



# Town of Hempstead Sanitary District No. 7 Post-Employment Payments, Claims Processing and Professional Services

Report of Examination

Period Covered:

January 1, 2012 — December 31, 2013

2014M-198



Thomas P. DiNapoli

# Table of Contents

	<b>Page</b>
<b>AUTHORITY LETTER</b>	1
<b>EXECUTIVE SUMMARY</b>	2
<b>INTRODUCTION</b>	4
Background	4
Objective	4
Scope and Methodology	4
Comments of District Officials and Corrective Action	5
<b>POST-EMPLOYMENT PAYMENTS</b>	6
Recommendations	7
<b>CLAIMS PROCESSING</b>	8
Claims Audit Process	8
Treasurer's Duties and Appointment	11
Recommendations	12
<b>PROFESSIONAL SERVICES</b>	14
Recommendations	17
<b>APPENDIX A</b> Response From District Officials	19
<b>APPENDIX B</b> OSC Comments on the District's Response	23
<b>APPENDIX C</b> Audit Methodology and Standards	25
<b>APPENDIX D</b> How to Obtain Additional Copies of the Report	27
<b>APPENDIX E</b> Local Regional Office Listing	28

# State of New York Office of the State Comptroller

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

December 2014

Dear District 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 Board of Commissioners 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 Hempstead Sanitary District No. 7, entitled Post-Employment Payments, Claims Processing and Professional Services. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State 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

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### EXECUTIVE SUMMARY

The Town of Hempstead Sanitary District No. 7 (District) is located in the Town of Hempstead in Nassau County. It is responsible for refuse and garbage collection and disposal for residents and some businesses located in the District. The District is governed by an elected five-member Board of Commissioners (Board). The General Sanitation Supervisor is the District's chief executive officer and is responsible, along with other administrative staff, for day-to-day management under the Board's direction. A Board member serves as the Treasurer. The Treasurer is the District's chief fiscal officer, responsible for the receipt, custody, disbursement and accounting of District funds.

The District's total expenditures were approximately \$9.2 million for fiscal year 2012 and \$9.8 million<sup>1</sup> for fiscal year 2013, primarily funded by real property taxes.

#### **Scope and Objective**

The objective of our audit was to examine the Board's oversight of selected financial operations for the period January 1, 2012 through December 31, 2013. Our audit addressed the following related questions:

- Did the Board ensure that post-employment compensation agreements and payments were authorized by law?
- Are claims audited by the Board and paid by a properly appointed Treasurer?
- Did the Board use competitive methods when procuring legal and consulting services?

#### **Audit Results**

The Board entered into "deferred compensation" agreements with a former sanitation supervisor (Supervisor A) and his successor (Supervisor B)<sup>2</sup> and made payments from the District's general fund, despite having no legal authority to do so. The board of a special district has no authority to provide for this type of benefit by resolution or pursuant to individual employment contracts. These agreements were not in accordance with a deferred compensation plan as authorized under New York State Finance Law and New York State Deferred Compensation Board regulations. As a result of these unauthorized agreements, the Board has improperly paid more than \$391,900<sup>3</sup> to Supervisor A over the past 15 years and \$421,353 to Supervisor B during our audit period.

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<sup>1</sup> Unaudited

<sup>2</sup> Supervisor A's son

<sup>3</sup> Including \$51,122 during our audit period

The Board also has not established a thorough claims audit process to ensure that all claims are audited by the Board and that the Treasurer disburses District moneys only upon receipt of a signed warrant. The Board improperly delegated check signing authority to all Board members and allowed them to issue checks without the Treasurer's signature and without a proper claims audit. In addition, despite having no authority to do so, the Board appointed two individuals as Treasurer and divided the Treasurer's duties between them. Our review of 26 claims totaling \$723,556 found that the Board, as a whole, did not audit or prepare a warrant for any of the claims, and four checks totaling \$393,246 did not have the Treasurer's signature.

We found deficiencies in all claims reviewed, including a lack of supporting documents such as purchase order forms, verbal and written quotes and itemized invoices. Further, for 13 claims, totaling \$168,664, the District did not follow its procurement policy. For example, the District did not competitively bid the purchase of a truck part costing \$69,416. Because the Board did not establish adequate policies and procedures for a proper and thorough audit of all claims, there is limited assurance that claims are accurate, complete and for legitimate District purchases before they are paid.

Finally, District officials have not established sufficient internal controls over the procurement of professional services. The District hired three professional service providers, paid a total of \$263,277, without issuing requests for proposals or using any other form of competition. District officials also did not enter into adequate written agreements with these service providers. For example, the Board paid management consulting fees totaling \$119,800 to the company of the retired sanitation supervisor (Supervisor A) during the audit period, based on a written agreement that lacked sufficient detail of the services to be provided to the District. In addition, an attorney who was paid \$97,490 during our audit period had no written agreement on file with the District. The Board also did not require these vendors to submit itemized invoices detailing the work performed. Without properly itemized invoices, officials cannot determine if they are receiving an adequate service for the amount charged, and the District could be paying for services not received. Because of these weaknesses, the District may have overpaid these professional service providers \$71,160.

