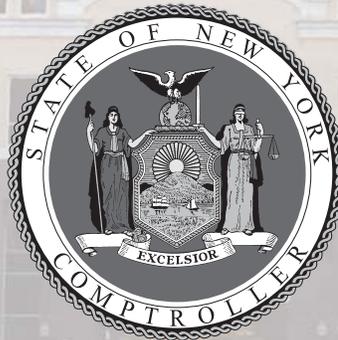




Federal Stimulus Program — Procurement for Local Highway Projects in the Capital Region

2010-MS-2



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

April 2010

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

Following is a report of our audit titled: Federal Stimulus Program – Procurement for Local Highway Projects in the Capital Region. 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 are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted on February 17, 2009. ARRA, which is informally known as the federal stimulus program, includes measures designed to modernize our nation's infrastructure, enhance energy independence, expand educational opportunities, preserve and improve affordable health care, provide tax relief, and protect those in greatest need. New York State will receive approximately \$1.12 billion for highway infrastructure projects.

ARRA includes several transparency and accountability standards. One of those standards requires each state to certify that it is using federal taxpayer dollars appropriately. ARRA highway funds can be used on a large, defined system of roadways. This generally includes Interstate highways, US routes, State routes, and some rural roads and city streets. The funds also can be used on most highway and/or bridge projects on this same system of roadways. In addition, ARRA highway funds may be used for some transit capital projects or transportation enhancement projects.

As of October 23, 2009, Governor Paterson has certified millions of dollars in highway projects statewide.

TABLE 1: Regional Distribution of ARRA Projects¹

Region	Number of Projects	Total Amounts Approved
Capital Region	31	\$86 million
Central New York	14	\$28 million
Hudson Valley	32	\$71 million
Long Island	13	\$66 million
North Country	12	\$19 million
Rochester Area	31	\$44 million
Southern Tier	39	\$24 million
Western NY	27	\$36 million
Total	199	\$374 million

The New York State Department of Transportation (NYSDOT) is the lead agency that will receive ARRA highway infrastructure funds and use them for State projects or distribute them to local governments to fund locally sponsored projects. After Governor Paterson certifies funding for ARRA highway projects, local

¹ These represent all local projects certified by Governor Paterson as of October 23, 2009, which have been recorded by NYSDOT.

government officials submit applications that detail the shovel-ready projects to NYSDOT for its review and approval. Upon successful application, local governments enter into contracts with NYSDOT for the project.

