



Town of Hempstead

Sanitary District Number Six Professional Services and Fuel

Report of Examination

Period Covered:

January 1, 2012 — April 30, 2013

2014M-246



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 2015

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 the 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 Number Six, entitled Professional Services and Fuel. 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

EXECUTIVE SUMMARY

The Town of Hempstead Sanitary District Number Six (District) is located in the County of Nassau and provides refuse and recycling pickup services to 32,000 homes. The District is governed by an elected six-member Board of Commissioners (Board). The District's total expenses for the 2012 fiscal year were \$25,907,430, funded primarily through property taxes. The District's budgeted appropriations for the 2013 fiscal year were \$27,514,724.

Scope and Objective

The objective of our audit was to review the District's procurement of professional services and maintenance of fuel inventories for the period January 1, 2012 through April 30, 2013. Our audit addressed the following related questions:

- Did the District use competitive methods when procuring professional services?
- Did the Board ensure that District's fuel records were accurate and all fuel was accounted for?

Audit Results

General Municipal Law requires local governments to establish policies, including the use of requests for proposals, for the procurement of goods and professional services that are not subject to competitive bidding. An exception to this requirement is allowed if the local government determines alternative proposals or quotations will not be in the best interest of the local government. Because the Board-adopted procurement policy does not require the use of competitive methods for professional services, District officials did not seek competition for the services of 12 professional service providers.¹ The District paid a total of \$274,447 to 11 of these providers² during our audit period. District officials have used five of these providers, who were paid a total of \$123,200 during our audit period, for as long as 10 to almost 30 years. Further, District officials paid three professional service providers a total of \$44,775 even though there were no written contracts or detailed Board resolutions for these professionals to establish the services to be provided or the basis for compensation. One of these providers, a former Board Secretary, was paid \$2,400 per month as a consultant, or \$38,400 during the audit period, without a written contract or detailed Board resolution describing the services to be provided or the basis for compensation. The failure to solicit competition and define the services to be obtained increases the risk that the District will not obtain professional services upon the most

¹ Professional services included accounting, auditing, legal, medical and actuarial services, services of an insurance broker, asset appraisal and information technology consulting services.

² During the audit period, one of the 12 providers was retained for auditing services but had not yet submitted an invoice to the District.

favorable terms and conditions, and without favoritism. In addition, there is an increased risk that the District will pay for services that have not been received or do not comply with the agreed upon conditions and rates.

The Board did not develop policies and procedures to achieve adequate safeguards of the District's fuel inventories, such as the maintenance of accurate and timely fuel delivery and usage records. As a result, fuel records were not accurate and fuel was not properly accounted for. For example, from September 1, 2012 through February 28, 2013, the District used 82,778 gallons of diesel fuel and 5,786 gallons of gasoline at a cost of \$310,262. We found discrepancies between the inventory records and the delivery invoices totaling 1,321 gallons of diesel fuel and 235 gallons of gasoline. In addition, we calculated the ending inventory at February 28, 2013 and found that the District's inventory records did not account for 515 gallons of diesel fuel and 40 gallons of gasoline at a cost of \$1,942. At the exit discussion, additional documentation was provided to us to account for all but an immaterial amount of these differences. However, because the District does not reconcile the book inventory system to delivery and usage records, these differences were not documented, investigated and corrected until after we brought them to the attention of District officials. Therefore, during our audit period, District officials did not have assurance that all fuel was accounted for.

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. District officials disagreed with the findings and recommendations in our report. Appendix B includes our comments on the issues raised in the District's response letter.

Introduction

Background

The Town of Hempstead Sanitary District Number Six (District) is an independent special district located in Nassau County. The District is governed by an elected six-member Board of Commissioners (Board). It is the largest special district in New York State, providing refuse and recycling pickup services to 32,000 homes in Elmont, Franklin Square, North Valley Stream, Garden City South, Lakeview, South Floral Park, West Hempstead and a portion of Malverne. The District's total expenses for the calendar year 2012 were \$25,907,430, funded primarily from property taxes. The District's budgeted appropriations for fiscal year 2013 were \$27,514,724.

The Board is responsible for the general management and control of the District's financial affairs including the selection of professional service providers. The Board Secretary, as chief administrative officer, is responsible for the general management of the District's operations, including fuel inventory management, under the Board's direction. The Treasurer, as chief fiscal officer, is responsible for the receipt and custody of District funds, for disbursing and accounting for those funds, and for preparing monthly and annual financial reports.

Objective

The objective of our audit was to review the District's procurement of professional services and maintenance of fuel inventories. Our audit addressed the following related questions:

- Did the District use competitive methods when procuring professional services?
- Did the Board ensure that District's fuel records were accurate and all fuel was accounted for?

Scope and Methodology

We examined the District's procurement of professional services and maintenance of fuel inventories for the period January 1, 2012 through April 30, 2013.

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. District officials disagreed with the findings and recommendations in our report.

Appendix B includes our comments on the issues raised in the District'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 Secretary's office.

Professional Services

General Municipal Law (GML) requires the Board to adopt written policies and procedures for the procurement of goods and services, such as professional services, that are not subject to competitive bidding requirements. GML states that goods and services that are not required by law to be bid must be procured in a manner to assure the prudent and economical use of public moneys in the best interests of the taxpayers. It further provides that the Board require in its policies and procedures that, with certain exceptions, the District secure alternative proposals through a request for proposals (RFP) process or quotations for such goods and services, including professional services. One exception is for circumstances when, or types of procurements for which the District has determined alternative proposals or quotations will not be in the best interests of the District.

While the GML permits local governments to set forth in their policies the circumstances when or the types of procurements for which the local government has determined RFPs will not be in the best interests of the local government, we believe using a competitive method, such as an RFP process, would help ensure that the District obtains needed qualified services upon the most favorable terms and conditions, and in the best interest of the taxpayers. Furthermore, written contracts or detailed Board resolutions are essential for establishing the professional services to be provided, the time frames for those services, the basis for compensation and other terms and conditions. The use of a fair and open competitive process, written contracts and detailed Board resolutions provide taxpayers with the greatest assurance that services of desired quality are being acquired on the most favorable terms and conditions and that procurements are not influenced by favoritism, extravagance, fraud or corruption.

The District has adopted a procurement policy.³ However, the policy does not require the solicitation of competition before awarding professional service contracts. Rather, the policy states that it may not be in the best interest of the District to solicit quotations or proposals for professional services or services requiring special or technical skill, training or expertise. It further states that the provider must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. As a result, the Board did not solicit competition, such as by issuing RFPs, when procuring professional services.

³ The procurement policy that was originally adopted November 22, 1995 and amended November 3, 1999 is readopted annually.

District officials did not seek competition for the services of 12 professional service providers.⁴ The District paid a total of \$274,447 to 11 of these providers⁵ during our audit period. We reviewed claims paid to each of these providers, totaling \$74,454,⁶ and found that the Board did not periodically seek competition for these professional services. Further, the District has contracted with five of these providers in excess of 10 years without soliciting competition. The District has continuously used the same attorney for certain services since 1999, an employee assistance specialist since 1998, an asset appraisal service since 1993, an insurance broker since 1996 and an accountant since 1986 (almost 30 years) without seeking competition. These providers were paid a total of \$123,200 during the audit period.

We also found the District did not enter into written contracts or pass detailed Board resolutions to describe the services to be provided or the basis for compensation for three of the professional service providers, who were paid a total of \$44,775 during our audit period:

- A former Secretary to the Board who was paid \$2,400 per month as a consultant or \$38,400 during the audit period,
- A physician who was paid \$3,375 and
- An asset appraisal company was paid \$3,000.

The District's failure to solicit competition for professional services may result in the District obtaining services that are not upon the most favorable terms and conditions, and without favoritism. The lack of written contracts or detailed Board resolutions to describe the services to be provided and the basis for compensation prevents the Board from properly auditing claims to determine if the fees charged are correct. There is also a greater risk that the District will pay for services that it has not received or for services that do not comply with agreed upon conditions and rates.

Recommendations

The Board should:

1. Consider revising the District's procurement policy to ensure it provides guidance for procuring professional services through a competitive process.

⁴ Professional services included accounting, auditing, legal, medical and actuarial services, services of an insurance broker, asset appraisal and information technology consulting services.

⁵ During the audit period, one of the 12 providers was retained for auditing services but had not yet submitted an invoice to the District.

⁶ We selected the claim with the largest dollar amount for each service provider during the fiscal year 2012.

2. Enter into written contracts or pass detailed Board resolutions for all individuals and firms that provide professional services to the District. These contracts or resolutions should clearly stipulate the services to be provided and the basis for compensation.

Fuel

District officials are responsible for designing internal controls over vehicle fuel inventories and monitoring adherence to these controls to ensure that fuel inventories are adequately safeguarded and protected against the risk of loss, waste and misuse. The Board should adopt policies and procedures that help ensure that staff maintain detailed perpetual inventory records to account for the amount of fuel purchased, used and the balance remaining, and perform periodic physical inventories. The fuel balances in the perpetual records should be periodically reconciled to delivery, usage and leak test records as well as physical inventories. Material differences should be investigated and resolved. It is also important for District officials to review fuel usage reports to ensure that fuel is used only for District purposes.

The District maintains four underground storage tanks, two 6,000 gallon tanks for diesel fuel and two 1,000 gallon tanks for gasoline. During the audit period, the District spent \$751,758 for diesel fuel and \$45,690 for gasoline. The Board did not develop policies and procedures to achieve adequate safeguards of the District's fuel inventories, such as the maintenance of accurate and timely fuel delivery and usage records. Although the District has two computerized fuel management systems that capture the quantities of fuel delivered and dispensed, and inventory on hand, District employees did not reconcile these records to ensure that all fuel was accounted for. Furthermore, District officials did not review fuel usage reports to ensure that fuel is used only for District purposes.

One computerized system (physical inventory system) automatically records fuel delivered and dispensed for each tank, calculates the fuel on hand and reconciles it, on a daily basis, to the physical inventory. In addition, an employee periodically takes stick readings to ensure the accuracy of the system. This system is primarily used to detect leaks. The other computerized system (book inventory system) is to ensure that fuel is accounted for and dispensed into District vehicles. The system requires each vehicle to be equipped with a radio frequency identification (ID) tag and for each employee to provide a unique user ID before fuel can be dispensed. The system requires delivery amounts to be manually entered into the system and automatically records usage by vehicle. However, no one reconciles these records to the delivery invoices or to the amounts of fuel on-hand to ensure all fuel is accounted for.

Furthermore, three employees⁷ have access to keys that can be used to over-ride the system and allow fuel to be dispensed without being recorded and into an unauthorized vehicle. District officials told us that these keys are needed to allow District vehicles to be fueled in the event that the computerized system malfunctions; however, there are no formal policies or procedures over the safeguarding and use of the over-ride keys to ensure they are accessible only to authorized individuals and used only for authorized purposes.