### **Comments of District Officials**

The results of our audit and recommendations have been discussed with District officials and their comments, which appear in Appendix A, have been considered in preparing this report. Appendix B contains our comments on issues raised in the District's response.

# Introduction

## Background

The Town of Hempstead Sanitary District No. 7 (District) is located in the Town of Hempstead in Nassau County. The District provides garbage collection and recycling pickup services to more than 13,000 households and 950 commercial businesses in Oceanside and parts of Baldwin and East Rockaway. Owners of homes and businesses within the District fund the District through real property taxes, and the District provides services to the residents and some of the businesses. The District's total expenditures were approximately \$9.2 million for fiscal year 2012 and \$9.8 million<sup>4</sup> for fiscal year 2013.

The District is governed by an elected five-member Board of Commissioners (Board). The Board is responsible for managing District operations and making sound financial decisions in accordance with the law and in the best interest of the taxpayers. The Board is responsible for auditing and approving claims prior to payment. A Board member serves as the Treasurer. The Treasurer is the District's chief fiscal officer, responsible for the receipt, custody, disbursement and accounting of District funds. The General Sanitation Supervisor (Supervisor) is the District's chief executive officer and is responsible, along with other administrative staff, for day-to-day management under the Board's direction.

## Objective

The objective of our audit was to examine the Board's oversight of selected financial operations. Our audit addressed the following related questions:

- Did the Board ensure that post-employment compensation agreements and payments were authorized by law?
- Are claims audited by the Board and paid by a properly appointed Treasurer?
- Did the Board use competitive methods when procuring legal and consulting services?

## Scope and Methodology

We reviewed the District's post-employment compensation agreements for compliance with legal requirements and examined the District's claims processing and procurement process for legal and consulting services for the period January 1, 2012 through December 31, 2013.

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<sup>4</sup> Unaudited

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  
District Officials and  
Corrective Action**

The results of our audit and recommendations have been discussed with District officials and their comments, which appear in Appendix A, have been considered in preparing this report. Appendix B contains our comments on issues raised in the District's response.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board of Commissioners to make this plan available for public review in the Secretary's office.

## Post-Employment Payments

The Board entered into agreements with two previous Supervisors to provide them with a series of annual payments when they retired, if they worked past a specified year. The Board paid former sanitation supervisors (Supervisor A and Supervisor B) \$51,122 and \$421,353, respectively, during our audit period. The Board paid these amounts from the District's general fund despite having no statutory authority to make such payments.

District officials could not provide us with a written agreement or Board resolution authorizing the payments to Supervisor A, but instead referred us to the notes of District's financial statements for further details. The District's 2012 financial statement note titled "Deferred Compensation Agreements" stated that the District entered into an agreement with Supervisor A on June 13, 1988 to pay him \$20,000 annually for 15 years if he retired from the District at any time after March 1, 1996. If Supervisor A did not retire in 1996, the District agreed to increase the annual payments by 10 percent for each year he continued employment.

Supervisor A retired from the District in June 1998, and the District started making annual payments of \$26,217 to him in January 1999. On September 1, 2011, the Board approved the buyout of the balance of this agreement for \$51,122 and made the payment on January 3, 2012.

The Board entered into a similar agreement with the succeeding supervisor, Supervisor B (Supervisor A's son). District officials provided a copy of a written agreement entitled "Agreement for Deferred Compensation Salary Continuation" dated June 16, 1998. The agreement states that the District established the agreement "in order to induce the Employee to remain" with the District and "forego other employment opportunities." Supervisor B's agreement states that if he retired after March 1, 2008, he would be paid \$25,000 per year for 15 years. If he continued to work after March 2008, his benefit would increase by 10 percent each year.

Supervisor B retired from the District in October 2013. The Board approved the buyout of Supervisor B's agreement for \$421,353 on January 5, 2012, and made the payment on January 14, 2012.

New York State Finance Law contains authority for a public improvement or special district to provide deferred compensation plans for its employees pursuant to regulations of the New York State Deferred Compensation Board (DCB) and the Internal Revenue Code

(IRC). A district must either participate in the State's plan, adopt the model plan in accordance with DCB's regulations or adopt another plan in accordance with the regulations of the DCB and the IRC. If a district develops its own plan, regulations require that the district file with the DCB a ruling or determination by the Internal Revenue Service stating that the plan meets IRC requirements. We found no evidence that the District has adopted such a deferred compensation plan and that the post-employment payments were made pursuant to such a plan.

Further, New York State Retirement and Social Security Law prohibits municipalities from creating local retirement systems. Notwithstanding this prohibition, under limited circumstances, local governments may make certain post-employment payments to former employees pursuant to a collective bargaining agreement.<sup>5</sup> There is no similar authority, however, for the board of a special district to provide for this type of post-employment payment by resolution or pursuant to individual employment contracts. As a result, we believe the Board was not authorized to pay more than \$391,900<sup>6</sup> to Supervisor A over the past 15 years, and \$421,353 to Supervisor B during our audit period from the District's general fund.

