



# Town of Marilla

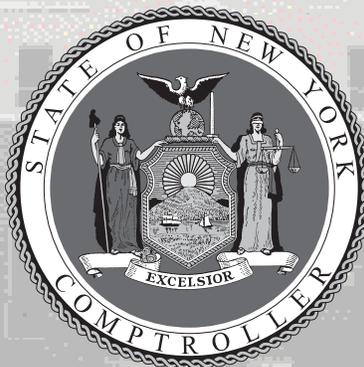
## Internal Controls Over Selected Financial Activities

Report of Examination

Period Covered:

January 1, 2008 — February 18, 2010

2010M-58



Thomas P. DiNapoli

# Table of Contents

	<b>Page</b>
<b>AUTHORITY LETTER</b>	2
<b>EXECUTIVE SUMMARY</b>	3
<b>INTRODUCTION</b>	5
Background	5
Objective	5
Scope and Methodology	5
Comments of Town Officials and Corrective Action	6
<b>CLAIMS PROCESSING</b>	7
Recommendations	10
<b>PROCUREMENT</b>	11
Competitive Bidding and Price Quotes	11
Professional Services	14
Recommendations	15
<b>APPENDIX A</b> Response From Town Officials	16
<b>APPENDIX B</b> OSC Comment on the Town's Response	20
<b>APPENDIX C</b> Audit Methodology and Standards	21
<b>APPENDIX D</b> How to Obtain Additional Copies of the Report	22
<b>APPENDIX E</b> Local Regional Office Listing	23

# State of New York Office of the State Comptroller

---

---

## **Division of Local Government and School Accountability**

August 2010

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 Board 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 Marilla, entitled Internal Controls Over Selected Financial Activities. 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 Marilla (Town) is located in Erie County (County) with a population of approximately 5,500 residents. The Town is governed by the Town Board (Board). The Board consists of the Town Supervisor (Supervisor) and four council members. The Board is the legislative body responsible for managing Town operations, including establishing internal controls over financial operations and for maintaining sound financial condition.

The Supervisor serves as the Town's chief executive officer and chief fiscal officer. The Supervisor represents the Town in the conduct of its financial affairs and is responsible for the disbursement and custody of Town moneys.

Although the Board is primarily responsible for the effectiveness and proper functioning of the Town's internal controls, the Supervisor and department heads also share the responsibility for ensuring that internal controls are adequate and working properly.

### **Scope and Objective**

The objective of our audit was to examine internal controls over selected financial activities for the period January 1, 2008 through February 18, 2010. Our audit addressed the following related questions:

- Are internal controls over claims processing appropriately designed and operating effectively?
- Are internal controls over the procurement process appropriately designed and operating effectively?

### **Audit Results**

The Board did not provide for an adequate claims audit function or sufficient oversight of the procurement process. We found numerous deficiencies in the documentation and approval of claims and the purchase of goods and services, including a significant improper payment.

The Town improperly paid \$20,000 in December 2007 to an incorporated fire company for the stated purpose of purchasing a generator,<sup>1</sup> but which Town officials told us was a loan to the fire company with no generator actually received. In June 2008, the Town received \$20,000 from a resident to whom the Town had granted a special-use permit<sup>2</sup> with the condition that he donate \$20,000 to the fire company.

<sup>1</sup> As recorded in the Board meeting minutes for December 13, 2007

<sup>2</sup> For clearing storm debris in October 2006

The payment of taxpayer moneys is improper without a statutory or contractual obligation to do so, or without receiving any goods or services in return for the payment. Further, the misleading record of the transaction intentionally circumvented internal controls and compromised the transparency of Town operations.

In addition, the Board did not properly audit claims, instead delegating this responsibility to two Board members. Our review of 35 claims totaling \$76,690 found that 26 claims totaling \$71,314 had various deficiencies including the lack of adequate supporting documentation, payment prior to audit, and/or lack of a signature to confirm receipt. For example, 17 of these claims, or almost half, totaling \$58,572 (including the improper \$20,000 payment) were not properly audited by the Board prior to payment. Without a proper audit of claims, errors or irregularities can occur and go undetected, and at least \$20,000 of taxpayer moneys was in fact misused.

