



Town of Cheektowaga

Awarding Contracts for Goods and Services

Report of Examination

Period Covered:

January 1, 2010 — August 28, 2013

2013M-293



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 2014

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 governance. Audits also can identify strategies to reduce costs and strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Cheektowaga, entitled Awarding Contracts for Goods and Services. 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

The Town of Cheektowaga (Town) is located in Erie County and has a population of approximately 88,000 residents. The Town provides various services to its residents, including highway maintenance, snow removal, sewer service, police protection, refuse collection and general government support. These services are financed mainly by real property taxes and assessments, sales tax and State aid. For the 2013 fiscal year, the Town's budgeted expenditures were approximately \$86.7 million.

The Town is governed by an elected seven-member Town Board (Board), which includes a Town Supervisor (Supervisor) and six council members. The Board is the legislative body responsible for managing Town operations, including establishing internal controls over financial operations. The Supervisor and various department heads share the responsibility for supervising and managing the Town's daily operations.

The Supervisor serves as the Town's chief executive and chief fiscal officer. The Supervisor appointed a Director of Finance, who is responsible for the Town's daily financial affairs and for the disbursement and custody of Town moneys. The Highway Superintendent is an independently elected official responsible for maintaining the Town's roads and procuring goods and services for the Highway Department. The Engineering Department is responsible for managing the Town's infrastructure, including its sanitary sewer and storm water drainage systems. The Engineering Department is under the general supervision and control of the Board-appointed Town Engineer.

Scope and Objective

The objective of our audit was to review the Town's procurement process for the period January 1, 2010 through August 28, 2013. Our audit addressed the following related question:

- Did the Board properly award contracts for goods and services?

Audit Results

We reviewed five contracts with payments totaling \$12.6 million and found that the Board did not properly award two of these contracts – for public works projects and sidewalk replacement services – that resulted in payments totaling more than \$10.6 million to two contractors. The Town also failed to properly monitor the services provided by three of the five contractors. Town officials wasted thousands of dollars by deciding to use more expensive bulldozers when other equally capable options were available at much lower costs. In addition, the Town paid more than necessary for sidewalk replacement and, because property owners are required to reimburse the Town for sidewalk

replacement, a significant portion of the additional cost was borne by individual taxpayers. Further, the Town overpaid two vendors by more than \$100,000 for solid waste disposal and sidewalk replacement services. Based on the information obtained and the manner in which these transactions were handled, there is a significant risk that errors, irregularities and improprieties occurred and were not detected, as discussed in more detail below.

Town officials not only appeared to structure and award a bid for public works projects inappropriately, but managed the contract in a manner that appeared to routinely favor the contractor and caused the Town to unnecessarily pay significantly more than needed. Although the bid specifications identified an estimated value of \$1.5 million for the contract's first year, the specifications did not indicate what equipment or labor was used to establish this estimate or provide an estimated value for the three optional renewal periods. Town officials simply totaled the per unit bid prices for the 24 items included in the bid specifications, without any regard for how much each would be used, and selected the contractor with the lowest total as the low bidder.

The successful bidder's proposal included the use of numerous pieces of equipment with very low bid rates, such as \$1 or \$2 per day, and which the Town rarely, if ever, used during the first year of the contract. However, other bidders' proposals for the same equipment were more in line with the costs of other equipment and operators that were bid. Ultimately, the \$1 and \$2 daily rates lowered the calculated total bid amount that the Town improperly used to award the bid. Furthermore, when considering the actual number of days that each bid item was used, the low bidder was no longer even the lowest overall bidder. The Town Engineer told us that a junior engineer was responsible for supervising the contracted work and selecting the project equipment, which was rarely the \$1 and \$2 per day equipment. These equipment selections routinely favored the contractor.

The Board also did not properly award a sidewalk replacement contract and, subsequently, Town officials used this contract to circumvent bidding requirements. The original bid specifications were grossly inaccurate. Town officials could not provide us with documentation to determine how they estimated the original contract to be valued at \$200,000, outline the process used to determine the lowest bidder, and define the scope of the work for the annual renewal periods. Town officials could not provide a written plan detailing the work to be performed during the entire contract period. The Town paid this contractor more than \$1.8 million during the first year of the contract and subsequent renewal periods. These payments included more than \$635,000 for services unrelated to the original project scope, such as curb restoration work and installation of new concrete curbs, which were not competitively bid as separate projects, as required by law.

Town officials also paid more than necessary for 121,000 square feet of sidewalk installation or replacement without a valid explanation. Town officials had the option of installing more durable six-inch sidewalks at a bid price of 10 cents per square foot, but instead chose to install thinner four-inch sidewalks at a bid price of \$5 or more per square foot. Had the junior engineer required the contractor to install six-inch sidewalks, the Town would have received a more durable sidewalk at a fraction of the price actually paid. In fact, the total cost would have been only \$12,100, saving Town taxpayers approximately \$600,000. This occurred because the Town Engineer failed to exercise proper oversight of the construction contract bid process or adequately supervise the management of the projects.

Comments of Town Officials

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix B, have been considered in preparing this report. Town officials agreed with the recommendations and indicated they would take corrective action. However, they disagreed with certain findings. Appendix C includes our comments on issues raised in the Town's response.

Introduction

Background

The Town of Cheektowaga (Town) is located in Erie County and has a population of approximately 88,000 residents. The Town provides various services to its residents, including highway maintenance, snow removal, sewer service, police protection, refuse collection and general government support. These services are financed mainly by real property taxes and assessments, sales tax and State aid. For the 2013 fiscal year, the Town's budgeted expenditures were approximately \$86.7 million.

The Town is governed by an elected seven-member Town Board (Board), which includes a Town Supervisor (Supervisor) and six council members. The Board is the legislative body responsible for managing Town operations, including establishing internal controls over financial operations. The Supervisor and various department heads share the responsibility for supervising and managing the Town's daily operations.