We reviewed fuel records from September 1, 2012 through February 28, 2013. During this period, inventory records showed that the District used 82,778 gallons of diesel fuel and 5,786 gallons of gasoline at a total cost of \$310,262.⁸ We reviewed delivery and usage records and fuel vendor invoices and found discrepancies totaling 2,111 gallons of fuel as follows:

- We found differences between the delivery records from the book inventory system and the vendor invoices. The totals of these differences⁹ were 1321 gallons of diesel fuel and 235 gallons of gasoline. For example, 513 gallons of diesel fuel delivered on October 1, 2012 and 211 gallons of gasoline fuel delivered on January 8, 2013 per vendor invoices were not recorded in the book inventory records. The District paid \$2,386 for these deliveries.
- We calculated the ending inventory¹⁰ for February 28, 2013 and found 515 gallons of diesel fuel and 40 gallons of gasoline at a cost of \$1,942¹¹ were unaccounted for. At the exit discussion, District officials provided us with additional documentation, including an invoice for the sale of gasoline to an outside agency and manual fuel usage records, which explained all but an immaterial amount of these differences.

Because the District does not reconcile the book inventory system to delivery and usage records, these differences were not documented, investigated and corrected until after we brought them to the attention of District officials. Therefore, during our audit period, District officials did not have assurance that all fuel was accounted for. Vehicle fuel represents a significant expense to the District, about \$800,000 during the audit period. As a result, District officials need to

⁷ The Secretary to the Board, the Treasurer and a bookkeeper

⁸ We took the average of the cost of diesel fuel and gasoline for our test period.

⁹ The net total differences were 229 gallons of gasoline and 35 gallons of diesel fuel.

¹⁰ We added the amount of fuel delivered per the invoices to the fuel on-hand at the beginning of the test period and subtracted fuel used per the computerized book inventory system and compared to the fuel on-hand at the end of the test period.

¹¹ We took the average of the cost of diesel fuel and gasoline for our test period.

require that fuel inventory records are reconciled on a periodic basis to ensure all fuel is accounted for and used for authorized purposes.

Recommendations

The Board should:

3. Adopt policies and procedures to safeguard the District's fuel inventories, such as for the maintenance of accurate and timely fuel delivery and usage records, and for the security and appropriate use of the override keys.

District officials should:

4. Review fuel usage reports to ensure that fuel is used for only authorized purposes.
5. Periodically reconcile fuel inventory records and promptly document and investigate any differences.

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

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

The District's response letter refers to an attachment that supports the response letter. Because the District's response letter provides sufficient detail of its actions, we did not include the attachment in Appendix A.

The District's response letter refers to Appendix B "Audit Methodology and Standards" that appeared in the draft report. The Appendix letters have changed during the formatting of this final report.



COMMISSIONERS

Vincent Bitetto
J. Michael Cairo
Gaetano Mauro

COMMISSIONERS

Marlon Fearon Jr.
Jeffrey Hasselbring
Frederick G. Senti Jr.

SANITARY DISTRICT NO. 6

**80 CHERRY VALLEY AVENUE
WEST HEMPSTEAD, N.Y. 11552
Telephone (516) 481-7110
Fax (516) 292-2970**

Via Email: imcracken@osc.state.ny.us
& Certified Mail RRR# 7012 3050 0002 1845 8402

November 21, 2014

State of New York
Office of the State Comptroller
NYS Office Building, Room 3A 10
250 Veterans Memorial Highway
Hauppauge, New York 11788-5533

Attention: Ira McCracken, Chief Examiner
Division of Local Government & School Accountability
(631) 952-6534

Re: Comptroller's Audit
2014M-246

Dear Mr. McCracken:

The undersigned is the Secretary to the Board of Commissioners of Sanitary District No. 6, Town of Hempstead.

Attached please find the District's "Response to NYS Comptroller's Report of Examination" concerning the audit covering the period January 1, 2012 to April 30, 2013.

The District's response is being submitted today via email to your attention and by certified mail to your attention at the Comptroller's Hauppauge, New York office.

If ~~there~~ be any questions, please communicate with the undersigned.

~~Very truly yours,~~

Frank Sparacio
Secretary to the Board

**SANITARY DISTRICT NO. 6
TOWN OF HEMPSTEAD**

**RESPONSE TO NYS COMPTROLLER'S
REPORT OF EXAMINATION**

AUDIT PERIOD: JANUARY 1, 2012-APRIL 30, 2013

**BOARD OF COMMISSIONERS
SANITARY DISTRICT NO. 6
TOWN OF HEMPSTEAD
80 CHERRY VALLEY AVENUE
WEST HEMPSTEAD, NEW YORK 11552
(516) 481-7110**

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PRELIMINARY COMMENTS

The response of the District to the Comptroller's audit must be understood and appreciated relative to its timing aspects. This response is incorporated as Appendix A within the overall audit documents.

However, this response has been prepared, with the District having received the Comptroller's "preliminary draft findings" sent by letter dated October 17, 2014, there having then been two meetings to review those preliminary findings, and then having received e-mails on November 18th and 19th incorporating changes to the draft report. The District, at the time of this submission, at deadline date of November 21, 2014 (as set by the Comptroller) has not received as one integral document the Comptroller's audit "Report of Examination."

See
Note 1
Page 62

Fairness dictates that a municipality should only be called upon to submit its written response to a Comptroller's audit after receipt of the final version of the audit. This will permit the municipality to fully respond to the final audit and further provide the public with the opportunity to more appropriately understand the municipality's response.

See
Note 1
Page 62

Furthermore, the Comptroller's very choice of the report title is potentially misleading. The Comptroller's representatives were present at the District on an almost daily basis during the period May – early September 2013. In Appendix B under heading of "Audit Methodology and Standards" the following is stated:

See
Note 2
Page 62

Our overall goal was to assess the adequacy of the internal controls put in place by the Board and District officials to safeguard District assets. To accomplish this, we perform 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: cash management, claims processing, control environment, governing board, information technology control environment, payroll and personal services, chief financial officer, financial condition, purchasing and fleet services.

However, the report's title is purposely limited to the following:

Professional Services and Fuel

Report of Examination.

Fairness dictates the title should be more descriptive so as to publicly and clearly indicate that a substantial four (4) month long examination of the District's operations was conducted. To give the impression that solely the area of professional services and fuel expenditures were examined – whether the term “audit” is appropriate or not – is totally inaccurate.

See
Note 2
Page 62

The District's response is divided into two sections. The first section replies to the audit's report pertaining to the District's procurement of professional services. The second section is a response to the audit's findings relative to the District's records concerning fuel delivery and usage.

SECTION 1

**THE DISTRICT'S
PROFESSIONAL SERVICE PROCUREMENTS
DURING THE AUDIT PERIOD
COMPLIED IN ALL ASPECTS
WITH NEW YORK STATE LAW**

OPENING STATEMENT

The Board of Commissioners is in full compliance with the New York State General Municipal Law (GML) pertaining to the District's procurement of professional services inclusive of the sixteen (16) month audit period January 1, 2012 through April 30, 2013. Critically, it must be understood that the Comptroller has failed to specifically set forth in its audit the following:

- (1) that the Board failed in any manner to comply with any specified New York State law, rule or regulation as to methods and manner used during the audit period to secure professional services for the use by the District in its operations; and
- (2) the specific authority pursuant to which the Comptroller purportedly has the right to make any recommendations to the Board, inclusive of the claim that requests for proposals (commonly referred to as RFPs) should have been used, pertaining to professional service procurements given that the Board is in full compliance with the GML concerning its methods and manner of obtaining those procurements.

See
Note 3
Page 62

See
Note 4
Page 62

POST-DRAFT AUDIT DISCUSSIONS

By letter dated October 17, 2014, the Comptroller forwarded to the District its "preliminary draft findings" of its audit and examination of District operations for the above stated audit period.

On October 31, 2014, during the course of a meeting between District representatives and a representative of the Comptroller, said representative admitted the District was in full compliance with the GML pertaining to procurements of professional services during the audit period but stated that he would have to check with his supervisor to ascertain if this could be included in the audit.

See
Note 5
Page 62

Discussion was had concerning the Comptroller's legal justification for the incorporation into the audit that the District should have issued "requests for proposals (REPs)" when seeking professional services during the audit period.

District representatives requested citation to statutory/regulatory authority for the Comptroller's claim that such recommendation could be duly made even though the Board of Commissioners was in compliance with the law as to the manner and method by which the District secured its professional services. The Comptroller's representative could not provide any citation to statute or regulation to justify the supposed right of the Comptroller to even make such a recommendation other than to state that this was past practice of the Comptroller's Office.

See
Note 4
Page 62

On November 10, 2014, an audit "exit discussion" was held attended by two Comptroller representatives (one of whom was the representative present at the aforementioned October 31st meeting and that individual's immediate supervisor) and various District representatives inclusive of two members of the Board of Commissioners and the Board's counsel.

At this meeting, the Comptroller's representatives continuously refused to acknowledge whether or not the Board's action in securing professional services was or was not in compliance with applicable New York State law. This conduct is most definitively questionable given that:

See
Note 5
Page 62

- (1) it is in direct contrast to the October 31st statement of the Comptroller's representative referred to above wherein the District was informed that the Board was in full compliance with the law; and
- (2) it would only be reasonable and logical to expect that, if the Board's actions in securing of professional service providers during the audit period was not in compliance with the law, the Comptroller would clearly so inform in the audit report as well as orally at this meeting whose special purpose was to discuss the audit findings.

The Comptroller's representatives stated that the Comptroller had the right to recommend that the Board follow a so-called "better business practice" by the use of "RFPs" (request for proposals) when securing its professional service providers. However, the representatives refused to verbally inform and/or provide any written substantiation as to the Comptroller's purported legal justification by reference to the GML or otherwise to back-up their claim that "better business practice" could even be suggested in a circumstance where a governmental entity, such as the District and its governing body, was not in violation of the GML or any other New York State law relative to its manner and methods of obtaining professional services.

See
Note 6
Page 63

The District was informed at this meeting that the Comptroller would amend its draft report to incorporate a statement(not included in the previously provided draft) that RFPs for professional services are not legally required by law; however, we were advised that no statement would be included to the effect that the Board was in compliance with the GML.

See
Note 5
Page 62

Objection was voiced to the Comptroller's representatives that the public should be informed as to whether or not the Board was or was not in compliance with the GML concerning procurement of professional services during the audit period and, if not, specific statutory citation must be incorporated in the audit clearly indicating what law the Board was allegedly violating. The representatives repeatedly stated that all the final audit would state on this point would be that RFPs are not legally required but the Comptroller's recommendation would be that RFP's should have been used and should in the future be used. According to the representatives, no justification supporting the Comptroller's purported right to make any such recommendation would be stated in the report.

See
Note 4
Page 62

**THE COMPTROLLER'S FINAL AUDIT REPORT
AS TO PROFESSIONAL SERVICES**

Subsequent to the "post-draft audit discussions" summarized above, on November 18, 2014 the District received from the Comptroller its "changes to the report draft that the District should use in preparing their response."

