



Town of Yorktown

Ethics and Internal Controls Over Purchasing Practices and Computer Use

Report of Examination

Period Covered:

January 1, 2007 — May 13, 2010

2010M-253



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 2011

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 to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Yorktown, entitled Ethics and Internal Controls Over Purchasing Practices and Computer Use. 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 Yorktown (Yorktown) is located in Westchester County, covers an area of 40 square miles, and has a population of approximately 36,000 residents. The Town provides residents with services such as refuse collection, street maintenance, water and sewer, police protection, a Town court, a public library, parks and recreation, and the Yorktown Community Cultural Center.

The Town is governed by the Town Board (Board) which comprises four elected members and the Town Supervisor (Supervisor). The Board is responsible for the general oversight of the Town's operations. The Supervisor is the chief executive officer and chief fiscal officer and is responsible for carrying out the decisions of the Board, administering the budget, and disbursing funds.

The Town Comptroller (Comptroller), along with the Supervisor, shares the responsibility for ensuring that internal controls are adequate and working properly. The Comptroller is responsible for auditing claims against the Town prior to making payments. The Superintendent of Highways (Superintendent) is an elected official and is responsible for maintaining 400 lane miles of roads and bridges.

Town expenditures are funded primarily from property taxes, State aid, and non-property tax items. The Town's 2010 general fund budget was approximately \$24 million, and the highway fund budget was \$5 million.

Scope and Objectives

The objectives of our audit were to examine the Town's internal controls over purchasing and computer use and to evaluate the Superintendent's work activities for the period January 1, 2007, through May 13, 2010. We extended our review of the Superintendent's computer use and purchasing activities back to January 1, 2006. Our audit addressed the following related questions:

- Did the Superintendent perform his duties in an ethical manner?
- Did the Superintendent use the Town's computer for official business purposes?
- Did the Board establish adequate internal controls over purchasing to ensure that goods and services were purchased in compliance with applicable laws and Town policies and procedures?
- Did the Board establish adequate internal controls over credit purchases to ensure that payments to vendors were for necessary and actual Town expenses?

Audit Results

The Board needs to strengthen its oversight of Town financial activities and assets. We identified significant deficiencies in the internal controls over the Superintendent's activities, procurement of goods and services, and credit purchases.

We are concerned that the Superintendent has not always acted appropriately and in the best interests of the Town's citizens. We identified actions of the Superintendent¹ in which we believe both his personal financial interests and public responsibilities conflict. We found that the Superintendent sold used equipment and materials totaling \$28,670 to the Town, and the Town paid a company over \$100,000 that was owned by his sister-in-law and for which his two brothers were vice-presidents, which created prohibited interests. In addition, we identified irregularities in the bidding processes for various pieces of equipment, including ignored bid specifications and erroneous bid documents to make it appear as though purchases were bid when they were not. Finally, we found that the Superintendent's computer was used to view and store pornographic and other inappropriate images, engage in a political campaign, and to buy and sell auto parts, for personal use, on a public auction website.

We also found that the Board did not establish adequate policies and procedures for procurements. The Town's purchasing functions are not centralized, which does not enable Town officials to aggregate purchases or take advantage of volume discounts. We found that Town officials did not solicit competitive bids or properly bid for purchases from nine vendors totaling about \$2 million and paid eight professional service providers over \$3.9 million without seeking competitive proposals or quotes. Furthermore, we found instances of incomplete and inaccurate recording of the minutes of Board meetings relating to the purchase of Town vehicles. Without adequate internal controls that include the adoption and enforcement of a comprehensive procurement policy and procedures, the Board and Town officials cannot assure taxpayers that purchases of goods and services were made in the most prudent and economical manner without favoritism. Finally, the Board did not establish adequate internal controls over credit purchases to ensure that payments to vendors were for necessary and actual Town expenses.

Comments of Town Officials

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on issues raised in the Town's response letter.

¹ The Board also appointed the Superintendent as the Director of Labor Operations effective January 2008.

Introduction

Background

The Town of Yorktown (Town) is located in Westchester County, covers approximately 40 square miles, and has a population of approximately 36,000 residents. The Town provides residents with services such as refuse collection, street maintenance, water and sewer, police protection, a Town court, a public library, parks and recreation, and the Yorktown Community Cultural Center.

The Town is governed by the Town Board (Board) which comprises four elected members and the Town Supervisor (Supervisor). The Board is responsible for the general oversight of the Town's operations. Town expenditures are funded primarily from property taxes, State aid, and non-property tax items. The 2010 general fund budget was approximately \$24 million, and the highway budget was approximately \$5 million.

The Supervisor is the chief executive officer and chief fiscal officer and carries out all the Town's administrative functions, including overseeing the Town's financial operations and signing Town checks. The Town Comptroller (Comptroller), along with the Supervisor, shares the responsibility for ensuring that internal controls are adequate and working properly. The Comptroller is responsible for auditing claims against the Town prior to making payments.

The Town's Superintendent of Highways (Superintendent) is responsible for the day-to-day operations of the Town's Highway Department. In addition to his duties as Superintendent, the Board appointed him to the position of Director of Labor Operations to oversee the Town's labor operations in the Departments of Environmental Conservation, Parks, Water, and Sewer.

Objectives

The objectives of our audit were to examine the Town's internal controls over purchasing and computer use and to evaluate the Superintendent's work activities. Our audit addressed the following related questions:

- Did the Superintendent perform his duties in an ethical manner?
- Did the Superintendent use the Town's computer for official business purposes?
- Did the Board establish adequate internal controls over purchasing to ensure that goods and services were purchased

in compliance with applicable laws and Town policies and procedures?

- Did the Board establish adequate internal controls over credit purchases to ensure that payments to vendors were for necessary and actual Town expenses?

Scope and Methodology

We examined internal controls relating to the Town's purchasing activities and computer use and evaluated the Superintendent's work activities for the period January 1, 2007, to May 13, 2010. We extended our review of the Superintendent's computer use and purchasing activities back to January 1, 2006.

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 are included in Appendix C 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 A, have been considered in preparing this report. Except as specified in Appendix A, Town officials generally agreed with our recommendations and indicated that they planned to take corrective action. Appendix B includes our comments on issues raised in the Town's response letter.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must 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.

Ethics

General Municipal Law (GML) limits the ability of municipal officials and employees to enter into contracts in which both their personal financial interests and their public powers and duties conflict. Unless a statutory exception applies, GML prohibits municipal officials and employees from having an interest in a contract with the municipality that they serve when they also have the power or duty – either individually or as a board member – to negotiate, prepare, authorize, or approve a contract; authorize or approve payment under a contract; audit bills or claims under a contract; or appoint an officer or employee with any of those powers or duties. A municipal official or employee has an “interest” in a contract when he or she receives a direct or indirect monetary or material benefit as a result of having a contract with the municipality that the officer or employee serves. Municipal officials or employees are also deemed to have an interest in the contracts of their spouse, minor children and dependents (except employment contracts); a firm partnership or association of which they are a member or employee; or a corporation of which they are an officer, director or employee, or directly or indirectly own or control any stock. A “contract” generally includes any claim, account, demand against, or agreement with a municipality. As a rule, even when an interest in a contract is not prohibited, the interest on the part of a municipal officer or employee, or his or her spouse, must be publicly disclosed in writing to the municipal officer or employee’s immediate supervisor and to the governing board of the municipality.

In addition, GML requires town boards to adopt a code of ethics setting forth the standards of conduct reasonably expected of officers and employees. A code of ethics must provide standards with respect to certain matters (e.g., private employment in conflict with official duties) and may provide additional standards relating to the conduct of officers and employees. A code of ethics generally may regulate or prescribe conduct that is not expressly prohibited by GML. For example, the Town’s code of ethics requires the submission of annual disclosure statements to contain, among other things, “[a] description of any interest a Town officer or employee has, will have or later acquires in any actual or proposed contract with the Town.” It is the Board’s responsibility to establish internal control policies and procedures to help detect potential conflicts of interest and prevent Town officials from entering into prohibited contracts.