## Recommendations

The Board should:

1. Immediately discontinue making these types of payments to any District employees or former employees.
2. Discuss with the District's legal counsel the potential to recoup all or part of payments already made.
3. Ensure that any future post-employment payments provided are in accordance with law.
4. Retain original documents and resolutions regarding any employee benefits.

<sup>5</sup> See e.g., 2000 Opinions of the State Comptroller No. 2000-4, at 10. It may also be possible in some cases to make certain post-employment payments to former employees pursuant to a local law. However, the District does not have home rule powers.

<sup>6</sup> Thirteen years at \$26,217 plus the \$51,122 payment during our audit period totals \$391,943.

## Claims Processing

The Board is responsible for establishing policies and procedures for the audit and payment of claims. The audit and approval of claims is one of the most critical elements of the District's internal control system. To ensure that disbursements are for valid District expenditures and that goods or services have actually been received, claims must be audited and approved prior to payment. New York State Town Law (Town Law) requires a majority of the Board as a whole to audit all claims against the District. The Board must acknowledge its audit in the public record of Board minutes and direct the Treasurer to pay each claimant included in the warrant or abstract (list of audited claims to be paid). The Treasurer, as the District's chief financial officer, is responsible for the custody of all District money and for making payment of claims (vendor bills) after the Board audits and approves them.

The Board has not established a thorough claims audit process to ensure that all claims are audited by the Board and that the Treasurer disburses District money only upon receipt of a signed warrant. The Board has improperly delegated check-signing authority to all Board members and has allowed them to issue checks without the Treasurer's signature and a proper claims audit. In addition, despite having no authority to do so, the Board has appointed two individuals as Treasurer and divided the Treasurer's duties between them. As a result, the Board did not audit or prepare a warrant for any of the 26 claims reviewed in our test sample, totaling \$723,556.<sup>7</sup> In addition, four checks totaling \$393,246 did not have the Treasurer's signature.

### Claims Audit Process

The Board is responsible for auditing and approving claims and establishing internal controls over the claims auditing process. The claims auditing process should be deliberate and thorough, ensure that each claim contains sufficient supporting documentation to verify compliance with Board-adopted policies and statutory requirements and ensure that the amounts claimed represent proper District expenditures. The Board must adopt a resolution approving the Board-audited claims for payment and all approved claims should be listed on an abstract. The abstract should specifically state the number and amount of claims that the Treasurer is authorized to pay. The Board must direct the Treasurer to pay the claims listed and document such action in the Board minutes.

Each claim should include a purchase order (PO) which authorizes placement of an order with the vendor. The PO subsequently provides

<sup>7</sup> See Appendix C for our sampling methodology

a cross-reference to the vendor's invoice, an itemized original receipt and other applicable documentation to allow for a proper audit, including the signature of the person giving rise to the claim.

The Board has not established a thorough claims auditing process to ensure that all claims are in compliance with Board-approved and statutory requirements. We reviewed a sample of 26 claims totaling \$723,556 and found that the Board, as a whole, did not audit or prepare an abstract for any of the claims. Instead, two Board members review claims for approval and a list of the checks paid is presented at the subsequent Board meeting. Our review of Board minutes relating to the 26 claims showed that the minutes did not acknowledge any Board audit, did not list the claims to be paid by the Treasurer and did not instruct the Treasurer to issue payment. Purchase requisitions or purchase order forms were not prepared or attached to 22 of the claims totaling \$661,914.

Further, the District did not have supporting documentation for four claims totaling \$34,500. Two of these claims were for a post-employment payment to Supervisor A and Medicare reimbursement. Officials could not provide a copy of the post-employment payment agreement for one payment totaling \$24,735 and could not provide supporting documentation for a Medicare Part B reimbursement<sup>8</sup> of \$2,014. While all Medicare reimbursement payments to other retirees during our audit were at the lowest rate, Supervisor A was paid the highest rate. According to the Treasurer, Supervisor A verbally informed the Treasurer of the rate he and his wife pay for Medicare Part B.<sup>9</sup>

We also found that the District did not follow New York State General Municipal Law (GML) or its own procurement policy for 13 claims totaling \$168,664.

- Officials did not solicit competitive bids for the purchase of a refuse truck part costing \$69,416, as required by GML. District officials stated that the vendor is a sole source, but no documentation was available to support their claim.
- Three claims totaling \$48,296 were purchased on State or other government contracts according to District employees. However, none of the claims had contracts, contract numbers or contract rates attached. For example, employees told us that a fuel purchase for \$29,250 was purchased on State contract,

<sup>8</sup> The District's union agreements allow for reimbursement of Medicare Part B for retirees (and spouse, if married). The District reimburses the retirees at the monthly Medicare Part B rate, quarterly. Married retirees receive double the rate to account for their spouse.

<sup>9</sup> After we inquired with the District, Supervisor A provided a copy of his Medicare statement to support the amount.

but the claim did not have contract details attached. District employees gave us a contract number, but the vendor was not listed on that State contract, as authorized by the New York State Office of General Services and District officials could not furnish a copy of the contract or contract rates for our review.