In this revised audit report, the Comptroller now states and was caused to admit the following "exception" exists in the law:

The New York State General Municipal Law (GML) requires the Board to adopt written policies and procedures for the procurement of goods and services, such as professional services, that are not subject to competitive bidding requirements. [District Comment: GML 104-b(1)]. The GML states that goods and services that are not required by law to be bid must be procured in a manner to assure the prudent and economical use of public moneys in the best interests of the taxpayers [District Comment: GML 104-b(1)]. It further provides that the Board require in its policies and procedures that, with certain exceptions, the District secure alternative proposals (RFPs) or quotations for such goods and services, including professional services. One exception is for circumstances when, or types of procurements for which the District has determined alternative proposals or quotations will not be in the best interests of the District [underlining for emphasis by District; Comment: GML 104-b(2)(g)].

It is critically important to understand exactly what the report is admitting as to the Board's authority and discretion under the GML and what the report purposely fails and wrongly refuses to acknowledge.

In the report received November 18th, for the first time and only after strenuous objections were raised by the District, the Comptroller was compelled to admit the GML authorizes the Board of Commissioners to decide that there are certain circumstances and types of procurements wherein:

- the law does **not** require competitive bidding
 - and -
- the Board **by law** has the absolute right to determine that alternative proposals (to bidding) or quotations, such as RFPs, are not required.

The public is referred to the discussion of NYS GML Section 104-b hereinafter.

See Note 6 Page 63

However, the Comptroller refuses to acknowledge that NYS law considers “professional services” are an example of those circumstances or types of procurements which the Board has the statutory right to determine are not in the best interest of the District to obtain by use of “alternative proposals or quotations.”

The Comptroller selectively omits from the wording of the report above quoted that NYS law recognizes “professional services” are an example of the “certain exceptions” and “types of procurements” for which no alternative proposals, inclusive of RFPs, need be sought by the governing body such as this Board.

After failing to acknowledge that New York law considers “professional services” as one of those circumstances and types of procurements for which the Board can lawfully elect not to seek alternative proposals, including RFPs, and/or quotes, the Comptroller then, without citation to any statutory or regulatory authority, states that some “competitive method, such as an RFP process...” should be utilized by the governing body:

While the GML permits local governments to set forth in their policies the circumstances when, or types of procurements for which the local government has determined RFPs will not be in the best interests of the local government, we believe using a competitive method, such as an RFP process, would help ensure that the District obtains needed qualified services upon the most favorable terms and conditions, and in the best interest of the taxpayers.

Again, the Comptroller selectively uses language which fails to directly and pointedly inform the public that “professional services” are indeed one of those exceptions permitted by NYS law and such procurements are:

circumstances when, or types of procurements for which the local government has determined RFPs will not be in the best interests of the local government...

Indeed, the Comptroller's intent is not to properly inform as to the law but to craftily create the inference that the Board of Commissioners is not acting in the best interest of the taxpayer in that there was no **"use of (a) fair and open competitive process"** in the obtaining of professional services.

The report's intent is to create doubt in the public's mind as to whether the Board was following the law in the securing of professional services. After failing to duly acknowledge that the Board was in compliance with NYS law in all respects, the Comptroller states:

The District has adopted a procurement policy. [Footnote: The procurement policy that was originally adopted November 22, 1995 and amended November 3, 1999 is readopted annually.] However, the policy states that it may not be in the best interest of the District to solicit quotations or proposals for professional services or services requiring special or technical skill, training or expertise. It further states that the provider must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. As a result, the Board did not solicit competition, such as by issuing RFPs, when procuring professional services.

Upon reading the above, there is no doubt remaining that the Comptroller clearly is desirous of making certain the public concludes the Board must solicit competition for professional services **but** the Board **"did not"** do so. RFPs, according to the Comptroller, should have been used and were not; thus, the public is left with the thought that the Board clearly must have done something wrong.

See
Note 7
Page 63

The Board requests the public to consider the following concerning the Report's comments upon the Board's Procurement Policy:

See
Note 7
Page 63

- the Comptroller fails to state how and in what manner the Procurement Policy – as adopted – is supposedly **not** in compliance with NYS law.
- what specific NYS law supposedly mandates that the Procurement Policy must:

...require the solicitation of competition before awarding professional service contracts...

It is fair and equitable to duly expect that, if the Procurement Policy adopted is somehow not in compliance with NYS law, the Comptroller should **in the audit report** specifically cite to the **actual** language of the NYS statute as to which the Board allegedly has failed to comply.

The Board submits the Comptroller does **not** cite to any NYS statute and to any regulatory authority as the Board's Procurement Policy is in full compliance with NYS law inclusive of the GML.

The report next improperly focuses upon 12-professional service providers noting that:

District officials did not seek competition for the services of 12 professional service providers. (footnote: Professional services included accounting, auditing, legal, medical and actuarial services, services of an insurance broker, asset appraisal, and information technology consulting services.)

The District will address the services rendered by each of said providers hereinafter.

It is to be noted the report fails to cite:

- what NYS law the Board of Commissioners did supposedly violate in obtaining the services of each of these providers;
- what NYS law mandated that the Board secure the professional services by seeking “competition”; and
- how and in what manner the Board’s duly adopted Procurement Policy was not complied with pertaining to its procurement of the services of any of these extremely competent and professional providers.

Lest there be any doubt of the Comptroller’s blatant attempt to convince the public that the Board has improperly acted concerning the obtaining of professional services, the report concludes, in part, with the following:

We believe the District’s failure to solicit competition for professional services may result in the District obtaining services that are not upon the most favorable terms and conditions, and without favoritism.

Neither in the body of the audit report or in its conclusion is the public informed as to the legal source of the Comptroller’s beliefs.

In order to charge the Board with a:

failure to solicit competition for professional services

the Comptroller must state in its written report the exact citation to statutory and/or regulatory authority to justify this unwarranted allegation. The Comptroller owed this duty to the public and failed to substantiate its baseless conclusions.

See Note 7 Page 63

THE DISTRICT'S POSITION

Therefore, the Comptroller's report, in the District's opinion, improperly and intentionally seeks to and does create a false and misleading impression with the public that in some form or fashion the Board of Commissioners did and continues to do something legally incorrect in the manner and method professional services were sought during the audit report. If this were not the intent, then why is not the public informed in the audit that the Board was in compliance with the GML during the audit period in the securing of professional services.

See
Note 7
Page 63

Further, it is the duty of the Comptroller to additionally inform the public as to the alleged specific legal basis, whether statutory and/or regulatory, for the Comptroller to make recommendations that RFPs should have been used during the audit period as to the obtaining of professional services even though the Board was in compliance with the GML.

See
Note 4
Page 62

The blanket failure of the Comptroller to properly inform the public on these two separate and distinct points will definitely create unwarranted suspicion and confusion likely causing a reasonable person to conclude the Board somehow has acted improperly and which would totally be an incorrect assumption. We submit that this is the intent of the final audit report, and it is a total disservice to the public's right to know that their elected public officials have indeed followed the law with the Comptroller's Office blatantly failing in its official duty to properly so inform the public.

THE SPECIFIC CLAIMS MADE IN THE AUDIT
AS TO PROFESSIONAL SERVICES & THE DISTRICT'S RESPONSE

Each of the persons or entities that the Comptroller considered as “providers” clearly performed what generally may be termed as “professional services” for the District in the nature of accounting, actuarial, appraisal, auditing, consultant, employee assistance, governmental relations, information technology, insurance, legal and physician services. At the core of these provider services is the utilization by the providers of their independent judgment, critical thinking and special skills which set apart such services from that which may be considered as “purchases” of goods, wares and merchandise for District operations.

The Comptroller does not state in the audit that a governing Board can by Resolution decide that “professional services” is a category that can be set-aside and be specified as one of the statutory “circumstances” and “types of procurements” which in the Board’s sole discretion no “alternate proposals” need be sought.

See
Note 6
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The key NYS law is contained in Section 104-b of the GML entitled “Procurement policies and procedures.”

Within General Municipal Law 104-b is its subdivision(2)(g) which states, in pertinent part, the following:

2. Such policies and procedures shall contain provisions which, among other things:

g. set forth any circumstances when, or types of procurements for which, in the sole discretion of the governing body ... the solicitation of alternative proposals or quotations will not be in the best interest of the political subdivision or district therein...

There are no exceptions stated in the law which would specifically prohibit the Board in its sole discretion to categorize “professional services” as one of the statutory “circumstances” pertaining to which no alternative proposals need be sought.

Utilizing the very words of the statute, the law clearly authorizes the governing body to draw its own conclusions based on its own findings as to the appropriate "circumstances" as and for which no "alternative proposals or quotation" need be obtained.

There can be no logical claim that there is a "grey" area in the law because Section 104-b (2)(g) doesn't specifically state that "professional services" are one of the electable circumstances a governing body can by resolution set aside as not requiring any alternative proposals.

Such analysis of the statute is faulty as same force-feeds an interpretation into the statute which the very language of the law does not permit. The structure of Section 104-b(2) clearly spells out when alternative proposals or quotations for goods and services must be obtained by the governing body.

The District is fully aware of the Comptroller's "Local Government Management Guide: Seeking Competition in Procurement" wherein on p. 17 there is section entitled "Professional Services" and it is stated that the use of the RFP is:

One way to promote competition in professional services...

(<http://www.osc.state.ny.us/localgov/pubs/lmgg/seekingcompetition.pdf>)

It is the District's position that there must be a statutory grounding for the Comptroller's above stated opinion.

At pages 15-16 of the aforementioned Comptroller's "Local Government Management Guide," the following is stated:

When procurement is not subject to bidding requirements, the law generally requires that the procurement policy provide that alternative proposals or quotations be obtained by use of written requests for proposals (RFPs), written quotations, verbal quotations or any other method that furthers the purposes of the law.
The procurement policy may set forth circumstances when, or types of procurements for which, in the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the local government or school district.

These exceptions should be limited and be set forth only when properly justified in the public interest.³³ Otherwise, the effectiveness of the procurement policy and its procedures will be diminished.

Footnote 33 cited above states as follows on page 16 of the document:

Examples may include emergencies when time is a crucial factor, procurements for which there is no possibility of competition and very small procurements for which solicitations of competition would not be cost effective.

The first sentence of the first paragraph above quoted from the Comptroller's "Local Government Management Guide" has part of GML Section 104-b(2)(b) as its statutory basis. Critically, however, it is the next sentence that is paramount to an understanding of the GML's authority and discretion granted to the governing body of the municipality such as the Board of Commissioners of Sanitary District No. 6.

The underlined portion (see the second sentence of the above quoted first paragraph) from the Comptroller's "Local Government Management Guide" has Section 104-b(2)(g) as its statutory basis. However, the Comptroller's claim that "These exceptions should be limited..." has absolutely no statutory linkage. There is no wording in Section 104-b(2)(g) or elsewhere in 104-b(2) to the effect that the governing body is limited as to the "any circumstances" language allowing, in our case, the Board of Commissioners to select the types and kinds of "procurements" as and for which no alternative proposals by RFP or otherwise need be sought.