We found that the Superintendent entered into contracts in which we believe both his personal financial interests and public powers and duties conflict. The Superintendent, in 2007 and 2008, entered into contracts involving the sale of used equipment and materials

totaling \$28,670 to the Town, which included an industrial sweeper and mixer and tires. As a sole proprietor,² the Superintendent had an interest in each contract, because he received a monetary benefit as a result of each of the contracts. As Superintendent, his powers include making purchases of highway equipment (subject to Board approval in certain instances) and materials for the repair and improvement of Town highways and certain other highway purposes. Accordingly, he had one or more powers and duties that would give rise to a prohibited interest under GML unless an exception applies. Because we are not aware of any statutory exceptions that apply under these circumstances, the Superintendent had a prohibited interest in each of these contracts.

We reviewed the Superintendent's annual disclosure statements to the Town for four years. He did not disclose any interest in any actual or proposed contracts with the Town until 2009 when his annual disclosure statement indicated that he would be working for a corporation with which the Town had contracts with in the past. His March 2010 annual disclosure statement to the Town indicated that he worked for the same corporation on "nights, weekends, and emergencies," and disclosed that he has an interest in a funeral home. We found no indication, however, that the Superintendent disclosed on the annual disclosure statement his interest in contracts between the Town and his private business in 2007 and 2008. He did, however, disclose his interest in his private business upon our request of information concerning potential conflicts of interest in June 2010. The Board may have been able to detect potential prohibited interests in the contract with the Superintendent and avoid entering into any such contract if his interest were disclosed in his annual disclosure statement for 2007 and 2008. The Superintendent's failure to disclose his interests created an environment susceptible to fraud and/or abuse.

We also found that two of the Superintendent's brothers were vice presidents of a corporation with which the Town contracted to perform environmental services. We believe the Superintendent may have been directly involved in the negotiation and preparation of one or more contracts with this corporation.³ The Town paid the corporation \$100,686 during the audit period. Moreover, we found that the Superintendent, acting on behalf of the Town, was involved in selling surplus Town vehicles to the same corporation.

² The Superintendent was engaged in various unincorporated businesses, including buying and selling used car and equipment parts and landscaping.

³ The Superintendent indicated that an outside contractor hired his brothers' corporation to perform the environmental services. This outside contractor, however, indicated that they were not involved in the hiring of the brothers' corporation and that the brothers' corporation had already begun work on the environmental site prior to the outside contractor's arrival.

A town officer is not deemed to have an interest in contracts of siblings who are not his or her dependents, and we were unable to ascertain whether the Superintendent received a direct or indirect monetary or material benefit as a result of the contracts with the Town. Nonetheless, to avoid even an appearance of self-interest or partiality, the Superintendent should have recused himself from any involvement he may have had in transactions with this corporation.

When a Town official conducts business with the Town, there is the potential for a prohibited conflict of interest. Moreover, when a Town official is involved in a contract between the Town and a company with which an elected official's close relative is an officer, taxpayers may question the appropriateness of such a transaction, and it may raise, at a minimum, the perception of self-interest or partiality. Town officials and employees are accountable to the public and, therefore, it is important for the Board to ensure that Town officials are aware of the conflict of interest provisions of GML and other principles of municipal ethics, and to implement internal control procedures to identify and prevent actual and potential conflicts of interest involving Town officials and employees.

Recommendations

1. The Board should enforce the requirement of its adopted code of ethics and review disclosure statements from Town officials to ensure that no official has a prohibited interest.
2. The Superintendent should not sell goods to the Town as a sole proprietor without documenting the need and seeking Board approval prior to the sale.

Computer Use Policy

It is the responsibility of the Board to establish policies that protect the Town's computing environment and provide clear guidance to employees using computer equipment. This includes a policy for acceptable computer use to protect the Town's computers from unauthorized, inappropriate, and wasteful use. Computers, e-mail, and Internet access are resources provided to Town officials and employees to help them perform their official duties and authorized work efficiently and effectively. Officials and employees are responsible for the appropriate and economical use of computers made available to them for the purpose of conducting Town business. Computer usage must be regularly monitored for compliance with the established policy. Such monitoring should include periodic scans of computer hard drives and an analysis of internet activity.

The Board adopted an Information Systems Usage Policy on June 1, 2010 (during our fieldwork) to govern the use of Town computers. The policy states, in part, that "users may never use the Town's IT system for selling products or merchandise. It is specifically prohibited for employees to knowingly visit sites that feature pornography,...or other illegal activity. Users shall never harass, intimidate, or threaten others, or engage in other illegal activity (including pornography,...) by e-mail or other postings. No personal information may be stored, printed or distributed using the Town's IT system. This includes but is not limited to; documents, graphic files or e-mails. The Town monitors all websites that are visited." According to the policy, the Comptroller, working with the contracted information technology (IT) manager, is responsible for ensuring that "all users have the most current software revisions."

We reviewed the Superintendent's computer and found that it was used inappropriately. Specifically, we found 26 pornographic images and eight inappropriate images stored on the Superintendent's computer. The computer was also used to engage in a political campaign. We determined that the computer was used to generate a letter that was sent to Town residents asking them to support a candidate for Town Supervisor. The Superintendent's computer was also used to buy and sell auto parts, for personal use, on a public auction website. The contracted IT manager informed us that the Town does not have content filters on its network servers to block Internet access to certain objectionable websites, and Town officials do not regularly monitor computer usage for compliance with the established policy. We also found that Town officials did not require all users to acknowledge receipt of the policy.

Although the Town currently has a computer use policy, there was no policy in place prior to June 1, 2010. The Board's failure to adopt a computer use policy in the past may have contributed to the inappropriate use of the Superintendent's computer.

Recommendations

3. Town officials should develop a system to monitor the Internet and e-mail activities of Town officials and employees and follow up on activities that are not in compliance with the Town's computer use policy.
4. Town officials should consider installing content filters on the Town's network servers to block Internet access to objectionable and inappropriate websites.
5. The Town should require all users to acknowledge receipt of the computer use policy.

Purchasing

An important part of the Board's responsibility is to establish, implement, and monitor procurement practices to help ensure that the Town obtains goods and services of the required quantity and quality at competitive prices and to protect against favoritism, extravagance, fraud, and corruption. Effective purchasing programs include adopting a comprehensive procurement policy, evaluating all purchase options, and advertising for competitive bids and proposals. A good system of internal controls over purchasing consists of policies and procedures that allow an organization to provide reasonable assurance that it is using its resources effectively.

The Town's procurement policy and procedures were inadequate. As a result, Town officials and employees did not have proper guidance for procuring goods and services. Also, the Town's purchasing functions are not centralized, which does not enable Town officials to aggregate purchases or take advantage of volume discounts. We found that Town officials did not solicit competitive bids or properly bid for purchases from nine vendors totaling about \$2 million and paid eight professional service providers more than \$3.9 million without seeking competitive proposals or quotes. Without adequate internal controls that include the adoption and enforcement of a comprehensive procurement policy and procedures, the Board and Town officials cannot assure taxpayers that purchases of goods and services were made in the most prudent and economical manner without favoritism.

Purchasing Policy

GML requires that town boards adopt a written procurement policy with procedures governing procurement of goods and services that are not subject to competitive bidding requirements. The policy and its procedures must provide for the use of written requests for proposals (RFPs) or other competitive procurement methods, procedures for determining which procurement method to use, circumstances when the solicitation of proposals or quotes will be waived, and the documentation standards for each method of procurement. In addition, it is important that a procurement policy address and provide guidance for emergency purchases, sole source purchases, and procurement of professional services and the documentation needed to support all purchasing decisions.

The Town's procurement policy and written procedures are inadequate and do not ensure that maximum value is received for taxpayer funds expended. Although the Town's procurement policy required employees to adhere to GML by competitively bidding purchases that meet bidding thresholds, it did not provide proper guidance

or procedures on how to apply the policy in procuring goods and services. Specifically, the Town's procurement policy does not do the following:

- Provide procedures for determining whether a procurement of goods and services is subject to competitive bidding and documenting the basis for any determination that competitive bidding is not required by law
- Provide procedures for procurements made from State and county contracts, and emergency purchases
- Set forth when alternative proposals or quotes for goods and services shall be secured by use of written RFPs, or any other competitive method of procurement
- Require justification and documentation of any contract awarded to other than the lowest responsible bid (or dollar offer) or setting forth the reasons for such an award
- Require documenting the procurement process
- Provide guidance on how Town officials and employees determine whether the Town will exceed competitive bidding thresholds for aggregate purchases over the course of the year.

