



Mary Taylor, CPA
Auditor of State

TABLE OF CONTENTS

TITLE	PAGE
Independent Accountants' Report	3
Supplement to the Special Audit Report	
Relevant Individuals and Entities	5
Background	6
General Contract Noncompliance and Internal Control Recommendations	7
Issue No. 1 Chaney Cement Contractors, Inc.	11
Issue No. 2 MGL Enterprises, Inc.	13

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Mary Taylor, CPA

Auditor of State

INDEPENDENT ACCOUNTANTS' REPORT

Honorable Randall Westfall, Mayor
Village of Valley View
6848 Hathaway Road
Valley View, Ohio 44125

We conducted a special audit of the Village of Valley View (Village), by performing the procedures enumerated in the attached Supplement to the Special Audit Report for the period January 1, 2002 through April 30, 2009 (the Period), solely to:

- Determine whether the Village received the quantity and quality of material in accordance with payments made to the contractor at the established unit price for the contracts entered into with Chaney Cement Contractors, Inc. and MGL Enterprises, Inc.

This engagement was conducted in accordance with the Quality Standards for Inspections established by the President's Council on Integrity and Efficiency (January 2005). The procedures and associated findings are detailed in the attached Supplement to the Special Audit Report. A summary of our procedures and significant results is as follows:

1. We examined available contracts, invoices¹, inspection reports, "as-built" drawings, and drop slips received from concrete suppliers related to projects undertaken by Chaney Cement Contractors, Inc. (Chaney) to determine whether the Village received the quantity and quality of material in accordance with payments made to the contractor at the established unit price.

Significant Results – We reviewed eight contracts the Village awarded Chaney to perform street repair. The Village overpaid Chaney \$58,655 for the type and amount of concrete used to complete the contracts. Chaney also made billing errors on two of the contracts totaling \$11,392, which the Village paid. Additionally, the Village paid Chaney for a duplicative amount of \$41,058. Village Engineer Paul Dey and his employer Donald G. Bohning & Associates approved the invoices and submitted them to the Village clerk-treasurer for payment.

We issued Findings for Recovery against Chaney Cement Contractors, Inc., Donald G. Bohning & Associates, Inc., and Village Engineer Paul Dey, totaling \$111,105.

In response to our request for documents related to this special audit, Donald G. Bohning & Associates, Inc., and Village Engineer Paul Dey invoiced the Village \$739, for the preparation of "as-built" drawings. These drawings had previously been invoiced and paid by the Village during the performance of the original contract.

We issued a Finding for Recovery against Donald G. Bohning & Associates, Inc., and Village Engineer Paul Dey in the amount of \$739 for this duplicate payment.

¹During the Period, contract payments were made either based upon estimates prepared by the Village Engineer as described in the contracts or based upon invoices submitted by contractors. The method of these submissions for payment varied among the different contracts; therefore, within this report, any submissions for payment, whether representing estimates, invoices, or combinations thereof, are referred to as "invoices."

2. We examined available contracts, invoices, inspection reports, "as-built" drawings, and drop slips received from concrete suppliers related to projects undertaken by MGL Enterprises, Inc. (MGL) to determine whether the Village received the quantity and quality of material in accordance with payments made to the contractor at the established unit price.

Significant Results – We reviewed the two contracts the Village awarded MGL to perform street repair. The Village overpaid MGL \$47,173 for the type and amount of concrete used to complete the contracts. MGL also made billing errors on both of the contracts in the amount of \$10,628, which the Village paid.

We issued Findings for Recovery against MGL Enterprises, Inc., Donald G. Bohning & Associates, Inc., and Village Engineer Paul Dey, who approved the invoices for payment, totaling \$57,801.

3. During our special audit, we noted noncompliance with the Ohio Revised Code and contract requirements applicable to projects of each contractor. We issued four noncompliance citations related to maintenance of records, monthly estimates, extra work, and contract start dates. We also made six recommendations to improve controls over contract estimates versus contract billings, contract documents, invoices, emergency repairs and contract extensions, unbalanced bids, and monitoring actual work performed.



Mary Taylor, CPA
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March 19, 2010

Supplement to the Special Audit Report

Relevant Individuals and Entities

Paul Dey / Donald G. Bohning & Associates, Inc.