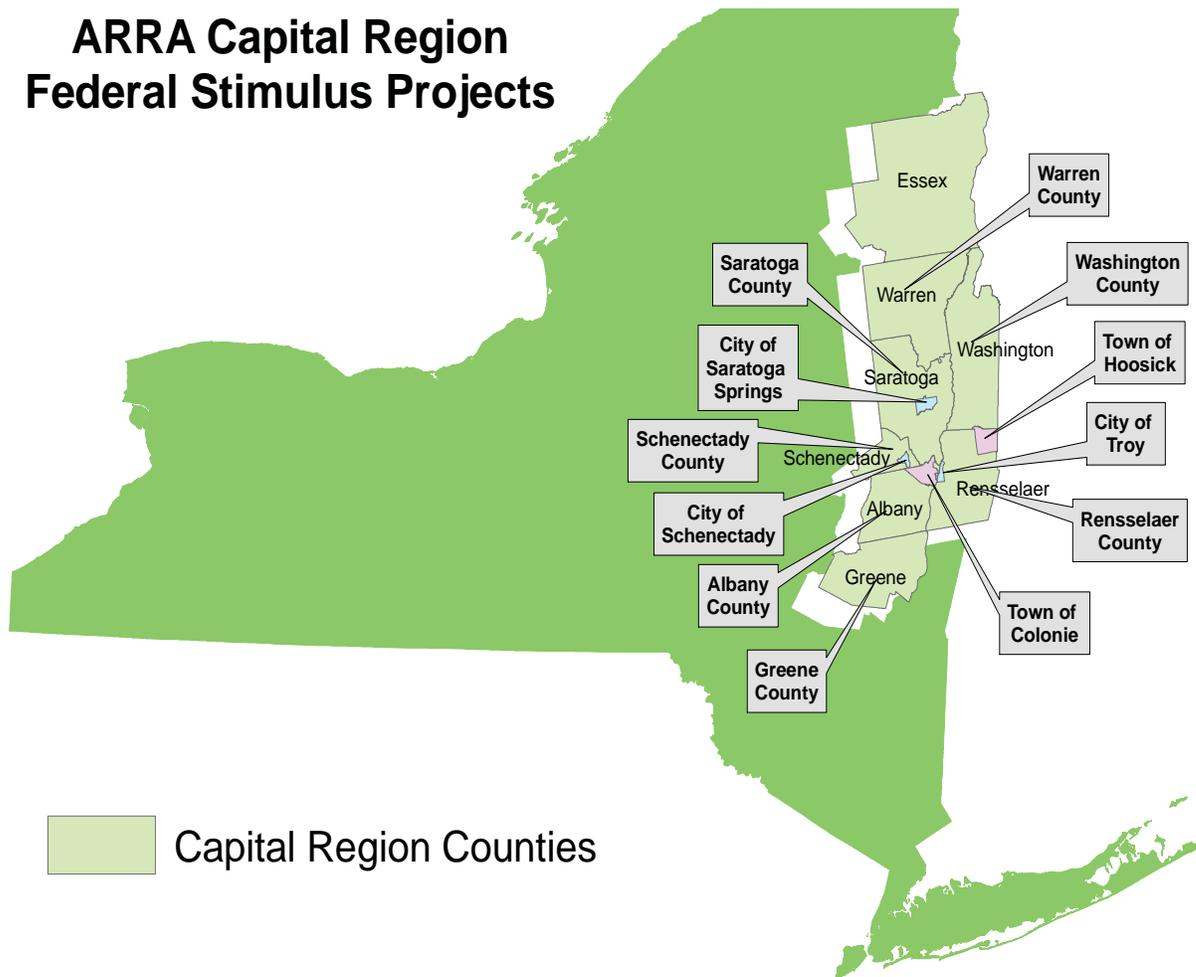
Before project work can begin, officials next must seek competitive bids. Generally, the Public Works Department, Purchasing Officer, and/or governing board are responsible for advertising, soliciting and receiving bids, and awarding contracts. Once a local government receives the bids, it summarizes the relevant information and prepares a packet containing a proof of advertisement, a summary of the bids received, a verification of the low bidder, a recommendation of award by the municipality, and other required forms (non-collusion bidding, debarment history certification, etc.). This packet is sent to NYSDOT, which then conducts a final review to ensure the project remains eligible for ARRA funding. The local government also enters into a contract with the vendor to complete the highway-related project. During the life of the project, the local government will submit vouchers for reimbursement to NYSDOT.

The following map illustrates the 12² local governments we selected for audit that had let and awarded their ARRA projects in the Capital Region of New York State.³

² See Appendix A for details of each municipality and project details.

³ The Capital Region, identified in the map, includes the 12 municipalities covered by this audit.

ARRA Capital Region Federal Stimulus Projects



Objective

The objective of our audit was to answer the following question:

- Are local governments following sound procurement procedures when awarding contracts funded by ARRA funds?

Scope and Methodology

We examined procurement procedures for ARRA-related highway projects at 12 municipalities located in the Capital Region for the period March 1, 2009 to February 1, 2010. This audit covers all of the available local government ARRA projects that were underway in the Capital Region at that time.

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 C of this report.

Comments of Local Officials

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

Procurement Guidance and Compliance

One of the goals of using sound procurement procedures is to foster honest competition so that local governments obtain quality commodities and services at the lowest possible prices. Competitive bidding, one method of fostering such competition, also guards against favoritism, extravagance, and fraud, and allows interested vendors a fair and equal opportunity to compete. We found that local governments followed sound procurement procedures when awarding contracts funded by ARRA funds. Specifically, 11 of the 12 local governments audited adhered to bidding laws and appropriately awarded their ARRA highway projects to the lowest responsible bidders. One municipality failed to advertise its project in the official newspaper, as required by General Municipal Law (GML). We also found that all local governments had taken responsible measures to ensure that only responsible vendors were awarded contracts.

