

Town of Homer

Conflict of Interest

DECEMBER 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Audit Objective

Determine whether any Town of Homer (Town) officials had prohibited interests in Town contracts.

Key Findings

One Board member is the president and owner of a welding company which provided repair work to the Town, totaling \$8,571, during our audit period. As president and owner of the welding company, the Board member had a prohibited conflict of interest in the welding company's contracts with the Town pursuant to New York State General Municipal Law Article 18.

We also found no evidence that Town officials complied with the Town's procurement policy by obtaining two verbal quotes prior to awarding contracts to the Board member's company.

Key Recommendations

- Ensure that officials and employees are familiar with and follow the requirements of New York State General Municipal Law Article 18 as they relate to conflicts of interest.
- Adopt procedures to help prevent prohibited interests in contracts.

Town officials generally agreed with our recommendations and have initiated or indicated they planned to initiate corrective action.

Background

The Town is located in Cortland County and governed by an elected Board (Board), composed of four Board members and the Town Supervisor. The Board is responsible for the Town's general management and finances. The Supervisor serves as the chief fiscal officer.

The Town has a separately elected Highway Superintendent (Superintendent), who is responsible for overseeing all Highway Department operations, which includes purchasing highway-related goods and services.

Quick Facts

2022 Appropriations	\$2.1 million
2022 Tax Levy	\$455,626
Population	6,293

Audit Period

January 1, 2021 – June 30, 2022

Conflict of Interest

How Should a Board Address Conflicts of Interest?

New York State General Municipal Law (GML) Article 18 prohibits municipal officers and employees from having an “interest” in contracts with the municipality for which they serve when they also have the power or duty – either individually or as a board member – to negotiate, prepare, authorize or approve the contract; to authorize or approve payment under the contract; to audit bills or claims under the contract; or to appoint an officer or employee with any of those powers or duties. For this purpose, a “contract” includes any claim, account, demand against or agreement with a municipality, express or implied.

Municipal officers and employees have an interest in a contract when they receive a direct or indirect pecuniary (monetary) or material benefit as a result of a contract. Municipal officers and employees are also deemed to have an interest in the contracts of, among others, a firm partnership or association of which they are a member or employee.

A Board Member Had a Prohibited Conflict of Interest

A Board member is the president and owner of a local welding company, organized as a limited liability company (company), from which the Town’s Highway Department purchased goods and services. During the audit period, the Board approved the payment of 10 claims to the Board member’s welding company, totaling \$8,571.

Under such circumstances, each invoice submitted by the welding company for repair work during our audit period is an agreement for goods and services purchased by the Town and, therefore, a “contract” for purposes of GML Article 18. As the president and owner of the welding company, the Board member is also deemed to have an interest in each contract by virtue of being a member of the company. Furthermore, as a member of the Board, the Board member has a number of powers and duties that can give rise to a prohibited interest, including the ability to authorize or approve contracts, authorize or approve payments under contracts, audit bills or claims under the contracts or appoint someone to perform that function. Therefore, unless a statutory exception applied, the Board member would have a prohibited interest in each of the invoices.

The Supervisor and the Board member told us that the Board used other vendors for similar repair work in the past but received poor quality workmanship. Therefore, the Board member’s company would correct errors made by these other vendors, resulting in additional costs incurred by the Town. In addition, the Board has used the Board member’s company for several years, dating back to before the owner became a member of the Board in 2016. The Board member also told us that when the Town does business with his company, the Town conducts business with either the company’s shop foreman and/or the

business manager, and that all billing is handled by the company's accountant/office manager. However, none of these facts presented by the Supervisor or the Board member qualify as an exception pursuant to GML Article 18 with respect to having a prohibited interest in contracts. Therefore, despite the fact that the Board member is not directly involved when the Town does business with his company, the Board member would still have a prohibited interest in each of the contracts between the Town and the welding company.

Finally, although the Board audited the claims before payment was made, we found no evidence that Town officials complied with the Town's procurement policy by obtaining two verbal quotes prior to awarding each contract to the Board member's company. The Supervisor told us multiple quotes were not received because the extent of work and final cost to complete a repair are unknown until a vendor initiates work on the project. However, seeking multiple quotes would provide perspective on the potential scope and costs of a project, and the procurement policy does not permit exceptions for the number of quotes required.