Each year during the Period, Village Council passed an ordinance hiring Paul Dey as the Village Engineer. Mr. Dey is employed by Donald G. Bohning & Associates, an engineering company. Mr. Dey's current contract with the Village expires on December 31, 2010.

Chaney Cement Contractors, Inc.

Chaney Cement Contractors, Inc. (Chaney) is a concrete company which began working in the Village in 1997. Based on documentation obtained and interviews conducted, Chaney was owned by Marco Leone and Massimo Leone. In 2006, Marco and Massimo Leone separated and Marco Leone continued to operate Chaney while Massimo Leone started a new company named MGL Enterprises, Inc. Chaney's last contract for work within the Village occurred in 2006.

MGL Enterprises, Inc.

MGL Enterprises, Inc. (MGL) is a concrete company owned by Massimo Leone who is the brother of Marco Leone. The company was founded in 2006 and received its first contract with the Village in 2007. MGL's last contract for work within the Village occurred in 2008.

Supplement to the Special Audit Report

Background

The Auditor of State (AOS) was conducting a special audit of payments by the City of Solon to certain street construction, repair, and maintenance vendors. As a result of information obtained during the special audit, AOS noted two of the vendors, Chaney and MGL, also conducted business with the Village of Valley View. AOS initiated a preliminary investigation of the Village's payments to Chaney and MGL and noted certain irregularities.

Based on the results of the preliminary investigation, on August 26, 2009, the AOS initiated a special audit of the Village's payments to Chaney and MGL.

Supplement to the Special Audit Report

General Contract Noncompliance and Internal Control Recommendations

NONCOMPLIANCE CITATIONS

Maintenance of Records

Ohio Rev. Code Section 149.351 states in pertinent part that “all records are the property of the public office and shall not be removed, destroyed, mutilated, transferred, or otherwise damaged or disposed of, in whole or in part, except as provided by law or under rules adopted by the records commissions provided for under sections 149.38 to 149.42 of the Revised Code...”

The 2003 Rigid Pavement Improvement contract was originally bid on May 2, 2003, and Konstruction King submitted the lowest bid for the project. However, no contract was awarded based on the original bid tabulation. Instead, advertisements were placed on May 15 and May 22, 2003, for a second set of bids to be received for the project. From the second set of bids, Chaney submitted the lowest bid and was awarded the contract. However, no documents were provided indicating why the first bid was not awarded and the project was rebid. The Village Engineer indicated that Council amended the scope of the project after the original bids were received and therefore, he was asked to change the bid specifications and rebid the project. The Village Engineer further stated that these modifications were discussed during Council committee meetings; however, transcripts, minutes, or recordings supporting these changes do not exist.

Without maintaining complete documentation of approved bid specifications and modifications, the Village is unable to monitor whether the contractors' bids accurately reflect the prescribed work pursuant to approved bid specifications and whether contracts are awarded to the lowest and best bidder. Additionally, failure to maintain these documents limits the Village's ability to maintain a historical timeline of projects for review and evaluation.

We recommend all documents related to bid specifications and modifications be maintained. These documents should be used to verify the amounts bid by the contractors conform to approved bid specifications and contracts are awarded to the lowest and best bidder. Additionally, maintaining these documents will provide a historical timeline of projects for the Village's review and evaluation.

Monthly Estimates

The contract documents state, “Estimates will be prepared monthly by the Engineer based upon the amount of acceptable work completed; and also upon acceptable material delivered upon the site.” In all ten of the contracts reviewed, the Engineer failed to submit his estimates on a monthly basis, as required, and instead submitted the estimates at random times during the performance of contract work. The failure to submit estimates or invoices monthly as required increases the risk of errors not being detected in a timely manner or difficulty in determining that work paid for during the month was actually completed.

We recommend the Village monitor contract invoicing to confirm estimates and/or invoices are submitted in accordance with contract requirements.

Supplement to the Special Audit Report

Extra Work

The standard contract language states, "Should the Engineer deem it necessary or advisable to have any extra work done, said extra work shall be done by the Contractor subsequent to and in conformity with a supplementary written agreement between the parties to this Contract."

For two of the contracts reviewed, the Village either did not complete a supplementary written agreement when required, or failed to thoroughly complete supplementary written agreements with all required information and signatures. The Village paid the contractors \$60,868 for extra work. Some of the extra work not documented in a formal change order included contractors billing for items which were not part of the original contract specifications. For these items, the lack of a written change order specifying the additional work prohibited us from determining whether changes to the contracts were paid in accordance with an agreed upon, established price.