Competitive Bidding

GML generally requires local governments to advertise for competitive bids when procurements exceed certain dollar thresholds. Purchase contracts involving expenditures in excess of \$10,000 and contracts for public work⁴ involving expenditures in excess of \$35,000 are subject to competitive bidding under the law. Specifically, GML requires that an “advertisement for bids shall be published in the official newspaper or newspapers, if any, or otherwise in a newspaper or newspapers designated for such purpose.” GML further requires that municipal contracts be awarded to the “lowest responsible bidder.”

We reviewed 15 ARRA projects at 12 local governments totaling approximately \$25.7 million.⁵ We found that the local governments competitively bid all 15 projects. We reviewed bid documents and supporting documentation and found that 14 of the 15 project contracts were awarded in accordance with GML. The City of Saratoga Springs advertised in the New York State Contract reporter and various other online websites, but failed to advertise in the official newspaper, as required by GML. Even though the City did receive four bids for the project, not all potential bidders may have been aware of this project opportunity.

⁴ Effective November 12, 2009, GML was amended to increase the bidding threshold from \$20,000 to \$35,000 for public works contracts. The \$10,000 bidding threshold for purchase contracts remains the same.

⁵ The table in Appendix A details each project.

We found that all 15 projects received multiple bids (three or more). All local governments awarded the contracts to the lowest responsible bidders, and each awarded vendor provided the required documentation (e.g., non-collusion agreement and proof of bonding).

Some examples of the local bid and contract award processes reviewed during our audit include the following:

- Schenectady County advertised for bids for its Rosendale Road Resurfacing Project in an official newspaper on September 28, 2009. County officials received six bids and opened them on October 22, 2009. The contract was awarded to the lowest bidder for approximately \$290,000.
- The City of Troy advertised for bids for its NY Route 2 Reconstruction Project in an official newspaper on July 13, 2009. City officials received seven bids and opened them on August 13, 2009. The contract was awarded to the lowest bidder for approximately \$6 million.

Responsible Vendors

Local government officials should award contracts subject to competitive bidding to the lowest responsible bidder after public advertisement for sealed bids.⁶ Vendor responsibility generally means that a vendor has the integrity to justify the award of public dollars and the capacity to perform the requirements of the contract fully. It is the local government's duty to evaluate the responsibility of a prospective contractor. A responsibility determination, wherein the local government determines that it has reasonable assurances that a vendor is responsible, is an important part of the procurement process, promoting fairness in contracting and protecting the local government against failed contracts.

Our review of the 15 projects found that local government officials employed reasonable measures to ensure that the vendors who received contract awards are responsible. These measures included obtaining performance bonds and enlisting the assistance of NYSDOT to review vendor responsibility. Eleven of 12 municipalities provided us with performance bonds for all of their ARRA-funded projects. Two projects in Warren County (bid as one joint project) had been awarded, but County officials were still waiting for the performance bond. According to County officials, they had not yet received the vendor's signed

⁶ Certain exceptions exist in statute, but do not apply to ARRA highway contracts.

contract and all corresponding paperwork because construction had not started and no contract was in place. These two projects are scheduled to begin in April 2010. County officials told us they expect to receive the signed contract and a performance bond for the full amount of the contract subsequent to the end of our fieldwork.

Some examples of municipalities' compliance with the vendor responsibility process include the following:

- Albany County awarded a contract for its Maxwell Road and Albany-Shaker Road Intersection Project to the lowest bidder for \$4,394,771. The successful bidder provided a performance bond for \$4,394,771 in accordance with the terms and conditions of the specifications.
- The City of Schenectady awarded a contract for its Van Vranken Avenue Resurfacing Project to the lowest bidder for \$1,144,513. The successful bidder provided a performance bond for \$1,144,513 in accordance with the terms and conditions of the specifications.