Consequently, Town officials did not properly bid about \$2.2 million in contracts, including the purchase of vehicles. Town officials did not declare a fuel-spill remediation project an emergency and engaged a contractor to clean up a fuel spill that occurred approximately 10 years earlier. In addition, the Town Clerk did not maintain complete bid files with advertisements and all bids received and did not maintain accurate documentation of the Board's authorization to award bids and procure goods and services. Without a comprehensive procurement policy and written procedures, Town officials cannot be assured that they are complying with GML, that purchases are authorized, and that the Town receives maximum value for taxpayer funds expended.

Competitive Bidding

One of the goals of competitive bidding is to foster honest and fair competition so that quality commodities and services are obtained at the lowest possible price. Competitive bidding also guards against favoritism, extravagance, and fraud, while allowing interested vendors a fair and equal opportunity to compete. During our audit period, GML and the Town's procurement policy required Town officials to competitively bid purchase contracts and public work contracts that aggregated to amounts in excess of \$10,000 and

\$20,000,⁴ respectively. In lieu of soliciting bids, Town officials may use contracts awarded through the New York State Office of General Services (OGS) or through Westchester County.

We selected and reviewed payments made to 25 vendors totaling approximately \$14.5 million that were subject to competitive bidding requirements. We based our selection on questionable transactions and dollar value. We found that Town officials did not always adhere to GML or the Board-adopted purchasing policy and made purchases that exceeded bidding thresholds without competitively or properly bidding. Town officials did not solicit competitive bids for purchases from nine vendors totaling about \$2 million. For example, the Town did not properly bid the purchase of the following goods and services:

- Trucks totaling about \$950,000
- Telecommunications services totaling \$303,000
- Alarm system monitoring services totaling \$82,000
- New pumps for \$31,000
- Cleaning services for floor mats and ancillary items totaling \$108,000
- Used heavy equipment totaling \$75,000
- Environmental remediation services totaling \$181,000.

The environmental remediation services were provided by a corporation owned by the Superintendent's sister-in-law (his two brothers served as vice-presidents). Of the \$181,000 paid for environmental remediation services, \$73,000 was paid pursuant to a contract entered under the emergency exception to competitive bidding, and this \$73,000 bill was paid, at the Superintendent's request,⁵ before the Board had an opportunity to review or approve the contract. The Comptroller issued the \$73,000 check on February 20, 2009, but the Board was not presented with a request for payment until February 24, 2009 – four days after the bill was paid.⁶ According to the Board minutes, at the time the request for payment

⁴ Effective June 22, 2010, the bidding thresholds for purchase and public works contracts increased from \$10,000 and \$20,000 to \$20,000 and \$35,000, respectively.

⁵ We attempted to speak with the former Town Supervisor regarding this payment; however, he did not respond to our multiple requests to speak with him.

⁶ The \$73,000 bill was paid three days after the corporation submitted an invoice to the Town. Another outside contractor who worked on the same cleanup project submitted a \$3,500 invoice to the Town on February 27, 2007, and was not paid until May 8, 2009.

was presented to the Board, there was insufficient documentation to support the \$73,000 payment or a claim that this was an emergency. In fact, the Board rejected the resolution, citing a lack of proper notification and information. Although the Board ultimately determined that the cleanup work was adequately performed, a former Board member expressed concern with the Superintendent's involvement in the project and the insufficient level of communication with the Board.

Truck Purchases – During the period 2007-09, the Town purchased 23 trucks for about \$1.8 million. We found that 13 of the 23 trucks, totaling \$948,052, were not properly bid and 11 of the 13 trucks totaling \$570,453 were purchased from one vendor. Even when bids were solicited, there were irregularities with the bidding process. The Superintendent ignored bid restrictions when he purchased more vehicles than were awarded and when he awarded bids for more vehicles than were advertised. Also, Board resolutions referring to the bidding process were confusing and misleading. For example:

- The Superintendent purchased four trucks in 2007 even though the Board authorized the Town Clerk to advertise for the solicitation of bids for the purchase of only two trucks. The Town Clerk issued an unsigned, undated addendum increasing the number of trucks to four without any Board authorization or mention in the Board's minutes. Two days later, the Town Clerk advertised for solicitation of bids for two trucks. Subsequently, the Board awarded the bid for the purchase of four trucks for a total of \$146,976.
- The Superintendent purchased a 2008 truck chassis and cab, dump body, and plow for \$53,366 without bidding. The voucher packet that was submitted for payment included a copy of a bid award for a 2008 four-wheel drive truck that was associated with another purchase. In addition, the voucher included a letter to the Superintendent from the vendor's sales representative, indicating the Superintendent's request for a 2008 truck cab and chassis in stock without the extended cab as bid. The accompanying bid specifications in the packet did not specify an extended cab, but did include a plow package. The sales representative stated that the price for the cab and chassis would be the bid price of the four-wheel drive truck, minus the adjustment for the extended cab, plus \$4,975 for a plow and \$14,175 for a dump body. Even if this bid award was open, the truck purchased was not what was bid.
- The Town advertised and bid for one 2009 truck for the Highway Department, with the bid opening on December

23, 2008, and subsequently awarded the bid in January 2009. However, a February 2009 Board resolution authorized the Superintendent to purchase three trucks referring to the same December 23, 2008, bid opening for a 2009 Ford Truck. The February 2009 Board resolution should not have referred to the same December 23, 2008 bid opening, but instead should have opened a separate bid for the purchase of the three additional trucks. The additional three trucks purchased were not bid.

As a result of these inconsistencies, Town officials have no assurance that the purchases of trucks were made in the most prudent and economical manner without favoritism.

Aggregate Purchases — GML requires that goods or services of the same or similar nature, which are customarily handled in the marketplace by the same groups of vendors or contractors, should be treated as a single item for the purpose of determining whether bidding thresholds will be exceeded. When it is known or can be reasonably expected that the aggregate amount to be spent on purchases of the same or similar goods and services will exceed the bidding threshold over the course of the fiscal year, the goods or services must be competitively bid. The dollar thresholds specified in the bidding statutes may not be avoided by artificially splitting or breaking up contracts into smaller contracts, or entering into a series of contracts, for sums below the bidding thresholds:

The Town has a decentralized purchasing system with each department purchasing its own supplies, materials, and services. The current purchasing policy does not require prior authorization when purchases do not exceed the bidding thresholds. For fiscal years 2008 to 2010,⁷ the Town purchased the following goods and services without bidding, even though in the aggregate, they exceeded the bidding threshold:

- Auto parts and services: \$413,193
- Automotive batteries: \$29,227
- Truck service and parts: \$103,773
- Lawnmower parts: \$24,565
- Hardware: \$71,095
- Office supplies: \$108,741
- Paper goods: \$40,495.

⁷ Not all items exceeded the bidding threshold each year. For example, automotive batteries and lawn mower parts only exceeded the threshold in 2008 and 2009.

Using a decentralized purchasing process does not allow for planned purchases and prevents the Town from obtaining the best price for goods through competitive bidding and taking advantage of volume discounts. As a result, the Town is at risk of paying more than necessary when obtaining goods and services.

Professional Services

Competitive bidding is not required for the procurement of professional services which involve specialized skill, training and expertise; use of professional judgment or discretion; and/or a high degree of creativity. While the Town is not legally required to competitively bid when procuring professional services, GML generally requires that the Town's procurement policy provide that alternative proposals or quotations be obtained by use of written requests for proposals (RFPs), written or verbal quotes, or any other method that furthers the intent of the law. To that end, an effective and comprehensive procurement policy should require competition when procuring professional services which will be paid for with public funds.

In addition, written agreements between the Town and professional service providers give both a clear understanding of the services professionals are expected to provide and how they will be compensated for these services. Therefore, it is important for the Board to establish written agreements that indicate the contract period, the services to be provided, and the basis for compensation for those services.

We reviewed payments totaling approximately \$4.6 million that were made to 11 professional service providers. We selected vendors with high dollar payments from a variety of professional services during the audit period. Town officials did not solicit competitive proposals or quotes for eight of the 11 professional service vendors. For example, the Town paid an insurance brokerage firm, two legal counsels, a certified public accountant (CPA), an environmental consultant, and an engineering firm more than \$3.9 million during the audit period without the benefit of competition. Town officials informed us that if they are satisfied with the professional service, they continue to engage the provider without seeking competition. However, in January 2010, Town officials sought competition for future CPA services.