The failure to document contract changes and amendments in writing and to obtain the required signatures increases the risk of exceeding budgetary restraints and overpayment. We recommend the clerk-treasurer monitor contract payments and confirm amendments are completed prior to payment.

Contract Start Date

Our review of the drop slips and inspection reports indicated the contractors began performing work on contracts as soon as they became aware of the acceptance of their bid, prior to the contract being signed. Section 3.10 of the contract between the Village and contractors states, in part, "The contract document shall be properly executed by the successful bidder and returned to the Engineer within seven days after the bidder has received notice that the contract has been awarded. No award shall be considered binding upon the Owner until the execution of the contract." Additionally, Section 3.14 of the contract states, in part, "The Contractor shall commence the work herein required to be done within ten days from the date of the execution of the contract."

Failure to execute contracts prior to commencing project work limits the ability of management to ensure contractors are working within contract guidelines and increases the likelihood that work will be completed that is not pursuant to agreed upon terms.

We recommend the Village refrain from allowing contractors to begin work until the contract is signed. The Village should require the contractor to notify the Village of the date it intends to begin working. An inspector should always be present to review the contractor's work for adherence to contract specifications pursuant to a properly executed contract signed by Council.

Supplement to the Special Audit Report

MANAGEMENT COMMENTS

Contract Estimates versus Contract Billings

Chaney's and MGL's bids for the concrete repair programs included two different classes of concrete to be used in varying amounts. Each contract documented the estimated quantity of each type of concrete and its cost. However, Chaney and MGL frequently received payments for reduced quantities of a lower-priced concrete and were paid by the Village in excess of its estimate for another, higher class of concrete.

Although the quantities of concrete provided in the contract were estimates, the variances between the two classes of concrete used by the contractor and paid for by the Village resulted in unapproved and significant increased costs to the Village, for which we issued findings for recovery. In the 2002 contract, the difference between the price estimate and the actual payments for concrete was \$105,059. Due to this increased cost, one section of the 2002 contract was not completed and had to be carried forward and included as part of the 2003 bid specifications and contract.

The ability to be paid in excess of the engineer's estimate on certain items, without being paid for other items, was one of the factors which resulted in the Village overpaying the contractor as indicated in the Findings for Recovery identified later in this report.

We recommend the Village monitor contract estimates versus actual contract billings to ensure contractors are completing projects pursuant to bid specifications and contract terms. If, for any reason, the specifications need to be changed, the Village Engineer should document the required change, the reason for the change, as well as the increase or decrease in estimated cost.

Contract Documents

Contract and bid documents were not entirely completed. Inspection reports, itemized sheets, concrete drop slips and "as built" maps were not always maintained by the Village Engineer or accurately and fully completed by the inspector for the ten contracts reviewed. These documents did not always identify specific work, depth, measurements and/or square feet of concrete poured.

Inspection reports, itemized sheets, concrete drops slips and "as built" maps should be completed in their entirety, for use by the Village in verifying prescribed work was completed. Failure to adequately document work being performed and comparing those reports to amounts invoiced resulted in overpayments to the contractor.

We recommend all documents related to the contract be complete and accurate with all required information and signatures. This will allow the documents to be compared to the invoices and reduce the risk of paying for work that was not completed or was not completed in accordance with bid specifications.

Invoices

Invoices contained per unit pricing errors. This resulted in overpayments by the Village to the contractors.

Invoices should be reviewed for correct unit pricing and recalculated to ascertain correct billing amounts. Items which are "lump sum" pricing should be tracked to determine the payment does not exceed the contract approved amount.

These procedures would enhance control over disbursements and reduce the risk of overpayments to contractors.

Supplement to the Special Audit Report

Emergency Repairs and Contract Extensions

During the Period, two emergency contracts were awarded to Chaney, for which bids were not solicited. The Village provided evidence of quotes received from Chaney for these two emergency projects; however, no documentation was available to determine whether the Village solicited bids or received quotes from any other contractors.

Additionally, instead of soliciting bids and executing a separate contract for the 2004 Rigid Pavement Repair Contract, the Village approved a \$162,000 extension of Chaney's 2003 Rigid Pavement Repair Contract for Chaney to perform the 2004 repairs.

