

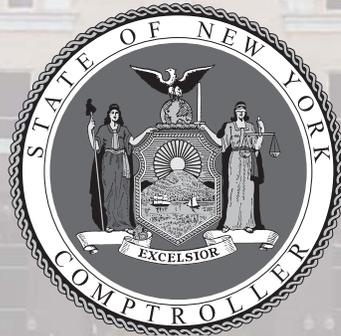
OFFICE OF THE NEW YORK STATE COMPTROLLER



DIVISION OF LOCAL GOVERNMENT
& SCHOOL ACCOUNTABILITY

Monitoring Town Asphalt Road Projects

2012-MS-7



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 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 school district 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 Monitoring Town Asphalt Road 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 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*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Hot mix asphalt (HMA), also known as blacktop, is the most commonly used flexible pavement in the United States. HMA is a combination of different-sized aggregates (e.g., stone, gravel, and sand) and asphalt cement, which binds the mixture together. Within the variances allowed by bid specifications, the vendor should produce an asphalt batch that creates the desired HMA product. Vendors produce daily reports that identify the ingredients used in each specific batch of HMA loaded on delivery trucks. When a vendor delivers HMA on-site at the road project, or makes it available for pickup at the plant, the product is accompanied by a delivery ticket that specifies the type and quantity of product delivered. Town officials can verify that the HMA product from the vendor meets bid specifications by reviewing the batch reports and delivery tickets. Towns can also require that vendors provide for core sample tests of the HMA surface applied to verify that the product matches contract specifications.

Section 220 of the New York State Labor Law (Law) requires vendors hired on a public work contract (such as road surfacing) to pay their employees on that contract the prevailing rate of wages and supplements for the locality where the work is performed. The Law requires the vendor to submit certified payrolls to the municipality for review before the vendor gets paid for the contract work.

Scope and Objective

The objective of our audit was to determine whether towns adequately monitored road surfacing projects for the period January 1, 2011, to December 31, 2011. Our audit addressed the following related questions:

- Did towns ensure that vendors provide asphalt products in accordance with bid specifications?
- Did town officials obtain certified copies of vendor payrolls for each project to monitor the payment of prevailing wage rates?

Audit Results

We found that towns can improve their monitoring of asphalt road surfacing projects to better ensure that asphalt products vendors provide meet bid specifications. While all 10 towns had procedures to verify the price and quantity of the HMA received, only two towns (Brookhaven and Islip) reviewed job mix formulas and batch reports to confirm that the HMA mix delivered by the vendor met bid specifications.

Further, although six towns used contracts with provisions for core sample tests of newly-applied HMA road surfaces to verify quality, only Brookhaven and Islip actually asked contractors to perform these tests to confirm the quality of the HMA delivered. Core sample testing helps local officials protect taxpayers' interests because it provides an in-depth analysis of applied asphalt that cannot be obtained in other ways. For example, when analysis showed that 34 percent of the core samples for a section of new pavement in Brookhaven failed to meet bid specifications, Town officials had the evidence they needed to get the vendor to replace an inferior product with the requested product, which was better quality asphalt.

Our review of a total of 26 asphalt projects in the 10 towns did not identify any material price or quantity exceptions. However, local officials can better ensure the quality and durability of road paving financed by local taxpayers by confirming that the HMA products vendors provide meet the town's requirements.

We also found that eight of the 10 towns reviewed certified payrolls, as required by Law, to ensure that contractors' employees on town projects were paid the appropriate wages. Officials in the other two towns did not realize it was their responsibility to monitor contractors' payment of the prevailing wage rate.

Comments of Town Officials

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

Introduction

Background

The most widely used paving material is asphalt, which accounts for about 94 percent of the nation's paved road surfaces. Hot mix asphalt (HMA), also known as blacktop, is the most commonly used flexible pavement in the United States. HMA is a combination of different-sized aggregates (e.g., stone, gravel, and sand) and asphalt cement, which binds the mixture together. HMA's composition is generally 93 to 97 percent (by weight) aggregate and 3 to 7 percent asphalt cement. For asphalt projects, the composition, useful life, and type of asphalt, along with the project's cost, can vary greatly in different areas of the State, in a region, and among asphalt vendors.