We also reviewed purchases from 20 vendors totaling approximately \$514,000 and found that Town officials did not properly bid two purchases totaling approximately \$90,500. In one instance the lowest responsible bidder was not selected, and in the other instance the Town did not publicly advertise for bids. In addition, the Town did not obtain the number of quotes required by the Town's procurement policy for five purchases totaling \$23,850 and made a \$12,388 purchase that exceeded the lowest quote by over \$7,000. Finally, the Town spent over \$182,000 for professional services procured without the benefit of competition, and did not have formal written agreements with the providers. When Town officials and employees do not adhere to statutory and policy requirements in procuring goods and services, and/or do not use a competitive pricing process where appropriate, they cannot provide reasonable assurance that the lowest price is obtained.

### **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. Town officials generally agreed with our recommendations and indicated they either plan to initiate or already have taken corrective action. Appendix B includes our comment on an issue raised in the Town's response letter.

# Introduction

## Background

The Town of Marilla (Town) is located in Erie County (County) with a population of approximately 5,500 residents. The Town provides various services to its residents, including street maintenance, snow plowing, refuse/garbage collection, water, fire protection, recreation and community programs, and general government support. Expenditures incurred in providing these services are accounted for in the general, highway, sanitation district, water district, and fire protection district funds. The Town's 2009 budgeted appropriations for all funds were approximately \$2.5 million. Operations are financed primarily by real property taxes, sales tax, user fees/charges, State aid, and grants.

The five-member Town Board (Board) is responsible for managing Town operations, including establishing internal controls over financial operations and maintaining sound financial condition. The Board is also responsible for auditing and approving claims against the Town. The Town Supervisor (Supervisor) is a member of the Board and serves as the chief executive officer and chief fiscal officer. The Supervisor is responsible for the disbursement and custody of Town moneys. Although the Board is primarily responsible for the effectiveness and proper functioning of the Town's internal controls, the Supervisor and department heads also share responsibility for ensuring that internal controls are adequate and working properly.

The Town contracts with a fire company which provides fire protection, first aid, and emergency medical services at a cost of approximately \$240,000 a year. The Town Supervisor is an active member of the fire company and served as the fire company treasurer prior to taking office as Supervisor.

## Objective

The objective of our audit was to examine internal controls over selected financial activities. Our audit addressed the following related questions:

- Are internal controls over claims processing appropriately designed and operating effectively?
- Are internal controls over the procurement process appropriately designed and operating effectively?

## Scope and Methodology

We examined internal controls over claims processing and procurement for the period January 1, 2008 through February 18, 2010.<sup>3</sup>

<sup>3</sup> Our testing included three claims that were processed for payment in December 2007, but not paid until January 2008.

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. Town officials generally agreed with our recommendations and indicated they either plan to initiate or already have taken corrective action. Appendix B includes our comment on an issue 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 should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

## Claims Processing

Town officials are entrusted with public resources and have a responsibility to comply with laws and regulations, behave in an ethical manner, and safeguard the Town's resources. A good internal control system can assist officials in meeting these responsibilities. The Board is responsible for auditing and approving all claims against the Town, and for establishing appropriate internal controls. Such controls should ensure that each claim contains sufficient supporting documentation to determine compliance with policies and statutory requirements, and that the amount claimed represents an actual and necessary Town expense. Town Law also requires that each claim be accompanied by a statement, from the officer whose action generated the claim, indicating approval of the claim and confirming that the service was rendered or the goods were delivered. With few exceptions,<sup>4</sup> all claims must be audited before payment, and by the Board as a whole. After a claim has been audited, the Town Clerk must file each claim and prepare an abstract of the audited claims directing the Supervisor to pay the claimants the allowed amounts.

The Town's claims auditing process does not ensure that taxpayer funds are properly safeguarded and used only for authorized purposes. We found deficiencies including improper payment prior to audit, lack of adequate support to demonstrate the payments were proper, and lack of signatures acknowledging the receipt of goods and services.

We also found that only two Board members, appointed at the Board's annual reorganization meeting, actually audit claims. In addition, the Board improperly authorized the Supervisor to pay all credit card claims and claims less than \$1,000 prior to audit by the two Board members.

Due to these weaknesses, we reviewed 35 claims, totaling \$76,690, to determine if they contained sufficient documentation, itemization, and approvals to allow for an adequate audit, as well as evidence that an audit was performed prior to payment. We found the following deficiencies in 26 claims totaling \$71,314.<sup>5</sup>

Improper Payment — The Town made an improper and unsupported payment to a fire company<sup>6</sup> in the amount of \$20,000 by check dated

<sup>4</sup> For example, salaries, debt service, and, when authorized by Board resolution, public utility services, postage, freight, and express charges

<sup>5</sup> Numerous claims contained more than one deficiency.