It cannot be logically argued that there are obvious exceptions to the governing Board's power under 104-b(2)(g), such as, mandatory bidding as it was not mentioned in the wording of 104-b(2)(g) and, thus, there must be unstated limitations thereby opening the door to a "grey" area permitting the Comptroller to then render interpretations of the law's intent.

This argument is baseless as it fails to take into account that 104-b itself, is entitled "Procurement policies and procedures" with 104-b(1) stating in its opening sentence the following:

1. Goods and services which are not required by law to be procured by political subdivisions or any districts therein pursuant to competitive bidding must be procured in the manner so as to assure the prudent and economical use of public moneys in the best interests of the taxpayers of the political subdivisions or district, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and corruption...

Therefore, 104-b(2) and its subdivisions must be read in context as obviously not being applicable where the mandatory bidding provisions of General Municipal Law, Section 103 are applicable. Further, the governing board's discretion as granted to it under 104-b (2)(b) and (g) must be understood and appreciated in the light of the 104-b(1).

The Comptroller in its "Local Government Management Guide" clearly seeks to utilize solely the language of 104-b(1) to construct an interpretation that RFP's and other forms of solicitations must be utilized in all cases where mandatory bidding is not required and where specific statutory language authorizes the governing board to bypass the alternative proposal methods – see, for example, the "Emergency Purchases" provisions of General Municipal Law, Section 103(4). This is the purported logic underscored in the above cited footnote 33 on page 16 of the "Local Government Management Guide."

The District's position is that the Comptroller's above stated opinion is not substantiated by reference to General Municipal Law Section 104-b (2). There can be no justifiable argument that the Comptroller is issuing a guideline upon a provision of law where the statute itself does not cover the topic or circumstance thus leaving room for interpretation by any state official. Such is not the case at hand. Section 104-b(2) leaves no doubt as to its extended reach and applicability.

PROCUREMENT OF PROFESSIONAL SERVICES

General Municipal Law Section 103 has been uniformly interpreted to provide a professional services exception to the formal bidding statutory requirements.

There are various NYS Comptroller's Opinions on the topic of the professional services exception as follows:

Op.State Compt. 93-7 wherein the NYS Comptroller acknowledges the existence of the "professional services exception" to competitive bidding requirements.

9 Op.State Compt. 403 (1953) acknowledging that General Municipal Law Section 103 "does not apply to contracts for personal services involving special skill or training" (citing a case and a treatise on the subject).

10 Op.State Compt. 323 (1954) - policies of insurance declared as not being subject to competitive bidding.

10 Op.State Compt. 335 (1954) - again referring to Section 103 - stating "Statutes of this character, however, have been judicially construed as having no application to contracts for professional services or for services requiring special skill or training."

11 Op.State Compt. 137 (1955) referencing the above 1954 opinion and reaffirming that policies of insurance are not subject to competitive bidding as they "are not 'purchases'..."

13 Op.State Compt. 315 (1957) clearly holding that "...contracts for legal, medical, dental, or nursing services are not subject to the competitive bidding requirements."

The point of contention to be made is not merely that professional services contracts are not subject to competitive bidding but that they pertain to services being rendered to the governing body which require some form of special skill, education or training and are to be distinguished from purchases of products, supplies or capital improvements.

It is the utilization of judgment and critical thinking which sets apart such services from that which the mandatory bidding provisions of General Municipal Law, Section 103 and alternative proposal provisions (if applicable and not excepted by resolution of the governing body) of General Municipal Law, Section 104-b were clearly intended to pertain. With the above understanding, a true reading and understanding of Section 104-b paragraph 2 and its subdivisions can be properly understood.

See
Note 7
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Section 104-b(2) contains 7-lettered subdivisions. In pertinent part, the following critically apply to our particular issue:

104-b (2)(a) - the governing body's procurement policy must set out a procedure to determine whether the procurement of goods and services is subject to competitive bidding under law. In this regard, clearly professional services are not subject to competitive bidding as has been discussed above.

104-b (2)(b) - the governing body's procurement policy must:

provide that, except for procurements made pursuant to...the policies and procedures adopted pursuant to paragraph f [correct reference should be to paragraph g of this subdivision*], alternative proposals or quotations for goods and services shall be secured by use of written requests for proposals, written quotations, verbal quotations or any other method of procurement which furthers the purposes of this section.

[*Explanation for Incorrect Reference in 104-b(2)(b) to "paragraph f of this subdivision"]

Section 104-b(2) was amended by the Laws of 2007, Chapter 402, Section 1, effective January 1, 2009 adding what is now 104-b(2)(f) and renumbering prior subsection f to become what is now 104-b(2)(g). However, the law failed to correct the reference in 104-b(2)(b) from "paragraph f of this subdivision" to "paragraph g of this subdivision."

104-b(2)(g) - the procurement policy may:

set forth any circumstances when, or types of procurements for which, in the sole discretion of the governing body... the solicitation of alternative proposals or quotations will not be in the best interest of the political subdivision...

Where the governing board in its procurement policy, required to be established pursuant to 104-b(2)(b), has not therein specifically set forth, as permitted by 104-b(2)(g), those circumstances or types of procurements for which in that board's sole discretion no alternative proposals need be sought, RFP's and/or other forms of obtaining competitive quotes are mandatory under 104-b(2)(b).

The law clearly permits the governing body, where competitive bidding is not mandated, to then promulgate a resolution setting forth those particular circumstances, which in the sole discretion of that body and in its best interest, wherein alternative proposals, inclusive of RFP's, need **not** be sought.

There is absolutely nothing in the statute which states or implies that professional services are excepted from the clear language of 104-b(2)(b) and (g).

Indeed, as above stated, 104-b(2)(b) states that RFP's "shall be secured" in a circumstance where the procurement policy does not have language contained within it as being authorized by the 104-b(2)(g) exception.

The Comptroller in its "Local Government Management Guide" and in practice superimposes an impermissible interpretation of 104-b (2)(b) and (g) thereby wrongfully attempting to limit a governing body's discretion by resolution properly crafted in accordance with 104-b(2) in order for that body to except professional services from the requirement otherwise that alternative proposals must be sought even for such services.

THE DISTRICT'S PROCUREMENT POLICY

The District's Procurement Policy (which was provided during audit to the Comptroller; copy attached hereto as **EXHIBIT 1** clearly contains the operative language authorized by GML Section 104-b(2)(g) and sets out those circumstances **inclusive of professional services** where the Board of Commissioners has specifically determined in its sole discretion that it is in the best interest of the District **not to solicit alternative proposals or quotations for such services**. The Procurement Policy clearly is within the ambit of Section 104-b(2)(b).

CONCLUSION TO DISTRICT'S POSITION

There is no statutory justification for the Comptroller's audit recommendation to the District that the Board of Commissioners should seek RFP's for professional services or utilize some other form of promoting competition in the securing of such services.

See
Note 8
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Thus, it is not be appropriate for there to be questioning of the Board of Commissioners, as the District's authorized governing body, concerning how and in what manner professional service providers are selected given that the District's Procurement Policy clearly complies with GML Section 104-b(2) and RFP's need not then be sought.

Therefore, it is clearly improper for the Comptroller to recommend to the Board of Commissioners the use of RFP's to secure alternative proposals as and for professional services as this would falsely give the impression that in some form or manner the District is not in compliance with existing law and is violating General Municipal Law 104-b.

The public's perception would clearly be that the Board has expended \$274,447 during the 16-month audit period of January 1, 2012-April 30, 2013 for professional services without doing so in accordance with law and established guidelines having basis in applicable law.

The Board's expenditure of \$274,447 for "professional services" during the 16-month audit period was proper in accordance with New York State General Municipal Law Section 104 and the District's Procurement Policy.

**DISTRICT'S RESPONSE PERTAINING TO
SPECIFIC PROFESSIONAL SERVICE PROVIDERS
REFERENCED IN THE AUDIT**

The report criticizes the Board for having utilized the services of 12 professional service providers during the audit report as the Board "did not seek competition."

During the audit period, 11 of the 12 providers were paid \$274,447. As will be later addressed, the other provider was paid \$6,500 for legally mandated outside auditing services in 2013 related to 2012 District operations.

The audit groups the 11-providers into three separate categories which the District shall address as Group 1, Group 2 and Group 3. The 12th provider shall be addressed as Group 4.

GROUP 1 – PROFESSIONAL SERVICE PROVIDERS TO THE DISTRICT

The audit refers to 5 providers and states that:

the District has contracted with five of these providers in excess of 10 years without soliciting competition. The District has continuously used the same attorney for certain services since 1999, an employee assistance specialist since 1998, an asset appraisal service since 1993, an insurance broker since 1996 and an accountant since 1986 (almost 30 years) without seeking competition.

These providers were paid a total of \$123,200 during the audit period.

The audit ignores the law, as the District has above shown, in that the Board's Procurement Policy adopted in strict compliance with GML 104-b(2)(g) permits the Board to obtain these professional services without the necessity of soliciting competition. We will now comment upon each of the provider's services as the Comptroller has apparently decided to bypass any discussion of those services as actually received by the District and the reasonable compensation paid for same. The providers will be addressed in the order that they are referenced in the audit.

RE: GOVERNMENTAL RELATIONS AND LOBBYING SERVICES

Since 1999, the Board has annually entered into a written contract with an individual extensively experienced in the field of governmental relations and lobbying on behalf of the District with the New York State Legislature. These services are referred to in the audit as having been rendered to the District by "...the same attorney for certain services since 1999..." Further, on an annual basis, the Board reviews the services rendered by the individual and makes decision to continue or not continue contracting for those services. Each year a resolution is passed by the Board accepting the terms and conditions of a contract entered into with the individual clearly defining the services to be rendered on behalf of the District and the compensation to be paid. The audit fails to state that the annual cost for said services has never been increased from the 1999 inception of the first contract with the party.

See
Note 9
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The auditor was provided with copies of the contract entered into by the District with the provider for the requested audit period as well as the respective Board resolutions pertaining to said time period. There is no claim in the audit that the contract in any manner was not descriptive of the services to be rendered by the provider and which were requested and to be expected by the District. Nor is there any claim in the audit that the \$12,000 annual compensation to the provider was improper and/or unreasonable inclusive of the \$16,000 paid to the provider during the 16-month audit period at \$1,000 per month.

RE: EMPLOYEE ASSISTANCE SPECIALIST SERVICES

In 1998, the Board determined that the services of a duly qualified employee assistance specialist would be beneficial and in the best interests of District employees who were desirous of utilizing such services. The Nassau County Civil Service Commission recognizes this title as "Employee Assistance Specialist" and requires that the person in order to be qualified must have a Master's degree in Social Work, Psychology, Counseling, Human Resources Administration, or closely related field from a regionally accredited or New York State registered college or university.