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 used in each specific batch of HMA that is loaded on delivery trucks. When a vendor delivers HMA on-site at the road project, or makes it available for pickup at the plant, the product is accompanied by a delivery ticket that specifies the type and quantity of product delivered. Town officials can verify that the HMA product from the vendor meets bid specifications by reviewing the batch reports and delivery tickets and by periodically doing core sample tests of the HMA surface applied.

We audited 10 towns from across the State that performed asphalt road surfacing projects during our scope period. Table 1 provides relevant statistics for these towns.

Town	2012 Budget (in Millions)	2012 Highway Department Budget (in Millions)	2012 Population	Department Responsible for Projects
Brookhaven	\$261.0	\$71.0	472,000	Highway
East Hampton	\$65.7	\$5.7	19,200	Highway
Guilderland	\$36.1	\$4.2	35,000	Highway
Islip	\$207.0	\$23.0	334,000	Public Work
Pittsford	\$15.0	\$2.4	29,500	Public Work
Salina	\$13.5	\$4.7	33,700	Highway
Shelter Island	\$11.0	\$1.7	2,300	Highway
Southold	\$38.5	\$5.4	23,000	Highway
Thompson	\$8.6	\$4.8	14,000	Highway
Union	\$18.2	\$5.5	56,000	Public Work

Each town conducted HMA road-surfacing projects.¹ For some of these projects, the vendor delivered and applied HMA to a road site; for other projects, Town employees picked up the HMA directly from the vendor and did the work themselves. Table 2 summarizes the towns' asphalt projects for the scope period.

Town	Town Applied Projects	Vendor Applied Projects	Total Projects	Total Projects - Tons Applied	Total Projects - Asphalt Cost
Brookhaven	0	18	18	106,305	\$7,554,657
East Hampton	0	2	2	6,796	\$533,411
Guilderland	0	2	2	6,176	\$364,366
Islip	0	26	26	47,986	\$3,866,509
Pittsford	0	9	9	4,046	\$320,489
Salina	0	17	17	4,973	\$681,923
Shelter Island	0	1	1	1,800	\$141,000
Southold	8	2	10	6,395	\$634,161
Thompson	3	1	4	2,057	\$126,689
Union	3	5	8	4,403	\$254,229
Total	14	83	97	190,937	\$14,477,434

¹ We did not include micro surfacing projects in our audit. Micro surfacing, a mixture of polymer-modified asphalt emulsion, aggregate mineral filler, and water, is continuously mixed and applied with specialized equipment. Micro surfacing can be used for projects that demand quick-traffic applications, skid resistant pavement, or repair of wheel ruts in a road surface.

Generally, the town highway superintendent and/or commissioner of public works are responsible for maintaining a town's roads. These officials are either elected or appointed.

When a town contracts with a vendor for asphalt road surfacing work, such contracts generally are defined as public work contracts rather than purchase contracts. Section 220 of the New York State Labor Law (Law) requires vendors under a public work contract with a municipality to pay their employees on that contract the prevailing rate of wages and supplements for the locality where the work is performed. The public work contract requires the vendor to submit certified payrolls to the municipality for review before the vendor gets paid for the contract work.

Objective

The objective of our audit was to determine whether towns adequately monitor road surfacing projects. Our audit addressed the following related questions:

- Did towns ensure that vendors provide asphalt products in accordance with bid specifications?
- Did town officials obtain certified copies of vendor payrolls for each project and to monitor the payment of prevailing wage rates?

Scope and Methodology

For the period January 1, 2011, to December 31, 2011, we interviewed town officials and reviewed town policies and procedures, vendor invoice/claim packets, and the awarded contracts to evaluate the towns' controls related to monitoring asphalt products received from vendors and vendors' payment of prevailing wage rates.

