



State of New Jersey

OFFICE OF THE STATE COMPTROLLER
P.O. Box 024
TRENTON, NJ 08625-0024

CHRIS CHRISTIE
Governor
KIM GUADAGNO
Lt. Governor

A. MATTHEW BOXER
State Comptroller

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Contact: Pete McAleer
609-633-2377

State Comptroller finds series of contracting flaws in Borough of Edgewater lead to unnecessary expenses

Comptroller action also results in borough attorney's removal from state pension system

A report released today by the Office of the State Comptroller (OSC) reveals that poor contract management practices in the Borough of Edgewater led to a string of unnecessary expenses for taxpayers.

The review by OSC's Procurement Division found that on numerous occasions the Borough paid for legal services that were improperly billed. The Borough also approved a series of modifications to its contract with the Borough attorney that permitted the attorney to bill the Borough hourly for services that previously were included in his salary. The Borough's hourly expenses for legal services substantially increased following the modifications. In interviews with OSC, responsible Borough officials were unable to provide any justification for the series of changes.

Instances of mismanagement detailed in the OSC report extended to the Borough's procurement of other professional services as well. The report found the Borough did not use a proper "fair and open" process for contracts as required under the state's pay-to-play statute, did not consider cost as a factor in awarding professional service contracts, and failed to impose a cap to control the cost of vendor billings.

"From start to finish, our review of contracts in Edgewater revealed shortcomings that cost taxpayer dollars," State Comptroller Matthew Boxer said. "Unfortunately, we've seen these issues all too frequently throughout the state. In issuing this report we're providing guidance to all public entities that need to improve their contracting and fiscal management practices."

As part of its review, the OSC also determined that the Borough attorney for Edgewater was improperly receiving pension credits for his legal work for the Borough of Emerson. Following intervention by the OSC, Emerson officials confirmed that they had been wrong to include the attorney in the pension system and that his pension credits would be removed.

In reviewing the Borough of Edgewater's legal services contract, OSC found a series of language changes over a four-year period beginning in 2007, the first year of the new Borough attorney's tenure. The changes permitted additional hourly billings by the attorney. For example, one change removed "preparation of ordinary contracts and bid documents" from the list of services covered by the attorney's salary, allowing the attorney to bill hourly for such work. In interviews with OSC, responsible Borough officials stated they were unaware of the changes. The then-Council President, for example, stated that he did not know of the changes and that to his knowledge they had not been presented to the Council for review, even though the Council had indeed voted to approve the contracts.

While changes in the contract language were not the only cause, hourly fees paid by the Borough to the Borough attorney increased from \$78,540 in 2006 to \$181,740 in 2007. In that same period, the Borough also increased the Borough attorney's additional salary from \$72,837 to \$75,022.

The Borough also failed to detect numerous instances in which it was billed hourly fees for legal work that should have been covered by the salary payments. The Borough attorney reimbursed the Borough for the improper billings after the OSC brought the issue to his attention. The Borough administrator stated to OSC that he had never disapproved or reduced a bill submitted for payment by the Borough's professional service providers.

The report also criticized the Borough's vendor selection process and its failure to apply selection criteria, as set forth by pay-to-play legislation. The Borough was unable to provide to OSC any documents indicating an actual evaluation of competing vendors. When asked about such evaluations, the Borough administrator noted that in his view "politics" played a role in the contract awards.

"While the Borough apparently considered politics in awarding the contracts, they didn't consider cost," Boxer said. "If the goal is to get the best deal for taxpayers, it's difficult to fathom why cost would not even be a factor to consider."

Included in the report are 13 recommendations to government agencies for improving contracting and fiscal management practices.

OSC began its review after receiving a complaint on its hotline regarding the Borough's professional service contracts and allegations of overbilling. OSC's toll-free hotline number is 866-547-1121.