The Commission further sets forth the "typical duties" as well as the required "knowledge, skills and abilities" of the person in order to be qualified for the position. The Board of Commissioners has retained the services of a most qualified individual to provide these necessary employee assistance services to District employees as and when needed. The individual who since 1998 has held this position with the District holds a Master of Science degree in counseling and education obtained from a university in the State of New York. The person's actual duties entail all that which is set forth in the aforementioned Nassau County Civil Service Commission title. The individual is not an employee of the District and said person's services are contracted for on an annual basis by the District. In 1998, the annual compensation paid to this person was \$5,212. For calendar year 2012, the person's compensation was \$6,200 (which was paid during the audit period); for 2013, the person's compensation was \$6,386 (paid outside the audit period).

There is nothing stated in the audit that the offering by the District of such services to its employees was in any manner improper or not needed; that the individual holding the title of employee assistance specialist did not have the proper credentials to provide such services; and/or that the compensation paid to said individual for such services during the audit period was in any manner unreasonable.

See
Note 9
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RE: ASSET APPRAISAL SERVICES

In September 1993, the Board adopted a resolution appointing a certain entity to conduct annual evaluations of the District's personal property and equipment for inventory purposes. This inventory is annually performed and is utilized in order for the District to obtain necessary insurance coverage for said property. Each year the inventory is updated, modified and supplemented and submitted to insurance companies for purposes of obtaining premium quotes. When the provider was first appointed by the Board in 1993, the agreed upon annual cost for performing the evaluation and appraisal services was \$1,200.

During the 16-month audit period from January 1, 2012 to April 30, 2013, two separate and distinct payments were made to the provider for the following: the sum of \$1,500 was paid for the 2012 appraisal report of District property and equipment; and the sum of \$1,500 was paid for the 2013 appraisal report.

The provider submits District vouchers for each annual payment request and sets forth thereon the services rendered as well as submits an invoice for the services performed.

The Board has acted in a totally appropriate and economical manner relative to continuously obtaining the services of said professional service provider who has timely and diligently performed its annual function of appraising and evaluating District property for annual inventory purposes. The annual cost for said services now at \$1,500 (a mere \$300 increase per annum from the time of first securing of such services from said entity in 1993) is totally economical and reasonable considering the services actually rendered.

See
Note 9
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RE: INSURANCE BROKER SERVICES

By resolution passed in 2011, the Board selected an insurance broker with over 45 years of experience to represent it regarding obtaining workers compensation insurance matters. This broker's services were first utilized in 1996 and in the Board's considered opinion has represented the District's interests in a most diligent, skillful and professional manner for approximately 20-years.

In the fall of 2011, this broker was instrumental in saving the District over \$285,000 relative to surveying the workers compensation marketplace and securing after extensive negotiations various quotes for the District's 2012 workers compensation insurance.

In addition to obtaining a most favorable premium for the District, the broker further manages the District's claims relative to negotiating the reserves set aside by the carrier for losses and potential payouts inclusive of the amounts to be offered in settlement of claims. All of this affects the District's workers compensation loss ratios and experience rating which impact and affect premiums in subsequent policy years. In 2012, the broker assisted in the managing of 68 workers compensation claims. For the broker's services related to the 2012 policy year, he was paid a fee of \$25,000 by the District.

Similarly, for calendar year 2013, said broker had been appointed to perform on behalf of the District the same type representative services as so adequately performed by the individual in 2012 and prior years. The workers compensation marketplace was surveyed and examined on behalf of the Board and premium quotations were provided. The person's expertise was shared with the Board, as was his custom and practice, and permitted the Board to act in its best interests relative to securing at most reasonable market rates workers compensation insurance coverage for the District for calendar year 2013. The broker was also responsible for and did manage 81 claims for calendar year 2013 on behalf of the District. For his services related to the 2013 policy year, the broker was paid a fee of \$25,000.

RE: ACCOUNTANT SERVICES

The District has utilized the services of its present accountant/auditor for approximately 30 years. Each year a contract is entered into with said individual, who is a CPA, setting forth the services to be rendered and the services being expected by the District for the specified compensation stated in said contract. Further, each year the Board adopts a resolution accepting the contract and appointing said person as the District's auditor. For calendar year 2012, the contracted for compensation for the person's services was the sum of \$42,000. For calendar year 2013, the contract was in the amount of \$43,260.

During the course of the 16-month audit period (January 1, 2012 to April 30, 2013), the sum of \$48,000 was paid to the individual pursuant to the respective applicable contracts.

The auditor examined the District's books and financial records for the 16-month audit period January 1, 2012 to April 30, 2013. There is absolutely no comment made in the audit that the District's financial records, as prepared by the auditor in accordance with the aforementioned contract with the Board, was in any manner improperly prepared and/or contained any errors or omissions. The Comptroller's office did review all monthly and applicable annual financial reports and statements which are prepared by the District's auditor. Appendix B entitled "Audit Methodology and Standards" states that the Comptroller did review the "financial condition" of the District with no comment being made that there were any negative issues to be reported.

Thus, it is reasonable to conclude from the Comptroller's audit that the services rendered by the District's auditor were professional and proper in all respects. Nothing is stated in the audit that the compensation paid to the District's auditor during the audit period was unreasonable and/or improper in any manner.

See Note 10 Page 64

GROUP 2 – PROFESSIONAL SERVICE PROVIDERS TO THE DISTRICT

The audit specifically addresses three (out of the 11) professional service providers who were cumulatively paid \$44,775 during the audit period. The following criticism is charged:

We also found the District did not enter into written contracts or pass detailed Board resolutions to describe the services to be provided or the basis for compensation for three of the professional service providers, ... The lack of written contracts or detailed Board resolutions to describe the services to be provided and the basis for the compensation prevents the Board from properly auditing claims to determine if the fees charged are correct. There is also a greater risk that the District will pay for services that it has not received or for services that do not comply with agreed upon conditions and rates.

These charges are baseless and inaccurate. An understanding of the services provided by these three individuals will make it perfectly clear that there was no misunderstanding of the nature of the services to be performed and that the cost of same was more than reasonable. We will address each provider referenced in the order referred to in the audit.

See
Note 11
Page 64

RE: CONSULTANT SERVICES

The Comptroller's representative was provided information and documentation to substantiate that the individual was employed by the District from 1975-2009 in various capacities inclusive of seasonal sanitation worker; permanent full-time sanitation worker; District Supervisor for 9 years; General Sanitation Supervisor for 10 years; and as Secretary to the Board, the District's chief administrative officer, for 11 years, that is, from 1998-2009.

See
Note 12
Page 64

As Secretary to the Board, the individual is charged with the responsibility of being the Superintendent of all District operations. As such, over the course of that individual's 35 years of experience in working for the District, he has obtained unique knowledge as to all District functions pertaining to garbage, refuse and recycling collection and disposal; procurement purchases of truck cab and chassis and body; personnel matters pertaining to over 150 employees; collective bargaining issues and miscellaneous issues.

The auditor inquired and was informed as to the nature of the consulting services actually provided by the individual during the course of the audit period. Said consulting services were provided pertaining to the following matters:

See
Note 12
Page 64

- a. Collection and disposal practices for garbage, refuse and recycling;
- b. Discussions as to modifications, if any deemed necessary and proper, for the 25 District garbage and refuse collection routes and the 6 District recycling routes;
- c. Employer - employee related issues pertaining to the Collective Bargaining Agreement between the District and Local 342;
- d. Employee disciplinary matters;
- e. Arbitration proceedings under the Collective Bargaining Agreement;
- f. Concept of "past practices" of the District within the meaning of Collective Bargaining Agreement, Article 13;
- g. Management's rights under Collective Bargaining Agreement, Article 15;
- h. Interpretation and understanding of the District's "Work Rules" and its "Drug & Alcohol Use and Testing Policy" as well as discussion pertaining to proposed modifications thereto;
- i. Workers' Compensation and disability issues;
- j. Litigation and claims involving the District and its employees.

The Board did pass appropriate resolutions during the audit period duly appointing said individual to the position of District consultant and setting forth the compensation to be paid. The amount so paid during the 16-month audit period at the rate of \$2,400 per month was the reasonable sum of \$38,400. It is to be noted that there is no claim in the audit that the amount of compensation paid to said individual based upon that person's unique wealth of experience in the field of garbage refuse and collection was in any manner unreasonable or otherwise questionable.

See
Note 9
Page 64

RE: PHYSICIAN SERVICES

The audit, without any specificity of any kind, claims that the Board in some manner has acted improperly in failing to competitively obtain the services of a physician who performs employment-related physical examinations of new hires and existing employees. Said physician, who has performed such services for at least 10 years, is located in West Hempstead, New York and within literal minutes and walking distance of the District's premises. It is totally without merit to recommend that the Board should seek by use of RFPs the services of a physician to perform physical examinations. During the course of the audit period, the physician selected by the Board was paid \$3,375. The auditor was provided with copies of all District vouchers signed by the physician which provide the date of services rendered on behalf of the District by the physician, the name of the employee involved and the charge per service rendered.

The Board submits that the audit's suggestion that RFPs or some other form of competition should be used relative to securing of physician's services lacks logic and merit without any further need for discussion.

RE: ASSET APPRAISAL SERVICES

As a component of the total amount of \$44,775 paid to the three providers (referred to by the District in this response as "Group 2" providers), the Comptroller refers to the same \$3,000 paid to the "asset appraisal company" provider which it apparently referenced to previously as "an asset appraisal service since 1993" (see above discussion of "Group 1" providers). Therefore, the District refers the public back to the discussion in Group 1 of the "asset appraisal services" provider for an understanding of the services rendered to the District during the audit period by that provider.

GROUP 3 – PROFESSIONAL SERVICE PROVIDERS TO THE DISTRICT

There are four (4) [out of the 11] remaining professional service providers not otherwise specifically addressed in the audit report, and they can be categorized as follows: actuarial; information technology; and legal provider services. The District will address each such provider.

RE: ACTUARIAL SERVICES

In accordance with the District's obligations under ERISA and the Internal Revenue Code and regulations promulgated thereunder, the District must cause an audit to be conducted of its post-employment benefit obligations to its retirees. In accordance with a Board resolution, the Board engaged the services of an actuarial firm to perform certain specified services as more particularly itemized in a contract entered into between the parties. There was paid to said actuary in 2012 the sum of \$3,000. The actuary's report was made available to the NYS Comptroller during the audit. No issues were raised that said report was prepared other than in a thorough, timely and professional manner in accordance with ERISA and IRS regulations. The audit report does not suggest otherwise, nor is the auditor's \$3,000 fee questioned as to its reasonability. The fee was paid in accordance with the aforementioned Board resolution and contract between the parties.

See
Note 9
Page 64

RE: INFORMATION TECHNOLOGY

In December 2007, the Board entered into a contract with an individual to perform informational technology services on behalf of the District. Said services pertained to performing payroll, accounting and related computer consulting services and functions. These contractual rates, in effect since 2004, remained in place through calendar year 2013.