<sup>6</sup> The fire company is a not-for-profit corporation that provides fire protection, first aid, and emergency medical services. The Town contracts with the fire company to provide these services at an annual cost of approximately \$240,000 a year, which is funded by an annual tax levy on a Town fire protection district.

December 28, 2007. The claim simply indicated “Board Resolution Generator” and was signed by the Supervisor and dated January 2, 2008. The minutes of a Board meeting held on December 13, 2007 indicated the payment was approved by the Board “for the purchase of an existing generator currently located at the Marilla Fire Hall from the Marilla Fire Company for the sum of \$20,000.” Town officials stated that the payment was a loan to the fire company and the Town did not actually purchase or receive the generator. However, this money was never repaid by the fire company. Instead, according to Town officials, the Town received \$20,000 six months later, in June 2008, from a Town resident. Town officials explained that the Town had issued this resident a special-use permit to receive, process, and dispose of branches, downed trees, and other storm debris in October 2006 on the condition that a donation be made to the fire company. According to a Board resolution, dated October 24, 2006, and a written agreement between the Town and the resident, the Town issued this permit to the resident with one of the conditions being that he donate \$20,000 to the fire company.<sup>7</sup> When the resident failed to comply with this condition, the Town paid the fire company the \$20,000, indicating by Board action that it was for the purchase of a generator. No goods or services were ever received for the \$20,000, which the Town accounted for as a general fund expenditure.

The State Constitution prohibits towns from loaning or giving money to any private corporation, including an incorporated fire company. Therefore, the Town lacked authority to loan \$20,000 to the fire company. Further, although towns have authority to contract with fire companies to provide fire protection, emergency service, and general ambulance service, the \$20,000 payment does not appear to be part of the consideration payable by the Town to the fire company under the contract. Therefore, the Town was under no statutory or contractual

---

<sup>7</sup>We are not aware of any authority for a town to condition the issuance of a special permit on the applicant making a “donation” to an incorporated fire company. As a rule, the conditions imposed in connection with the issuance of a special permit must be directly related to and incidental to the proposed use of the property, and aimed at minimizing the adverse impact to an area that might result from the issuance of the permit. A condition that does not seek to ameliorate the effects of the land use at issue is invalid. Here, it seems to us, that the “donation” to the fire company has little to do with the use of the applicant’s property. We also note that towns are authorized to impose fees for the issuance of permits, but we do not believe that the “donation” may be characterized as a permit fee which the Town is authorized to impose. The purpose of a permit fee imposed by a town is to defray the cost to the town of issuing the permit and inspecting or enforcing the permitted activity. Here, the resolution authorizing the special use permit makes clear that the purpose of the “donation” was “to fund costs that may result to [the] Marilla Fire Company as a result of the Temporary Special Permit.” Because the express purpose of the “donation” was to defray potential costs to the fire company, rather than the Town, we think it would be difficult to justify the “donation” as a permit fee.

obligation to advance the money to the fire company. Because the Town received no goods or services for the payment, and had no statutory or contractual obligation to make the payment, we believe the \$20,000 payment was an unconstitutional gift of Town moneys.

Further, Town officials acted improperly when they intentionally created an inaccurate record of the transaction between the Town and fire company in order to conceal its true nature. These actions not only compromised the transparency of Town operations but also the integrity of the Town's internal control system. When appropriately designed and implemented properly, internal controls, such as the claims audit function, can reduce the risk that improper payments will be made. However, when public officials charged with the responsibility of implementing controls intentionally circumvent them, they defeat the purpose of those controls and betray the public trust.

The Town Supervisor, who was a councilman in 2007, voted in favor of the resolution to issue the special use permit conditional on the \$20,000 donation to the fire company. At that time, he was also the fire company's treasurer. While the Supervisor's participation in this matter did not violate article 18 of General Municipal Law (the main State statute governing conflicts of interest on the part of municipal officers and employees), the courts of this State have held public officials to a high standard of conduct and, on occasion, have negated certain actions that — although not constituting a literal violation of article 18 of GML — violate the spirit and intent of the statute, are inconsistent with public policy, or suggest self-interest, partiality or economic impropriety. Based on these principles, to avoid even an appearance of impropriety, the Supervisor should refrain from making or participating in official decisions involving or benefiting the fire company.