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 Town Officials

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

Project Monitoring

To ensure the prudent use of public funds, town officials should verify that asphalt project costs are accurate, and that the HMA used meets bid specifications for both quantity and quality. We found that all 10 towns had procedures to verify the price and quantity of the HMA received. However, only two towns (Brookhaven and Islip) reviewed job mix formulas and batch reports to confirm that the HMA mix delivered met bid specifications.

Further, although six towns used contracts with provisions for core tests of newly-applied HMA road surfaces to verify quality, only Brookhaven and Islip actually asked contractors to perform these tests. Core sample testing helps local officials protect taxpayers' interests because it provides an in-depth analysis of applied asphalt that cannot be obtained in other ways. For example, when analysis showed that 34 percent of the core samples for a section of new pavement in Brookhaven failed to meet bid specifications, Town officials had the evidence they needed to get the vendor to replace an inferior product with the requested product, which was better quality asphalt.

Our review of a total of 26 asphalt projects in the 10 towns did not identify any material price or quantity exceptions. However, local officials can better ensure the quality and durability of road paving financed by local taxpayers by confirming that the HMA product meets the town's requirements.

Project Monitoring

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 both the quantity and the quality of applied surface material are consistent with bid specifications. We found that the towns did a good job of monitoring the accuracy of pricing and quantity of product received, but that they did not always ensure that the HMA they received matched project specifications.

We judgmentally selected three asphalt road-surfacing projects completed by each town² during our scope period for a total of

² Seven towns completed three or more projects during this period, but Guilderland and East Hampton had only two projects, and Shelter Island completed just one project.

26 projects. We reviewed asphalt delivery tickets, bid prices, and invoices, and did not find any discrepancies in the tonnage delivered or the amounts billed for any of the projects we reviewed. All the towns had established and implemented adequate controls to ensure that they received the correct amount of HMA at the contract price. Town officials used various monitoring techniques to confirm price and quantity, including:

- Having the town’s project manager on-site to oversee the paving work
- Visiting the asphalt vendor to compare the billed invoices to awarded bid prices
- Matching the tonnage purchased on the delivery ticket to the vendor’s contract.

To illustrate, East Hampton receives vendor claim packages at the Highway Department for review and payment. Each package, which contains a claim, an invoice, and the applicable certified payroll, is first reviewed by the Department secretary and then by the Highway Superintendent. These Department officials ensure that the price and amount of product billed on invoices match the awarded bid prices on file and the tonnage purchased, as shown on the delivery tickets already obtained. Once this review is complete, the Finance Department pays the vendor.

However, we found that the towns need to improve their monitoring of the quality of the HMA product they receive from the vendor. Without such monitoring, a town cannot ensure that it has received the HMA job mix formula it ordered for a specific road-paving project. For example, a mix composed of “virgin” (new) asphalt will be of higher quality – but also more expensive – than a mix that contains a percentage (e.g., 20 percent) of recycled asphalt pavement. Town officials can ensure they receive the mix of HMA that the town contracted and paid for by reviewing the vendor’s job mix formula and the daily batch reports.

We found that only two towns, Brookhaven and Islip, obtained the job mix formula and daily batch reports as part of their routine monitoring. Officials in the remaining eight towns said they believed that their knowledge of the asphalt vendor, the presence of a town official at the job site, and other current monitoring procedures were sufficient to monitor road asphalt projects. For example, the Guilderland Highway Superintendent informed us that his employees visually inspect the quality of all asphalt material purchased.

While these are good controls, they cannot provide the detailed reports and analyses that towns need to verify that they are receiving the quality and mix of HMA stated in the contract. Obtaining the job mix formula and daily batch reports can provide towns with the “master recipe” for the HMA, as well as the actual ingredients in the daily production. These reports provide towns with some assurance that the HMA being applied is consistent with contract provisions.