Since the emergency repairs were not bid and there was no evidence that the Village requested more than one quote for the emergency or the contract extension, the contractor could establish his own price. This could result in the Village paying more for projects than if they were competitively bid.

The Village should consider accepting bids for an annual contract for emergency repair work and bidding all contracts over \$25,000. By doing so, the emergency work will no longer automatically default to the contractor performing work in the Village. We recommend the Village ensure that emergency work includes only true emergencies, and that prices for emergency work are agreed upon in writing and in advance of the performance of work.

Unbalanced Bids

The Village entered into ten contracts during the Period, eight which were awarded to Chaney and two which were awarded to MGL. Of these ten contracts, four were awarded based upon unbalanced bids, where the contractor included an item on its bid sheet that was bid well below the cost of the materials to complete the work.

According to the United States Department of Transportation (USDOT), Office of Program Administration, "A mathematically unbalanced bid is one containing lump sum or unit bid items which do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs, which he/she anticipates for the performance of the items in question."

We recommend the Village perform a detailed review of all bid documents to ensure the lowest bidder is not submitting an unbalanced bid. USDOT recommends that bids be analyzed by considering whether the bid is mathematically unbalanced and the effect the unbalanced bid items have on the total contract amount. Bids should also be evaluated for reasonable conformance with the engineer's estimate.

Monitoring Actual Work Performed

As part of the 2006 Rigid Pavement Contract with Chaney, a change order in the amount of \$50,000 for additional work was requested by the Village Engineer on July 7, 2007. This change order request was denied by Council and the additional work to be performed was put out to bid by the Village on August 6, 2007.

On August 16, 2007, the contract was awarded to MGL. Chaney did not submit a bid for this project. However, during an interview with the Village Engineer, Mr. Dey indicated that Chaney had completed portions of the additional work prior to Council bidding and awarding the contract to MGL. Further, Mr. Dey indicated that he did not inform Council that work on the project had already been performed by Chaney prior to Council awarding the contract to MGL. On December 10, 2007, MGL invoiced the Village for the project and, according to Mr. Dey, MGL subsequently paid Chaney for the work performed.

We recommend the Village reconcile actual work performed with the contract documents to ensure contracted work is completed by the appropriate contractors and pursuant to the contract timing guidelines. Additionally, Council should be made aware of accurate project status and all relevant project information for projects subject to bidding procedures.

Supplement to the Special Audit Report

Issue No. 1 – Chaney Cement Contractors, Inc.
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Procedures

We obtained and examined contracts, invoices, inspection reports, “as-built” drawings, and drop slips received from concrete suppliers for all contracts awarded to Chaney Cement Contractors, Inc. (Chaney) during the Period.

We identified the type and calculated the total amount of concrete delivered for each contract and compared it to contractors’ invoices to determine whether the Village paid for the correct type of concrete and if the Village paid for amounts in excess of the quantity delivered. We compared invoice details to project contract provisions to determine whether the Village paid for project costs in accordance with the contracted unit prices.

Results

We reviewed eight contracts the Village entered into with Chaney to perform street repair. The Village paid Chaney \$1,926,588. We determined the Village overpaid Chaney for both quantity and quality of concrete provided.

FINDINGS FOR RECOVERY

Concrete Overbilling

Chaney Cement Contractors, Inc. received various contracts from the Village during the Period. Village Engineer, Paul Dey approved the Chaney invoices and submitted them to the Village clerk-treasurer for payment.

Based on documents provided by the Village Engineer and concrete suppliers, the Village overpaid Chaney for use of an inferior grade of concrete which did not meet the contractual specifications and for concrete in excess of the quantity actually used on three of the eight contracts in the total amount of \$58,655.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Chaney Cement Contractors, Inc., Donald G. Bohning & Associates, Inc., and Paul E. Dey, Village Engineer, jointly and severally, in the amount of \$58,655, and in favor of the Village.

Billing Errors

Chaney Cement Contractors, Inc. received various contracts from the Village during the Period. Village Engineer, Paul Dey, approved the Chaney invoices and submitted them to the Village clerk-treasurer for payment.

As part of the audit, we reviewed invoices submitted by Chaney or by Paul Dey on behalf of Chaney, of which two contained unit pricing errors. The Village paid the invoices as they were presented, resulting in an overpayment to Chaney totaling \$11,392.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Chaney Cement Contractors, Inc., Donald G. Bohning & Associates, Inc., and Paul E. Dey, Village Engineer, jointly and severally, in the amount of \$11,392, and in favor of the Village.

