital project (project) for further audit testing.

To accomplish the objectives of this audit:

- We interviewed Town officials regarding policies and procedures related to the establishment of the project.
- We interviewed Town officials to determine the process by which they monitored the project.
- We reviewed project cost estimates and budgets.
- We reviewed monthly Board meeting minutes relevant to the project.
- We reviewed paid project claims for the period January 1, 2008 through May 31, 2013 for evidence of Board audit and approval for payment.
- We reviewed Town procurement policies and procedures.
- We examined request for proposals and bid documentation to determine whether procurement of professional services and public works contracts was in accordance with Town policy and legal requirements.
- We examined vendor contracts and change orders for services acquired for the project.

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 C

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