Unsupported Payments — Seventeen claims totaling \$60,940 lacked adequate supporting documentation to demonstrate that the payments were proper. For example, Town officials could not provide adequate documentation to demonstrate that the following claims were valid:

- In December 2007, the Town made an unsupported payment of \$26,000 to a vendor for constructing a veterans' memorial. The payment was not listed on the abstract of audited claims and there was no claim form or invoice to support the payment.
- In January 2008, the Town made an unsupported payment of \$2,500 to the fire company. According to the Supervisor, the payment represented a reimbursement to the fire company for two lost generators. The Supervisor stated that the

reimbursement was owed to the fire company, because the Town had applied for State assistance to replace the equipment on behalf of the fire company. Town officials were unable to provide supporting documentation to evidence that the request that was submitted for State assistance identified and included the purported loss of the fire company's generators. This activity, when considered in light of the \$20,000 unsupported payment noted previously, raises significant concerns with respect to Town officials' actions, especially as they relate to the fire company.<sup>8</sup>

Claims Paid Prior To Audit — Seventeen claims totaling \$58,572 were paid prior to being audited by the Board as required by Town Law.

Evidence of Receipt/Approval to Pay — Five claims totaling \$33,302 lacked signed documentation acknowledging receipt of the goods or services. For example, a payment of \$1,201 was made to purchase various office supplies but the payment did not have documentation signed by a Town official or employee to verify that the supplies had been received.

Because the Town paid incomplete or unsubstantiated claims, failed to properly audit claims before payment, and failed to verify that purchases were actually received, there is an increased risk that the Town made inappropriate, excessive, or unauthorized payments.

## Recommendations

1. The Board should discuss with the Town attorney whether there are grounds to recover the \$20,000 improper and unsupported payment made to the fire company.
2. The entire Board should properly audit all claims prior to payment.
3. The Board should ensure that all claims contain enough detailed information, supporting documentation, and proper approvals to demonstrate that the claims comply with statutory requirements and policies, that the amounts represent actual and necessary expenses, and that the goods and services were actually received.
4. The Supervisor should refrain from making or participating in official decisions involving or benefiting the fire company.

---

<sup>8</sup> As with the \$20,000 payment discussed above, to the extent that the Town received no goods or services for the \$2,500 payment to the fire company, we believe the payment was a gift in violation of the State Constitution.

## Procurement

The Board is responsible for designing internal controls to help safeguard the Town's assets by ensuring the prudent and economical use of taxpayers' moneys when procuring goods and services. GML requires that local governments solicit competitive bids for purchase contracts that exceed \$10,000 and contracts for public works<sup>9</sup> that exceed \$20,000 by public advertisement in the official newspaper of the Town.<sup>10</sup> For procurements below these thresholds, as well as for professional services and other procurements that fall within an exception to competitive bidding, GML requires the Board to adopt written policies and procedures. These policies and procedures must indicate, among other things, when Town officials must obtain price quotations or request proposals; establish the procedures for determining which method will be used; and provide for adequate documentation of the actions taken.

While the Board adopted a procurement policy<sup>11</sup> requiring that competitive prices be sought for most Town purchases, there are no provisions in the policy that address oversight of the procurement process to ensure compliance. Without a process to monitor compliance with its policy, the Board has no assurance that the Town is obtaining the best prices for goods and services. Further, the policy specifically exempts the procurement of professional services from its price competition requirements.

We found that Town officials did not consistently adhere to bidding requirements or to the Town's procurement policy. Town officials did not properly bid two purchases totaling over \$90,000 and did not comply with its procurement policy for six purchases totaling over \$36,000. In addition, the Town spent over \$182,000 for professional services procured without the benefit of competition.

### Competitive Bidding and Price Quotes

The Town may seek price competition by publicly advertising for bids or, when bidding is not required by law, by requesting proposals or obtaining written or verbal quotes from several vendors. Town officials may reject a low bid if it does not comply with bid specifications, or if the bidder is not a responsible bidder; in that case, they should document their reasons for rejecting the bid in order to demonstrate that they complied with bidding requirements. The Town's policy

<sup>9</sup> Public works contracts include both materials and labor.

<sup>10</sup> For any contract let or awarded on or after June 22, 2010, the threshold for purchase contracts is increased to \$20,000 and for public works contracts to \$35,000.