For calendar year 2012 and inclusive of the audit period ending 4/30/2013, the hourly rate for payroll/accounting functions was \$35 and the hourly rate for computer consulting was \$50 per hour.

During the 16-month audit period, the individual was paid a total of \$80,020.78 with there being full itemization for all services rendered to the District. In total, this person has performed services for the District for approximately 14 years. The hourly rates paid to said individual are fair and reasonable. The Comptroller did extensively review the work performed by said individual with there being no comment in the audit report concerning the reasonability of the amount paid to this provider or the quality of the services performed.

See
Note 9
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RE: LEGAL SERVICES

Performed by Outside Counsel: During the audit period, there was paid to a law firm in accordance with a Board resolution the total sum of \$6,600.90 at discounted hourly rate of \$225.00 plus disbursements for legal services to represent the District in a Civil Service Law Section 75 employment matter. Invoices for services rendered and disbursements incurred were submitted by the attorneys. The legal fee rate is at least \$175 below the standard rates of trial attorneys in today's marketplace.

Performed by Outside Counsel: In accordance with a Board resolution, an attorney with over 35-years of municipal law experience was appointed for calendar year 2012 as outside counsel to the Board at the rate of \$175 per hour. Said attorney appeared at Board meetings and provided his invaluable legal expertise on a variety of subject matters including employment related issues; Civil Service law requirements; election law; contract preparation; Board resolutions; District policy review, creation and adoption; insurance; Civil Divisions Act; and competitive bidding processes. The attorney was paid \$19,850 for 114.25 hours of legal services rendered to the District at discounted rate of \$175 per hour and which rate is at least \$225 per hour below standard billing rates of similarly experienced attorneys.

GROUP 4 – PROFESSIONAL SERVICE PROVIDERS TO THE DISTRICT

RE: AUDITING SERVICES

It is noted in the report that this individual who provided auditing services to the District was retained during the audit report. A contract between the District and the individual, a CPA, was entered into and a Board resolution was passed to retain the individual upon the terms and conditions of the contract. The auditor's services were required by law. In accordance with the Nassau County Charter, Article IV, Section 405, the District is required annually to file an audit of its financial statements with the Nassau County Comptroller. The audit report as prepared by this CPA was reviewed by the NYS Comptroller. By law, an independent auditor reviews the work of the District's accountant-auditor. The scope of the auditing services was calendar year 2012. It is to be noted that the NYS Comptroller's audit [January 1, 2012-April 30, 2013] overlapped the audit timeframe (2012) of the District's independent auditor. The NYS Comptroller does not report that it found any errors, omissions or issues concerning this provider's professional services. Regardless of the fact that this provider was paid for his services subsequent to the end of the April 30, 2013 NYS Comptroller's audit period, the Comptroller refers to this person as one of the 12 professional service providers for which the District purportedly had to seek competition for his services. The NYS Comptroller was provided a copy of the auditing contract and the provider's audit report of the District 2012 financial operations. There is no comment in the NYS Comptroller's audit report that the provider

- was not qualified to perform the auditing services for the District;
- services were not professional in nature and content;
- contractual fee of \$6,500 was unreasonable giving consideration to the services being performed and which were actually performed (as the NYS Comptroller was provided a copy of the 2012 Audit Report).

See
Note 9
Page 64

SECTION 2

THE DISTRICT'S FUEL RECORDS ARE ACCURATE
WITH FUEL HAVING BEEN DULY ACCOUNTED FOR
IN ACCORDANCE WITH ADEQUATE SAFEGUARDS INSTITUTED
BY THE BOARD OF COMMISSIONERS

OPENING STATEMENT

The Board, prior to the audit period at hand, did have in place due and proper safeguards and administrative controls to ensure that all fuel delivered and dispensed was accurately accounted for by District personnel. Correct payments were made for all fuel purchases. Fuel inventory was duly monitored and controlled.

See
Note 13
Page 64

At the time of the fuel audit starting date of September 1, 2012, there was in place at the District two separate and distinct fuel accounting computerized systems. The first system, commonly referred to as the [REDACTED] system, tracks all fuel deliveries into each of the four (4) underground fuel tanks. There are two (2) gasoline storage tanks (denominated as Tank #1 and Tank #2) and two (2) diesel storage tanks (denominated as Tank #3 and Tank #4). Upon each delivery, District personnel monitor same and receive documentation from the delivery tanker driver as to the fuel dispensed from the truck and correspondingly which of the four tanks the fuel was dispensed into at that time. This documentation is presented to the District's accounting department. The [REDACTED] system generates documentation substantiating the deliveries. The audit refers to [REDACTED] as the "physical inventory system." Further, this system's software also records fuel dispensed from each tank.

Contrary to the Comptroller's claim, the purpose of the [REDACTED] system is not "primarily" to detect leaks. This is but one essential function but by no means the primary function. The dual purposes of [REDACTED] are fuel monitoring and leak detection. Additionally, the Board decided in 2011 to have installed a computerized fuel monitoring system known as [REDACTED].

See
Note 14
Page 64

That system is an updated version to an earlier fuel inventory control system in use at the District. [REDACTED] provides data as to the source of the user to whom fuel from any of the four tanks was dispensed. As acknowledged in the audit report:

The system requires each vehicle to be equipped with a radio frequency identification tag and for each employee to provide a unique user identification number before fuel can be dispensed.

Thus, the Board has duly ensured that only authorized and permitted District users are allowed to access the [REDACTED] system to obtain fuel for their respective District vehicle and/or equipment for District operations.

Without an access code – issued by the District – and without a vehicle being duly equipped by the District with the [REDACTED] device fitted to each District vehicle by District personnel, fuel cannot be dispensed from any of the four tanks. The software delineates the District employee-user and simultaneously into what piece of equipment the fuel was dispensed.

During the course of the audit period, the [REDACTED] and [REDACTED] systems were not linked to each other. Thus, District personnel manually recorded into [REDACTED] the fuel deliveries received which had been recorded in [REDACTED] at delivery time.

District personnel did monitor the workings of both systems to substantiate fuel deliveries, as invoiced for payment by the fuel company, were proper, that usage was for District purposes and that inventory was adequately controlled and monitored.

Before any payment of fuel is made, the District Treasurer investigates and coordinates all fuel deliveries against the [REDACTED] system records, delivery records and billing invoices.

The Board of Commissioners monitors and authorizes each and every District payment of each and every bill.

See
Note 15
Page 64

Indeed, as a greater internal control and safeguard to ensure an accurate accounting of fuel received, dispensed and in inventory, the Board has undertaken to and there is in place software linking the [REDACTED] and [REDACTED] systems thereby allowing for a total sharing of fuel-related information which has only furthered the Board's mandate that all District expenses be accurately and duly accounted for to safeguard public monies.

In circumstance where the [REDACTED] system is inoperative, it is without question prudent and necessary in the proper course of District operations to have in place an override system in order that fuel be dispensed in a timely manner to those otherwise authorized to receive same. The Board has authorized the Secretary to the Board, the highest ranking administrative officer in the District, to establish a procedure for the use of an override key to be utilized only when the [REDACTED] system is inoperative. As the Comptroller was informed during the course of the audit, this key is kept in a locked safe. When the [REDACTED] system is inoperative and in order to continually operate District functions, fuel must be timely and properly dispensed. The Secretary to the Board has authorized one individual to have access to and use the key when the Secretary to the Board is not on site. The District Treasurer obtains the key from the locked safe and provides it to the aforementioned designated individual (the District's information technology consultant who is fully familiar with the operations of both the [REDACTED] and [REDACTED] systems). In all cases when the key has been utilized, the key has been operated by either the Secretary to the Board or said designated individual. At the conclusion of the use of the key, it is returned per District procedures to the locked safe by either the Secretary to the Board or the District Treasurer.

See
Note 16
Page 65

The statement in the audit report that:

...three employees (Footnote: The Secretary to the Board, the Operations Manager and a bookkeeper) have access to keys that can be used to over-ride the system and allow fuel to be dispensed without being recorded and into an unauthorized vehicle.

See
Note 16
Page 65

is inaccurate. No such information was provided to the Comptroller by any District employee or representative. To the contrary, the Secretary to the Board informed both the Comptroller's auditor and that auditor's immediate supervisor on numerous occasions that only two employees have access to the key in the locked District safe and explained the reasons for the key and the purposes for which the key is intended and all of which is as stated above.

The inference sought by the Comptroller to be drawn by the public is clearly that the Board has no adequate control over the [REDACTED] system and carelessly permits an override of that system without institutional guidelines such that fuel can supposedly be dispensed to anyone for District purposes or otherwise. This is false, intentionally misleading and untrue.

The Board had instituted, and there was in place at the time of the audit period, adequate Board directives to administration pertaining the maintenance of all fuel records as well as defined procedures pertaining to the continued dispensing of fuel if the computerized systems were inoperative and which procedures were under the control of the chief administrative officer of the District.

See
Note 17
Page 65

THE DISTRICT'S POSITION

As example of the purported lack of institutional controls and alleged failure of the District to properly investigate issues concerning fuel deliveries and usage, the Comptroller states that the audit found various supposed discrepancies between delivery records, fuel vendor invoices and usage records

Discrepancy #1: The audit report states that there are purported differences between [REDACTED] (referred to by the Comptroller as the "book inventory system"), fuel delivery records and vendor invoices totaling 1,263 gallons of diesel.

See
Note 18
Page 65

As an example of this purported discrepancy between the District's [REDACTED] records and delivery invoices totaling 1,263 gallons of diesel, the audit report states the following:

For example, 513 gallons of diesel fuel delivered on October 1, 2012... per vendor invoices were not recorded in the book inventory ([REDACTED]) records.

During the audit, the Comptroller's representative was informed by District personnel that the District utilized the [REDACTED] computerized system relative to tracking fuel deliveries and not the [REDACTED] system. However, the Comptroller decided to use the [REDACTED] system to perform its mathematical computations. As the Comptroller was advised, at the time of the audit period, the District was manually inputting fuel deliveries computerized in the [REDACTED] system into the [REDACTED] system.

See
Note 19
Page 65

The reason for this was at that time (since modified) the two computerized systems were not linked such that a fuel delivery upon computerized recording into the [REDACTED] system would not be automatically transferred into the [REDACTED] system thereby necessitating a manual entry.

See
Note 19
Page 65

Pertaining to the alleged 513 gallons of diesel fuel discrepancy, the Comptroller's representative was informed that the [REDACTED] system, due to a manual error, did not have recorded in it a 555 gallon delivery of diesel fuel into Tank #3 on October 1, 2012 starting at 10:23 a.m. and ending at 10:26 a.m.

The Comptroller was shown during the audit the following pertaining to this 555 gallon diesel delivery:

first, the computerized record from [REDACTED] showing said 555 gallon diesel delivery into Tank #3; the computerized record from [REDACTED] showing additional delivery on October 1st of 4,839 gallons of diesel into the same Tank #3 starting at 10:27 a.m. and ending at 10:48:37 ;

second, the computerized record from [REDACTED] showing a delivery of 4,148 gallons of diesel fuel into Tank #4 starting at 10:48:39 a.m.; and

third, fuel invoice delivery from [REDACTED] substantiating delivery total of 9,500 gallons of diesel fuel to the District on October 1, 2012.