Core Sample Testing

Once the HMA is applied to a road surface, core sample testing is an effective method for monitoring not only the type, composition, and quality³ of the HMA material used, but also its depth and compaction on the road surface. When a town’s contract gives the town the right to demand core sample testing, either the vendor or an independent firm performs the testing. Typically, the tester examines samples of the HMA the town purchased to assess whether the product matches contract specifications. The tester can also take core samples from the road surface to determine the physical characteristics of the asphalt that was applied and other essential elements, such as the depth of the asphalt on the finished road surface. Core sample testing provides an in-depth analysis of the applied asphalt that cannot be obtained in other ways.

We found that four of the 10 towns did not put provisions for core sample testing in their asphalt contracts. The absence of core sample testing provisions in town contracts limits the town’s ability to effectively monitor the physical characteristics of the HMA it purchased and the manner in which the asphalt was applied by the vendor.

Six towns did include core sample testing provisions in their contracts (Brookhaven, Islip, Salina, Shelter Island, Southold, and Union). Below are two examples of asphalt contract language that provides for core sample testing:

- Brookhaven’s asphalt contract - *“The Superintendent may at any time require the contractor to perform quality control testing of the mix produced by the supplier for the conformance to the mix design and job mix formula.”*
- Southold’s asphalt contract - *“The Town shall have the absolute right to make tests before and after delivery and placement of asphalt material to determine conformity to*

³Core sampling will not allow testers to determine the percentage of recycled asphalt material in the HMA.

specifications, quality, and standards of excellence. The Contractor agrees to bear the cost and pay for all tests....”

However, only two of these six towns (Brookhaven and Islip) actually exercised the contract provisions and required the conduct of core sample testing to monitor the vendor’s product and performance.

- Islip requested and received six core sample tests from the vendor, all of which were found to comply with contract specifications.
- Brookhaven⁴ received analysis of 61 core samples it had requested from three different vendors. In one case, the Town required core sampling testing conducted because some areas of the roads that this contractor had paved were noticeably unacceptable. The pavement appeared to deteriorate just a few days after the paving was completed. The asphalt core sample test analyses concluded that 15 of 44 samples (34 percent) failed to meet bid specifications for cement content and gradation. The vendor replaced the substandard asphalt, to the Town’s satisfaction, at no additional cost. The remaining 17 core sample tests did not identify any significant departure from materials specifications.

Islip’s requests for core sample tests gave Town officials assurance that its newly-paved roads met specifications; Brookhaven’s exercise of its core sample test provision gave Town officials the evidence necessary to get the vendor to replace inferior product with asphalt that met contract specifications. Officials in both Towns demonstrated sound fiscal stewardship in including the core sample text provision in their contracts, and in exercising this provision, to protect the interests of taxpayers.

Officials in the other towns told us they did not believe core sampling was necessary. According to these officials, their on-site presence and their knowledge of asphalt were sufficient to ensure that road surfacing jobs were properly performed. While on-site monitoring by knowledgeable town staff can certainly help towns monitor a vendor’s product and performance, analyzing the HMA’s quality and composition provides clear evidence that the product meets bid specifications. If the asphalt product does not

⁴ Brookhaven’s bid specifications state that the Town can request unlimited core sample testing.

meet bid specifications and the quality of the road infrastructure is compromised, taxpayers will not get good value for their tax dollars.

Recommendations

1. Towns 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.
2. The Towns should revise their contract bid specifications with an option for obtaining core samples to obtain better assurance that the HMA product they receive matches the contract specifications.
3. Towns with core sample testing provisions in their contracts should exercise the option to obtain core samples to ensure that the HMA product matches the contract specifications.

Prevailing Wage Rates

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 a certified payroll to the locality every 30 days. The town is required to state in the contract that the filing of certified payrolls is a condition for the payment of moneys due and owing for work done. It is the town’s responsibility to collect and perform a facial review⁵ of the contractor’s certified payroll⁶ for each project.

