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ERIE COUNTY DEPARTMENT OF PUBLIC WORKS AUDIT OF THE EDEN-EVANS CENTER ROAD PROJECT FOR THE PERIOD JULY 1, 2011 THROUGH AUGUST 31, 2012

DAVID J. SHENK
ERIE COUNTY COMPTROLLER

HON. DAVID J. SHENK
ERIE COUNTY COMPTROLLER'S OFFICE
DIVISION OF AUDIT & CONTROL
95 FRANKLIN STREET
BUFFALO, NEW YORK 14202

December 31, 2012

Honorable Members
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Honorable Members:

The Erie County Comptroller's Office has completed an audit of the Erie County Department of Public Works (DPW) – Highway Division's (Highways) Eden-Evans Center Road Project (Eden-Evans) for the period July 1, 2011 through August 31, 2012.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards. 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. Our objectives were to:

- define the project type (i.e. reconstruction, maintenance, etc.);
- examine the internal controls over the bidding for road construction projects;
- examine how vendors are selected for projects;
- determine the cost of each of the three phases for this project; and
- determine the source(s) of funding for this project.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Management of DPW is responsible for establishing and maintaining a system of internal control. The objective of such a system is to provide management with reasonable, but not absolute, assurance that transactions are executed in accordance with management's authorization and are recorded properly. Because of inherent limitations in the system of internal control, errors or irregularities may nevertheless occur and not be detected.

Scope Limitation

A limitation on the scope of our audit was imposed by DPW as a result of their refusal to furnish written representations. As a result, we were unable to obtain adequate assurance whether or not management of DPW fulfilled its responsibility to design, implement and maintain a system of internal controls to prevent and detect fraud.

In our opinion, except for the effects of the scope limitation described above, the internal controls over the bidding process for road construction are adequate.

Sincerely,

David J. Shenk
Erie County Comptroller

cc: Hon. Mark C. Poloncarz, County Executive
John C. Loffredo, P.E., Commissioner, Department of Public Works
Robert W. Keating, Director Budget & Management
Erie County Fiscal Stability Board

Table of Contents

Background 5
Findings and Recommendations 5
Failure to Competitively Bid Reconstruction Project 5
Auditor Comments 6
Unaudited Records 6
Written Guidelines 7
Vendor Selection 7
Project Funding Sources 8
Project Costs 8
Exit Conference 9
Auditee Response 9

Background

The Erie County DPW is responsible for the maintenance and construction of 1,187 miles of County roads, 278 bridges, and 450 major culverts. Highways plans and designs appropriate construction, reconstruction, repair, and maintenance projects. DPW has a workforce capable of maintenance and construction activities, however due to the sheer volume of projects the hiring of outside contractors for some projects is necessary.

Funding for DPW operations is obtained through Federal, State and County sources. In order to fund extremely large projects, bonds are issued. Eden-Evans Road had deteriorated to the point that it had become a safety hazard to motorists and an inconvenience to local residents. The road was last reconstructed 40 years ago. DPW established a three phase plan to reconstruct the 6.6 mile stretch of road. The reconstruction plan included removal and replacement of the road sub-base. Work on the 1.6 mile stretch of road for Phase I of the project began on August 1, 2011.

Per the Erie County Charter (Charter) and NYS General Municipal Law §103 (Law), DPW is required to follow a bid process for retaining outside contractors. They are required to solicit bids from potential vendors through a Request for Proposals (RFP). Bids are received and reviewed, and the lowest, responsible bidder is awarded the contract.

A new commissioner was appointed as head of DPW on January 9, 2012 and Phase III was initiated under his purview. Phases I and II of Eden-Evans began under the oversight of the previous commissioner.

Findings and Recommendations

Failure to Competitively Bid Reconstruction Project

The Erie County Capital Budget states:

"Capital projects are defined as all physical projects having a minimum value of $50,000 which meet the following criteria: (1) All physical projects of a non-recurring nature, including construction, improvements or renovations to buildings, roads, bridges and parks".

As this project, because its cost was well in excess of $50,000 (the project total was approximately $8 Million), and it is of a non-recurring nature, it is only prudent to consider it a capital project and not as either a maintenance or incidental construction project. Since Eden-Evans was a capital project, and was not "minor in occurrence or unplanned in nature," this project should have been bid out through the use of RFPs.

Additionally, on July 28, 2011, the former County Executive stated that "we are starting the reconstruction of Eden-Evans Center Road." Obviously, the total reconstruction of Eden-Evans did not constitute incidental construction which is one of the general purposes behind the use of the Highway Bid Book. We were also informed by DPW personnel that incidental was deemed to be a minor occurrence of an unplanned nature.

DPW did not competitively bid Phases I and II of Eden-Evans. These Phases of Eden-Evans utilized vendors selected from the Bids for Construction and Maintenance Materials (Highway Bid Book), rather than issuing an RFP for the project. Bypassing DPW's normal bidding practice allows management the opportunity to practice favoritism in selecting vendors for projects. Phase III of Eden-Evans, commencing in 2012, was bid out and a vendor selected through an RFP.