The Supervisor serves as the Town's chief executive and chief fiscal officer. The Supervisor appointed a Director of Finance, who is responsible for the Town's daily financial affairs and for the disbursement and custody of Town moneys. The Highway Superintendent is an independently elected official responsible for maintaining the Town's roads and procuring goods and services for the Highway Department. The Engineering Department is responsible for managing the Town's infrastructure, including its sanitary sewer and storm water drainage systems. The Engineering Department is under the general supervision and control of the Board-appointed Town Engineer.

Objective

The objective of our audit was to review the Town's procurement process and address the following related question:

- Did the Board properly award contracts for goods and services?

Scope and Methodology

We examined various financial reports and other records related to the awarding of contracts for the period January 1, 2010 through August 28, 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 D of this report.

**Comments of
Town Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix B, have been considered in preparing this report. Town officials agreed with the recommendations and indicated they would take corrective action. However, they disagreed with certain findings. Appendix C includes our comments on issues raised in the Town's response.

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 Board to make this plan available for public review in the Town Clerk's office.

Contracts for Goods and Services

Town officials are entrusted with public resources and have a responsibility to comply with laws, act in an ethical manner and safeguard the Town's assets. The Board is responsible for ensuring that contracts for goods and services are awarded properly. Contracts should be awarded in accordance with law, in the best interests of taxpayers, and in a manner that fosters honest competition, while avoiding favoritism, wastefulness and fraud. It is essential that Town officials comply with competitive bidding statutory requirements, and monitor the goods and services provided.

General Municipal Law (GML)¹ requires competitive bidding on contracts for public works involving expenditures of more than \$35,000. Competitive bidding gives prospective bidders an equal opportunity to furnish supplies, equipment and services to the Town. The bid specification document sets forth the standards and requirements that competitors must observe and provides information necessary to prepare their bids. Properly written and detailed specifications provide a common standard by which bids are measured and provide assurance that bidders will be competing on a fair and equal basis. This should encourage vendors to be responsive and competitive, resulting in cost savings to the Town.

We reviewed five contracts² with payments totaling \$12.6 million and found that the Board did not properly award two of these contracts – for public works projects and sidewalk replacement services – that resulted in payments totaling more than \$10.6 million to two contractors. The Town also failed to properly monitor the services provided by three of the five contractors. Town officials wasted thousands of dollars when deciding to use more expensive bulldozers when other equally capable options were available at much lower costs. The Town also paid approximately \$600,000 more than was necessary for sidewalk replacement. Further, because property owners are required to reimburse the Town for sidewalk replacement, a significant portion of this cost was borne by individual taxpayers. In addition, the Town overpaid two vendors more than \$100,000 for solid waste disposal and sidewalk replacement services. Based on the information obtained and the manner in which these transactions

¹ In June 2010, the bidding 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.

² Our sample was selected using vendor activity reports for the 2010, 2011 and 2012 fiscal years. We identified the Town's 10 highest-paid vendors and judgmentally selected the five largest public works or purchase contracts that were subject to competitive bidding requirements.

were handled, there is a significant risk that errors, irregularities and improprieties occurred and were not detected.

Public Works Contract

In February 2010, the Board awarded a public works contract for equipment and operators to be used on various projects within the Town, during the period March 1, 2010 through March 1, 2011. This one-year contract contained a provision allowing the terms to be renewed for three additional one-year periods with annual price increases. According to the bid specifications, the first year of the contract had an estimated value of \$1.5 million. The contract has been renewed annually by the Board and is currently in the fourth and final year. As of August 5, 2013, the Town has paid the contractor more than \$8.8 million for services rendered under this contract.

We reviewed the bid process and all payments made to the contractor over the past three-and-one-half years and found that Town officials failed to act in the best interest of the taxpayers when awarding and renewing the contract. Moreover, Town officials did not appropriately manage the projects that used this contract as the basis for payment or adequately monitor the work performed by the contractor.

Incomplete Bid Specifications — When bid specifications request bids for rates, such as per hour or per day, the total quantity of anticipated work for each type of equipment or labor should be provided. In January 2010, the Town advertised for bids on the above noted public works contract. The bid specifications failed to provide bidders with sufficient information to appropriately prepare their bids or for the Town to evaluate the bids that were received. The Town requested bids for daily rates for 23 pieces of equipment with operators and general labor (for a total of 24 bid items) but did not specify the anticipated number of days it would need such equipment and labor. When the Town received bids, it determined each total bid amount by simply adding the daily rates for all 24 items.

Without defining the amount of work, and the total number of days Town officials expected to use specific pieces of equipment and labor, Town officials were not in a position to compare the total cost of the contract and establish the low bidder. Simply adding the daily rates for all 24 bid items for each bidder provides no basis upon which to determine the Town's cost for the contract. As such, it is unclear how Town officials believed that such a comparison was an appropriate means to award this contract, especially in light of the magnitude of work that was expected to be performed pursuant to this contract.

According to the bid specifications, the work to be performed through the contract included projects such as sanitary and storm sewer repairs, installation of sewers, manhole repairs and installation,

repair and construction of drainage tributaries, roadwork repairs and construction, waterline replacement, repairs to and installation of new water service connections, demolition work, paving and patching of highways, concrete finishing for sidewalks and curbing, and repairs and installation of public utilities or facilities, bridge systems, box culverts and athletic courts/fields. While the bid specifications identified an estimated value of \$1.5 million for the first year of the contract, the specifications did not indicate what equipment or labor was used to establish this estimate; this amount was simply a projected overall cost. As such, that estimate provides virtually no value to a prospective bidder, other than a general sense of the aggregate amount of payments it may receive from the Town for the one-year period. Further, the bid specifications did not provide an estimated value for the three optional renewal periods.

