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OPINION 2012-004 FOR PUBLIC RELEASE

RECONCILIATION OF CERTIFIED PAYROLL WITH OTHER RECORDS OF HOURS OR PAYROLL

This opinion represents the views of the Office of the Ulster County Comptroller at the time they were rendered, based upon facts and records as presented to this office by the persons or departments making the inquiry or contacted in order to render this opinion. This opinion may no longer represent those views if, among other things, facts provided are determined to be inaccurate, or there have been subsequent court cases or statutory amendments that bear on the issues discussed in this opinion.

INTRODUCTION

In connection with certain irregularities noted in the certified payroll submissions of Certain Vendors, generalized concerns were raised with regard to County review of such vendor invoices. On April 2, 2012, we met with Ms. Ronga and Ms. Krom regarding our concerns. This opinion follows up on that meeting and memorializes our recommendations with respect to the issues.

STATEMENT OF ISSUES

The issues may be summarized as follows: (i) in the case of the referenced contractors, there were inconsistencies noted between the certified payroll submitted and the FEMA documentation provided by the same contractors on forms prepared by the County for that purpose, as well as the vendor's "Daily Record of Work Authorized" in Vendor 1's case, and, (ii) there were errors noted in the certified payroll, which led to submission of a "revised" certified payroll from Vendor 1 and revised invoices from Vendor 2. These errors, if not identified by our office, would have led to overpayment of the invoices. With respect to these two contractors, revised and reconciled invoices and certified payroll statements appear to have led to correct payment, and such payment has been authorized. We turn our attention now to the procedural issues which can be put in place to protect the County from further problems in this regard.

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FEMA CONSIDERATIONS

An initial concern of this office in this matter was that if the FEMA forms were incorrect, and in particular, if they revealed entitlement to lesser payment than the certified payroll statements, then there was a risk that FEMA would not reimburse the County for the full amount which the County paid in accordance with the certified payroll statements. We note the representation of Ms. Ronga and Ms. Krom that the FEMA forms which revealed inconsistencies in the referenced payrolls are not “official” forms required by FEMA in order to obtain reimbursement, but rather internal forms used for your office’s record-keeping only, a practice of which we approve under the circumstances. We further note the representation that FEMA representatives may not be reviewing payroll and work log records with a particularly critical eye. Both points seem to result in little risk of deficient reimbursement.

However, it is this office’s obligation to ensure internal control over accounts payable in any event, and to that end, it is important that the FEMA records match the certified payroll records. We therefore advise that procedures must be put in place in your office to reconcile the FEMA records and certified payroll records as they are submitted, and to require adjustment prior to submitting for payment where inconsistencies are noted. We recognize that this particular round of FEMA contracts is nearly complete, but obviously the storms of 2011 will not be the last involvement the County will have with FEMA.

CERTIFIED PAYROLL ISSUES

The certified payroll issues raised by the referenced vendor submissions go beyond the FEMA reconciliation issue to general concerns as to protocol. We are concerned that any payroll deemed “certified” can properly be later corrected and deemed “certified” again. Having researched the issue, we have concluded that where the previously certified payroll may legitimately be justified as a good faith error, the second certified payroll can be accepted, but certainly we have to be careful not to be put in a position of “investigating” the motives or causes of such errors, making it critical that review of certified payroll take place at the time of submission by your office. It is important to note that in both referenced cases, the initial certified payroll submission would have resulted in overpayment. The fact that both contracts apparently had a “not to exceed” clause (NTE), does not obviate the concern; that there is no danger of paying over a certain aggregate amount does not justify overpayment in any given payment cycle, or, indeed, overpayment in the aggregate even if the NTE amount is never reached. Had Ms. Reinhard not recognized certain inconsistencies in these records and requested backup, the overpayment would have been issued.

We therefore advise that your office must review certified payroll for accuracy as against known job site records, and except in the most extreme circumstances, must require and refer to on-site review records to verify their accuracy.

IMPLEMENTING PROTOCOL

We are sensitive to the particular circumstances of these FEMA cases, and to the fact that the vendors themselves, in some cases, may be ill-equipped to handle the necessary record-keeping and payroll. We also acknowledge that there may be challenges to the implementation of the protocols suggested herein for your office, and we are happy to discuss those challenges further with you to ensure the proper controls in a format that can be reasonably achieved by your staff. Please feel free to follow up with us in this regard. Otherwise, we will assume procedures have been implemented to put the recommendations herein in place. Thank you for your hard work and dedication.

Elliott Auerbach, Comptroller

April 17, 2012

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