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March 7, 2008

The Honorable Carey Ferrell
Chair, Town of Brevator
7184 East Cord Road
Cloquet, Minnesota 55720

The Honorable Kal Kokkonen
Supervisor, Town of Brevator
7559 Kinden Road
Cloquet, Minnesota 55720

The Honorable Keith Oswald
Supervisor, Town of Brevator
3575 Highway 33 North
Cloquet, Minnesota 55720

Ms. Brenda Pallin
Clerk, Town of Brevator
P.O. Box 623
Cloquet, Minnesota 55720

Dear Town Board of Supervisors and Ms. Pallin:

The Office of the State Auditor received concerns regarding the contracting procedures used by the Town of Brevator ("Town") for the 2006 Jokela Road project. Based upon our review of information provided to us by the Town Clerk, it appears that the Town did not obtain two quotations for this road project, or for other 2006 road projects, as required by Minnesota law. This letter offers our recommendations to help the Town comply with contracting requirements in the future.

It is our understanding that the Town determined what roadwork needed to be performed on Town roads in 2006, based upon the Town's "2006 Road Tour."¹ Included in the "2006 Road Tour" was the Jokela Road project, described as a "big ditching project" that included the installation of several driveway culverts.² According to the March 21, 2006, Town Board meeting minutes, a quote from Dougherty's was accepted for the Town's 2006 road work.³

According to the Town Clerk, the Town did not receive a second quotation for the Jokela Road project.⁴ We were not provided with any documentation showing that the Town

¹ According to the Town Clerk, the Town recently decided to separate road projects and to obtain quotes on individual projects. While it may make sense to separate out large projects, the Town may receive more interest from contractors if the Town's smaller road projects are grouped together.

² The "2006 Road Tour" also contains such items as brushing, ditching, grubbing, re-sloping, and the addition of gravel on some roads. The "2006 Road Tour" does not mention general grading work.

³ According to the December 13, 2005 Town Board meeting minutes, a two-year grading contract for 2006-2007 was awarded to another contractor. The minutes reflect that two quotes were received for the grading contract.

⁴ The March 21, 2006, Town Board meeting minutes do not mention any other quotations for the road projects, or any unsuccessful attempts by the Town to obtain additional quotations for the work.

estimated the costs of the Jokela Road project, or the additional work included in the "2006 Road Tour."⁵ While we were provided with a general hourly rate quotation from Dougherty's, we were not provided with any specific quotes for the Jokela Road project, or for any of the other projects included in the "2006 Road Tour." We understand that the Town does not enter into written contracts with its road contractors. From the invoices and handwritten notations on the invoices, it appears that Dougherty's was paid approximately \$12,718 for the Jokela Road project.

Minnesota law requires a town to use certain procedures when entering into road construction contracts.⁶ Competitive bids must be obtained if the estimated cost of the contract exceeds \$50,000. For contracts estimated to cost between \$10,000 and \$50,000, a town may use the competitive bidding process or direct negotiations. However, if the town uses direct negotiations, the town must obtain at least two quotes when possible, and keep the quotes on file for at least one year. For contracts estimated to cost less than \$10,000, a town may either obtain at least two quotes so far as practicable (and keep them on file for at least one year) or purchase the goods/services in the open market. Contracts cannot be split in order to keep the dollar amount of the contract under the various threshold dollar amounts.⁷

We recommend that, in the future, the Town comply with Minnesota law. More specifically, when using direct negotiations, we recommend that the Town obtain two quotations when possible for projects estimated to cost between \$10,000 and \$50,000. If the Town is unable to obtain a second quotation, we recommend that the Town document in its meeting minutes efforts taken by the Town to obtain additional quotations. We also recommend that the Town's minutes reflect the estimated costs of projects, so the Town's records will accurately document whether proper contracting procedures were used. Finally, we recommend that the Town use written contracts to provide clarity regarding services provided by contractors.

⁵ The Town Clerk informed us that any estimate would have been less than \$50,000 because the Town's annual road budget was less than \$50,000.

⁶ See Minn. Stat. § 471.345.

⁷ For additional guidance on contracting procedures, we recommend that the Town review the following MAT documents:

- Chapter 8 of the 2007 Township Manual found at http://www.mntownships.org/index.asp?Type=B_BASIC&SEC={DC3E6BC4-7A05-4193-83BC-ECD5681411BE}&DE={64FDF7B6-D5FD-47CE-AA3C-6AFCD1E8BBEF} ;
- Sample Contract for Services (Short Form for Small Contracts) found at <http://www.mntownships.org/vertical/Sites/{D45B3299-B0BE-4D08-8A42-B7053B4AE74F}/uploads/{FB033BF4-119F-49C6-B8D6-6325CC1064F2}.PDF>; and
- Other contracting documents found in MAT's informational library at http://www.mntownships.org/index.asp?Type=B_BASIC&SEC={BB9ED329-F859-496B-B770-0B7E2C598AAB}.

Town of Brevator

March 7, 2008

Page 3

To provide the Town with further guidance on road contracting issues, a model road contract from the Minnesota Association of Townships (“MAT”) is enclosed.⁸ In addition, a copy of the Office of the State Auditor’s Statement of Position on Meeting Minutes is enclosed.⁹ If the Town has additional questions about contracting procedures, we encourage the Town to consult with its attorney or the Minnesota Association of Townships.

We hope this information is helpful. If you have any questions about these matters, please feel free to contact me directly at 651-297-5853.

Sincerely,

/s/ Nancy J. Bode

Nancy J. Bode
Assistant Legal Counsel
Office of the State Auditor

Enclosures

cc. Ms. Phyllis Port, Town Treasurer

⁸ Please note that Minn. Stat. § 471.345, the municipal contracting law referenced on page 1 of the MAT document, has been amended since the document was created. However, the document still provides towns with a sample for drafting written road contracts. The document is available on MAT’s website at:

<http://www.mntownships.org/vertical/Sites/{D45B3299-B0BE-4D08-8A42-B7053B4AE74F}/uploads/{D6409D64-5E8D-4D82-8053-E9774783F93A}.PDF>.

⁹ This document is available on our website at:

http://www.osa.state.mn.us/other/Statements/meetingMinutes_0710_statement.pdf.