We also found that the principal engineer of the engineering firm used by the Town served as the "acting Town Engineer." The Town compensated the firm approximately \$384,500 for the services of the acting Town Engineer and other consulting projects. Town officials could not provide us with an appointment letter or a Board resolution indicating that the Board actually appointed the principal engineer to the title of Town Engineer. Furthermore, the Town did not have a

written agreement with the principal engineer or the engineering firm that indicated the contract period, the services to be provided, and the basis for compensation for those services.

By not establishing procurement policy and procedures that require or encourage competition and awarding professional service contracts without the benefit of RFPs or quotes, Town officials cannot assure taxpayers that the services are procured in the most economical manner without favoritism. Furthermore, without a written agreement, there is no clear understanding of what compensation these professionals are entitled to and the extent of the services that they are obligated to provide.

Competitive Quotes

The Town's procurement policy requires three written quotes for all purchase and public work contracts over \$1,000 and \$5,000, respectively, up to the competitive bidding thresholds. We reviewed 124 claims for purchases totaling \$145,949 that fell into this category. We based our sample on questionable transactions and payee names. Of the 124 claims, 30 represent purchases totaling \$57,286 made by the Superintendent. Of the 30 individual purchases made by the Superintendent, 15 purchases totaling \$54,560 exceeded the \$1,000 threshold requiring three written quotes. However, the Comptroller paid the claims without requiring that the Superintendent obtain three written quotes as required by the Town's procurement policy. The items purchased by the Superintendent without competitive quotes included used equipment and materials. Specific examples include:

- A concrete wet saw and additional equipment for \$8,505
- Used highway materials for \$5,000
- Used loader attachments (sweeper, mixer, and control kit) for \$8,055. We obtained prices from a catalog of new equipment and found that the total cost of the three items new is \$7,635. Therefore, the Town paid \$870 more for used items than if purchased new.

For the other 94 claims totaling \$88,664 the Town did not obtain written quotes for 19 purchases totaling \$40,152.

Board Resolutions

Town Law requires the Town Clerk to attend all Board meetings and keep a complete and accurate record of proceedings of each meeting, including all resolutions adopted by the Board. Based on our review of the Board minutes, we found errors, such as typing errors, that were not detected and corrected because the Board does not review and approve the minutes at subsequent meetings. We found irregularities in the Board minutes related to purchasing, as follows:

- In 2007 the Town bid and subsequently purchased a sewer cleaning truck. However, the Superintendent determined that this vehicle was inadequate and asked to sell it and purchase a more powerful truck. The Board authorized the solicitation of bids for the sale of a used truck. When no bids were received, the Superintendent arranged a trade-in with the original vendor and purchased a new truck in June 2009 without bidding. However, a November 18, 2009, Board resolution authorized Town officials to purchase the truck with the trade-in, indicating that the truck bid opening was October 9, 2009. In fact, no bid opening occurred because the truck had already been purchased. The resolution date of November 18, 2009, was not recorded in the Board minutes until December 1, 2009.
- In 2007 the Town Clerk provided the Finance Department with two Board resolutions that awarded two separate bids for trucks to one vendor. However, when we compared the resolutions to the Board minutes we found that the wording of the resolutions was confusing, and it was not clear what contracts the Board awarded, if any. We obtained and reviewed the video of the Board meeting and found that contract awards were not mentioned during the meeting. Therefore, we believe the resolution is not a valid bid award. The Town Clerk told us that, at that time, the Board meeting agenda would indicate all bid awards and purchase authorizations to expedite the meeting. However, she was unable to provide us with the agenda for this particular meeting.

Without accurate and complete minutes, the Board cannot provide Town officials with adequate direction and oversight and Town residents do not have accurate and complete information about Town operations. The lack of proper Board direction and oversight exposes Town resources to an increased risk of errors and/or irregularities occurring and remaining undetected and uncorrected.

Recommendations

6. The Board should review and update the Town's procurement policy to ensure that it is in compliance with GML. The policy should include detailed and clear guidance on competitive bidding, aggregate purchases, emergency purchases, and documentation of purchases.
7. Town officials should comply with the Town's procurement policy and GML, which require that purchase and public work contracts be competitively bid and awarded to the lowest responsible bidder when they exceed aggregate thresholds during a fiscal year.

8. The Town Clerk should ensure that all bidding files contain complete documentation, including advertisements, bid specifications, successful and unsuccessful bids, and bid awards.
9. The Board should use a competitive process when procuring professional services.
10. The Board should enter into written agreements with all professionals that clearly define the amount of compensation and the work to be performed.
11. The Board should require Town officials and employees to obtain multiple proposals or quotes when competitive bidding is not required to ensure that goods and services are procured in accordance with the established Town policy and procedures.
12. Town officials should ensure that the purchasing function solicits bids for purchases of like goods and services that aggregate to amounts that meet the bidding thresholds.
13. The Board should award bids during the regular meetings that clearly state the description and quantity of items and price awarded, and the period the award is effective. The Board should also ensure that bid specifications are not changed after the bids are advertised and that awards adhere to the specifications in the advertisement.
14. The Town Clerk should keep a complete and accurate record of the proceedings of all Board meetings, including all resolutions and bid awards adopted by the Board.
15. The Board should consider reviewing and approving the minutes from the prior meeting during the current meeting and have the Town Clerk correct any discrepancies.

Credit Purchases

An effective internal control system for purchase cards⁸ should include a Board resolution authorizing their use along with the adoption of a comprehensive policy that provides an initial framework for their use. The Comptroller is responsible for ensuring that all charges included in the purchase card statements are audited to verify that charges paid by the Town are supported by adequate documentation that indicates that the charges are for actual and necessary Town expenses.

The Town did not adequately design internal controls over purchase cards. As a result, the Town paid for 15 credit purchases totaling \$6,776 without adequate supporting documentation to show that they were actual and necessary Town expenses. Without ensuring that purchase cards are authorized, that the proper use of purchase cards is defined by policy and procedures, and that the charges are supported by signed receipts, the Town is at risk of paying for unauthorized or excessive costs.

Authorization

Before a town begins to use purchase cards to pay for expenses incurred by local government officers and employees, it is essential for the governing board to first formally adopt a resolution authorizing their use. The resolution should specify the authorized purposes for which the cards are used, the number of cards authorized, the credit limits for each card, and who is authorized to use the cards.

The Board has not adopted a resolution authorizing the use of credit or purchase cards. However, the Town had store-specific purchase cards with eight different vendors, with each Town department having multiple cards for each vendor. The Comptroller told us that she was not aware of the number of purchasing cards that were available, which employees had access to them, and what the credit limit was for each account. During our audit period, the Town made 1,596 purchases totaling \$233,600 using purchase cards without the cards being authorized. The lack of formal authorization for the use of purchase cards can result in cards being applied for and used without the knowledge of Town officials. The lack of authorization also significantly increases the risk that the Town could pay for other than legitimate Town expenses.

Policy and Procedures

Written policy and procedures are necessary to establish an internal control structure for the use of credit or purchase cards and to identify the allowable expenses that Town officers and employees can charge

⁸ This includes credit purchases

on Town-owned credit or purchase cards. Once the Board has approved the use of credit or purchase cards by Town officials and employees and authorized the use of the cards by Board resolution, the Board should adopt a comprehensive credit and/or purchase card policy. The policy should at minimum do the following:

- Identify all authorized users
- Set appropriate credit limits
- Establish custody of the cards when not in use
- Require proper documentation for all transactions
- Establish a means to recoup payment for any unauthorized expenditures.

The Town did not adopt a written credit policy and develop adequate procedures for use of the cards. The lack of a comprehensive credit/purchase card policy can lead to unauthorized employees making purchases on behalf of the Town; individuals making inappropriate, excessive, or undocumented purchases using Town cards; or the loss or misuse of credit or purchase cards. Moreover, without any specific policy and procedures in place, the Town may have difficulty collecting reimbursement for any unauthorized or questionable charges.