- One purchase of \$11,230 was not competitively bid, as required by the District's policy<sup>10</sup> (and, alternatively, no quotes were obtained).
- Officials did not obtain quotes,<sup>11</sup> as required, for seven claims totaling \$31,766. For example, a purchase of \$8,907 for brake parts should have had three written or faxed quotes attached, but no quotes were obtained prior to purchase. Another purchase of office supplies for \$2,900 did not have documentation showing that two verbal quotes were obtained. District employees confirmed that they did not obtain quotes for the purchase but selected the vendor because the store was close by.
- One claim totaling \$7,955 did not have a documented explanation<sup>12</sup> supporting the District's decision to award a contract to a vendor who was not the lowest bidder.

Lastly, none of the 26 claims we reviewed had a statement by the officer or employee whose action gave rise to the claim; therefore, it is not clear who initiated the transactions.

The Board did not ensure that detailed claims audit procedures were in place and did not perform a proper and thorough audit of claims. In addition, the District's claim form<sup>13</sup> does not require that supporting documentation and sufficient evidence be submitted prior to payment of all claims. The Board's failure to audit claims increases the risk that payments are not for proper District purposes, that goods or services are not of the quality or price agreed upon or that goods and services are not actually received.

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<sup>10</sup> The District's procurement policy requires advertising for bids for purchases of \$10,000 or more.

<sup>11</sup> District policy requires two verbal quotations for purchases between \$1,000-\$2,999 and three written or faxed quotations for purchases between \$3,000-\$9,999.

<sup>12</sup> The District's procurement policy requires documentation and explanation whenever a contract is awarded to other than the lowest responsible bidder. The explanation should include how the District will achieve savings or why the lowest bidder was not responsible.

<sup>13</sup> The District has a standard claim form to be used by vendors and officials. A claim form or voucher should be itemized and accompanied by a statement by the officer whose action gave rise to the claim that he or she approves the claim and that the services were rendered or the goods and materials received. A claim form may also provide space to document that the claim was audited.

## **Treasurer's Duties and Appointment**

New York State Town Law and the Nassau County Civil Divisions Act each establish the Treasurer as custodian of all District money, responsible for the receipt, custody, disbursement and accounting of District funds. Therefore, the Treasurer, who may be a Board member, is responsible for signing all checks to pay claims against the District. The Board may, at its discretion, require another District officer to countersign checks and may appoint a Deputy Treasurer to sign checks in the Treasurer's absence. The Treasurer is also responsible for preparing monthly and annual financial reports. An annual report of expenditures must be filed with the Town Clerk each year and posted on the District's website. Should the Treasurer require assistance, the Board must ensure that the individual hired is qualified and hired with an appropriate Nassau County Civil Service (Civil Service) title.

Treasurer's Duties – The Board appointed a Board member as Treasurer. However, the Treasurer performs few duties regarding the receipt, custody, disbursement and accounting of District funds and does not sign all District checks. Instead, the Board authorized all Board members to sign checks and gave certain other duties to an individual with a Civil Service title of District Treasurer, thereby curtailing the Treasurer's duties.

The Board allows any two available Commissioners to sign District checks; therefore, the Treasurer's signature is not on all checks. As a result of this weakness, we reviewed 26 claims<sup>14</sup> totaling \$723,556 for which the District issued checks and found that the Treasurer did not sign four checks totaling \$393,246.

By improperly delegating check signing authority to all Board members, the Board has developed a check signing practice that is not in compliance with the law and has diminished an important segregation of functions designed to help ensure that District funds are properly expended.

Appointment of District Treasurer – The Board has not ensured that a properly appointed individual is performing all the Treasurer's duties. In addition to the Treasurer, the Board appointed a full-time employee as District Treasurer and gave him responsibility for the receipt and accounting of District funds. Although this individual is not authorized to sign District checks and does not take an oath of office, he has a Civil Service title of Treasurer, a position which is exempt from competition. His responsibilities are processing receipts and preparing deposits and monthly bank reconciliations.

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<sup>14</sup> The same 26 claims discussed under "Claims Audit Process"

The Board has no authority to appoint two Treasurers and divide the Treasurer's duties. Further, because the properly appointed Treasurer does not perform duties related to depositing, disbursing or accounting for District funds, internal controls over cash disbursements are weakened and there is a significant risk that errors or unauthorized payments could be made and not be detected.

In addition, because the individual hired to perform accounting duties was not hired based on Civil Service qualifications, the Board has not ensured that all accounting and clerical duties are performed by an individual with proper training and experience. Management letters from the District's external auditors for fiscal years 2011 and 2012 cited District officials for hiring a Treasurer lacking the expertise to prepare the District's financial statements and recommended that he receive additional accounting training. The Treasurer has not filed financial reports with the Town Clerk since 2009 and has not posted financial statements to the District website. The failure to make such information readily available prevents officials and taxpayers from obtaining the necessary information to make informed decisions.

## **Recommendations**

The Board should:

5. As a whole, conduct a deliberate, thorough and timely audit of all claims prior to payment by the Treasurer.
6. Present all claims to be paid on an abstract and record approval of claim payments in the Board minutes.
7. Ensure that District employees use purchase requisition or PO forms for approval prior to ordering goods and services.
8. Ensure that all District employees who are involved in the procurement process are aware of and comply with GML and the District's procurement policy.
9. Properly appoint one person as Treasurer with all the duties and responsibilities as established by law.
10. Ensure that District employees are hired with appropriate Civil Service titles to ensure they are adequately qualified to perform all the required functions.

