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December 22, 2020

By Electronic Mail

Jacqueline Beebe, Town Administrator
Town of Eastham
2500 State Highway
Eastham, MA 02642

Re: Chapter 90 and All States Asphalt

Dear Ms. Beebe:

The Massachusetts Office of the Inspector General (“OIG”) reviewed and evaluated the town of Eastham’s contract administration process for roadway improvements made in 2017, and specifically an overpayment to All States Asphalt. This review uncovered weak town oversight and financial controls on a road resurfacing and chip sealing project.¹ Although the overpayment was relatively small, the review highlights the importance of contract management and vendor oversight. The Office’s findings and the town’s corrective actions, as well as recommendations for improvement, are discussed in more detail below.

Background

Created by the Massachusetts Legislature in 1973, the Chapter 90 program provides annual funding to municipalities for transportation infrastructure projects on municipal ways, including roads and bridges.² These projects create or extend the life of capital facilities and roadways. Chapter 90 funds entitle cities and towns to receive 100% reimbursement from the state on approved projects. The Massachusetts Department of Transportation (“MassDOT”) oversees the funding program, approves projects and handles reimbursement.

Typically, funding for the program is authorized annually through bond bills, which are adopted as Acts of the Massachusetts Legislature. Each municipality’s Chapter 90 apportionment is

¹ “Chip sealing” is a common pavement maintenance process that extends roadway life. A chip seal is an application of asphalt followed immediately with an aggregate cover on an existing pavement.

² While commonly referred to as “Chapter 90,” since the program was originally created by M.G.L. c. 90, § 34(2)(a), the statutory authority for the program is now codified as M.G.L. c. 6C, § 4.

based on a formula that takes into account the city's or town's total road mileage, population and employment.

In 2017, the Legislature passed *An Act Providing for the Financing of Certain Improvements to Municipal Roads and Bridges*, which appropriated \$200 million in Chapter 90 funds for distribution to municipalities in fiscal year 2018.³ In fiscal year 2018, Eastham's distribution was \$245,866. The Massachusetts Legislature continues to provide funding for Chapter 90 projects. For fiscal year 2021, the Legislature authorized \$200 million in Chapter 90 funds to support local transportation infrastructure projects in all 351 cities and towns in Massachusetts.

Town of Eastham Roadway Improvements

In 2017, the town of Eastham's superintendent of public works ("superintendent") applied for Chapter 90 funds for roadway resurfacing from Aspinet Road to Schoolhouse Road. The town estimated the project's preliminary scope to require 62,778 square yards of rubber chip seal. Based on the information the town provided in its application, MassDOT approved funding for the project.

The town hired All States Asphalt, Inc. ("All States Asphalt") to perform the work on the project. Following the completion of work, All States Asphalt invoiced the town for 62,250 square yards of material, totaling \$283,237.50. The superintendent approved payment and submitted a reimbursement request to MassDOT Highway District 5 in October 2017. MassDOT approved the Chapter-90-funds reimbursement one month later.

Finding: The former superintendent failed to verify material quantities at the completion of the project, resulting in an overpayment to the vendor.

In April 2018, town officials were alerted to a potential overpayment on the Aspinet and Schoolhouse roads resurfacing project. In response, the town examined project records and hired a private firm to review the allegations. During the town's review, it noted that All States Asphalt's invoice did not list the resurfaced roads or detail road measurements to substantiate the total materials billed. The town administrator concluded that neither the former superintendent nor the vendor had measured how many square feet of road the vendor had resurfaced. The former superintendent also disregarded a readily accessible pavement study of road sizes and failed to conduct his own measurements.

Following its review, the town met with the vendor and measured the roads. The town determined that the vendor had actually used 59,245 square yards of rubber chip seal treatment to resurface the roads, 3,005 square yards less than the invoiced quantity. The difference in quantities resulted in an overpayment of \$13,672. The table below outlines the town's preliminary estimate, what the vendor billed, and the confirmed (*i.e.*, actual) road measurements.

³ See 2017 Mass. Acts. c. 10.