Audit of Claims

Town Law requires the Comptroller to audit all claims against the Town prior to making payments on the claims. In addition, each claim must be accompanied by a statement from the officer or employee whose action gave rise to the claim stating that he or she approved the claim and attests that the service was rendered or the goods were delivered and stating that the claim represents an actual and necessary Town expense. The claims audit function can help detect abuses or improprieties and helps ensure that funds are expended for authorized purposes and that expenditures are in accordance with Board policies.

We reviewed 40 credit purchases totaling \$16,575 to determine if the Comptroller audited the claims to ensure that they were properly supported and represented actual and necessary Town expense. We based our sample selection on high risk transactions. The Town did not have adequate internal controls in place to ensure that all claims were sufficiently itemized, supported, and represented actual and necessary Town expenses. The Comptroller did not always require original invoices, register receipts and packing slips as evidence for payment on credit accounts and accepted credit statements as valid support of purchases. Following are specific examples of claims paid without adequate supporting documentation:

- A claim for library books totaling \$2,032
- Highway Department claims for tools totaling \$3,405
- A claim submitted for paper and supplies for the Mohegan Beach Park District totaling \$1,107.

The failure to thoroughly audit credit/purchase card claims to ensure that they are accurate and are supported by proper documentation, such as original itemized invoices and receipts, increases the risk that the Town will pay for unauthorized or excessive purchases. Moreover, Town officials do not have adequate assurance that all payments are for appropriate and necessary Town expenses.

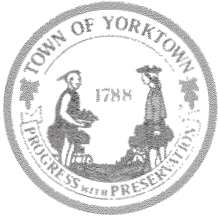
Recommendations

16. The Board should adopt a credit/purchase card use policy and develop adequate procedures for their use.
17. The Comptroller should establish written procedures to provide guidance to Town employees using credit cards and vendor purchase cards and specify the documentation required for submission of claims for payment.
18. The Comptroller should conduct a deliberate and thorough review of credit and purchase card claims to determine that they are accurate and are supported by proper and adequate documentation, including original itemized invoices and receipts, and that the amounts claimed represent actual and necessary Town expenses.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



Yorktown Town Hall
363 Underhill Avenue, P.O. Box 703
Yorktown Heights, NY 10598

(914) 962-5722
www.yorktownny.org

July 7, 2011

Mr. Christopher J. Ellis
Chief Examiner
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

Dear Mr. Ellis:

Please find attached the Town of Yorktown's response to the revised draft audit report dated July 1, 2011 entitled "Ethics and Internal Controls over Purchasing Practices and Computer Usage."

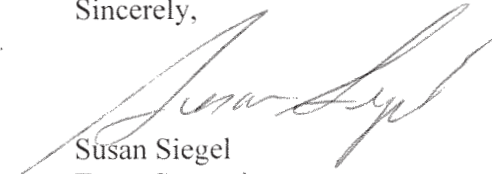
Note that there are three sections to the Town's response:

- a. The response from the Town Board
- b. The response for the Highway Superintendent
- c. The response from the Town Clerk

Please do not hesitate to contact me with any question you or your team may have regarding our response.

Again, thank you for taking the time to review the documentation the Town submitted in response to the initial draft report and for making the changes in the revised draft.

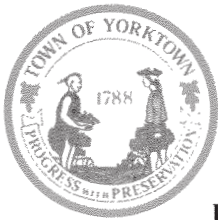
Sincerely,



Susan Siegel
Town Supervisor

SS/jp
Attachments

cc: Town Board
Eric DiBartolo, Highway Superintendent
Alice E. Roker, Town Clerk
Joan Goldberg, Town Comptroller
Jeannette Koster, Town Attorney



Yorktown Town Hall
363 Underhill Avenue, P.O. Box 703
Yorktown Heights, NY 10598

(914) 962-5722
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Town of Yorktown
Response to the Revised Draft of the New York State Comptroller's Audit
Ethics and Internal Controls Over Purchasing Practices and Computer Use
Period Covered:
January 1, 2007 to May 13, 2010

Response From Local Officials

Note: The following Town Board (Town) response applies only to issues raised in this report which fall within the purview of the Town Board, the Supervisor and the Town Comptroller. As elected officials, the Highway Superintendent and Town Clerk are entitled to submit their own responses to comments in this report that refer directly to them. Their comments follow this submission by the Town.

With some exceptions, which are noted below, the Town agrees with most of the recommendations included in this report. Indeed, the need for changes in some of the Town's procurement policies and purchasing practices were generally known even before the commencement of the audit, which is why many of the corrective actions cited below were begun in January, 2010 and pre-date the audit and the receipt of the draft audit report.

It should also be noted that once the audit process began, and potential problem areas were identified, Town staff met informally with the auditor to discuss corrective measures. As a result of these meetings, several of the deficiencies cited in this report, and recommendations for change, have either already been implemented or were underway before the report arrived.

For clarification, the Town notes that the Town Superintendent of Highways was effectively put in charge of the Water Department in October, 2007, although this appointment was not noted in the Town Board minutes. On December 18, 2007, the Town Board voted to create the position of Director of Labor Operations effective January 1, 2008 and to appoint Eric DiBartolo to the position to serve concurrently with his position of Superintendent of Highways. Mr. DiBartolo served in that capacity through December 31, 2009.

Ethics

[The following paragraph reflects the opinion of the two Councilmen on the Town Board in 2006 forward and the Town Comptroller.]

It is important to note that while the State found that the Highway Superintendent entered into "contracts" with the Town, the receipts submitted show the payments were actually reimbursements for monies laid out by the Superintendent for the benefit of the Town. Furthermore, as noted in the State's report, there was no violation of the ethics law in place at the time.

See Note 1
Page 41

See Note 2
Page 41

However, having been made cognizant of deficiencies in its existing Ethics Law as early as March, 2010, the Town Board initiated a review of the Law and on May 18, 2010 adopted a new Ethics Law that addressed weaknesses in the prior law, including expanding the definition of “family” and clarifying which provisions of the law applied to elected officials and to town officers. The amended law also required all those who had to file an Annual Disclosure Form acknowledge, in writing, that they received and read a copy of the new law. The Town Board also appointed a new Ethics Board.

After reviewing the existing Annual Disclosure Form, the newly constituted Ethics Board recommended the adoption of a more comprehensive form, as well as additional amendments to the 2010 law. The new Annual Disclosure Form, and other amendments were adopted by the Town Board on June 7, 2011, and on June 16, 2011 the individuals required to complete the disclosure form were sent copies of the new form to fill out.

Computer-Use Policy

The Town has had both informal and formal policies in place since February 9, 2009 governing employee use of town computers.

In a February 9, 2009 memo directed to all employees, the Town Comptroller wrote, in part:

Town owned and operated computers are for use by Town employees in conducting official town business only.

See Note 3
Page 41

On June 1, 2010, the Town Board adopted a formal and more comprehensive Information Systems Usage Policy that, as noted in the audit report, specifically prohibits employees from knowingly visiting sites that feature pornography or other illegal activities. The policy also includes the requirement that employees with computer access sign an Acknowledgement Form indicating that they have received and read the policy document. Steps are being taken to insure that all employees required to sign the Acknowledgement Form do so.

The Town has discussed the OSC recommendation to consider installing filters with its IT consultant. According to the consultant, the filters often block sites that are necessary, resulting in staff having to spend considerable time unlocking needed sites. As an alternative, the Town will consider the feasibility of having department heads, on a monthly basis, review their employee’s computer usage.

Procurement Policy

On September 21, 2010, the Town Board adopted a new Procurement Policy that addressed the shortcomings cited in the draft audit report, including:

- Aggregating purchases of similar items across different departments (see below)
- Using RFPs for professional services (see below)
- Detailing the documentation that was required to justify the exemptions from the competitive bidding requirements, including sole source purchases and purchases made off state or county contracts.
- Establishing a procedure for declaring an emergency

It should also be noted that although a 2010 New York State law increased the thresholds for requiring competitive bids, the Town kept the lower thresholds.

The Town is currently reviewing a proposed amendment to the Procurement Policy covering instances where specific pricing information is not available from vendors with state or county contracts.

Competitive Bidding Trucks

The Town has a long standing practice of using “per-item” bids and honoring those bids for a period of one year. The Town finds putting multiple bids out for the same item in the same year an inefficient use of town resources.