District officials should:

11. Update the claim form to require the signature of the officer or employee whose action gave rise to the claim.

12. File the District's most recent financial statements with the Town Clerk and post them on its website.

The Treasurer should:

13. Sign all checks as required by law. If the Board requires checks to be countersigned, a specific District officer or Commissioner should be delegated that responsibility.

## Professional Services

GML does not require competitive bidding for the procurement of professional services that involve specialized skill, training or expertise, professional judgment or discretion; or a high degree of creativity. However, GML requires the District to adopt a procurement policy which provides guidance for all procurements not subject to competitive bidding, including professional services, to assure the prudent and economical use of public money without favoritism, extravagance or corruption. Soliciting written proposals or quotes, as through a request for proposals (RFP) process, is an effective means to procure professional services at the best value and document how the selection was made. Generally, there are no set rules regarding the frequency of seeking competition for professional services. However, provisions should be made for periodic solicitations at reasonable intervals.

In addition, the District should have a written agreement with each professional service provider with a clearly defined and mutually agreed-upon basis for determining entitlement to payments. Written agreements should include the timeframe and description of services to be provided and may be used to verify that the fees charged are in accordance with the Board's intent. Lastly, the District should require vendors to submit an itemized invoice to explain the services provided and billed for, to help ensure that payments are appropriate.

The District's procurement policy does not require officials to seek competition for professional services. During our audit period, officials paid \$263,277 to three professional service providers without soliciting competition. In addition, the Board did not properly enter into detailed written agreements with its professional service providers prior to receiving services from these vendors. The District did not obtain itemized invoices from the District's management consultant and Board counsel. As a result, the District paid two of the vendors \$71,160 more than the agreed-upon amounts and District officials have no assurance that they received all services paid for.

Competition – The District developed a procurement policy, as required, but the policy does not require solicitation of written proposals, quotes or other methods of cost and quality comparison for acquiring professional services. Between January 1, 2012 and December 31, 2013, officials paid \$119,800 for consulting services and \$143,477 for legal services without soliciting competition. Legal services included \$97,490 to the District counsel and \$45,987 to another firm to provide legal services in all litigation and non-litigation matters brought against or by the District.

The consultant is the former Supervisor (Supervisor A), who retired from the District in 1998 and was hired as a management consultant shortly thereafter. The payments to Supervisor A for consulting services were in addition to his post-employment compensation (as detailed in the “Post-Employment Payments” section of this report). Officials told us that Supervisor A’s knowledge and experience were invaluable to the District. However, we found that he was hired without any competitive process, during the time his son was the District’s Supervisor. As of December 2013, the consultant’s contract was extended to December 2018.

Because the District does not solicit competition for professional services, it has been using the same attorney for 25 years and the same management consultant for 15 years. Without a competitive process, taxpayers have limited assurance that the District procured \$263,277 in professional services in the most prudent and economical manner.

Written Agreements – The District does not have adequate written agreements with three professional service vendors. During our audit period, the District paid District counsel \$97,490 (\$48,250 for a retainer, \$47,160 for administrative services and \$2,080 for services related to elections). Although the District counsel’s retainer rate was approved through Board resolutions, there are no retainer agreements on file to document the specific legal services to be provided, the timeframe for the services to be provided and the billable rates for services not covered by the retainer. According to District officials, District counsel serves as the Board’s attorney to answer legal questions as well as assist with contract negotiations and sale of real property. During the audit period, in addition to the retainer, the District counsel charged \$100 per hour for administrative services such as written correspondence with insurance companies and other attorneys, opening the District’s mail and spot-checking bank reconciliations.

The District entered into a written agreement with a management consultant to provide “...operations management advice to the District and assist the District with issues that arise during the consulting period.” Since no additional details exist in writing to clarify the services to be provided, we asked officials and the consultant about the type of work done. According to their responses, the consultant’s services include assisting the District with the sale of real property, providing advice on labor contract negotiation and garbage routes, purchase of equipment and attending Board meetings. During our audit period, the consultant was paid \$4,000 per month. Between November 2012 and February 2013 he was paid an additional \$6,000 per month, totaling \$24,000. Claims for these payments indicate that the consultant charged for services provided due to Hurricane

Sandy. However, the agreement did not stipulate extra payments or a varying rate for additional services provided, or what would constitute additional services. District officials said the payments were approved by the Board, but they were unable to provide us with the Board resolution approving the increased rate.

In addition, when we met with District officials to present our findings at the end of fieldwork, officials requested the presence of the management consultant to advise them. The consultant provided responses to our audit findings on the District's behalf and directed District employees to look for missing documentation related to our audit findings. Due to these actions, combined with the lack of specificity in the District's written agreement with the consultant, it is unclear whether the consultant's role is solely an advisory function or whether he is permitted to perform discretionary functions and responsibilities which must be performed by a District official.