As indicated in Table 1, Town officials totaled the per unit bid prices for all 24 items and selected the contractor with the lowest total as the low bidder.³

	Successful Bid	Bid A	Bid B	Bid C
Calculated Bid Amount	\$5,135	\$21,303	\$9,979	\$29,085

We reviewed the vendor invoices for the first year⁴ of the contract and found that four of the 24 bid items were used substantially more than the other items. The public works projects during the first year of the contract primarily used general labor, tandem dump trucks, equipment trucks and backhoes. The successful bidder’s proposal included numerous items bid at \$1 or \$2 per day, which the Town rarely, if ever, used during the first year of the contract. However, other bidders’ proposals for the same equipment were more in line with the costs of other equipment and operators that were bid. Ultimately, the \$1 and \$2 daily rates had the effect of lowering the total of the rates that the Town used to award the bid. The successful bidder apparently assumed the significant risk that the Town would not use the equipment that was bid at the \$1 or \$2 daily rate, which would have resulted in a substantial loss to the successful bidder in providing those services to the Town to any great degree.

Furthermore, when the actual number of days that each bid item used was considered, the low bidder was no longer the lowest overall bidder because other bidders submitted lower daily rates for certain

³ See Appendix A for further details on items and amounts included in the bids.

⁴ During the period of March 1, 2010 through August 5, 2013, the Town paid the contractor more than \$8.8 million and the Town’s pattern of using only certain bid items repeated itself during the entire three-and-a-half-year period reviewed.

items used most often by the Town.⁵ After multiplying the number of days actually used⁶ by each bidder's bid price, the successful bidder's total bid price was approximately \$2.9 million. However, both Bidder A and Bidder B had lower total bid prices of \$2.6 million and \$2.8 million, respectively. Therefore, the lowest bidder would have been Bidder A.

The Town Engineer indicated that it would have been difficult to estimate the quantities for each bid item because of the nature and broad scope of work the contract was intended to cover. In fact, Town officials could not provide documentation to demonstrate that they had properly planned any of the public works projects completed during this time. Town officials explained that they preferred to have a contractor available to complete various types of projects as needed rather than planning and bidding on a project by project basis.

Despite the lack of proper project planning and documentation, the Town Engineer stated that Town officials had sufficient information to have evaluated the bids more fairly using past history. He indicated that past history demonstrates that the Town primarily uses labor, a dump truck and a backhoe. If Town officials had considered this information when evaluating the bids, they would not have given all bid items equal weight when calculating the bid amount and determining the lowest overall bidder. Moreover, giving more appropriate weight to those bid items would have resulted in the award of the bid to one of the other bidders because, in many cases, they had lower rates for those services. As one example, by far the most often used bid item for the first year of the contract was laborers, with 1,527 total billed days. The Town's bid award vendor rate for laborers was \$780 per day, which was significantly more than the three other bidders, who bid rates of \$596, \$600 and \$725. The Town paid the awarded vendor almost \$1.2 million for laborers in the first year of the contract. Had the Town awarded the contract to Bidder A, it would have paid \$910,000 for laborers, or about \$300,000 less than what it actually paid.

Planning and Oversight — Without a plan detailing the total project scope and related costs, the Board cannot ensure that projects are completed in a cost effective manner. Although the contract contained a provision to allow for an annual renewal, there was no indication that Town officials performed any analysis to evaluate whether the initial contract term resulted in the lowest costs to the Town. Our analysis demonstrates otherwise. Further, there was no indication that

⁵ See Appendix A - Public Works Contract Bid Tabulation

⁶ We removed overtime hours charged by the vendor during this period for presentation purposes; therefore, the actual amount charged for labor in various categories is slightly higher than presented.

Town officials had any plan for the type of work to be performed in subsequent years or that the services required would differ substantially from those provided in the first year. Therefore, it appears that Town officials failed to perform necessary due diligence before reaching the conclusion that the Board should renew this contract. The Board and other Town officials should have been cognizant of the fact that the contract renewal would continue to result in substantial costs to the Town, which would likely continue to exceed the costs that would have been incurred had one of the other bidders provided the services.

Further, the Town made payments for projects totaling more than \$524,000 for services rendered during the three-and-one-half year period reviewed that were not paid in compliance with the bid specifications and were not competitively bid as separate projects, as required by law. For example, in September 2011, the Town paid the contractor \$47,120 for the installation of 2,356 linear feet of curbing on a Town highway. The services were not billed based on the contractor's daily rates for equipment or labor, but rather as a lump sum.

Although the Town's bid specifications indicated that curb installation could be included in the scope of services to be provided, no provision was made for the cost of material, including, in this case, a substantial amount of concrete. As such, the services rendered to install the curbing should have been bid as a separate public works project covering both labor and materials. However, Town officials awarded the work to the contractor without competitive bidding. Although insufficient to address the fact that competitive bids had not been solicited for this project, we also found no indication that written quotes were obtained from the contractor for the concrete that would be needed. This would have demonstrated at least a minimal level of assurance that Town officials had evaluated whether the Town was receiving appropriate value before proceeding with this project.

In a similar fashion, the Town paid the contractor an additional \$71,288 and \$53,890 in lump sum payments for separate curb installation projects completed in September 2012 and November 2012, respectively, and more than \$85,000 to install a waterline in October 2012. Each of these projects also exceeded the \$35,000 statutory bidding threshold established by GML. The failure to properly solicit competition deprived other vendors the opportunity to bid and could have been more costly than if the work had been properly awarded following competitive bidding requirements.

Although Town officials indicated that they did not intend to provide any bidder an advantage, their actions in awarding the contract, not bidding what appear to be separate public works contracts, renewing

the contract without performing due diligence, and not monitoring the services being rendered by the contractor suggests otherwise.

We also found that the bid included three types of bulldozer, all of which were presumably capable of performing the type of projects the Town required. However, the varying sizes of the machines compared to the size of the work area apparently limited the Town's ability to use the largest bulldozer and left the Town with the option of using either the smallest bulldozer for \$2 per day or the middle-sized bulldozer for \$550 per day. The Town paid for 97 days use of the \$550 per day bulldozer and only three days use of the \$2 per day bulldozer during the first year of the contract. Similarly, during the period March 1, 2012 through March 1, 2013, the Town used the middle-sized bulldozer for 143 days and did not use the smaller bulldozer at all. According to the equipment list submitted by the bidders, the contractor did not even own the smallest-sized bulldozer, or an equivalent, at the time bids were submitted. This suggests that the contractor anticipated either renting such a bulldozer for hundreds of dollars per day or acquiring one for several thousand dollars to provide that service, had the Town required one for a project.⁷ It seems unlikely that a contractor would bid \$2 for services that would cost hundreds, if not thousands, of dollars to perform without some assurance or belief that these services would not be selected much, if at all.