During some of our audit interviews, key DPW personnel stated that they were not aware of any capital projects similar to the magnitude of Eden-Evans that used the Highway Bid Book in lieu of the bid process. Our examination also disclosed that there were ten other capital projects started in 2011. However, unlike Eden-Evans, the other ten capital projects were bid competitively through the use of RFPs.

WE RECOMMEND that management of DPW take the steps necessary to ensure that all road construction projects in excess of $50,000 are competitively bid and further, **WE RECOMMEND** that additional steps be taken to limit the use of the Highway Bid Book to the purposes intended (i.e., maintenance, materials and incidental construction).

Auditor Comments

Unaudited Records

During a supervisory review of the evidence that supports the findings, conclusions and recommendations contained in the audit report and workpapers, we became aware of additional information that was not included in our audit testing.

In our inspection of procurement documents related to vendor invoicing for Phase I and Phase II of Eden-Evans, we observed inconsistencies between pages which were computer generated and those that contained hand written adjustments.

Because of these inconsistencies, including (but not limited to) not utilizing the lowest bidder from the Bid Book, **WE RECOMMEND** that DPW review the vendor invoices from Phase I and II of Eden-Evans in detail. **WE FURTHER RECOMMEND** that based on the results of their review, that DPW determine if additional action has to be taken to address these problems.

Written Guidelines

There are no written guidelines or procedures to follow regarding the use of the DPW's Highway Bid Book. Because there were no guidelines to follow DPW management improperly used the Highway Bid Book for Phases I and II of Eden-Evans and did not follow their normal bidding process for road reconstruction projects.

WE RECOMMEND that DPW management develop procedures adequately describing the use of the Highway Bid Book.

Vendor Selection

Our audit of Eden-Evans disclosed that the following vendors were used on the project out of the Highway Bid Book and that these vendors received the following payments for this project:

Vendor	Amount
Accadia Site Contracting, Inc.	$2,848,761
All American Companies of WNY	430,724
Amherst Paving, Inc.	538,387
Challenger Community News	114
Country Line Stone Company, Inc.	275,595
DiDonato Associates Engineering and Architecture, PC*	985,657
Eberl Iron Works, Inc.	310
Gernatt Asphalt Production, Inc.	1,754,623
K & S Contractor Supply, Inc.	17,600
Pavilion Drainage Supply Company, Inc.	2,755
The Buffalo News	652
Union Concrete & Construction Corp.	788,451
Vellano Brothers, Inc.	35,436
Total	$7,679,065

* This vendor was selected from the July 17, 2008 Legislative Resolution

We acknowledge that such purchases are allowable pursuant to §3.07(2) of the Erie County Code (Code), when the County Executive has declared a public emergency, but such a declaration was not issued.

Project Funding Sources

We determined the sources of the project funding through an analysis of Erie County Legislature resolutions and the tracking of project expenditures. The following is a schedule of the funding sources of Eden-Evans through August 31, 2012:

Account	Amount
Acct B.11005 (Cemetery Road Bridges) 6/16/2011	$420,400
Acct B.11006 (Seneca Street Bridge) 6/16/2011	245,000
Acct B.11007 (Pavement Road Bridges) 6/16/2011	254,000
Acct B.11008 (Bridge Painting) 6/16/2011	160,000
Acct B.11009 (Greiner - Shimerville) 6/16/2011	300,000
Acct 414030 Federal Medicaid Matching Assistance (FMAP) 6/30/2011	1,000,000
Acct B.00028 (2001 Various Road Design, Non-Federal Aid) 7/21/2011	80,000
Acct 414030 Federal Medicaid Matching Assistance (FMAP) 9/8/2011	2,600,000
407000 NYS Consolidated Highway Improvement Program (CHIP) 9/15/2011	312,151
Acct B.21001 (2010 Capital Overlay Program) 5/24/2012	180,000
Acct B.21001 (2010 Capital Overlay Program) 6/21/2012	428,770
Acct B.11001.2 (2011 Capital Overlay Program) 6/21/2012	20,165
Acct B.11005 (2011 Various County Roads) 6/21/2012	557,582
Acct B.12007 (2012 Preservation of Roads - Construction) 6/21/2012	2,000,000
Acct B.12015 (2012 Capital Overlay Program) 6/21/2012	353,000
Total Funding	**$8,911,068**

Project Costs

Our analysis of the cost by phase of Eden-Evans from July 11, 2011 through August 31, 2012 provided the following results:

Project Phase I	$1,735,834
Project Phase II	$3,761,526
Project Phase III	$2,181,705
Total Project Cost	$7,679,065

Project costs are not maintained in a single set of accounts (one cost center). While Eden-Evans was initially funded in the budget, the budgeted appropriations were insufficient to meet all project expenditures. In order to meet additional project expenditures, DPW sought and received Legislative approvals numerous times to utilize funds from other sources. As a result, these additional project costs were charged to different cost centers and not to Eden-Evans. Since SAP does not include all these costs under a single project cost center, this practice makes it increasingly difficult to track project costs without resorting to additional Excel spreadsheets for support.

WE RECOMMEND that DPW meet with representatives of Budget and Management and Information and Support Services to determine whether there are SAP options available to address this issue.

Exit Conference

An exit conference was held on December 24, 2012 where the contents of the report were discussed.

Auditee Response

Management of DPW declined to provide a written response prior to the release of our report.