The District's written agreement with the consultant lacks sufficient detail to determine what services he is expected to provide. As a result, there was no way to verify what services were covered under the agreement or determine whether the additional payments totaling \$24,000 were appropriate.

Lastly, the District separately hired a law firm to provide legal services in all litigation and non-litigation matters brought against or by the District. The agreement indicates all rates to be paid and additional costs that the District could incur but does not specify a timeframe. According to officials, there was no timeframe included in the initial agreement because the District can end the agreement with the vendor at any time. The District has had the law firm on retainer since 2010 and paid it \$45,987 during our audit period. There are no resolutions authorizing the contract extension or specifying the service to be provided. In addition, since the District had no written agreement on file for its District counsel and hired this law firm on retainer, the District is paying two attorneys for what appears to be the same service.

The Board did not properly request, review and approve detailed written agreements with District vendors. Without clear written agreements, there is no documented understanding of what compensation professional service providers are entitled to and the extent of the services they are required to provide.

Itemized Invoices – An itemized invoice supports claims by providing an explanation of the services provided and billed for. The District counsel, who received 39 payments totaling \$97,490, did not submit any invoices during our audit period. According to the vendor, he

submits vouchers to the Treasurer documenting the services provided. We reviewed the claims for all 39 payments to determine the level of detail documented on vouchers and whether payments were appropriately paid in accordance with Board-approved rates. None of the claims were itemized and simply stated they were for either legal (retainer) or administrative services. Administrative claims also noted the number of hours worked. Because no written contract or retainer agreement was available, we compared retainer claims to Board resolutions to determine whether retainer payments were at the authorized amounts. Although we were able to verify that the vendor charged the same \$100 rate on each claim, we could not confirm the appropriateness of administrative payments because there was no written agreement or Board resolution provided by District officials or by the vendor to authorize the administrative payments.

Similarly, none of the invoices for the management consultant were itemized nor did the claims describe in detail what services were provided. Furthermore, the consultant stated that he has never maintained any written documentation to support his invoices. During the audit period, the District made 28 payments to the vendor, totaling \$119,800, including the four payments of \$6,000 for Hurricane Sandy services. These extra claims did not give any detail identifying the out-of-the-ordinary services that prompted the additional payments.

The Board does not require vendors to submit itemized invoices for all claims that provide a full description of the services provided along with supporting documentation. As a result, two vendors did not submit itemized invoices to the District when requesting payment for services and were paid a total of \$71,160 more than agreements and Board resolutions reflect. Without properly itemized invoices, officials cannot determine if they are receiving adequate services for the amount charged, and the District could be paying for services not received.

When the Board does not require the use of competition for obtaining professional services, there is an increased risk that the District will not procure services of the best quality and cost without favoritism or corruption. Additionally, without adequate written agreements detailing the type and timeframe of services to be provided and the compensation to be paid, the District may not be receiving all services contracted for or could pay more for services than intended.

## **Recommendations**

14. The District should consider amending its procurement policy to include the use of competition when procuring professional services.

The Board should:

15. Enter into a written agreement with all providers of professional services to the District, indicating the contract period, the services to be provided, the timetable for completion and the basis for compensation.
16. Require all professional service providers to submit itemized invoices that provide a full description of the services provided along with supporting documentation.

## **APPENDIX A**

### **RESPONSE FROM DISTRICT OFFICIALS**

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



# OCEANSIDE SANITATION DEPARTMENT

## COMMISSIONERS

Joseph Cibellis  
Florence Mensch  
Christopher Powers  
Edward Scharfberg  
Thomas M. Lanning

Sanitary District No. 7  
Town of Hempstead  
90 Mott Street  
Oceanside, N.Y. 11572

October 2, 2014

Ira McCracken, Chief Examiner  
NYS Office Building, Room 3A10  
250 Veterans Memorial Highway  
Hauppauge, New York 11788-5533

Re: Sanitary District No.7  
Oceanside, New York

Dear Mr. McCracken,

This is in response to your Draft Audit of the District for the period covering January 1, 2012 through December 31, 2013. The Board of Commissioners each received a copy of the Audit Draft and has approved the submission of this response to your office. The Commissioners believe that it would be very productive if they could meet with you as a group, and not individually, along with District Counsel. The Board of Commissioners want to be present at all meetings.

See  
Note 1  
Page 23

The Board was pleased that you found no misappropriation of funds and no falsification of documents. In as much, there are no comments regarding the cooperation of our staff, so it is evident that you had the full cooperation of our staff and District Counsel.

There are many of your comments and findings that require clarification. The Board will consider your recommendations and will implement those that are cost effective, reasonable and required.

### Audit Finding (1-4):

#### Post -Employment Payments

The District is not paying any post employment payments. As to recoupment of past payments, the District will investigate its options. We will continue our policy of retaining original documents and resolutions. The District does not contemplate entering into post-employment contracts.