See Note 4
Page 41

In light of the State’s finding that purchasing multiple vehicles from the same bid is improper, regardless of Town Board authorization, the Town will change its practice to bidding each purchase individually.

Services (Telecommunication, Alarm Monitoring)

Some services are inherently different from purchases, and cannot be secured simply on a “lowest price” bid. Such services are more efficiently secured through Requests for Proposals (RFP’s). The Town does utilize the bid process for clearly defined services such as truck body repair and electrical work, selecting the vendor on an hourly basis. The Town finds RFP’s a more useful tool in securing other services, as it allows for vendors to suggest alternate proposals and allows the Town to use criteria other than price for decision making. For example, on April 20, 2011, the Town advertised an RFP (rather than a bid) for alarm monitoring services and is currently reviewing varying proposals submitted by five vendors.

Environmental Remediation Services

[The following is offered by the two Councilmen on the Town Board in 2006 forward and the Town Comptroller.]

See Note 5
Page 41

Whenever environmental contamination is discovered, the governing regulatory agencies must be notified by law. These agencies are responsible for protecting the public health and safety. Their enforcement powers include the ability to levy significant fines against the Town. In an effort to protect the environment and avoid fines and penalties, swift decision making is often necessary. The Town Board did in fact determine the 2009 environmental remediation required immediate action, (which, according to Webster’s dictionary, is the definition of “emergency”), and ultimately found the actions taken by all parties involved were appropriate. The following is a timeline of the event.

1997 Water Department Environmental Remediation

June 4, 1997

Bid award to Ira Conklin & Sons for removal of underground fuel tanks and installation of new aboveground tanks.

September 23, 1997

Memorandum from Water Superintendent informing the Town Board of additional buried waste oil tank found while performing above work. Water Superintendent requests the Town Board authorize a contract with Ira Conklin & Sons to remove the tank.

October 7, 1997

Town Board resolution authorizing Ira Conklin & Sons to remove the waste oil tank identified above. Included in the tasks is "4. Bring to closure with the NYS DEC."

October 8, 1997

Contract is signed with Ira Conklin & Sons for removal of buried waste oil tank.

November 4, 1997

Ira Conklin invoice 31851 for original tank removal and contaminated soil disposal: \$17,032.92

November 11, 1997

Ira Conklin invoice 32265 for waste oil tank removal and waste water removal: \$3,544

January 12, 1998

Ira Conklin invoice 34663 for diesel tank removal and contaminated soil disposal: \$16,312.92

December 7, 1999

Retainage for SW tank project released to Ira Conklin & Sons: \$2,283.53

September 29, 2008

Mr. Todd Ghiosay from NYS Dept of Environmental Conservation sends correspondence requesting additional subsurface investigation for DEC spill #9706398 (the 1997 spill).

October 3, 2008

Director of Labor replies to Mr. Ghiosay supplying spill closure information for spill #9706398.

October 9, 2008

Mr. Ghiosay writes back to inform the Director of Labor the information supplied related to spill #9812307, not spill #9706398, along with a request for the town to comply with the requirements of the September 29, 2008 letter.

November 19, 2008

Estimate received from Conklin Services & Construction Inc for "limited subsurface investigation".

November 19, 2008

An employee of the water department writes a letter to Mr. Ghiosay stating the requested work will be done by Ira D. Conklin & Sons.

November 20, 2008

Mr. Ghiosay faxes a memo to the water employee requesting the submission of a "subsurface investigation work plan," referencing a November 1, 2008 letter.

November 24, 2008

HydroEnvironmental Solutions, Inc. submits an estimate to complete a Subsurface Investigation.

December 3, 2008

Two employees of the water department send a request to the Town Comptroller to review the two estimates received and advise the department.

February 2, 2009

HydroEnvironmental performs geoprobe services to sample soil and groundwater, finds contamination and reports said contamination.

February 3, 2009

Carlos Torres from the Westchester County Department of Health reports to the site to assess the situation. Supervisor Peters speaks with Mr Torres on the phone, and is told immediate action is necessary. Peters questions why, and Mr. Torres explains once probes are done, the contamination is active and must be handled immediately. Supervisor then signs contract with Envirostar to start remediation work. HydroEnvironmental is contracted by phone to perform environmental consulting during the cleanup.

February 4, 2009

Supervisor signs formal proposal from HydroEnvironmental for environmental and technical oversight during the "New York State Department of Environmental Conservation mandated cleanup"

February 9, 10, 11, 12, 2009

Both Envirostar and HydroEnvironmental are on site as remediation work progresses.

February 13, 2009

Remediation work ceases due to volume of water encountered, and options are discussed with the Town Engineer.

February 17, 2009

Envirostar bill is presented for payment.

February 20, 2009

In accordance with Section 34 of Town Law, the invoice is reviewed and paid in accordance with the signed contract and backup documentation presented.

February 24, 2009

Town Comptroller reports on situation to Town Board at work session. Town Board members were dismayed with the level of communication to the Board and expressed significant concern regarding the appearance of impropriety. Town Board orders an investigation.

March 2, 2009

Town Board holds special meeting to discuss the issue and interview all participants.

March 3, 2009

Councilman Matt Metz presents the results of the investigation he performed at the direction of the Town Board in an open, public meeting (minutes of the meeting are available on-line). After conducting interviews with NYS DEC, West Co Health Dept, HydroEnvironmental, and town staff, he reported back to the Town Board that the money had been spent appropriately, the work was done properly and that had the Town not taken action, fines of \$37,500 per day would have been assessed. He stated that while the Town Board should have been notified in a timely fashion, the Town had no choice but to take immediate action. The Town Board as a whole determines the immediate action taken was necessary and appropriate. As an additional oversight measure, the Town Board appoints the Town Engineer in charge of all environmental remediation.

March 24, 2009

Town Board passes a resolution authorizing an additional \$16,980 contract with HydroEnvironmental.

July 27, 2009

HydoEnvironmental submits spill closure report from New York State Department of Environmental Conservation for spill #9706398.

Aggregate Purchases

The Town initiated centralized purchasing for office supplies for most departments several years ago. In 2010, the Police and Water Departments were the last two departments to become part of the centralized office supply purchasing system.

The adoption of a Purchase Order system in March, 2010, has allowed the Town to expand its centralized purchasing efforts, including aggregating similar purchases across different departments, and the use of county and state contracts which have resulted in lower prices and a significant overall savings.

Auto Parts:

While attempting to comply with State bid requirements on auto parts, the Town has received conflicting information from both the State and Westchester County. State and County contracts are awarded for auto parts based upon a percentage off list price. The contracts require the list prices be supplied to the purchaser for verification, yet on most contracts neither the vendor nor the awarding entity will provide the Town with the required documentation. Additionally, many of the bid award vendors require minimum orders or charge delivery fees. It is our position that it is in the Town's best interest to secure three written price quotes for all auto parts over \$100. Considering the staff time involved in attempting to secure price verification, and the delay in receiving parts necessary to return a vehicle to service, it is not cost effective to utilize most State and County contracts for vehicle parts. Where feasible, the Town shall prepare its own bid for the most common parts used for town vehicles.

Pumps and Repairs:

The Town's sewer treatment facility is environmentally sensitive, and pump failures must be repaired in a timely fashion to avoid damaging sewage spills. The specialized pumps fall under two exemptions to competitive bidding: one, sole source, and two, emergencies. Sole source documentation has been provided to the OSC.

See Note 6
Page 42

Cleaning Services:

Since May, 2010, the Town has employed seasonal workers to provide these services, and beginning in 2011 has used state or county contracts for floor mats.

Professional Services:

Since January, 2010, the Town has made a concerted effort to use either quotes or RFPs when seeking professional services. Additionally, the September, 2010 Procurement Policy includes specific guidelines for soliciting professional services.

Since January, 2010, RFPs have been advertised for: risk assessment services, auditing services, insurance brokers, a social service provider, real estate appraisers, alarm monitoring, engineering services, a park development project and an emergency notification system.

The Town Board is currently considering a proposed amendment to the Professional Services section of the Procurement Policy that would cover future services by a professional who was initially selected based on an RFP.