As part of our audit, the Bureau of Contracts' Vendor Responsibility Team⁷ completed the same standard review for the vendors who were awarded contracts (except for those vendors that were State contract vendors) by the local governments that it performs for all State-awarded ARRA projects. The Vendor Responsibility Team did not find any potential responsibility issues with vendors used by all 12 municipalities audited.

Details about these 15 projects and the awarded vendors can be found in Appendix A.

Recommendations

1. Local officials should ensure that projects are properly advertised in their local government's official newspaper in accordance with General Municipal Law.
2. Local officials should ensure that the awarded vendor provides a performance bond for the full amount of a contract's value before authorizing work to begin on a highway project.

⁷ The State Comptroller's Vendor Responsibility Team (Team) improves the quality and consistency of responsibility determinations by State agencies. The Team solicits and maintains information from State agency procurement staff and the business community about vendor responsibility. It also works to standardize the criteria by which responsibility determinations are made at the State level.

APPENDIX A

ARRA CAPITAL REGION PROJECT DETAILS

Local Government	Project Description	Awarded Vendor	ARRA Award	Vendor Project Bid
Albany County	Maxwell Road and Albany-Shaker Road Intersection	Rifenburg Construction, Inc.	\$5,104,563	\$4,394,771
Town of Colonie ⁸	Maxwell Road and Albany-Shaker Road Intersection	Foit-Albert Associates for professional services only	\$816,637	\$816,637
Greene County	New Baltimore Road Bridge Replacement	Bette & Cring LLC	\$1,269,000	\$1,118,447
Greene County	CR 28 (Elm Ave) Resurfacing	Peckham Road Corporation	\$572,000	\$379,082
Town of Hoosick	Caretaker Bridge Replacement	WMJ Keller & Son Inc.	\$1,348,000	\$1,071,611
Rensselaer County	CR 145 (Oakwood Ave) Resurfacing	Callanan Industries Inc.	\$880,000	\$759,512
Saratoga County	Zim Smith Trail	HMA Contracting Corp	\$838,000	\$659,108
City of Saratoga Springs	Church Street Reconstruction	DelSignore Blacktop Paving, Inc.	\$2,756,000	\$2,642,547
City of Schenectady	Van Vranken Ave Resurfacing	Empire Paving of Schenectady, Inc.	\$1,770,000	\$1,144,513
Schenectady County	Rosendale Road Resurfacing	Callanan Industries Inc.	\$373,000	\$294,178
City of Troy	NY Route 2 Reconstruction	A. Collaruso and Son, Inc.	\$7,255,000	\$5,998,070
Warren County ⁹	CR 34 (Glenwood Ave) Resurfacing	HMA Contracting Corp	\$339,000	\$172,122
Warren County	CR 28 (Corinth Road) Resurfacing	HMA Contracting Corp	\$407,000	\$208,337
Warren County ¹⁰	CR 3 (Warrensburg Road) Bridge Replacement	Arch Bridge Contracting Corp	\$1,694,000	\$1,283,010
Warren County	Grist Mill Road Bridge Replacement	Arch Bridge Contracting Corp	\$1,169,000	\$872,426
Washington County	Bridge Replacements	Harrison & Burrowes Bridge Constructors, Inc.	\$4,459,000	\$3,857,740
Totals			\$31,050,200	\$25,672,111

⁸ This is a joint project with Albany County in which the Town of Colonie was only responsible for professional service costs associated with the project. Due to this, the professional service costs were not bid as it is not required and the amounts listed are the current contract amount.

⁹ This project was bid with project CR 28 Corinth Road resurfacing project. Due to the fact that they were bid together, the County was able to save a considerable amount of money.

¹⁰ This project was bid with the Grist Mill Road Bridge Replacement project. Due to the fact that they were bid together, the County was able to save a considerable amount of money.

APPENDIX B

RESPONSES FROM LOCAL OFFICIALS

We provided a draft copy of this global report to all 12 local governments included in this audit and gave all of them the opportunity to respond to it. Only two municipalities, the Cities of Schenectady and Troy, chose to do so. Their responses can be found on the following pages.