We did not find any other prohibited conflicts of interest with the remaining Board members, the Town Clerk and Superintendent.

What Do We Recommend?

The Board should:

1. Ensure that officials and employees are familiar with and follow the requirements of GML Article 18 as they relate to conflicts of interest.
2. Adopt procedures to help prevent prohibited interests in contracts.
3. Ensure that Town officials comply with procurement policy requirements to obtain and document competition when procuring goods and services.

Appendix A: Response From Town Officials

The Town's response letter refers to an attachment that supports the response letter. Because the Town's response letter provides sufficient detail of its actions, we did not include the attachment in Appendix A.



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December 6, 2022

Office of the State Comptroller Division of Local Government & School Accountability
PSU – CAP Submission
110 State Street, 12th Floor
Albany, NY 12236

Dear Office of the State Comptroller:

This is in response to your draft “Conflict of Interest, Report of Examination.” The report makes 3 recommendations, and the Homer town board intends to follow all of them. We have become very familiar with the requirements of General Municipal Law Article 18. We will adopt procedures to help prevent prohibited interests in contracts. We will also comply with and document compliance with our town procurement policy.

We would like to point out a few facts that are not mentioned in your report. Homer Iron Works does repair work for virtually all municipalities in Cortland County. It has several municipal customers that bring their equipment more than 100 miles to have the repair work done (see attachment A). There are very few alternative facilities available. I have investigated other potential repair businesses that would do this type of work and I am not aware of any in Cortland County. There is a facility in Onondaga County which is approximately 47 miles away that we may need to use. That will require 4 vehicle trips (2 both ways) and is likely to increase the cost dramatically. Homer Iron Works is located about 1 mile from the town barn. Homer Iron Works does not need our business, which reportedly constitutes less than two tenths of one percent of the business's income.

We understand that the above facts do not constitute any exceptions from the General Municipal Law requirements. As we understand it there are 3 options available under GML Section 802.1. The first is for Mr. Park (who is deputy town supervisor) to resign from the town board. He is considering doing so. The rest of the town board believes this would be very unfortunate for the town. We consider his life experience and management skills to be virtually irreplaceable. The second option would be for Homer Iron Works LLC to do the work for free. We do not believe that it is reasonable to expect that. The third option would be for Mr. Park to give up his lucrative



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salary of \$2,460 per year, and for Homer Iron Works to do less than \$5,000 per year of business with the Town. Mr. Park is also considering that option, not for financial reasons, but to help the town. Of course, we understand that our procurement policy must be followed with all 3 options.

We understand the importance of avoiding the appearance of a conflict of interest. However, we do not believe that the balance struck under the present GML adequately takes into consideration situations such as ours. The options available to the town as described above will cost the taxpayers more and leave the town worse off. We do not believe that your draft report adequately describes the problem the Town of Homer faces.

We believe that some of the work that was done in the past by Homer Iron Works, and some of the work that may be required in the future would fall under the GML Section 103.4 exception for emergencies. If a snowplow breaks down and roads are not being sufficiently maintained, it can create a life-threatening situation. Consequently, we must reserve the right to proceed accordingly under that section of the GML.

Thank you for your consideration of our response to your draft Report of Examination.

Sincerely,

A small, handwritten mark consisting of a simple, curved line, likely representing the signature of Frederick J. Forbes Sr.

Frederick J. Forbes Sr.
Town of Homer Supervisor

Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed Town officials and reviewed Board meeting minutes and Town policies and procedures to gain an understanding of controls in place over determining prohibited conflicts of interest.
- We made inquiries of Town officials to identify their outside employment interests or business ownerships and reviewed vendor reports, Board-approved abstracts of audited claims and canceled check images to identify payments made to officials, their spouses and dependents or related employers, firms, corporations or associations that may indicate a potential improper or undisclosed interest in contracts.
- We reviewed all the invoices paid to the Board member's welding company during our audit period to determine the total amount paid to the company and whether Town officials complied with the procurement policy.

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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

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 provided to our office within 90 days, pursuant to Section 35 of 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 Board to make the CAP available for public review in the Town Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/local-government/academy

Contact

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