<sup>11</sup> In February 1995

requires the lowest responsible proposal or quote to be awarded the purchase or public works contract unless the purchaser prepares a written justification for not selecting the lowest offer. The appropriate use of competition provides taxpayers with the greatest assurance that goods and services are procured in the most prudent and economical manner, that goods and services of desired quality are being acquired at the lowest possible price, and that procurement is not influenced by favoritism, extravagance, or corruption.

We reviewed 98 payments totaling approximately \$514,000 made to 20 vendors, and the related purchases, for compliance with GML and the procurement policy adopted by the Board. Sixteen payments to eight of these vendors, totaling approximately \$281,000, were for purchases subject to competitive bidding requirements. The remaining 82 payments to 12 vendors were for purchases subject to the requirements of the Town's procurement policy and for the procurement of professional services.

Competitive Bidding—The Town did not comply with the competitive bidding requirements for one purchase (of the eight purchases subject to bidding requirements) totaling approximately \$26,000, and Town officials did not adequately document their reason for rejecting a low bid related to an expenditure of \$64,546.

- In 2008, the Town purchased a new radio system for the Highway and Sanitation Departments for approximately \$26,000. The request for bids was not publicly advertised, as required by GML. The Board authorized the Town Clerk to advertise a request for bids for the radio system, but the Town Clerk said she did not place the advertisement because she was not provided with the bid specifications. The Supervisor told us that he chose not to advertise because there were only two vendors capable of providing the product and services required; accordingly, he sent the bid specifications to two local vendors requesting a proposal or quote and selected the lowest quote. By opting not to publicly advertise for bids, Town officials failed to comply with GML and did not ensure the process was competitive and fair, affording all responsible bidders the opportunity to bid on the contract.
- The Town advertised for bids for the purchase of a refuse truck body in 2008. Three bids were received but the low dollar bidder was not awarded the purchase contract. The bid selected by the Town was for \$64,546, or \$646 greater than the lowest bid. According to the Highway Superintendent, the lowest bidder failed to meet the bid specifications; however, this was not properly documented. The bid tabulation sheet

listed all three bidders with no indication that any of them did not meet the required specifications or was not a responsible bidder.

Price Quotes — The Town’s procurement policy establishes the requirements for obtaining goods and services that are not statutorily required to be competitively bid. This policy specifically outlines when quotes or proposals are necessary and requires all supporting documentation be maintained. The policy also requires a good-faith effort to secure the required number of quotes, but if the purchaser cannot obtain the required number of quotes, he or she must document the attempt. The policy requires two verbal quotes for purchases between \$1,000 and \$2,999 and three written or faxed quotes for purchases between \$3,000 and \$9,999. For public works contracts, the policy requires two written or faxed quotes for contracts between \$1,000 and \$2,999 and three written or faxed quotes for contracts between \$3,000 and \$19,999. For all purchases or public works contracts less than \$999, the method used to secure the best pricing is left to the discretion of the purchaser.

Town officials did not always adhere to the procurement policy when obtaining goods and services. We reviewed nine purchases and public works contracts totaling \$50,416<sup>12</sup> that required quotes or proposals. Six of these purchases, totaling \$36,238, were not made in compliance with the Town’s procurement policy as follows:

- In one instance, although Town officials obtained the proper number of quotes, they did not select the vendor with the lowest quote, as required by the policy. In September 2008, the Town hired a contractor to replace windows in the Town Hall for a total cost of \$12,388. Town officials obtained written quotes from three vendors but did not select the contractor with the lowest quote. Town officials did not document a rationale for rejecting the lowest quote as required by policy. The Supervisor was unable to recall the reason. The lowest quote, of \$5,195, was over \$7,000 lower than the quote chosen.
- Five purchases totaling \$23,850 were procured without the required number of quotes. For example, in October 2008, the Town purchased and installed a new phone system for the Town Hall. The total cost for materials and labor was \$5,332. There was no evidence or documentation attached to the vouchers or on file to demonstrate that Town officials obtained or attempted to obtain the three written quotes/proposals required by the Town’s procurement policy.

---

<sup>12</sup> Included in our examination of \$514,000 in payments to 20 vendors

When Town officials and employees do not adhere to the statutory requirements for competitive bidding or the provisions of the Board's procurement policy, they cannot provide reasonable assurance that the lowest price is obtained for the product or service to be acquired. As a result, the taxpayers could incur unnecessary costs.