We found that eight of the 10 towns obtained and reviewed certified copies of vendor payrolls for each project we reviewed to monitor the payment of prevailing wage rates to vendors’ employees.

However, two towns, Pittsford and Union, did not obtain the certified payrolls and conduct reviews as required by the Law. Officials in these towns did not realize it was their responsibility to review contractors’ certified payrolls to monitor prevailing wage rates.

- Union – According to Town officials, the Town Highway Department normally applies HMA. However, because the Town had to perform remediation work after the September 2011 flood, the Town had to use a vendor to apply the HMA at the projects we reviewed. The Town Highway Department personnel who monitored these projects were unfamiliar with Law’s requirement that vendors must submit certified payrolls to Town officials prior to payment for contract work.
- Pittsford – Because the Town purchases HMA products and services from vendors on the Monroe County contract, Town officials believed that the County was responsible for monitoring compliance with the Law. However, the

⁵ The town’s review is intended to assess whether, on its face, the payroll provides the information required under the statute (i.e., for each laborer, mechanic and or worker, the hours and days worked, the occupations worked, the hourly wage rates paid, and the supplements paid or provided (220[3-a] [a][iii]).

⁶ Approved by management prior to payment

Monroe County contract explicitly states that the County assumes no responsibility for the purchases of others under the terms of its contract. New York Labor Laws also indicate that the contracting party – in this case, the Town – is responsible for obtaining and reviewing certified payrolls where applicable.

In the eight towns that did monitor prevailing wage rates, we tested 16 projects, which included payments to a total of 173 employees, and found that all employees were paid wage rates consistent with prevailing wage rates for their classification of employment.

Recommendation

4. Towns should obtain and review certified payrolls as required by the Law.

APPENDIX A

RESPONSES FROM TOWN OFFICIALS

We provided a draft copy of this global report to the 10 towns we audited and requested responses. We received response letters from seven towns: Brookhaven, East Hampton, Islip, Salina, Shelter Island, Thompson, and Union. The other three towns (Guilderland, Pittsford and Southold) were provided an opportunity to respond to the report but they chose to not do so.

The towns collectively agreed with our findings and recommendations and plan to implement corrective action. The following comments were excerpted from the seven responses.

Overall Comments

Town of Brookhaven officials: “I agree with the summary of findings that characterizes our program and the benefits it provides to our residents.”

Town of Islip officials: “We are pleased to know that the policies and procedures that the Town has been following have been done in accordance with the “best practices” that the State Comptroller’s Office recommends.”

Town of Salina officials: “...we generally agree with the audit recommendations and plan to implement them during the next fiscal year when obtaining bids for paving projects.”

Town of Shelter Island officials: “...we believe the audit has played a constructive role in our operations by providing helpful suggestions for improving our performance.”

Town of Thompson officials: “The Superintendent of Highways agrees with the report findings and will incorporate its findings to improve the performance of future paving projects. The Town made changes to its 2013 asphalt bid specifications to reflect the report’s recommendations.”

HMA Testing

Town of East Hampton officials: “I believe all HMA projects should be core tested.”

Town of Salina officials: “The Town recognizes the need to test the asphalt material to insure compliance with the bid requirements. However, it is reluctant to dig into new pavement. Instead, it will take samples of the material delivered onsite and have it sent out to a laboratory for testing. This will be done at the expense of the contractor.”

Town of Union officials: “The Town supports the recommendation that random testing of core samples should be performed on resurfacing projects performed by others, under contract to the Town, to verify that the HMA is consistent with bid specifications.”

Prevailing Wages

Town of Union officials: “...all personnel involved in road resurfacing projects should fully understand applicable prevailing wage laws, and no vendor shall be paid until certified payrolls have been submitted for review.”

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

We reviewed the towns' policies and procedures for monitoring HMA purchased and payment of prevailing wages. As part of this process, we reviewed the applicable contracts, bid specifications, and claim/voucher packets. We selected a non-bias judgmental sample of 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.

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