The Comptroller's apparent mathematical computation of a supposed 513 gallon diesel discrepancy was as follows for deliveries made on October 1st:

See Note 20 Page 65

Fuel delivery per invoice.....	9,500
Fuel delivery (per [REDACTED] and [REDACTED]) Tank #3...4839	
Fuel delivery (per [REDACTED] and [REDACTED]) Tank #4...4,148	
	(8,987)
Alleged fuel discrepancy.....	513 gallons

In reality, the correct mathematical computation that should have been made by the Comptroller utilizing the [REDACTED] computerized delivery system records – as utilized by the District to record and monitor deliveries – is as follows:

Fuel delivery per invoice.....	9,500
1 st Fuel delivery (per [REDACTED]) Tank #3.....	555
2 nd Fuel delivery (per [REDACTED]) Tank #3.....	4,839
Fuel delivery (per [REDACTED]) Tank #4.....	4,148
Total Fuel Delivered October 1, 2012 per [REDACTED].....	9,542

The 42 gallon differential when comparing the [REDACTED] computerized recording of the volume of fuel in Tanks #3 and #4 after the 9,500 gallon delivery is explained due to circumstances where, on occasion, fuel already housed in the delivery truck hose is located past the fuel meter measuring fuel exiting the fuel compartment and before exiting the hose nozzle. In these situations, the District is receiving additional fuel as part of the delivery but for which it is not charged as said additional fuel did not pass through the fuel recording meter of the delivery tanker.

The above was explained to the Comptroller's auditor at the time of the audit.

Further, the Comptroller's representative – at the time of the audit – was informed that the [REDACTED] delivery records were manually corrected on March 18, 2013 to reflect a 552 gallon plus adjustment (should have been 555 gallons) for the inadvertence in not recording in [REDACTED] the 555 gallon diesel delivery to Tank #3 aforementioned. The Comptroller's representative was shown the [REDACTED] adjustment documentation inclusive of the document entitled "[REDACTED] Fuel Costing Report" dated March 30, 2013. Thus, this is but another example that the District did have in existence internal controls to monitor and correct fuel delivery records inclusive of [REDACTED] records and which adjustments were duly and timely made by District personnel in accordance with safeguards instituted by the Board.

See
Note 21
Page 65

Discrepancy #2: As a further example of the purported discrepancy between the District's [REDACTED] records and delivery invoices, the audit report states the following:

For example, ... 211 gallons of gasoline fuel delivered on January 8, 2013 per vendor invoices were not recorded in the book inventory ([REDACTED]) records.

The Comptroller apparently calculated this alleged 211 gallons of gasoline discrepancy in the following manner:

Fuel delivery per invoice.....	645
Fuel delivery (per [redacted] and [redacted]) gas Tank #2.....	(434)
Alleged fuel discrepancy.....	211 gallons

At the time of the audit, District personnel informed the Comptroller’s representative that an inadvertent error was made by failing to record in the [redacted] system a gasoline delivery made on January 8, 2013 into gas tank #1 of 198 gallons which started at 9:53 a.m. and ended at 9:56 a.m. The [redacted] computerized receipt for this delivery into tank #1 was shown to the Comptroller’s representative during the audit. District personnel were aware of the true amount of gas delivery – per the [redacted] system utilized to monitor and control deliveries and utilized as the basis for making payment for fuel deliveries – that is – total gallons of 632.

Therefore, the auditor had in his possession at the audit proof from the District’s computerized [redacted] system the fact that two deliveries of gas were received at the District on January 8, 2013 as follows: 198 gallons into gas Tank #1 and 434 gallons into gas Tank #2. Due to the fact that only the 434 gallon gas delivery into Tank #2 was manually recorded by District personnel into the [redacted] system, the auditor selectively chose – for purposes of the audit report – to exclude the documentary proof provided during the audit that 198 gallons of gas was delivered per the [redacted] computerized system into Tank #1 on January 8, 2013.

Therefore, the proper calculation that should have been made by the auditor for gas delivery to the District on January 8, 2013 is as follows:

Fuel delivery per invoice.....	645
Fuel delivery (per [redacted]) gas Tank #1.....	198
Fuel delivery (per [redacted]) gas Tank #2.....	434
Total Fuel Delivered per [redacted].....	632

The 13-gallon gas differential between the actual fuel delivered (645 gallons) and the [REDACTED] recorded fuel delivery (632 gallons) can be explained as follows: on occasion, such as this one, when fuel is delivered into a tank and, depending upon ambient temperature and fuel tank temperature, fuel, in its liquid state, is chemically transformed into vapor and, thus, not recorded as a component of liquid tank volume. The 0.020155 percent factor when comparing the 13 gallon differential to the 645 gallon delivery is not out of the ordinary.

Discrepancy #3:

In the audit report, it is claimed that there is a further discrepancy between the District's [REDACTED] records and the Comptroller's mathematical computation of the amount of fuel – diesel and gasoline – that should be in inventory as of the close of the audit period on February 28, 2013. The Comptroller claims that its audit "...found 515 gallons of diesel and 40 gallons of gasoline..." being unaccounted for as of February 28, 2013. The District submits that this claim never had any merit as none of the alleged discrepancies, (see **Discrepancy #1 and #2 above**) purportedly being components of the alleged closing inventory discrepancy of February 28, 2013, have been substantiated in any logical manner by the Comptroller.

The public is requested to note that the Comptroller states the following in its report pertaining to the closing inventory alleged discrepancy:

At the exit discussion (held November 3, 2014), District officials provided us with additional documentation, including an invoice for the sale of gasoline to an outside agency and manual fuel usage records, which explained all but an immaterial amount of these differences.

The information provided at the exit discussion was previously provided by the District to the Comptroller's auditor during the course of the audit. This documentation was provided at the exit discussion to the auditor's immediate supervisor.

See
Note 22
Page 66

**DISTRICT FUEL WAS DULY ACCOUNTED FOR
DURING THE AUDIT PERIOD**

Utilizing the agreed upon fuel numbers as hereinafter set forth, it can rationally be understood that the District has accounted for the fuel starting with opening inventory as of the beginning of the audit period on September 1, 2012, taking into account fuel deliveries per delivery invoices and then giving consideration to the District's computerized [REDACTED] inventory tracking system showing closing inventory at the end of the audit period on February 28, 2013

GASOLINE FUEL ACCOUNTING

9/1/12 Starting Inventory per [REDACTED] Tank #1 864/Tank #2 699	1,563
Fuel Deliveries – per invoices – through 2/28/13	5,491
SUBTOTAL.....	7,054
Fuel Usage – per [REDACTED]	<u>(5,786)</u>
Calculated Inventory	1,268
2/28/13 Actual Inventory – per [REDACTED] Tank #1 763/Tank #2 496	<u>(1,259)</u>
DIFFERENTIAL.....	9 GALLONS

See Note 23 Page 66

The above gas fuel differential of 9 gallons as compared to total gas fuel taking into account starting inventory and deliveries accumulating 7,054 gallons can be expressed as a 0.0012758 differential or a 0.1276% differential.

DIESEL FUEL ACCOUNTING

See Note 23 Page 66

9/1/12 Starting Inventory per [REDACTED]	
Tank #3 3,703/Tank #4 3,699	7,402.00
Fuel Deliveries – per invoices – through 2/28/13	84,635.20
SUBTOTAL.....	92,037.20
Fuel Usage – per [REDACTED]	<u>(82,778.30)</u>
Calculated Inventory	9,258.90
2/28/13 Actual Inventory – per [REDACTED]	
Tank #3 4,728/Tank #4 4,504	<u>(9,229.00)</u>
DIFFERENTIAL.....	29.9 GALLONS

The above diesel fuel differential of 29.9 gallons as compared to total diesel fuel taking into account starting inventory and deliveries accumulating 92,037.20 gallons can be expressed as a 0.0003248 differential or a 0.0325% differential.

CONCLUSION TO SECTION 2 OF DISTRICT'S RESPONSE

The Comptroller's assertions are:

The Board should adopt policies and procedures that help ensure that staff maintain detailed perpetual inventory records to account for the amount of fuel purchased, used and the balance remaining, and perform periodic physical inventories. The fuel balances in the perpetual records should be periodically reconciled to delivery, usage and leak test records as well as physical inventories. Material differences should be investigated and resolved. It is also important for District officials to review fuel usage reports to ensure that fuel is used only for District purposes.

The Board did not develop policies and procedures to achieve adequate safeguards of the District's fuel inventories, such as the maintenance of accurate and timely fuel delivery and usage records. Although the District has two computerized fuel management systems that capture the quantities of fuel delivered and dispensed and inventory on hand, District employees did not reconcile these records to ensure that all fuel was accounted for. Furthermore, District officials did not review fuel usage reports to ensure that fuel is used only for District purposes.

The Comptroller's assertions and conclusions are not supported by the facts at hand.

As detailed hereinabove, the Board did cause to be in place due and proper internal controls and safeguards to ensure that all fuel is accounted for from perspective of delivery, usage and payment.

One need only reasonably conclude that the Comptroller's failure to understand the purposes of, and to have properly analyzed the information provided by, the District's two functioning fuel control computerized accounting systems, as manually monitored by District personnel, is the basis for the inaccurate information concerning the supposed discrepancies existing in District's fuel records set forth in the audit report under the subheading "Fuel."

See
Note 13
Page 64

The Board did have in place during the audit period adequate controls and safeguards to ensure that all fuel received, used and paid for is duly accounted. The post-audit period linkage of the District's two computerized fuel systems enhances the accuracy of said accounting processes.

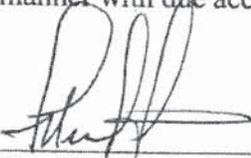
The Board required and continues to mandate that both computerized fuel accounting systems be continually monitored by District personnel to assess if there are any issues to be addressed and which issues will continually be reviewed as needed inclusive of a monthly recapitulation.

DISTRICT'S CONCLUSION TO COMPTROLLER'S AUDIT

The Board of Commissioners of Sanitary District No. 6, Town of Hempstead submits that Comptroller's audit report findings concluding that the Board has acted in an improper manner relative to procuring professional services and that the Board has failed in its fiduciary duty to cause appropriate safeguards to be in place to duly account for fuel are inaccurate, misleading and totally without merit.

The Board of Commissioners prior to the audit period, during the audit period and subsequent thereto has duly and properly undertaken to perform its fiduciary responsibilities to the public; has caused there to be in place all appropriate internal controls and safeguards concerning procurements of all District purchases with all procurements having been made and presently being made in accordance with New York State law; and with all District expenses having been incurred and paid for in a proper manner with due accounting therefor.