By far, the largest “non bid” or “non RFP” item cited in the audit was approximately \$3 million for insurance, an amount, it should be noted, that covered multiple years.

Prior to October, 2009, it was the Town’s practice to have its long time insurance broker solicit competitive quotes from several companies and present the options to the Town Board for a decision.

On October 6, 2009, in response to public pressure to allow other insurance brokers to compete for the Town’s insurance business, the Town Board gave other brokers 60 days to submit proposals for 2010 coverage. A formal RFP was not issued and the board did not authorize any public notice that it was soliciting quotes.

On December 8, 2009, the Town Board entertained presentations by several brokers who had submitted what the minutes called “bids” and on December 15, 2009, the Town Board awarded the “bid.”

In 2010, in preparation for soliciting quotes for the Town’s 2011 insurance, the Town did an RFP for insurance brokers, and then, after selecting qualified brokers, assigned each broker specific markets (companies to solicit) as per insurance industry procurement procedures.

Competitive Quotations

[The following reflects the opinion of the two Councilmen on the Town Board in 2006 forward and the Town Comptroller.]

While the Procurement Policy required three written quotes for all purchases over \$1,000, the previous Town Board granted the Highway Superintendent purchasing authority without written quotes up to \$5,000. The Town recognizes this policy was not clearly documented, and the current Town Board removed the higher threshold.

Town Board Minutes

Town Law assigns the responsibility for taking and maintaining the minutes of Town Board minutes to the Town Clerk. There is no legal requirement that the Board review or “adopt” the minutes.

See Note 7
Page 42

On June 28, 2011, the Town Board reached an understanding with the Town Clerk that minutes of Town Board meetings will be made available according to the provisions of state law and that the Board will review and adopt them.

Credit Purchases

As required by General Municipal Law, payment cannot be made prior to receiving goods or services. As such, all purchases are made on credit. All vendors doing business with the Town must provide the town with credit.

Vendors utilize different methods to confirm town employee status. Some accept a town id card, and some require their own verification. Certain stores, such as Sears, Staples, and Home Depot, require presentation of the store's ID card for purchases made at the store. These ID cards are not credit cards, or what the state considers "purchase cards." They are simply a means of identifying the town's account for billing purposes.

See Note 8
Page 42

While it is the Town Comptroller's responsibility to audit claims for payment, the control of the identification cards is the responsibility of the individual department head. Which employees are sent to purchase items is entirely at the department head's discretion.

All claims for payment were documented, certified by the department head, audited and approved for payment by the Town Comptroller.

The Town Board will review and adopt a policy authorizing the use of store ID cards and a policy stating only the Town Comptroller may apply for credit on the Town's behalf.

Audit of Claims

The Town Comptroller is responsible for auditing all claims for payment. Any organization that spends \$50 million dollars annually will inevitably have isolated cases of lost receipts or misplaced packing slips. No payments are authorized without adequate supporting documentation and certification.

In response to the three items cited in the audit report, the following should be noted:

See Note 9
Page 42

- Library books, \$2,032. These are ordered on-line. As such, there are no register receipts. The invoices are printed out from the computer. The librarian who placed the order ticks off each item when received, and the library director signs off on the payment. While the field auditor noted the lack of packing slips for this particular order, the Town has written documentation from the State approving alternate methods of verifying the receipt of goods, and that packing slips are not the only acceptable proof of delivery.
- Highway tools, \$3,405. During the audit fieldwork, a complete voucher packet, with original invoice, packing slips and register receipt was provided to the auditor. All documentation is properly attached to the payment request.

- Mailing preparation, \$1,107. The Mohegan Improvement District utilized Staples's services to copy and prepare a district-wide correspondence for mailing. The charges were for copies, envelopes, labels and folding. There was no original register receipt when the bill was presented for payment. The district Treasurer certified the work was done and that he personally picked up the final product for distribution.

Further information regarding additional measures taken will be detailed in the Town's Corrective Action Plan.

TOWN OF YORKTOWN
363 UNDERHILL AVENUE, P.O. BOX 703
YORKTOWN HEIGHTS, N.Y. 10598

July 14, 2011


New York State Office of the Comptroller

Thank you for the opportunity to respond to comments in your report:

1. Changes made to Bids:

Prior to 2010, during its work- sessions, The Town Board would, at times, agree to changes to a bid without voting.

REMEDY

The Town Clerk's Office will not send out changes or addendums **to any bid** unless there has been a vote on the change/addendum by The Town Board. The resolution approving the change will be included in the work session minutes and in the bid file.

2. Minutes:

I agree that there have been typographical errors made in minutes which have not been caught.

REMEDY

Resolutions do not originate in the Town Clerk's Office. Since the Town of Yorktown went to its current computer system in the early 2000's, Department Heads electronically send their resolutions to my office which are then copy and pasted into our agenda and minutes.

In 2008, I decided to add the actual resolutions that the Town Board votes on at its televised meeting, to the agenda. Prior to that time, the Town Board was given copies and would go over resolutions at its work session. Now, Board members no longer have to bring their copies of resolutions to the meeting, and the public can follow along with what is actually being voted on. So, since 2008 if there were problems with a resolution, the Town Board has been free to make changes and or/not approve the resolution.

As of today, I have set a deadline for receiving resolutions from Department Heads. If they do not arrive on my computer by 1:00PM, they will not be a part of the formal agenda. This allows my staff, which was cut in 2011, the opportunity to read and send back resolutions that are not clear or may contain typos. The Town Board members will still be able to approve the resolution. Each member of the Town Board will receive a copy of whatever is sent to me after 1:00PM so that they can see what is being voted on.

Also, as of today, July 5, 2011, the Town Board will be approving the minutes (the resolutions) at the following meeting.

I would like to add that The Town Clerk's Office routinely gets calls from residents the day after a Town Board Meeting wanting to know when the minutes will be available, my usual response is to go on the web on Friday and they will be available.

Page 19 under Board Resolutions, you write "The Town Clerk stated that the errors such as typing errors, were not detected and corrected because the Board does not review and approve the minutes at subsequent meetings."

RESPONSE

"I, Alice E. Roker categorically DENY making that statement. Not only is it inaccurate, it is disrespectful to the Town Board and unprofessional.

See Note 10
Page 42

BID FILES

I appreciate your recommendations regarding bid files, new procedures have already been put in place.

No one outside of my staff will have direct access to files in my office. If someone needs something from a file, they will have to sit in my office with the file and if they need a copy, a staff member will copy the document.

Also, one of the clerks in my office who has always been in charge of cleaning the bid file (duplicates) will now have to date and sign her name on the outside of the file as well as tell which documents are in the file.

BIDS

You point out errors made on resolutions concerning several truck bids.

Again, I point out that resolutions do not originate in this Office. We are sent resolutions from Department Heads, they are placed on agendas. The Town Board will or will not approve the resolution and then copies are forwarded to the Comptroller's Office for payment.

Also, there were two clerks in 2007. In October of 2007, I became Interim Supervisor.

My Deputy, who was the Clerk at the end of 2007 when I became Supervisor sent you a duplicate copy of the Town Board Meeting that you stated you could not hear while in

See Note 11
Page 42

Town Hall. Again, you state that you cannot hear anything on the tape. My question is; did you listen to it because we played it in my office and the sound was fine.

Respectfully submitted,


ALICE E. ROKER



Superintendent of Highways
Town of Yorktown
281 Underhill Avenue
Yorktown Heights
New York 10598

To: Christopher Ellis
Chief Examiner
Office of the State Comptroller
33 Airport Center Drive
Suite 103
New Windsor, New York 12553
July 12, 2011

From: Eric DiBartolo
Superintendent of Highways
Town of Yorktown

Re: Draft Audit Report of the Town of Yorktown

MY COMPUTER USE:

In reference to sending political e-mails through my office computer, if someone would send an email I would forward that message from my computer (at work) to my personal computer. As far as pornography; no computer in the Highway Department was ever locked and for years many people had access to my computer in my office to use at any time. I never restricted anyone from using my office computer. After learning about all of this, I have since locked my computer in my office so that no one will be able to use it except for myself. Keep in mind that the Town of Yorktown has never had a computer policy in effect until recently, as of June 2010. When the Town Board established a policy I followed it.

