

# Bemus Point Central School District

## Capital Projects

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OFFICE OF THE NEW YORK STATE COMPTROLLER  
Thomas P. DiNapoli, State Comptroller

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# Report Highlights

## Bemus Point Central School District

### Audit Objective

Determine whether the District properly and transparently used capital project resources.

### Key Findings

- District officials could have presented the capital project to the voters in a more transparent manner.
- The Board did not approve change orders or competitively bid seven change orders totaling \$362,000 that exceeded the statutory bid limit.

### Key Recommendations

- Present the capital project plan transparently to voters.
- Properly approve all change orders and competitively bid change orders exceeding the statutory bidding limit.

District officials generally disagreed with our findings but indicated they would take corrective action.

### Background

The Bemus Point Central School District serves the Towns of Ellery, Ellicott and Gerry in Chautauqua County.

The District is governed by an elected seven-member Board of Education (Board). The Superintendent of Schools (Superintendent) is the chief executive officer and is responsible for day-to-day management. The Business Manager is responsible for the administration and supervision of financial activities.

District officials completed a \$16.5 million District-wide capital improvement project in 2019, which involved constructing, renovating and improving various buildings and sites.

#### Quick Facts

Enrollment	690
Employees	135
2018-19 General Fund Budget	\$15.5 million
2013 Capital Project Budget	\$16.5 million

### Audit Period

July 1, 2015 – September 12, 2019

# Capital Projects

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In December 2013, District voters approved two propositions for a District-wide capital improvement project, which involved constructing, renovating and improving various buildings and sites. According to the propositions, the total estimated cost for the project was not to exceed \$16.5 million.

## How Should Officials Oversee and Manage Capital Projects?

Capital improvement projects are generally long-term projects that require large sums of money to acquire, develop and improve various facilities. The board is ultimately responsible for the oversight and management of the district's capital projects. District officials should monitor progress and implement necessary changes to ensure the project is completed in a cost-effective manner.<sup>1</sup>

The board and district officials should ensure that proposed capital projects are presented to the public in a transparent manner. To make an informed decision, voters need to be provided with a sufficiently detailed description of the project scope, including a thorough description of the type of work contemplated, where the work will be performed, what furnishings and equipment will be purchased, estimated costs and information regarding how the district will pay for the project.

With any construction undertaking, changes or amendments are expected because a number of variables are unknown at the start of a project. A change order is a formal construction contract modification, agreed upon by both district officials and the contractor, to authorize a change in the work, an adjustment in the project cost or a change in the contract time.

Because the board authorizes construction contracts, it should also review proposed changes to these agreements. Change orders should be presented to the board for approval in a timely manner and should be reviewed by the board as promptly as possible to ensure each change order is approved before any additional work is started. Change orders will often result in modifications to the capital project budget, which also require board approval. The board should document its review and approval of change orders in the board minutes. Change orders should generally be reserved for unanticipated job site conditions or to otherwise address conditions that may have changed since the bid specifications were drawn.

New York State General Municipal Law<sup>2</sup> generally requires the Board to competitively bid public works contracts involving expenditures exceeding \$35,000.

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<sup>1</sup> Refer to our Local Government Management Guide publication *Capital Projects Fund* available on our website at [www.osc.state.ny.us/localgov/pubs/lgmg/capital-projects-fund.pdf](http://www.osc.state.ny.us/localgov/pubs/lgmg/capital-projects-fund.pdf)

<sup>2</sup> New York State General Municipal Law, Section 103

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## Officials Could Be More Transparent When Presenting Project Details to the Public

We identified instances where the Board and District officials could have been more transparent when presenting the project's scope to the public. While the project's total costs of \$16.49 million did not exceed the \$16.5 million in propositions approved by voters, officials had an opportunity to complete the proposed project for less than the approved amount. However, officials chose to complete additional work and adjust the project's scope rather than spending less. Further, officials did not provide the voters with sufficient detail to enable them to be fully informed regarding the project scope.

Although the District provided voters with a project plan with a general description of the work to be completed, it did not provide voters with a more detailed plan explaining the project's full scope. The District is required to propose all phases of a capital project, including detail of the work's scope, to the New York State Education Department (SED) for approval.

After the project was approved by the voters, six separate applications were submitted to SED for approval. We reviewed the applications and found that the cumulative estimated project cost exceeded the voter approved amount by \$594,000. We compared the scope of the work described in the applications to bid documents, construction plans and the propositions and found that the applications and bids included several significant items not listed or described in the original propositions. These items included the following:

- A new parent drop-off/pick-up area (\$293,000)
- Locker room showers (\$143,000)
- A new rear parking lot (\$129,000)
- Soccer scoreboard (\$33,000)
- Softball scoreboard (\$26,000)

District officials, anticipating that actual bids could be less than estimated amounts, included these items<sup>3</sup> in the original project bids as alternate items but did not include these items in the project propositions presented to the voters. SED allows districts to prepare a shopping list of desired items in the original plans and specifications as added alternatives, in the event appropriations remain at the end of a project. However, alternative items should be included in propositions submitted for voter approval.

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<sup>3</sup> With the exception of the new rear parking lot, which was separately bid after initial project construction began.

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Because bids received were significantly less than officials anticipated, they decided to adjust the original project scope and spend the remaining authorized appropriations. Officials told us that they believed that the original propositions were vague enough to add these items to the project without getting additional voter approval.