According to the Town Engineer, a junior engineer from his department was responsible for supervising the work performed by the contractor and for selecting the equipment used for each project. Upon our inquiry, both the Town Engineer and the junior engineer indicated that the Town could have and should have used the less costly bulldozer more often but did not do so because it was more efficient for the contractor to complete the work using the middle-sized bulldozer. As an example, we found that in March of 2013, the Town paid for the middle-sized bulldozer to move material at a dumpsite for 30 days at a cost of \$578⁸ per day, but could have used the smaller bulldozer to do the same work at a rate of just \$2 per day. Had the junior engineer required that the contractor use three small bulldozers, the Town would have paid less than \$200 for the dumpsite work rather than the \$17,000 it actually paid to the contractor.

This activity raises significant concerns with respect to certain Town officials' actions. They not only appeared to structure and award the bid inappropriately, but managed the contract in a manner that appeared to routinely favor the contractor. When public officials fail to ensure contracts are awarded and managed in a fair and objective

⁷ For perspective, Bidder A charged \$1,021 and Bidder C charged \$1,120 per day for this bulldozer.

⁸ The bulldozer rate increased from \$550 to \$578 due to annual increases.

manner, they defeat the purpose of the statutory requirements for competitive bidding.

Sidewalk Replacement Contract

The Board did not properly award a sidewalk replacement contract and, subsequently, Town officials used the contract to circumvent bidding requirements. In December 2010, the Board awarded a contract for 2011 that contained an annual renewal provision. We reviewed the bid process and more than \$1.8 million in payments made to the contractor over the past two-and-one-half years.

In November 2010, the Town requested bids for the replacement of sidewalks throughout the Town. According to the bid specifications, the work was to include all labor, materials, tools and equipment necessary for the replacement and installation of new concrete sidewalks and concrete driveway aprons, the installation of handicap ramps and the installation of under-drains where necessary. The bid specifications requested bids on a unit basis for each type of work, such as cost per square foot, per ramp or per linear foot.

Although the bid specifications included an estimated quantity for each bid item, the estimates were grossly inaccurate. The Town expected to replace⁹ approximately 20,000 square feet of existing four-inch concrete sidewalks, 5,000 square feet of existing six-inch concrete sidewalks, and 1,200 square feet of existing concrete driveway aprons. However, the Town only replaced approximately 6,200 square feet of four-inch sidewalks, no six-inch sidewalks, and almost 54,000 square feet of driveway aprons. As a result of rendering these services, the contractor was paid \$31,000 for sidewalks and more than \$323,000 for concrete driveway aprons.

When Town officials added the bids for all the items together, based on the estimated quantities, and selected the contractor with the lowest total bid price as the low bidder, the grossly inaccurate estimates impacted the result. Had all of the bidders been provided with more accurate estimates, they may have bid more competitively on the driveway apron bid item which was used far more often by the Town than the estimate provided to bidders. Again, the Town's bid specifications estimated that 1,200 square feet of driveway aprons would be replaced; however, 54,000 square feet were actually replaced.

Town officials were unable to provide documentation to support the original \$200,000 estimate cited in the bid specifications as the

⁹ The bid specifications also indicated that the Town would install 8,000 square feet of new four-inch concrete sidewalks and 1,000 square feet of new six-inch concrete sidewalk, but the Town only installed approximately 1,500 square feet of new four-inch sidewalks and installed no new six-inch sidewalks.

contract's approximate value, or the estimated quantities used to evaluate the bids and determine the lowest bidder. The Town paid the contractor more than \$646,000 for services rendered in 2011. This contract has been renewed annually by the Board, but the scope of the work for the renewal periods was not defined in the bid specifications, and Town officials could provide no written plan detailing the work to be performed during the entire contract period. More than \$1.2 million has been paid to this contractor during the subsequent renewal periods.

Town officials stated that the Board approves a \$200,000 bond resolution annually for sidewalk replacement. The Town's capital projects committee meets at the beginning of each year to discuss various projects and priorities, and then selects the projects to complete. However, Town officials could not provide documentation pertaining to this process or the decisions made regarding sidewalk replacement. Such information could include providing us with a plan detailing the various locations within the Town where sidewalks would be replaced each year and the estimated square footage of each type of concrete work to be performed in each location.

Over the two-and-one-half year period reviewed, the Town paid the contractor more than \$635,000 for services unrelated to the original project scope which were not competitively bid as separate projects, as required by law. For example, the Town paid the contractor over \$66,000 for curb restoration work and approximately \$92,000 to install new concrete curbs throughout the Town during the 2011 calendar year. However, curb restoration or installation was not included, and a unit cost for concrete curbing was not identified, in the original bid specifications. According to the junior engineer, the curb work was necessary to rebuild or replace deteriorated catch basins and curbing originally installed by the Highway Department. During the 2012 and 2013 calendar years, the Town paid the contractor an additional \$160,000 for curb restoration and installation work. The failure to properly gauge the scope of the contract and solicit competition deprived other vendors the opportunity to bid and could very well have been more costly than if the work had been properly awarded following competitive bidding requirements.

Town officials also paid more for certain services than necessary without valid explanation. Over the two-and-one-half year period since the sidewalk contract was first awarded, the Town has replaced or installed over 121,000 square feet of concrete sidewalks. In every instance, Town officials chose to install four-inch sidewalks at a bid price of \$5 or more per square foot instead of installing six-inch sidewalks at a bid price of only 10 cents per square foot. The Town Engineer stated that, typically, four-inch sidewalks had been used

throughout the Town because it usually is less costly than installing six-inch sidewalks. The other four vendors that bid provided prices for six-inch concrete sidewalks that ranged from \$6.30 to \$8 per square foot. The Town Engineer also indicated that the more durable six-inch sidewalks are used more sparingly in commercial areas or in front of high-traffic areas, such as driveways. However, the Town Engineer admitted that the Town could have used six-inch sidewalk in all areas of the Town and could not provide a reason for opting to install the less durable and significantly more expensive (per the awarded bid) four-inch sidewalks throughout the Town.

