

COUNTY OF ULSTER

PO BOX 1800

KINGSTON, NEW YORK 12402

Office of the Comptroller

(845) 340-3525

(845) 340-3697-Fax



Elliott Auerbach

Comptroller

Joseph Eriole, Esq.

Deputy Comptroller

OPINION 2012-003 FOR PUBLIC RELEASE

Payment of Untimely Invoices to Vendors

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INTRODUCTION

In connection with our review of whether payment should be made to Vendor for work performed in 2008 but not billed until 2012, we have also considered the impact on future budget and payment cycles. This opinion memorializes our recommendation on both the Vendor case and the general protocol to be put in place.

STATEMENT OF ISSUES

The issues may be summarized as follows: (i) should Vendor be paid \$5,000.00 for work which has been verified as complete, but which was, by their internal error, not billed until 2012 after the completion of the work, and (ii) what measures should be adopted going forward to ensure no materially adverse impact on future budget and payment cycles for the County.

AS TO VENDOR'S INVOICE

Vendor was engaged by contract with the County to perform certain services in September 2005, under the direction of the County Planning Department. The invoice for which payment was sought was for work performed in or around November, 2006. There is no dispute that the work invoiced was actually performed, and that the aggregate contract value and the invoice in question were in keeping with the Contract. It has also been established that there is money available to make the requested payment. Finally, review of the Contract indicates no contractual

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provision which would allow for the payment to be rejected due to its materially late presentation. Review of case law indicates the possibility of a colorable laches claim based on the delinquency of the invoices, but pursuit of that course of action under the circumstances and in light of the claim value of \$5,000.00 is deemed imprudent. The payment has been authorized.

AS TO FUTURE PROTOCOL

We are concerned that there is no provision in our standard County contract which would protect the County from payment of a seriously delinquent invoice. In the instant situation, the harm is negligible because the budget exists to pay the claim in a budget cycle *five* years removed from the date of the performance; but if the claim were more substantial, and/or less verifiable, the harm to the County in a subsequent budget cycle might be much more acute, not to mention that it is an accounting irregularity which may not be capable of being adjusted for after the fact if the claim were greater than a reasonable contingency might afford.

We therefore recommend that future County contracts immediately include an “aging” provision which allows the County the right to deny or adjust claims made outside of an established timeframe in relation to the work performed. It is our suggestion that that timeframe be no more than 120 days. The County Attorney’s office is asked to implement this policy immediately. Language in sum and substance as follows may be instructive:

"Billing and invoicing with documentation, must be timely submitted within 120 days of the completion of the services, work or delivery for which payment is sought. The County reserves the right to reject or adjust, at its sole discretion, payment of billing and/or invoicing which is not timely submitted in accordance herewith, regardless of whether the services, work, or delivery was rendered."

This would protect the County in a case where a substantial invoice was presented which might have an impact on a subsequent budget cycle, while also allowing the discretion to pay the invoice under appropriate circumstances.

Elliott Auerbach, Comptroller

April 17, 2012