Ismat .S. Alam
Commissioner of Finance
& Administration

DEPARTMENT OF FINANCE
CITY OF SCHENECTADY
NEW YORK

Jay St., City Hall, Room 103
Schenectady, NY 12305
(518) 382 - 5010
Fax: (518) 382-5030

April 12, 2010

Ms. Ann Singer
Chief Examiner
Office of the State Comptroller
State Office Building, Room 1702
44 Hawley Street
Binghamton, NY 13901-4417

RE: Audit of Federal Stimulus Program – Procurement for Local Highway Projects in the Capital Region i.e Van Vranken Avenue Resurfacing Project (2010 MS-2)

Dear Ms. Singer:

I am writing in regards to your Draft global audit report dated April 7, 2010 to the City Of Schenectady. Your draft report was issued in regard to our recent audit of the Federal Stimulus Program – Procurement for Local Highway Projects in the Capital District. First of all, we would like to thank you and your staff for your visit as well as for the feedback that you have provided us. Your staff was very professional and courteous. We concur with the findings issued by the Office of State Comptroller Division of Local Government & School Accountability and will address each one in turn.

- Recommendation: Local officials should ensure that projects are properly advertised in their local governments' official newspaper in accordance with GML.
- Response: *We agree with your recommendation. We follow and followed the Comptrollers procurement guidelines. It is the City's policy to advertise all bids in our local official newspaper (Daily Gazette) for 3days in accordance with GML which was the case for the above mentioned project. The City also advertised this project for fifteen (15) business days in the New York State Contract Reporter.*
- Recommendation: Local officials should ensure that the awarded vendor provides a performance bond for the full amount of a contract's value before authorizing work to begin on a highway project.

- *Response: We agree with your recommendation. Once again, the City follows and followed Comptroller's guidelines and recommendation for procurement. We awarded a contract for our Van Vranken Avenue resurfacing project to the lowest bidder. The City also required and received a performance bond form the successful bidder in accordance with the terms and conditions of the bid specifications.*

Please feel free to call me with any questions.

Sincerely,



Ismat Alam
Commissioner of Finance
& Administration

Cc: Mayor Brian U. Stratton
Commissioner Carl Olsen
City Engineer Paul Cassillo
Corporation Counsel John VanNorden



OFFICE OF THE MAYOR
Hon. Harry J. Tutunjian

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April 12, 2010

Ms. Ann Singer
Chief Examiner
Office of the State Comptroller
State Office Building, Room 1702
44 Hawley Street
Binghamton, New York 13901-4417

Dear Ms. Singer,

I would like to take this opportunity to thank the staff of the New York State Office of the Comptroller for their expeditious recent audit of our procurement procedures as they relate to Local Highway Projects. I appreciate the courtesies shown to our city employees while conducting this audit and trust that all your questions were answered in a timely fashion.

The City of Troy is committed to following sound procurement procedures across the board when awarding any contracts. As such, all audit results are reviewed with interest and with an eye towards incorporating findings into our own procedures and processes. We recognize our obligation to foster honest competition among interested bidders and will continually strive to do so.

Please know that the City of Troy remains available to work with the New York State Office of the Comptroller to both streamline and improve the way in which we deliver services and manage resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry J. Tutunjian", written over a light-colored background.

Harry J. Tutunjian
Mayor

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

We reviewed the procurement process used by 12 local governments to award ARRA highway project contracts in the Capital region, and interviewed applicable local officials to obtain an understanding of that process. We reviewed each ARRA Federal Stimulus highway project for compliance with bidding laws. Specifically, we reviewed project applications, solicitation of bidding, advertisement of bids, documentation supporting bidding summaries and subsequent awards and required documentation.

Further, we interviewed local officials and reviewed New York State's Department of State Corporations' web site to identify potential conflicts of interest in awarding ARRA highway projects contracts to vendors. Further, we reviewed contract awards to ensure that vendors were responsible by viewing required documentation from the vendors (i.e., non-collusion agreements and bonding) and providing each vendor name to the Division of Contracts and Expenditures (Bureau of Contracts) in the Office of the State Comptroller. This Division reviewed each of the vendors awarded contracts by the local governments.

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

APPENDIX D

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