See  
Note 2  
Page 23

# OCEANSIDE SANITATION DEPARTMENT



COMMISSIONERS  
Joseph Cibellis  
Florence Mensch  
Christopher Powers  
Edward Scharfberg  
Thomas M. Lanning

Sanitary District No. 7  
Town of Hempstead  
90 Mott Street  
Oceanside, N.Y. 11572

## Audit Finding (5-13):

### Claims Processing

Before disbursements are made to any vendor the District confirms that the services or goods have been obtained. Our current procedure, which has been enhanced prior to the audit, is as follows: A request for purchase is completed in detail. The General Supervisor reviews and approves the purchase request. If approved, a Purchase Order is made. The District Treasurer is responsible for attaching the Purchase Order form to the receipt for goods or services. The District Treasurer completes a Claim Voucher, which includes attachments. The Voucher is presented for approval by at least three (3) of the five (5) Commissioners. If any voucher is deemed questionable, it is set aside for further investigation. Upon approval, checks are issued by the District Treasurer and then signed by two (2) Commissioners. Where feasible, the Board Treasurer is one of the signees.

See  
Note 3  
Page 23

See  
Note 4  
Page 23

Presently, at the monthly Board Meetings, the Commissioners are presented with a report that contains a list of all the checks that were dispersed in the previous month (Treasurer's Report). The Report is then approved by the Board of Commissioners and is included in the Minutes.

See  
Note 5  
Page 23

The employees responsible for acquisitions and disbursements, including Board members, are all aware of our present procedures.

The person responsible for the accumulating all the data for acquisitions and maintaining all financial records is the District Treasurer. His duties exclude the signing of checks or the approving of any vouchers. He has been vetted and approved by Nassau County Civil Service Commission for the position of Treasurer. This person has been responsible in this position for twenty plus years. We believe he has proven himself to be quite capable and he is responsive to all inquiries.

See  
Note 6  
Page 23

The District has explored retaining an accountant to prepare financial statements prior to the audit by our independent CPA firm. We have been advised that the cost of this would be approximately twenty-five thousand dollars (\$25,000.00). It seems exorbitant, in light of the fact that the Financial Statements are prepared by our independent auditors and their fee includes the preparation of these statements.

See  
Note 7  
Page 24

Please be advised the District files its Audited Financial Statements with the Town of Hempstead Town Clerk and the posting of these statements is on the District website.



# OCEANSIDE SANITATION DEPARTMENT

COMMISSIONERS  
Joseph Cibellis  
Florence Mensch  
Christopher Powers  
Edward Scharfberg  
Thomas M. Lanning

Sanitary District No. 7  
Town of Hempstead  
90 Mott Street  
Oceanside, N.Y. 11572

The Board Treasurer is an elected official, and when feasible will continue to sign all District checks along with another member of the Board after reviewing all documentation supporting the disbursements.

See  
Note 8  
Page 24

## Audit Finding (14-16):

### Professional Services

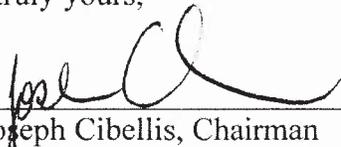
The District does not seek bids for professional services, which is not a requirement. Your audit specifically states “GML does not require competitive bidding for the procurement of professional services that involve specialized skill, training or expertise, professional judgment or discretion, and/or a high degree of creativity.” Where applicable, a timetable for completion of services is so indicated. However, we retained outside counsel for labor negotiations, which took three (3) years before being resolved.

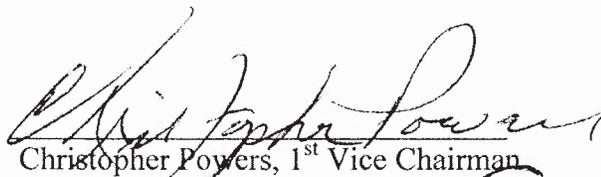
See  
Note 9  
Page 24

The Consultant is on a contractual basis and the District Counsel is on an annual retainer, which are paid monthly. It is expected they will perform the services that are required, regardless of time spent. Other professional services are retained for a specific purpose and they are paid on an hourly basis. They itemize their services and their time spent in order for them to receive payment.

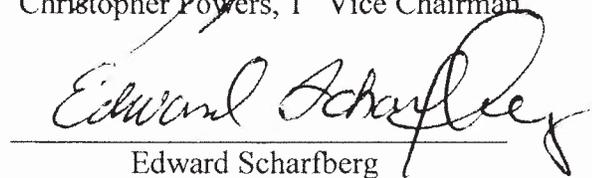
See  
Note 10  
Page 24

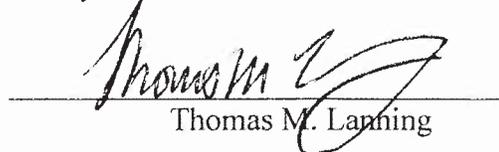
Very truly yours,

  
\_\_\_\_\_  
Joseph Cibellis, Chairman

  
\_\_\_\_\_  
Christopher Powers, 1<sup>st</sup> Vice Chairman

  
\_\_\_\_\_  
Florence Mensch, Secretary- Treasurer

  
\_\_\_\_\_  
Edward Scharfberg

  
\_\_\_\_\_  
Thomas M. Lanning

## APPENDIX B

### OSC COMMENTS ON THE DISTRICT'S RESPONSE

#### Note 1

We conducted our exit conference with the Board President and the Supervisor and offered to meet separately with any other Board members who wished to do so.