Although officials did not exceed the total amount authorized by the propositions, voters were not afforded the opportunity to voice an opinion on the Board's decision to adjust the project scope. The Board did not fully disclose and discuss all substantial proposed project revisions and the related costs, at one or more Board meetings for public consideration.

### **The Board Did Not Properly Approve Change Orders or Follow Bidding Requirements**

District officials submitted 69 change orders to SED totaling \$648,000. We reviewed 27 orders totaling \$563,000 to determine whether they were properly approved by the Board and complied with applicable bidding requirements.

We found that while the Superintendent reviewed and approved the change orders, the orders were not presented to the Board for review and approval and documented in the minutes. Therefore, the public was unaware of the change orders.

In addition, we found seven change orders totaling approximately \$362,000 that exceeded the statutory bidding threshold of \$35,000 for public works contracts. The following change orders were not competitively bid:

- One order totaling \$152,000 for the replacement of unsuitable parking lot soils.
- Three orders totaling \$70,000 for the purchase and installation of new ceramic tile to match tile already installed on adjacent walls.<sup>4</sup>
- One order totaling \$52,000 for changes to the parking lot configuration to allow for proper traffic flow.
- One order totaling \$51,000 for the installation of electrical components and conduit.
- One order totaling \$37,000 for the replacement of existing louvers throughout the high school.

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<sup>4</sup> Three separate change orders were completed for matching tile work.

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The Superintendent told us that officials did not obtain additional bids for items included in change orders because using the same vendors who previously bid on the work would help ensure the project was finished in a timely manner.

Because the change order work was negotiated with existing contractors, it may have been more costly than work awarded through a competitive process. Further, because the Board did not approve change orders, the orders were not made in a transparent manner.

### **What Do We Recommend?**

The Board and District officials should:

1. For future capital projects, present the capital project plan in a more transparent manner and provide voters with detailed descriptions of the improvements to be made and all reasonably planned costs.
2. Ensure that change orders are properly approved and competitively bid change orders that exceed the statutory bidding limit.

# Appendix A: Response From District Officials

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ADMINISTRATIVE OFFICES

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MICHAEL E. MANSFIELD  
Superintendent of Schools

January 29, 2020

Mr. Jeffrey Mazula  
Chief Examiner  
295 Main Street, Suite 1032  
Buffalo, NY 14203-2510

Dear Mr. Mazula:

Bemus Point Central School District acknowledges receipt of the draft Report of Examination 2019M-212 concerning Capital Projects of the District.

Please note that the Board submits this letter as both our response to the draft audit and our corrective action plan.

### **Response to Key Findings and Recommendations**

#### **Transparency-**

- We understand the Comptroller's desire for transparency. Our Board and the district's administration strive for transparency with our community as one of our primary goals. We found this part of the draft report indicating our District's lack of transparency to be disheartening and misleading. The project presented to the public at initial planning meetings provided the general scope and cost estimates as provided by the architects. As with all capital projects, until the bids are in and construction begins, the actual cost and construction needs can be unknown and fluctuate greatly. With the changes in costs experienced, the Board believes District Administration kept both the Board and the public updated on the various changes to the project through Building Committee meetings, monthly Superintendent reports at public board meetings and through other visual media within our buildings and on our district website. In the future the District will attempt to present greater detail of project scope, including potential additions and deletions based on bidding results, and will be sure to maintain documentation of update reports for verification.

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**Change Order Approval-**

- The Board will formally authorize the Superintendent to approve change orders so as not to delay construction. However, the Board will also receive a change order report to accept as part of the monthly financial reports approved in the Board minutes.

**Competitive Bidding Requirements-**

- The District was not aware that once a contract is bid and awarded, such as electrical, a change order for that contract exceeding statutory bidding requirements requires additional bidding. We will ensure that bidding requirements are followed in future projects.

Sincerely,

Barry L. Swanson  
Board President  
Bemus Point CSD

## Appendix B: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective<sup>5</sup> and obtain valid audit evidence, our audit procedures included the following:

- We interviewed District officials and reviewed Board minutes, architectural drawings and District policies to gain an understanding of capital project management.
- We reviewed original project propositions, capital project applications submitted to SED and project contract, bids and bid specifications to determine the project scope and whether sufficient information was presented to voters.
- We reviewed the architect estimates to determine whether capital project applications submitted to SED were for amounts that exceeded the voter approved amounts.
- We interviewed District officials to gain an understanding of the additional project work contracted for and expansions to the original scope.
- We reviewed bid documents to assess whether the District properly awarded the bids.
- We used our professional judgment to select a sample of 27 change orders for testing. We reviewed these change orders to assess whether the Board properly approved the orders and complied with applicable bidding requirements. We selected all change orders over \$10,000 for our sample.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or the relevant population size and the sample selected for examination.

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<sup>5</sup> We also issued a separate audit report, *Bemus Point Central School District – Financial Management (2019M-216)*.

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The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The CAP should be posted to the District's website for public review.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

### **Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

### **Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf](http://www.osc.state.ny.us/localgov/pubs/cyber-security-guide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

### **Research Reports/Publications** – Reports on major policy issues facing local governments and State policy-makers

[www.osc.state.ny.us/localgov/researchpubs/index.htm](http://www.osc.state.ny.us/localgov/researchpubs/index.htm)

### **Training** – Resources for local government officials on in-person and online training opportunities on a wide range of topics

[www.osc.state.ny.us/localgov/academy/index.htm](http://www.osc.state.ny.us/localgov/academy/index.htm)

## Contact

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