## Professional Services

The significant dollar amounts (and complexities) of professional service contracts increase the need to obtain quality services at competitive prices. GML does not require competitive bidding for the procurement of professional services that involve specialized skill, training and expertise, use of professional judgment or discretion, and/or a high degree of creativity. However, soliciting competition for professional services helps ensure that quality services are obtained at a reasonable cost and avoids the appearance of favoritism or impropriety. Additionally, formal contracts or agreements with professional service providers help to protect the Town's interests by clearly defining the services to be provided, the cost of those services, and the terms for payment. Town officials can also reference written agreements to ensure the services provided and claims for payment are in compliance with contract terms and conditions.

The Town's procurement policy does not require the use of competitive methods for acquiring professional services, such as the solicitation of proposals through a Request for Proposal (RFP) process or by obtaining price quotes, and does not provide procedural guidance for officials to procure professional services at the most favorable terms and in the best interest of Town taxpayers. In fact, the policy specifically exempts the procurement of professional services from its price competition requirements.

We reviewed payments made to three professional service providers, totaling \$182,386, during the audit period. These payments totaled \$120,369 for engineering services related to several capital projects, \$45,643 for legal services, and \$16,374 for information technology (IT) services. The Town did not solicit competition or competitive price quotes when procuring the professional services provided by these three vendors. For example, the same company<sup>13</sup> has been providing IT support services to the Town for over five years, and the Town has also purchased much of its computer equipment from this vendor for at least two years, without seeking competitive pricing from other vendors. In addition, the same firms have been providing engineering and legal services to the Town for over 14 years and the Town has not sought competition for these services since the Board originally selected these firms in January 1996. Finally, there were

---

<sup>13</sup> The company's president is the Town Clerk's brother-in-law.

no formal written contracts between the Town and its professional service providers.

When the Board does not seek competition for professional services, there is an increased risk that the Town is not paying the most reasonable price for those services, and the taxpayers do not have assurance that the Town's procurement of professional services is free of favoritism. Additionally, without formal written contracts with its service providers to clearly define each party's responsibilities and the agreed-upon conditions for payment, the Board cannot properly audit the related claims.

## **Recommendations**

5. The Board should require strict adherence to the requirements of its procurement policy and the bidding requirements of GML and regularly monitor for compliance during its audit of claims.
6. The Board should revise its procurement policy by prescribing the procedures and documentation requirements for obtaining professional services. Such procedures could include the use of an RFP process, where appropriate.
7. The Board should enter into formal contracts or written agreements with professional service providers that clearly define the services to be provided and establish the terms and conditions for payment.

**APPENDIX A**  
**RESPONSE FROM TOWN OFFICIALS**

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



## TOWN OF MARILLA

S-1740 TWO ROD ROAD  
MARILLA, NEW YORK 14102

(716) 652-5350  
FAX: (716) 652-2541

### Response to OSC Audit Report July 2010

We would like to note that this audit was conducted at the specific request of the Town Board. The Board contacted the Buffalo Regional Office of the OSC and asked to have its records and operations audited because of concerns that had arisen out of the pre-2008 Town administration, especially with respect to the Town's Highway Department. With a new Supervisor in place, the Board wanted advice and direction on actions it should take and changes it should make to best protect the Town's resources and integrity.

The Board is grateful for the guidance provided by OSC. It made many of the recommended changes during the course of the audit, as soon as the auditor made the recommendations. The Board is fully committed to abiding by the laws and regulations governing Town operations.

The Board has the following comments and explanations with respect to specific points made in the draft audit report.

1. The unsupported payment of \$26,000 in December of 2007 was made by the former Supervisor (who left office 12/31/2007). No other members of the Board were aware that such a payment was made. Since this was brought to the attention of the Board by the auditor, the Board now reviews cancelled checks received from the bank to ensure that no unauthorized checks have been written.
2. With respect to the \$20,000 loan to the Fire Company, the Town Attorney has advised the Town Board that there are grounds to recover that amount, and the Board will address this issue with the Fire Company. We would like to note that the transaction did not create any financial detriment to the Town, since the \$20,000 was repaid to the Town by the resident who had promised to pay the money to the Fire Company.
3. The unsupported payment in January of 2008 of \$2,500 to the Fire Company was to replace two generators that the Fire Company had set up to allow the signal lights to work during the October storm but were stolen. The Town received a grant to replace the stolen generators which was worked out by the former Supervisor. The grant funds were used to reimburse the Fire Company for their loss but the current board was unable to provide supporting documentation because any such documentation was missing following the former Supervisor's departure from office.
4. As of February 2010 all claims are reviewed and signed by all five Board members.