Dated: November 21, 2014



**FRANK SPARACIO, SECRETARY
BOARD OF COMMISSIONERS
SANITARY DISTRICT NO. 6
TOWN OF HEMPSTEAD**

See
Note 24
Page 66

See
Note 15
Page 64

APPENDIX B

OSC COMMENTS ON THE DISTRICT'S RESPONSE

Note 1

We held one exit discussion on November 10, 2014 to discuss any comments or concerns District officials had with the report. Subsequently, we shared with District officials proposed changes to the report that resulted from that meeting and additional documentation provided to us after the exit discussion. As discussed with District officials at our entrance meeting at the beginning of the audit and at the exit discussion, our audit process is to transmit the draft report to District officials to have the opportunity to respond to the audit findings. Their response is included as an appendix to our final audit report.

Note 2

The title of our report is not misleading. The District correctly highlights that our initial assessment included evaluations of additional areas; however, our audit procedures were limited to the areas of professional services and fuel because they were the areas most at risk. This process was explained at the beginning of the audit process and again at the exit discussion.

Note 3

Our audit report does not state or imply that the Board failed to comply with the law.

Note 4

As indicated in our authority letter included in the audit report, pursuant to the State Constitution (Article V, Section 1) and General Municipal Law (Article 3), the State Comptroller has the responsibility to oversee the fiscal affairs of local governments. This fiscal oversight is accomplished, in part, through our audits. General Municipal Law authorizes the Comptroller to examine into the financial affairs, financial condition, resources and accounts of each local government. There is nothing in this grant of authority that suggests we are limited merely to examining compliance with minimum statutory requirements. Rather, we may also make findings and recommendations as to the observance of good business practices by commenting on the exercise of discretion by local officials, and identifying opportunities for local governments to improve and effectively manage operations. Section 35 of General Municipal Law provides that the Board may prepare and forward to our office a written corrective action plan that addresses the findings and recommendations in our audit report.

Note 5

At no time did Examiners comment on whether or not the District's procurement policy is in compliance with the GML as this is not within the scope of the audit. At the exit discussion, we agreed with District officials that the statute allows for local governments to provide exceptions to the use of RFPs for the procurement of goods and services, including professional services, which are not subject to competitive bidding requirements and we have revised the final report accordingly. Our audit scope

was limited to assessing the methods used by the District in the procurement of professional services, and not to giving affirmative/negative assurances as to the legal propriety of the District's procurement policy.

Note 6

As already noted, we agree that the statute allows for local governments to provide exceptions to the use of RFPs for the procurement of goods and services, including professional services, which are not subject to competitive bidding requirements and we have revised the final report accordingly. The report expressly states that GML authorizes governing boards to set forth in their procurement policies circumstances when, and types of procurement for which, the solicitation of proposals will not be in the best interest of the local government. However, we also believe it was not in the best interest of taxpayers and the District to never use RFPs for professional services. The fact that a local practice may be permissible under a statute does not necessarily mean the practice is a good one. It is our view that the solicitation of competitive proposals is an effective way to ensure the District receives the desired services on the most favorable terms and conditions without favoritism, extravagance, fraud or corruption.

Note 7

The purpose of our audit report is to identify opportunities for improving operations and strategies to reduce costs and to strengthen controls intended to safeguard the District's assets. It is not to give affirmative/negative assurances as to the legal propriety of the Board's policies. Although the statute, as a legal matter, allows the District to provide for exceptions in its procurement policy, that does not preclude us from expressing our view that the solicitation of competitive proposals is an effective way to ensure the District receives the desired services on the most favorable terms and conditions. RFPs allow the Board to take into account factors in addition to price, such as experience and staff availability. Seeking competition also provides assurance that contracts are entered into a manner which guards against favoritism, improvidence, extravagance, fraud and corruption. This process is intended to inform the Board in selecting its professional service providers for the benefit the taxpayers. We believe it is a good business practice for efficient and economical fiscal operation. We note that the Court of Appeals also has recognized the use of RFPs for professional services (*Omni Recycling v Town of Oyster Bay*, 11 NY3d 868; see also e.g., 2007 Ops St Comp No. 2007-1; 2000 Ops St Comp No. 2000-8).

Note 8

Our recommendation is advisory in nature and expresses our opinion in the matter. We are authorized to provide such advice pursuant to the Comptroller's statutory audit authority in GML, and it is appropriate for us to do so when we believe it is warranted by our audit findings. Moreover, our recommendation was merely that the District consider revising its procurement policy to provide guidance for procuring professional services through a competitive process. Consideration of such a revision may occur during the Board's required annual review of the procurement policies (see GML Section 104-b[4]) and in our view should include an understanding of how an RFP process can provide a mechanism for fostering increased competition and help ensure that these contracts are awarded in the best interests of the taxpayers.

Note 9

Our audit scope was not to determine whether the providers had the proper credentials and qualifications, the quality of the services, whether services provided were appropriate, or whether the compensation was reasonable. By never soliciting competition and not always requiring written agreements detailing contract terms and the basis for compensation, the Board may not be able to effectively select professional service providers.

Note 10

Reviewing the work of the auditor was not part of our audit scope. Furthermore, the District's financial condition is the responsibility of the Board and District officials, not that of an independent contractor.

Note 11

The District's response includes explanations of the services provided by these three individuals; however, the services to be provided, the time frames for those services, the basis for compensation or any other terms and conditions were not specified in written agreements or detailed Board resolutions.

Note 12

We were not given specific information about this individual's background or qualifications at any time during our audit or at the exit discussion. When we asked District officials, they told us that the individual has many years of experience in matters pertaining to sanitary district operations and works on special projects and compliance issues. We determined through independent research, and District officials confirmed at the exit discussion, that he is a former Board Secretary.

Note 13

At a meeting on October 31, 2014, and again at the exit discussion, District officials agreed with our finding that during the audit period District employees were not periodically reconciling fuel delivery and usage records with the physical inventory; therefore, they could not be assured that all fuel was accounted for or used only for authorized purposes.

Note 14

At a meeting on October 31, 2014, and again at the exit discussion, District officials agreed that, during the audit period, the physical inventory system was being used primarily to detect leaks and not to reconcile fuel inventory because District officials were waiting for the software vendors to "link it" to another system.

Note 15

During fieldwork and at the exit discussion, District officials could not provide us with reconciliations of fuel deliveries and usage records to the physical inventory. As a result, there is an increased risk that all fuel was not accounted for or not used for authorized purposes.

Note 16

During fieldwork, we were told that two individuals had access to the override keys, the Board Secretary and the Bookkeeper/information technology (IT) consultant, which we included in our draft report. At the exit discussion, District officials told us that a third individual also had access so we agreed to adjust the report accordingly. The District's response claim that the IT consultant does not actually have access but rather is granted access by the Treasurer (our final report has been revised to reflect this change) is new information which we did not verify. Because the IT consultant is an independent contractor, this would be a more appropriate control. However, it is not consistent with what District officials previously told us. Because these keys can be used to override the inventory control system and dispense fuel into unauthorized vehicles, it is important for the District to be clear about controls over these keys and establish policies for their security and use.

Note 17

District officials could not provide policies or procedures for the reconciliation of fuel inventories and told us on October 31, 2014, and again at the exit discussion that during the audit period no periodic reconciliations of fuel inventories were performed because they were waiting for the software vendors to "link" the two inventory systems.

Note 18

Based on additional documentation provided at the exit discussion, we adjusted the total gallons of diesel fuel delivered used in our calculations and revised the total discrepancies from 1,263 gallons to 1,321 gallons in the final audit report.

Note 19

District officials during fieldwork and at the exit discussion agreed that vendor invoices were the appropriate source for recording deliveries into the book inventory records for the purpose of reconciling the inventory records. During fieldwork, we found the physical inventory system was unreliable for the purpose of our test because we found discrepancies between the delivery invoices and the physical inventory records. Therefore, we used the book inventory records because the District manually records the deliveries into that system.

Note 20

Our computations were discussed with District officials at the meeting on October 31, 2014 and again at the exit discussion and they did not dispute them. Further, if District officials had periodically reconciled their records, these discrepancies should have been documented, explained and corrected prior to us bringing them to their attention.

Note 21

Our audit began in May 2013 and the book inventory records did not contain the March 2013 corrections referred to by District officials in their response. At the exit discussion, District officials agreed that it was a clerical error on their part. The purpose of the exit discussion is to give District officials the

opportunity to address any factual errors or omissions in the report. However, District officials did not use this opportunity to assert their claim that we were shown this report during fieldwork, nor did they choose to provide it to us to review after the exit discussion. Because we were not provided with an opportunity to verify this documentation, we could not consider it when finalizing our report.

Note 22

The invoice for the sale of gasoline to an outside agency was provided to us for the first time at the exit discussion, held on November 10, 2014, and using that information we revised the final report accordingly.

Note 23

We agree with these calculations; however, this type of reconciliation was not being performed by District personnel during the audit period, which increases the risk that all fuel may not have been accounted for or used for authorized District purposes.

Note 24

We do not believe it is in the best interest of taxpayers and the District to never use RFPs for professional services. The solicitation of competitive proposals is an effective way to ensure the District receives the desired services on the most favorable terms and conditions without favoritism, extravagance, fraud or corruption.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by the Board and District 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: cash management, claims processing, control environment, governing board, information technology control environment, payroll and personal services, chief financial officer, financial condition, purchasing and fleet services.

During the initial assessment, we interviewed District officials, performed limited tests of transactions, and reviewed pertinent documents, such as District policies, Board minutes, and financial records and reports.

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 or professional misconduct. We then decided on the reported objective and scope by selecting for audit those areas most at risk. We selected professional services and fuel inventories for further audit testing.

To accomplish the objective of this audit and obtain valid audit evidence, our procedures included the following:

- We interviewed District officials and a Board member, and reviewed the District's procurement policy, to determine if the Board sought competition in the selection of professional services providers.
- We reviewed minutes from Board meetings, vendor contracts, vendor history reports for 12 vendors. We reviewed 11 claims paid during our audit period, totaling \$74,454, to determine if the District entered into written contracts for professional service providers and to determine if payments were in accordance with the contracts or resolutions, as applicable. During our audit period, one of the 12 vendors had not yet submitted an invoice to the District; therefore, we did not have any claim to review. We also reviewed Board resolutions to determine if the services and basis for compensation were approved by the Board.
- We interviewed District officials and key employees to identify any policies and procedures over vehicle fuel inventories. We also determined if perpetual inventory and usage records were maintained and if records were periodically reconciled to ensure all fuel was accounted for.
- We examined perpetual inventory and usage records from September 1, 2012 through February 28, 2013 as well as vendor invoices to determine if fuel was used only for authorized purposes and if differences were investigated.
- Using the amount of fuel on hand on September 1, 2012, we added the deliveries for the period based on the delivery invoices and subtracted the usage based on the usage records and

compared the result to the amount of inventory on hand on February 28, 2013 to determine if fuel purchases were accounted for.

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

APPENDIX D

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