Road Name	Preliminary Estimate (in Square Yards)	Vendor Invoiced (in Square Yards)	Actual Measurements (in Square Yards)	Variance
Schoolhouse Road	15,556	No Detail Provided	15,498	.38%
Old Orchard Road	19,444		18,357	6.00%
Massasoit Road	11,111		9,968	11.00%
S. Sunken Meadow Road	5,556		4,437	25.00%
N. Sunken Road	6,944		6,613	5.00%
Aspinet Road	4,167		3,191	31.00%
Meetinghouse Road ⁴			1,181	
Total Square Yards	62,778	62,250	59,245	
Total Cost	\$285,639.90	\$283,237.50	\$269,565.75	
Project Overpayment			\$13,672.75	

The Town’s Corrective Actions

The town conducted a thorough review and hired a private firm to investigate allegations of overcharges on this roadway project. Following the town’s internal review, the town administrator made staffing changes, notably hiring a new superintendent of public works, Silvio Genao. Mr. Genao has engineering and public works experience and has had similar roles in other municipalities throughout the Cape and Islands. Additionally, he is a Massachusetts Certified Public Purchasing Official. This certification is part of the OIG’s training and certification program, which provides classes to state employees to promote good government and appropriate spending. The program includes courses that relate to construction procurement, contract administration and vendor oversight.

Soon after being hired, Mr. Genao began negotiating with All States Asphalt to recover the overpayment. In January 2019, he sent the vendor a letter requesting reimbursement. Town and All States Asphalt representatives met to conduct measurements in the spring of 2019, which confirmed the vendor did overcharge the town for materials. On August 6, 2020, All State Asphalt reimbursed the town of Eastham the full \$13,672.75. Town officials worked with MassDOT to identify an appropriate method for returning the overpayment. The town and MassDOT concluded that MassDOT would deduct \$13,672.75 from the reimbursement for a future Chapter 90 project.

Recommendations

As Chapter 90 funds are essential to local improvement projects and because the state has limited public funds, it is imperative that municipal officials oversee the funds appropriately and institute measures to safeguard resources. Municipal officials must be vigilant in contract administration. Adequate contract administration is crucial to project success and can reduce the risk of fraud, waste and abuse.

⁴ The town later added this road, not originally in the initial estimate.

The OIG recommends that the town of Eastham enhance its contract administration and vendor oversight policies and procedures to ensure that the town only pays for materials and services that it receives. Town officials must actively oversee vendor work, including confirming that work is completed satisfactorily and according to the contract. In Chapter 90 projects, this includes measuring the quantity of material used to ensure that the town only pays for the supplies used on the project.

Further, the OIG recommends that the town implement stringent controls around the vendor payment process. Officials should always ensure that the payment is appropriate under the terms of the contract or other agreement. Best practices include ensuring invoices are detailed and provide sufficient identifying information, such as a description of work, total quantity, unit of measure, unit price and the location of services performed (if applicable).

Lastly, the OIG recommends that town employees involved in procurement, project oversight or payment processes take the OIG's free, online training, *Contract Administration for Public Employees*. The class is part of the OIG's Massachusetts Certified Public Purchasing Official program.

Conclusion

Chapter 90 funds are vital for cities and towns. As a result of inadequate project and vendor oversight, the town of Eastham paid for materials that the vendor did not use on this roadway resurfacing project. The town also approved an invoice that did not contain adequate detail, and therefore, it should have been rejected.

Municipalities are entitled to Chapter 90 funds at a 100% reimbursement rate, and the Commonwealth expects municipalities will use the funds properly and provide adequate project oversight. The town of Eastham, along with all municipalities, must ensure that it uses these taxpayer funds in a responsible manner for public works projects.

Thank you for your attention to this matter. The OIG appreciates the cooperation and assistance from the town of Eastham's employees during this review. If the town needs any assistance in pursuing these recommendations, fraud prevention programs or other control measures, please do not hesitate to contact our office.

Sincerely,



Emily Pedersen
Director, Internal Special Audit Unit

cc: Silvio Genao, Superintendent of Public Works and Natural Resources,
Town of Eastham (by electronic mail)