5. As of February 2010 all claims have required complete documentation prior to signature.
6. Statements in the report that the current Supervisor was Treasurer of the Fire Company during the audit period are incorrect; he has not held any corporate office with the Fire Company since he became Supervisor. The Supervisor will abstain from Board votes relating to Fire Company business.
7. Competitive Bidding
  - a. There were only two vendors in Erie County with the capability of providing the required radio system in a timely fashion. Both were invited to bid, and both submitted bids.
  - b. The lowest bid for the refuse truck body bid did not meet specs. This was discussed by the Board at a work session, but not at the subsequent Board meeting, and thus was not reflected in the minutes of the Board meeting. The Highway Superintendent has copies of the bid specifications in his file. The purported low bidder did not meet the bid specifications as the vehicle exceeded the size set forth in the specifications. Prior to submitting a bid, the bidder brought the vehicle to the Town Highway Garage and it would not fit. He was advised at that time by the Highway Superintendent that the vehicle did not meet specifications but he submitted a bid anyway. The specifications are available in the file maintained by the Highway Superintendent.
  - c. With respect to bids for replacement windows, the lowest bid was for storm windows, not replacement windows. This fact was not mentioned at the Board meeting when the lowest bid for replacement windows was accepted.
  - d. The phone system was purchased on an emergency basis when the old system malfunctioned and it was not cost effective to replace it. The Town Hall could not be without a functioning phone system and there was no time to advertise. Nevertheless, the Town did obtain two bids for the new system.
8. The board has reviewed the bidding process and procurement policy and will monitor claims in accordance with such policy. The board has been advised of the change in the General Municipal Law as to dollar thresholds and intends to make some additional revisions to the policy to reflect those changes. One of the changes that the Town Board intends to make is in its award process is to make sure that a resolution is adopted by the Town Board when any award is made, whether it is as a result of a competitive bid or quote under the procurement policy. That resolution will contain all the relevant information as to the bidders and the basis for any award including information as to why any bid or quote was disallowed.

See  
Note 1  
Page 20

9. For 2011, the Board will reassess all professional services and use an RFP process for provision of those services. We wish to note that one reason the attorney and the engineering firm were retained for the last two years was the work they had already done and that was continuing for Water District #5.
10. Formal contracts have been secured for all professional services.

The Town Board is committed to addressing all issues raised by this audit to avoid any problems in the future.



George J Gertz  
Marilla Town Supervisor

## **APPENDIX B**

### **OSC COMMENT ON THE TOWN'S RESPONSE**

#### Note 1

During our audit, the Supervisor represented that he was also the fire company's treasurer. At the exit discussion he clarified the statement and indicated that his term as treasurer of the fire company ended on December 31, 2007. However, the Town Board approved the \$20,000 payment to the fire company on December 13, 2007, when the Supervisor was serving as both the fire company treasurer and a member of the Town Board.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

To accomplish the objective of the audit and obtain valid audit evidence, we interviewed appropriate Town officials and employees, tested selected records, and examined pertinent documents for the period January 1, 2008 to February 10, 2010. We focused on ensuring that Town assets were safeguarded and the desired quality of goods and services were acquired at the lowest cost. Our procedures included the following steps:

- We reviewed 35 paid claims to determine if they were authorized and contained itemized receipts and sufficient supporting documentation; if the amounts claimed represented actual and necessary expenses; and if the claims were audited by the Board and approved for payment. We selected claims paid after January 1, 2008. Although all of the claims we reviewed were paid during the audit period, three of the claims were dated prior to January 1, 2008.
- We selected purchases made from 20 vendors during the period January 2008 to December 2009 to determine if they complied with GML and the Town's procurement policy. When necessary, we requested additional documentation to ascertain compliance.
- We examined the following records:
  - o Written policies and procedures
  - o Minutes of the Town Board
  - o Bank statements, canceled checks and canceled check images
  - o Abstracts of audited claims and other lists of paid claims including vendor payment history reports and general ledger cash disbursement listings
  - o Competitive bid and Request for Proposal documentation
  - o State and County contracts
  - o Written price quotes
  - o Claims and voucher packets including vendor invoices and other supporting documentation
  - o Credit card statements and supporting documentation.