Had the junior engineer required the contractor to install six-inch sidewalks (10 cents/square foot) rather than four-inch (\$5/square foot), the total cost would have been only \$12,100, saving approximately \$600,000. In addition, the Town has a cost-sharing policy for sidewalk replacement, where property owners pay for a substantial portion of the cost. Therefore, a significant amount of this additional cost was borne by individual taxpayers for sidewalk replaced on their property.

We find it highly irregular that a contractor would bid a significantly lower price for the six-inch sidewalks than for four-inch sidewalks. This helped drive this contractor to be selected as the low bidder. When this is coupled with the junior engineer electing to have the thinner – yet more expensive – sidewalks installed, we find this highly questionable.

This waste of taxpayer money occurred because the Town Engineer failed to exercise proper oversight of the construction contract bid process or adequately supervise the management of the projects. Had the Town Engineer instructed the contractor to install the more durable – yet significantly less costly – six-inch sidewalks, the Town would have saved hundreds of thousands of dollars.

Contract Overpayments

Once contracts have been awarded, the Board is responsible for ensuring that all associated payments are made in accordance with contract terms and are proper Town expenditures.

For each of the five contracts in our sample, we tested all related payments totaling \$12.6 million to determine whether they agreed with the rates in the bid awards. We found that the Board failed to properly audit claims as required and, as a result, approved – and the Director of Finance made – overpayments to one vendor totaling more than \$76,000 and to another vendor totaling more than \$25,000.

In December 2012, the Board awarded a contract for solid waste disposal services. The bid specifications and subsequent contract contained a provision limiting the compensation for transporting and

disposing waste to a tipping (disposal) fee per ton of waste. However, the Town has been billed for and paid a fuel surcharge averaging approximately \$12,000 per month, even though the waste disposal contract does not provide for or obligate the Town to pay a surcharge or additional fee for fuel. As of August 5, 2013, the Town had overpaid the vendor more than \$76,000 since the contract was awarded. When we brought these overpayments to Town officials' attention, they immediately contacted the vendor, and the Town received a full refund. When overpayments are made to a vendor, there is an inherent risk that such payments may not be recovered in a timely manner, if at all, so every precaution should be taken to prevent the overpayments from occurring in the first instance. A thorough review of claims and comparison with contract terms would have identified this billing error before the bills were approved for payment.

On May 21, 2012, the Town paid the sidewalk replacement contractor \$19,470 for curb and driveway apron restoration work; this payment was based on an original invoice approved by the Highway Superintendent. In June 2012, the Town paid the same invoice based on a photocopy of the original invoice. Had the Board made it a practice of only auditing and approving claims based on original invoices, the duplicate payment may have been avoided. Additionally, the same invoice included a \$5,000 overcharge for services that were not rendered. During our review of invoices submitted by this contractor, we found numerous mathematical errors that resulted in both over and underpayments. After accounting for the underpayments, we determined that the Town has overpaid the contractor \$25,677. Town officials stated that they would request a refund of these overpayments.

We attribute these overpayments, in part, to the Board's inadequate claims audit function. The Board does not audit claims; it simply approves a listing of claims to be paid without reviewing the actual claims and supporting documentation. Because the Board failed to properly audit claims before payment, and failed to verify that purchases were actually received, there is an increased risk that the Town made other inappropriate, excessive or unauthorized payments.

Recommendations

1. The Board should ensure that project requirements and costs are properly planned before bid specifications are prepared and contracts are awarded.
2. Town officials should ensure that bid specifications clearly communicate the quantity and nature of the work to be performed and the criteria used to award the contract. When specifications solicit bids on a rate basis, such as per hour or per day, the total quantity of work to be performed should be reasonably estimated and provided.

3. The junior engineer should not be allowed to manage contracts without proper oversight. The Town Engineer should provide proper oversight of his department, approve all project decisions and monitor the work performed by contractors to ensure compliance with bid specifications.
4. The Board should ensure that all contracts are competitively bid and properly awarded as required.
5. The Board should monitor project activity to ensure that projects are completed in a cost effective manner.
6. The Board should conduct a proper audit of claims prior to approving them for payment.
7. The Board should determine whether to pursue recovery of all overpayments identified in this report after consultation with the Town Attorney.