#### Note 2

District officials were not able to provide a written agreement or resolution authorizing post-employment payments totaling almost \$392,000, demonstrating a clear need to improve their procedures for retaining original documents and resolutions. Further, the Board has no authority to enter into such post-employment agreements.

#### Note 3

The process described is not sufficient and is similar to what we observed during our audit. Claims should be presented to all Board members for audit prior to payment. Allowing three Commissioners to audit and approve claims, prior to a regular meeting, denies the other two Commissioners an opportunity to review them and possibly voice an objection.

#### Note 4

New York State Town Law and the Nassau County Civil Divisions Act authorize the Treasurer to sign District checks, but not all members of the Board. Allowing any two Commissioners to sign District checks usurps the Treasurer's duties. In addition, having Commissioners both authorize payments and sign checks overrides an important segregation of duties.

#### Note 5

With limited exceptions, the Treasurer has no authority to issue a payment until the Board has audited the claim and authorized the payment at its meeting. Board review of the Treasurer's report does not constitute an audit of claims, and authorizing the payment of claims after the checks are issued is too late.

#### Note 6

The District cannot have two Treasurers. The Board Treasurer, the official authorized to sign checks, appears to be the actual Treasurer. The duties of the "District Treasurer" are more akin to those of an account clerk.

Further, it is not accurate to state that the "District Treasurer" was vetted by Civil Service; the position of Treasurer is an appointed, non-competitive title. The District reported to Civil Service that this person is the Treasurer, when in fact, he is not. Regardless of his experience and capabilities, he has not been properly appointed through Civil Service.

#### Note 7

We did not recommend that the District incur additional costs to hire another accounting firm. The Board should, however, ensure that any accounting staff in the business office is qualified and properly trained. In addition, the responsibility of the District's audit firm is to audit the financial statements prepared by District management, not to prepare the financial statements and audit its own work.

#### Note 8

The Treasurer may issue checks only after approval by the entire Board.

#### Note 9

We recommend the use of competition in procuring professional services, which – while not required by law – can help ensure procurement in the most prudent and economical manner without favoritism. The use of competition can also bring potential providers into the process who would otherwise be excluded.

#### Note 10

The District's written agreement with the consultant is vague, and the District had no written agreement with District counsel during our audit. In addition, no invoices were submitted by either individual to describe the services performed. The Board's statement that "they will perform the services required regardless of the time spent" is contradicted by the fact that the consultant and counsel each received payments over and above the amounts authorized.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard District 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 evaluations of the following areas: financial oversight, cash receipts and disbursements, purchasing, payroll and personal services, capital assets and inventories and information technology.

During the initial assessment, we interviewed appropriate District officials, performed limited tests of transactions and reviewed pertinent documents, such as District policies and procedures manuals, Board minutes and financial records and reports. In addition, we reviewed the District's internal controls and procedures over the computerized financial databases to help ensure that the information produced by such systems was reliable.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud, theft and professional misconduct. We then decided on the reported objectives and scope by selecting for audit the areas most at risk. We selected the District's post-employment payments, claims processing and procurement of professional services for further audit testing.

To accomplish our audit objectives we performed the following procedures:

- We interviewed District officials and employees to gain an understanding of District operations.
- We reviewed the notes to the District's 2012 financial statement for details of Supervisor A's post-employment agreement, the post-employment agreement for Supervisor B, related Board meeting minutes and cash disbursement, payroll and W-2 (tax withholding) reports.
- We researched applicable laws for special districts' legal authority to provide deferred compensation benefits.
- We reviewed the policies and procedures regarding the District's claims audit and procurement processes.
- We selected the 13 largest payments the District made to vendors for food, other purchases and credit card purchases, and the largest payment to each of the 13 vendors whose total payments from the District exceeded \$20,000, to compile a sample of 26 claims from all claims paid by the District during our audit period. We examined these claims for accuracy, completeness, legitimacy and evidence of a proper audit by the Board.
- We reviewed each claim in the sample of 26 to determine if the District adhered to its procurement policy, if the Treasurer signed the checks for the claims and if sufficient documentation was available to support payment of the claims.

- We interviewed the Treasurer and District Treasurer to determine their job responsibilities.
- We obtained any available written job descriptions and responsibilities for the Treasurer position from District personnel files and Civil Service.
- We researched applicable sections of New York State Town Law and the Nassau County Civil Divisions Act for responsibilities of a Treasurer and compared those responsibilities with the tasks performed by the Treasurer and District Treasurer.
- We interviewed Board members to determine the District's procedures for auditing and approving claims for payment and signing District checks.
- We reviewed procurements from the three highest paid professional service providers during our audit period to determine whether the District sought competition when procuring these services, whether agreements were established in writing and whether payments were made in accordance with Board-approved rates.
- We interviewed professional service providers to determine their procedures for submitting invoices to the District and to gain an understanding of the services they provide.

We conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit 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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**DIVISION OF LOCAL GOVERNMENT**  
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Andrew A. SanFilippo, Executive Deputy Comptroller  
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