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

## APPENDIX D

### HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller  
Public Information Office  
110 State Street, 15th Floor  
Albany, New York 12236  
(518) 474-4015  
<http://www.osc.state.ny.us/localgov/>

**APPENDIX E**  
**OFFICE OF THE STATE COMPTROLLER**  
**DIVISION OF LOCAL GOVERNMENT**  
**AND SCHOOL ACCOUNTABILITY**

Steven J. Hancox, Deputy Comptroller  
John C. Traylor, Assistant Comptroller

**LOCAL REGIONAL OFFICE LISTING**

---

**ALBANY REGIONAL OFFICE**

Kenneth Madej, Chief Examiner  
Office of the State Comptroller  
22 Computer Drive West  
Albany, New York 12205-1695  
(518) 438-0093 Fax (518) 438-0367  
Email: [Muni-Albany@osc.state.ny.us](mailto:Muni-Albany@osc.state.ny.us)

Serving: Albany, Columbia, Dutchess, Greene,  
Schenectady, Ulster counties

**BINGHAMTON REGIONAL OFFICE**

Patrick Carbone, Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 1702  
44 Hawley Street  
Binghamton, New York 13901-4417  
(607) 721-8306 Fax (607) 721-8313  
Email: [Muni-Binghamton@osc.state.ny.us](mailto:Muni-Binghamton@osc.state.ny.us)

Serving: Broome, Chenango, Cortland, Delaware,  
Otsego, Schoharie, Sullivan, Tioga, Tompkins counties

**BUFFALO REGIONAL OFFICE**

Robert Meller, Chief Examiner  
Office of the State Comptroller  
295 Main Street, Suite 1032  
Buffalo, New York 14203-2510  
(716) 847-3647 Fax (716) 847-3643  
Email: [Muni-Bufferalo@osc.state.ny.us](mailto:Muni-Bufferalo@osc.state.ny.us)

Serving: Allegany, Cattaraugus, Chautauqua, Erie,  
Genesee, Niagara, Orleans, Wyoming counties

**GLENS FALLS REGIONAL OFFICE**

Karl Smoczynski, Chief Examiner  
Office of the State Comptroller  
One Broad Street Plaza  
Glens Falls, New York 12801-4396  
(518) 793-0057 Fax (518) 793-5797  
Email: [Muni-GlensFalls@osc.state.ny.us](mailto:Muni-GlensFalls@osc.state.ny.us)

Serving: Clinton, Essex, Franklin, Fulton, Hamilton,  
Montgomery, Rensselaer, Saratoga, Warren, Washington  
counties

**HAUPPAUGE REGIONAL OFFICE**

Ira McCracken, Chief Examiner  
Office of the State Comptroller  
NYS Office Building, Room 3A10  
Veterans Memorial Highway  
Hauppauge, New York 11788-5533  
(631) 952-6534 Fax (631) 952-6530  
Email: [Muni-Hauppauge@osc.state.ny.us](mailto:Muni-Hauppauge@osc.state.ny.us)

Serving: Nassau, Suffolk counties

**NEWBURGH REGIONAL OFFICE**

Christopher Ellis, Chief Examiner  
Office of the State Comptroller  
33 Airport Center Drive, Suite 103  
New Windsor, New York 12553-4725  
(845) 567-0858 Fax (845) 567-0080  
Email: [Muni-Newburgh@osc.state.ny.us](mailto:Muni-Newburgh@osc.state.ny.us)

Serving: Orange, Putnam, Rockland,  
Westchester counties

**ROCHESTER REGIONAL OFFICE**

Edward V. Grant, Jr., Chief Examiner  
Office of the State Comptroller  
The Powers Building  
16 West Main Street – Suite 522  
Rochester, New York 14614-1608  
(585) 454-2460 Fax (585) 454-3545  
Email: [Muni-Rochester@osc.state.ny.us](mailto:Muni-Rochester@osc.state.ny.us)

Serving: Cayuga, Chemung, Livingston, Monroe,  
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates counties

**SYRACUSE REGIONAL OFFICE**

Rebecca Wilcox, Chief Examiner  
Office of the State Comptroller  
State Office Building, Room 409  
333 E. Washington Street  
Syracuse, New York 13202-1428  
(315) 428-4192 Fax (315) 426-2119  
Email: [Muni-Syracuse@osc.state.ny.us](mailto:Muni-Syracuse@osc.state.ny.us)

Serving: Herkimer, Jefferson, Lewis, Madison,  
Oneida, Onondaga, Oswego, St. Lawrence counties