APPENDIX A

PUBLIC WORKS CONTRACT BID TABULATION

Table 2: Bid Tabulation										
Item #	Bid Item	Days Used ^a	Successful Bid Daily Rate	Actual Cost	Bid A	Extended Cost	Bid B	Extended Cost	Bid C	Extended Cost
1	TANDEM DUMP	1,115	\$696	\$776,149	\$100	\$111,516	\$600	\$669,094	\$720	\$802,913
2	BACKHOE, RUBBER TIRE	212	\$695	\$147,427	\$1,080	\$229,095	\$685	\$145,306	\$1,320	\$280,005
3	LABORERS	1,527	\$780	\$1,191,401	\$596	\$910,353	\$725	\$1,107,392	\$600	\$916,463
4	SAW (VERMEER TRACK)	25	\$2	\$49	\$982	\$24,182	\$400	\$9,850	\$1,220	\$30,043
5	SAW (WALK BEHIND)	5	\$1	\$5	\$646	\$3,472	\$1	\$5	\$800	\$4,300
6	EQUIP. TRUCK A	639	\$1	\$639	\$300	\$191,625	\$1	\$639	\$600	\$383,250
7	EQUIP. TRUCK B	24	\$1	\$24	\$350	\$8,400	\$1	\$24	\$800	\$19,200
8	SHIELD 8 X 10	133	\$1	\$133	\$20	\$2,660	\$1	\$133	\$500	\$66,500
9	SHIELD 6 X 16	28	\$1	\$28	\$20	\$560	\$1	\$28	\$500	\$14,000
10	TRANSPORT SHIELD	3	\$1	\$3	\$150	\$450	\$1	\$3	\$1,100	\$3,300
11	ROLLER, 3 TON	40	\$1	\$40	\$90	\$3,589	\$150	\$5,981	\$500	\$19,938
12	BACKHOE, 1/3 YD	0	\$2	\$0	\$1,017	\$0	\$1	\$0	\$1,360	\$0
13	BACKHOE, 7/8 YD	508	\$990	\$503,229	\$1,090	\$554,061	\$900	\$457,481	\$1,570	\$798,051
14	BACKHOE, 1-1/3 YD	6	\$400	\$2,275	\$1,091	\$6,205	\$410	\$2,332	\$1,695	\$9,640
15	BACKHOE, 2-1/3 YD	68	\$500	\$33,875	\$1,872	\$126,828	\$900	\$60,975	\$1,935	\$131,096
16	BULLDOZER, D-3	3	\$2	\$6	\$1,021	\$3,063	\$1	\$3	\$1,120	\$3,360
17	BULLDOZER, D-4	97	\$550	\$53,453	\$1,036	\$100,686	\$800	\$77,750	\$1,220	\$118,569
18	BULLDOZER, D-6	7	\$2	\$14	\$1,335	\$9,345	\$300	\$2,100	\$1,770	\$12,390
19	FRONT END LOADER, 3 YD	323	\$500	\$161,344	\$1,059	\$341,726	\$800	\$258,150	\$1,520	\$490,485
20	LANDSCAPE TRACTOR	0	\$1	\$0	\$782	\$0	\$1	\$0	\$1,120	\$0
21	BACKHOE MIN 4500 LB	0	\$2	\$0	\$2,312	\$0	\$1,000	\$0	\$1,820	\$0
22	BACKHOE MIN 7500 LB	2	\$2	\$4	\$2,582	\$5,164	\$1,100	\$2,200	\$2,285	\$4,570
23	BACKHOE MIN 8800 LB	1	\$2	\$2	\$990	\$1,052	\$800	\$850	\$1,570	\$1,668
24	DRUM DIRT ROLLER	2	\$2	\$4	\$782	\$1,564	\$400	\$800	\$1,440	\$2,880
Total		4,768	\$5,135	\$2,870,104	\$21,303	\$2,635,596	\$9,979	\$2,801,096	\$29,085	\$4,112,621

^a For presentation purposes, we rounded to the nearest whole day. However, the actual and extended cost calculations were based on the actual days used. As such, extending this column with the rates columns will not consistently result in precise calculations.

APPENDIX B

RESPONSE FROM TOWN OFFICIALS

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

In their response, Town officials reference page numbers that were initially included in the draft report. These page numbers changed when the final report was formatted.

The
Town of
Cheektowaga



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MARY F. HOLTZ
Town Supervisor

February 3, 2014

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**Re: Response to Preliminary Draft Findings
Report of Examination No. 2013M-293
Town of Cheektowaga Awarding Contracts for Goods and Services**

Dear Mr. Meller:

Please allow this letter to serve as the Town of Cheektowaga's response to the above referenced preliminary draft findings of the Office of The State Comptroller.

Be advised that the Town of Cheektowaga concurs with the Recommendations made on page 17 of your Report and will take all necessary steps in the future to follow these recommendations.

Since the Executive Summary appears to recap what is contained in your main report, I will address the statements made in the report, which starts on page 9 of your Report of Examination. The Town of Cheektowaga respectfully disagrees with the following respective paragraphs of your report for the following respective reasons:

Page 9, third paragraph, third sentence – We disagree that the Town "wasted" taxpayer money when deciding to use more expensive bulldozers. This will be explained in more detail later in this response.

Page 9, third paragraph, fourth sentence – We disagree that the Town paid approximately \$600,000 more than was necessary for sidewalk replacement. I will explain later why we chose to utilize four-inch sidewalks instead of six-inch sidewalks.

Public Works Contract

Page 10, first full paragraph, first sentence – We disagree with your assertion that we failed to act in

the best interest of the taxpayers when awarding and renewing the contract. I will explain this in more detail later in this response.

Page 11, first paragraph – The Report fails to acknowledge that Bidder B also submitted bid prices of \$1 for certain items.

See
Note 1
Page 28

Page 11, second paragraph, third sentence – The Report fails to acknowledge that Bidder A (identified in your Report as the lowest bidder) did not have an apprenticeship program. The bid specifications required bidders to have apprenticeship programs; any bidder which did not have an apprenticeship program was disqualified from bidding on the project. Since Bidder A did not have an apprenticeship program, the Town could not legally award the bid to this bidder.

See
Note 2
Page 28

Page 11, third paragraph, third sentence – The auditor, not Town officials, used the phrase “contractor on-call” to characterize the Town’s practice.

See
Note 3
Page 28

Page 12, first paragraph, last sentence – Bidder A (identified in your Report as the lowest bidder) would have been disqualified from receiving the bid award because it did not provide documentation that it had an established apprenticeship program approved by the Commissioner of Labor, which was a requirement of the bid specifications.

See
Note 2
Page 28

Page 12, first paragraph – Had the Town awarded the contract to Bidder A and paid \$300,000 less for labor as suggested in the Report, this would have cost the Town an additional \$706,727 in related equipment costs to support the aforementioned labor force, thus resulting in an additional \$406,767 being paid by the Town, not a \$300,000 savings. The analysis of a single bid item in a typical project cannot be used to draw your stated conclusion.

See
Note 4
Page 28

Page 13, first full paragraph – The Town did not in any way intend to provide any bidder an advantage. The Report contains no proof that the Town ever intended to do this.

Page 13, third full paragraph – It was not practicable to solely use the smallest bulldozer when a bulldozer was needed because, to do so, would have caused the delay in completion of the project at the detriment to the residents on each street; residents would have been subjected to having the road and their properties torn up for an extended period of time, resulting negatively in their quality of life for an extended period of time. The Town attempted to complete the project as expeditiously as possible for the benefit of the property owners. Furthermore, if the smallest bulldozer was directed to be used all of the time, the bidder would have likely abandoned the contract, leaving the Town with an incomplete project; the Town would then have been compelled to re-bid the work, resulting in further delays and increased costs.