Supplement to the Special Audit Report

Duplicate Invoicing

Chaney Cement Contractors, Inc. received various contracts from the Village during the Period. Village Engineer, Paul Dey, approved the Chaney invoices and submitted them to the Village clerk-treasurer for payment.

During an interview with the Village Engineer, Mr. Dey identified an invoice that he previously submitted on behalf of Chaney to the Village clerk-treasurer which included duplicate billings totaling \$41,058. The Village paid the invoice as presented which resulted in an overpayment to Chaney totaling \$41,058.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Chaney Cement Contractors, Inc., Donald G. Bohning & Associates, Inc., and Paul E. Dey, Village Engineer, jointly and severally, in the amount of \$41,058, and in favor of the Village.

Invoicing for "As-Built" Drawings

Donald G. Bohning & Associates, Inc. received various contracts from the Village during the Period to employ Paul Dey, a registered professional engineer, as Village Engineer. During the course of the audit, we requested certain documents from Donald G. Bohning & Associates, Inc., related to their work on Village projects. Bohning and Associates billed the Village for preparation of one of the requested documents, specifically, the 2003 "as built" drawing.

Section 2e of the 2003 contract between the Village and Donald G. Bohning & Associates Inc. states, "All plans, reports, estimates, statements, etc., shall be placed on file with the Village Clerk and a complete set of "as-built" drawings shall be filed with the Village upon completion of the improvement." Additionally, previous invoices submitted to the Village and paid during the completion of the 2003 project included charges for the "as-built" drawings.

The Village paid the invoice for the 2003 "as built" drawing provided for this audit, as well as the original invoice in 2003 which included the "as built" drawing. This resulted in a duplicate payment totaling \$739.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against Donald G. Bohning & Associates, Inc., and Paul E. Dey, Village Engineer, jointly and severally, in the amount of \$739, and in favor of the Village.

Supplement to the Special Audit Report

Issue No. 2 – MGL Enterprises, Inc.
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Procedures

We obtained and examined all contracts, invoices, inspection reports, “as-built” drawings, and drop slips received from concrete suppliers for contracts awarded to MGL Enterprises (MGL) during the Period.

We identified the type and calculated the total amount of concrete delivered for each contract and compared it to contractors’ invoices to determine whether the Village paid for the correct type of concrete and if the Village paid for amounts in excess of the quantity delivered. We compared invoice details to project contract provisions to determine whether the Village paid for project costs in accordance with the contracted unit prices.

Results

We reviewed the two contracts the Village entered into with MGL to perform street repair. The Village paid MGL \$396,708. We determined the Village overpaid MGL for both quantity and quality of concrete provided.

FINDINGS FOR RECOVERY

Concrete Overbilling

We reviewed two contracts awarded to MGL Enterprises, Inc. Village Engineer, Paul Dey, submitted the MGL invoices for payment to the Village’s clerk-treasurer.

Based on documents provided by the Village Engineer and concrete suppliers, MGL overcharged the Village a total of \$47,173 for use of an inferior grade of concrete which did not meet the contractual specifications and for concrete in excess of the quantity actually used for both of the contracts.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against MGL Enterprises, Inc., Donald G. Bohning & Associates, Inc., and Paul E. Dey, Village Engineer, jointly and severally, in the amount of \$47,173, and in favor of the Village.

Billing Error

MGL Enterprises, Inc. received two contracts during the Period. Village Engineer, Paul Dey approved the MGL invoices for payment to the Village’s clerk-treasurer.

As part of the audit, we reviewed invoices submitted by MGL or by Paul Dey on behalf of MGL for two contracts, of which both contracts contained unit pricing errors. The Village paid the invoices as they were presented, resulting in an overpayment to Chaney totaling \$10,628.

In accordance with the foregoing facts and pursuant to Ohio Rev. Code Section 117.28, a Finding for Recovery for public monies illegally expended is hereby issued against MGL Enterprises, Inc., Donald G. Bohning & Associates, Inc., and Paul E. Dey, Village Engineer, jointly and severally, in the amount of \$10,628, and in favor of the Village.



Mary Taylor, CPA
Auditor of State

VILLAGE OF VALLEY VIEW

CUYAHOGA COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

CERTIFIED
JULY 21, 2010