See Note 12
Page 43

See Note 13
Page 43

See Note 14
Page 43

USED EQUIPMENT SUPPLIES:

The Town of Yorktown procurement policy was followed. Used equipment was purchased and the bid requirements were followed. Price quotes were obtained for equipment purchases. Everything was sent to the Town Comptroller for payment. (See Comptroller's report).

See Note 15
Page 43

PHONE: 914.962.5781

FAX: 914.243.4285

EMAIL: highway@computer.net

DISCLOSURE OF WORK FOR ANY COMPANY:

The Town of Yorktown's annual disclosure statement did not state anywhere that working for another company while employed by the Town of Yorktown needed to be disclosed. You will see in the enclosed 2009 disclosure statement, I volunteered to disclose that I worked for the Envirostar Company. Nowhere was it required, however, I felt it was the right thing to do and, volunteered the information. My late brother, Frank DiBartolo Jr., was **not** the owner of Envirostar; his wife was and still is. All bids went through the Town according to the procedures in place. Whenever Envirostar was working for the Town of Yorktown I made sure that I did not oversee any work being done, as I did not want anyone to feel that there was any impropriety with Envirostar working for the Town. (See Comptroller's report).

See Note 16
Page 43

Sincerely,



Eric DiBartolo
Superintendent of Highways
Town of Yorktown

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

COMMENTS ON THE BOARD'S RESPONSE

Note 1

Town records indicated that the Superintendent sold used equipment and materials to the Town and made direct purchases from a Highway Department employee on behalf of the Town.

Note 2

We agree that the Superintendent did not violate the Town's ethics policy in place at the time, when the transaction occurred. However, as stated in the report, when the Superintendent conducted business with the Town, there was the potential for a prohibited conflict of interest. Moreover, his involvement in the contract between the Town and a company with which his close relative was an officer raises questions about the appropriateness and transparency of such transactions.

Note 3

We agree with Town officials that the Town did not have an adopted computer-use policy in place until June 1, 2010. The February 9, 2009, memo to employees was not an adopted policy, but an informal reminder to employees that Town-owned computers are for conducting official Town business only.

Note 4

GML permits a municipality to purchase multiple items off the same bid provided the bid specifications and bid publication clearly state the number of items allowed (up to specified number of items), in this case, trucks that could be purchased. Then, the bid specifications limit the authorization to award and purchase items. However, during our audit period, Town officials exceeded the limits in the specifications and awarded and purchased more than authorized.

Note 5

We disagree that this was an emergency purchase. The Town received a letter from the New York State (NYS) Department of Environmental Conservation (DEC) in February 2008 requesting the Town's corrective action plan for the fuel spill and reminded the Town that DEC could impose a civil penalty of \$37,500 per day. However, the Town did not take action until October 2008 when the Board brought in two vendors to assess the situation. The work did not start until February 2009, a year after the Town received a letter from DEC. At the March 3, 2009, Board meeting, a former Board member stated that the Town's consultant determined that there was contamination. In addition, Town officials did not provide any documentation that they received from NYS DEC indicating that if a specific deadline was not met the Town will receive a civil penalty. Therefore, we continue to believe that the Town had sufficient time to seek competition to complete this project.

Note 6

The sole source documentation that Town officials provided after the exit conference was for pump repairs. Our finding was about the purchase of new pumps, not pump repairs.

Note 7

While it is true that there is no legal requirement that the Board review or adopt the minutes, it is a good business practice for boards to review the minutes for accuracy and completeness, because the minutes serve as the official record of the Board.

Note 8

Our report states that the Town did not have a credit or purchase card policy. The Town clearly has and uses store-specific purchase cards, some labeled commercial or business credit accounts, each with credit limits. Regardless of whether these cards are referred to as credit cards or ID cards, they have the same effect. Town employees are able to purchase items and commit the Town to pay for those amounts.

Note 9

Payments were authorized without adequate supporting documentation. The credit card information provided by the Town for the library books, tools and mailing services did not support the items we reviewed. The confirming invoices for the library books were not printed at the time of purchase. For example, library staff ordered books on November 1, 2008; however, the confirming invoice was printed on February 18, 2009. The Town did not provide us with the original order confirmation with prices (invoice) to support the two purchases of tools. Finally, the invoice for the \$1,107 payment for the Town mailing did not support the items listed on the claim voucher.

COMMENTS ON THE TOWN CLERK'S RESPONSE

Note 10

We amended the wording in our report.

Note 11

We received a copy of the December 18, 2007, Board meeting minutes. We have concerns with the validity of the copy of the video tape provided. While it included information on the questioned bid awards, the last minute of the video had a different date than the rest of the video. Therefore, it appears the video has been edited.

COMMENTS ON THE HIGHWAY SUPERINTENDENT'S RESPONSE

Note 12

The Superintendent's computer was used to prepare, not just transfer, the political campaign message/letter on behalf of a candidate.

Note 13

The e-mail messages with inappropriate images were sent back and forth between the Superintendent's account and accounts of individuals who appeared to be his relatives.

Note 14

We agree that the Town did not have a computer policy in effect until June 1, 2010.

Note 15

The Superintendent did not always follow the Town's procurement policy. For example, the Town's procurement policy required Town officials to competitively bid purchase contracts in excess of \$10,000, when the GML threshold for purchases is currently \$20,000. However, the Superintendent purchased a used 2001 wheel loader for \$75,000 with only two written quotes instead of competitively bidding the purchase.

Note 16

Our report does not state that the Superintendent's brother was the owner of Envirostar. We disagree with the Superintendent's statement that he did not oversee any work being done by Envirostar. We found contracts signed by both the Superintendent and his brother to perform environmental work for the Town.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

During the initial assessment, we interviewed appropriate Town officials, performed limited tests of transactions and reviewed pertinent documents, Board minutes, Town policies, financial records, vouchers, disclosure statements from officials, and reports.

After reviewing the information gathered during our initial assessment, we obtained information directly from the computerized financial databases and then analyzed it electronically using computer-assisted techniques. This approach provided us with the additional information about the Town's financial transactions as recorded in its databases. We determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft, and/or professional misconduct. Based on that evaluation, we determined that controls were inadequate and risk existed in most of the areas of cash procurement. We then decided on the reported objective and scope by selecting for audit the Superintendent of Highways' work activities, computer use, and purchasing practices for further audit testing.

We examined the internal controls over the Town's operations for the period January 1, 2007, through May 13, 2010. To accomplish our audit objectives and obtain relevant audit evidence, we performed procedures that included the following:

- We interviewed the Supervisor, Comptroller, Deputy Comptroller, Water Superintendent, Superintendent of Environmental Conservation, Highway Superintendent and Town Clerk to gain an understanding of the internal control policies and procedures used to control, record, and monitor Town activities.
- We obtained the ledger reports for 2007 through 2010 and compared the reports with the claims and supporting documentation listed in the ledger reports for completeness and accuracy to verify their propriety.
- We reviewed Board minutes for authorization to purchase goods and services, solicit bids, and award bids, and to get a general sense of the Board's oversight of the Town activities.
- We selected purchases that exceeded the bidding thresholds and sampled and reviewed paid vouchers to determine whether the appropriate authorizations were obtained prior to purchases, competitive bidding laws were adhered to, and documentation supporting the purchases, including complete bidding files, were maintained by the Town.
- We selected a sample of various professional service providers with high dollar amount payments and tested their claims to determine whether the Town competitively solicited these

providers using the RFP process or other similar quotes method before contracting with the providers.

- We reviewed claims that did not meet the bidding thresholds to determine whether the Town adhered to the procurement policy and obtained quotes for purchases over \$1,000 or services over \$5,000.
- We reviewed the procurement policy and procedures for compliance with GML Section 104-b, claims procedures to determine whether the Town required that claims contain supporting documentation to provide evidence that purchases are actual and necessary expenditures of the Town, and disclosure statements for officials to determine whether the Town officials had any potential conflicts of interests.
- We reviewed the claims for Department and Comptroller approvals.
- We reviewed the credit card policy and selected a sample of the credit purchases to determine whether the Board authorized the purchases that were made using a credit card. We determined which credit cards were used and determined whether that were made the Board was aware of the number of credit and purchase cards being used by the Town employees.
- We reviewed information on the Highway Superintendent's computer to determine whether it is used solely for official business.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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