See
Note 5
Page 28

Page 13, fourth full paragraph – The Town of Cheektowaga did not structure, award or manage the bid to favor the contractor. There is nothing in the Report that can prove this unsubstantiated statement of the auditor.

Overall response to Report's Comments on Public Works Contract

The Report appears to discuss only the increased costs to the Town from utilizing only a couple of items from the successful bid proposal, and not the overall project equipment and operator needs.

Sidewalk Replacement Contract

Page 14, fourth paragraph – Due to unanticipated damages caused by contractors plowing snow during the snow emergency conditions in the winter of 2010-11, numerous driveway aprons were damaged, thus resulting in the significant increase in the number of square feet of driveway aprons which needed to be replaced. The Town is currently in litigation with one of the contractors to recoup moneys for the damage to these aprons.

Page 15, first full paragraph – During the snow emergency, which occurred in the 2010-11 winter, contractors damaged curbing, resulting in a need to replace these curbs in an expeditious manner.

Page 15, second full paragraph – It is and has been the Town's practice to replace four-inch thick sidewalks with four-inch thick sidewalks. It would have been impracticable for the Town to replace four-inch thick sidewalks with six-inch thick sidewalks. Potentially, this could have resulted in doing damage to tree roots, necessitating removal of trees along our highways; additional moneys may thus have been needed to be spent to replace these trees. Six-inch thick sidewalks were intended to be placed only in commercial areas or at driveway crossings where heavy vehicles would be driving over said sidewalks. We agree that the bid specifications should have clarified this. Also, it should be noted that the contractor who was awarded the contract for sidewalk replacement was the lowest responsible bidder for four-inch sidewalks out of the five (5) bids received.

Page 15, fourth full paragraph – The Town of Cheektowaga did not, in any way, intend to benefit any contractor in relation to sidewalk replacements. The Report does not contain any proof that the Town or its employees intended to benefit the contractor when it chose to replace four-inch sidewalks with four-inch sidewalks. In fact, if the Town decided to make the contractor install six-inch sidewalks in every location, the contractor would likely have abandoned the contract, resulting in delays in completion of the work.

See
Note 5
Page 28

Page 16, first paragraph – There was no "waste" of taxpayer money. The Town taxpayers received fair and even better than fair value for the cost of sidewalk installation. The Town routinely reviews locally awarded bids and unit pricing from municipal, County, State and local public authority construction contracts for comparison purposes. The Town's review of these unit price bids from a large neighboring community dating back to 2010 indicates that the Town received very favorable unit price bids for four-inch thick sidewalk installations. A similar review of area-wide unit price comparisons for curb installation also indicates that Town taxpayers received fair value.

As a general overall response to the State Comptroller's Report relating to Public Works Contracts, the Town of Cheektowaga makes the following statements:

The Town of Cheektowaga has performed an analysis of road reconstruction projects competitively bid over a five (5) year period from 2002 to 2007, and has concluded that the average bid price for road reconstruction per lineal foot was \$263.67-\$281.33, and the average price for new storm drainage per lineal foot was \$59.94. The successful project contractors also purchased their own materials (with a mark-up in the cost of materials). These items added to the project costs.

In 2008, the Town held taxpayer meetings to explain what Town officials believed was a more cost-effective procedure for road reconstruction and installation of storm sewers. At such time, anticipated projects were discussed with the taxpayers; at these meetings, Power Point presentations were given. When the Town of Cheektowaga implemented the use of the public works contract for road reconstruction and installation of storm sewers, Town Engineering Department personnel were able to design and oversee the projects, resulting in a substantial savings to the taxpayers. Furthermore, in-house Town Highway Department personnel were utilized to perform some of the labor, and Town vehicles and equipment were utilized, resulting in further savings to the taxpayers. Also, Town, County and State bids for stone, asphalt, pipe, concrete receivers, etc. were able to be used at a lower cost than contractors would charge. The Town of Cheektowaga also began a program to utilize millings reclaimed from other road projects for the road reconstruction projects (rather than having contractors purchase these materials from a private vendor). All of this in-house work, etc. resulted in a significant savings to the Town and its taxpayers.

The attached Exhibit 1 provides a cost analysis of twelve (12) highway reconstruction projects competitively bid by the Town and completed by various contractors between 2002 and 2007. This analysis has concluded that the average square foot unit costs for the stated projects amounted to \$14.65 per square foot. The attached Exhibit 2 presents six (6) highway reconstruction projects completed by the Town between 2009 and 2012 in which the public works contract was utilized together with Town Highway Department equipment and labor utilizing reclaimed millings on hand and materials purchased under Town, County and State contracts. The analysis presented in Exhibit 2 denotes a much lower square foot unit cost for these six (6) projects which resulted in a cost savings to the Town in excess of \$1.6 million.

The Town of Cheektowaga was well intentioned in implementing this method for reconstructing roads and installing storm sewers, and this resulted in substantial savings to the Town and its taxpayers.

Contract Overpayments

Overpayments were inadvertently made to a solid waste contractor (under a new contract which commenced in 2013) for more than \$76,000. These overpayments represented a fuel surcharge fee that was being charged under a prior contract by the same vendor. Both the vendor and the General Crew Chief of the Sanitation Department were unaware of the new contract language. Once this new language was brought to their attention, the solid waste contractor returned all moneys owing to the

Mr. Robert Meller
February 3, 2014
Page 5

Town. Furthermore, these overpayments would likely have been noticed and recovered by Town officials at the year-end audit, if not sooner.

See
Note 6
Page 28

Overpayments and overcharges made to the sidewalk contractor were made inadvertently. The sidewalk contractor has been notified of these overpayments and overcharges and said vendor has issued a check to the Town for this overpayment/overcharge. This overpayment/overcharge would likely have been noticed and recovered by the Town upon review at project-end.

SUMMARY:

In summary, the Town of Cheektowaga acted in good faith and in the best interests of the taxpayers with respect to utilizing public works contracts for the road reconstruction projects. With the in-house use of Town employees in connection with these projects, the Town saved taxpayer money.

With respect to the sidewalk replacement contract, the Town received fair or better than fair value for the sidewalks. The contract for four-inch sidewalk installation was awarded to the lowest of the five (5) bids. We concur that it is appropriate to weight future bid specifications to make it clear that six-inch sidewalks would not be installed very often.

The Town obtained fair value or better than fair value for the work performed. Furthermore, we feel that our taxpayers obtained the highest quality work for all of these projects

We understand that we need to refine our bid specification and the manner of computing the lowest responsible bidder, and will ensure that this occurs in the future.

The Town has recovered all overpayments and overcharges identified in the Report.

We accept the Report's recommendations and will, in the future, amend our procedure for bidding the public works and sidewalk replacement projects.

Respectfully submitted,

TOWN OF CHEEKTOWAGA

MARY F. HOLTZ
SUPERVISOR

Attachments

COST ANALYSIS OF PREVIOUSLY BID ROAD RECONSTRUCTION PROJECTS

THE FOLLOWING TWELVE (12) FULL DEPTH ROAD RECONSTRUCTION PROJECTS WERE COMPETITIVELY BID AND CONSTRUCTED DURING 2002 THROUGH 2007. THESE TWELVE PROJECTS HAVE BEEN UTILIZED TO DEVELOP AN AVERAGE PROJECT UNIT PRICE FOR COMPARISON PURPOSES.

PROJECT	CONTRACTOR	YEAR	FOOTAGE	COST	COST PER FOOT
Siberling Drive			244 L.F.	\$68,696	\$281.54 per ft
Elkhurst Drive			193 L.F.	\$62,589	\$324.30 per ft
Brookhaven Drive			172 L.F.	\$42,395	\$246.48 per ft
Kingswood Drive			172 L.F.	\$55,585	\$323.17 per ft
Rockliegh Drive			178 L.F.	\$47,785	\$268.46 per ft
Starcrest Drive			210 L.F.	\$46,646	\$222.12 per ft
Donlen Drive South			250 L.F.	\$88,505	\$354.02 per ft
Shirley Drive South			260 L.F.	\$59,950	\$230.58 per ft
Primrose Drive			478 L.F.	\$110,032	\$230.19 per ft
Shirley Drive North			266 L.F.	\$60,190	\$226.28 per ft
Simsbury Drive			449 L.F.	\$101,419	\$225.88 per ft
Donlen Drive North			294 L.F.	\$67,923	\$231.03 per ft

The average price per lineal foot for the above twelve projects is \$263.67 = **\$14.65 per square foot**

COMPLETE ROAD RECONSTRUCTION COST COMPARISON (Utilization of Public Works Contract)

THE FOLLOWING ROAD RECONSTRUCTION PROJECTS WERE COMPLETED USING THE PUBLIC WORKS CONTRACT IN CONJUNCTION WITH HIGHWAY DEPARTMENT SUPPORT FOR CONSTRUCTION PROJECTS COMPLETED DURING 2009 TO 2012.

PROJECT	YEAR	PROJECTED BID COST *	ACTUAL COST	AVERAGE PRICE PER SQ. FOOT	SAVINGS
Benbro Drive	2009	\$845,070.60	\$509,581.29	\$8.83	\$335,489.31
Town Hall Campus	2009-2011	\$3,003,074.20	\$2,300,000.00	\$11.22	\$703,074.20
North Meadowbrook Pkwy	2011	\$621,453.00	\$513,266.78	\$12.09	\$108,186.22
North Transithill Drive	2011	\$404,047.00	\$227,503.12	\$8.24	\$176,543.88
Claude Drive	2012	\$754,357.80	\$549,864.81	\$10.67	\$204,492.99
North Willowlawn Pkwy	2012	\$510,288.80	\$394,944.00	\$11.33	\$115,344.80

Total Cost Savings = **\$1,643,131.40**

* NOTE = Projected bid costs derived from average square foot cost for projects bid from 2002 thru 2007 (see exhibit 1)

APPENDIX C

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

Appendix A of the audit report discloses the individual prices of all bid items for all four vendors.

Note 2

Town officials did not provide any evidence that this vendor's bid was rejected because it did not comply with the bid specifications.

Note 3

We have amended the report by deleting reference to "contractor on call."

Note 4

The audit report indicates that, based on the actual days used for all items, Bidder A would have been the low bidder. Furthermore, the audit report cites, as an example, the most significantly used item. It is unclear what equipment Town officials used to calculate the amounts cited in their response letter.

Note 5

It is disconcerting that the Town would award a contract to a vendor that Town officials believed would not honor all of the terms and conditions of the contract. This further demonstrates why we have significant concerns with the manner in which this contract was structured, awarded and used.

Note 6

The Board is required to audit claims prior to payment and should not be relying upon a year-end audit to identify potential overpayments.

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

Our objective was to review the Town's process for awarding contracts for goods and services and to determine if the Board provided sufficient oversight over the award process, contracts and related projects. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following steps:

- We reviewed the Town's policies and procedures pertaining to competitive bidding and procurement activities.
- We reviewed relevant provisions of the General Municipal Law and Local Finance Law.
- We reviewed Board minutes, bid specifications and other pertinent documents to determine if contracts were properly bid and awarded in compliance with GML.
- We interviewed the Town Supervisor, Town Clerk, Director of Finance, Highway Superintendent, Town Attorney, Town Engineer, employees of the Engineering Department, Board members, and other pertinent Town officials and employees regarding the Town's process for awarding contracts for goods and services and for monitoring the services rendered by contractors.
- We evaluated the Town's claims audit process and reviewed all payments for the contracts included in our sample to ensure that they agreed with contract terms and/or bid specifications and were properly supported.

We conducted this performance audit in accordance with 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.

APPENDIX E

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