

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

EXAMINATION REPORT
OF
CITY OF WARSAW
KOSCIUSKO COUNTY, INDIANA
January 1, 2011 to December 31, 2013



FILED
07/15/2014

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
City Officials	2
Transmittal Letter	3
Examination Results and Comments:	
Overpayments	4-5
Audit Costs - Overpayments.....	5
Public Works Law	5-6
Anti-Competitive Bidding Practices	6-7
Internal Controls	7
Insurance Coverage	7
Exit Conference.....	8
Summary of Charges	9
Affidavit	11

CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Mayor	Ernest Wiggins Joseph M. Thallemer	01-01-08 to 12-31-11 01-01-12 to 12-31-15
Clerk-Treasurer	Lynne Christiansen	03-06-10 to 12-31-15
President of the Board of Public Works and Safety	Ernest Wiggins Joseph M. Thallemer	01-01-08 to 12-31-11 01-01-12 to 12-31-15
President of the Common Council	Joseph M. Thallemer Elaine Call Diane Quance	01-01-11 to 12-31-11 01-01-12 to 12-31-12 01-01-13 to 12-31-14



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

STATE BOARD OF ACCOUNTS
302 WEST WASHINGTON STREET
ROOM E418
INDIANAPOLIS, INDIANA 46204-2769

Telephone: (317) 232-2513
Fax: (317) 232-4711
Web Site: www.in.gov/sboa

TO: THE OFFICIALS OF THE CITY OF WARSAW

We have examined the records of the City of Warsaw for the period from January 1, 2011 to December 31, 2013, and certify that the records and accountability for cash and other assets are satisfactory to the best of our knowledge and belief, except as stated in the Examination Results and Comments. The financial transactions of this office are reflected in the Annual Reports of the City of Warsaw for the years 2011, 2012, and 2013.

STATE BOARD OF ACCOUNTS

April 28, 2014

CITY OF WARSAW
EXAMINATION RESULTS AND COMMENTS

OVERPAYMENTS

During the period from January 1, 2011 through December 31, 2013, the City of Warsaw (City) paid to have various storm sewers lined. This work was divided into 11 projects. The contractor for all of these projects was Pro Form Pipe Lining Company of Mishawaka, Indiana (Pro Form). In addition to installing the linings, the City paid Pro Form to do cleaning and repairs on the same sections of storm sewer. The lining work was billed and paid based on quoted prices per lineal foot and estimated lineal footage provided by Lacy Francis, Jr., former Street Superintendent. Pro Form billed the City for the full amount of the estimated lineal footage. As a part of the lining work quoted, Pro Form was to video each reach of sewer both before the work was started and after the work was completed. Pro Form was to provide the videos to the City. The exact lineal footage of each reach of sewer could be determined from these videos. Both Pro Form employees and Lacy Francis, Jr., former Street Superintendent, acknowledged that the videos were recorded, but neither Pro Form nor anyone at the City can locate any of the recordings. Both Pro Form employees and Lacy Francis, Jr., former Street Superintendent, knew, or should have known, the exact lineal footage for each reach of sewer after it had been videoed.

In December 2013, a former employee of Pro Form contacted the City of Warsaw Clerk-Treasurer and alleged that Pro Form had been intentionally overbilling the City. This former employee indicated that the overbilling included charging for more sewer lining than was actually installed. This information was shared with various City officials, including the City Engineer, a professional engineer whose services the City had retained starting April 2, 2012. The City Engineer was not involved in the sewer lining projects, except to advise Lacy Francis, Jr., former Street Superintendent, of the requirements of the public works law late in 2012 when he became aware that the City had not been in compliance with the law.

After being informed of the allegations of overbilling, the City Engineer collected all of the quotes, agreements, and accounts payable vouchers with attached invoices pertaining to the payments to Pro Form. From these documents, and using available GIS technology, the City Engineer was able to calculate the actual length of sewer that was lined for each project to within plus-or-minus five feet. Based on these calculations, for 10 of the 11 projects, the amount of footage that was billed to the City exceeded the actual footage by amounts ranging from 59 feet to 229 feet per project for a total of 1,638 feet. On the 11th project, the City was billed and paid for lining 175 feet of sewer that only measures 75 feet and was never actually lined. The total sewer lining, billed to and paid for by the City, in excess of the amount actually installed, was 1,813 lineal feet. Based on the quoted prices per lineal foot for the various projects, the City overpaid Pro Form \$267,569 over the three year period. Ten out of eleven of the accounts payable vouchers for these payments were signed by Lacy Francis, Jr., former Street Superintendent, certifying that the attached invoices were true and correct and that the itemized materials or services were ordered and received. The other voucher was prepared by Lacy Francis, Jr., former Street Superintendent, and signed by another street department employee. Lacy Francis, Jr., former Street Superintendent, knew, or should have known, that these invoices were not correct and that the itemized services had not been received.

Lacy Francis, Jr., former Street Superintendent, and Marc Campbell, Owner/President of Pro Form Pipe Lining Company, were arrested March 25, 2014, on charges including various counts of corrupt business influence; theft; aiding, inducing or causing theft; providing false information to governmental entity to obtain contract; official misconduct; and conflict of interest.

As a result of search warrants issued in connection with the arrests, documents were found that indicated payments from Pro Form back to Lacy Francis, Jr., former Street Superintendent, based on City payments to Pro Form for work done on a time and material basis. The documents listed 12 invoices with amounts to be paid back to Lacy Francis, Jr., former Street Superintendent, in even thousands of dollars that appear to be based on the amount of the invoice. The total payback for these 12 invoices was \$22,000. These amounts were projected to an additional 22 City paid invoices for an additional payback of \$29,000.

CITY OF WARSAW
EXAMINATION RESULTS AND COMMENTS
(Continued)

We consider amounts paid back to Lacy Francis, Jr., former Street Superintendent, from Pro Form to be overpayments on the part of the City. The total \$51,000 overpayment on these time and material invoices added to the \$267,569 overpaid on sewer lining work comes to a total of \$318,569 in overpayments by the City of Warsaw.

Governmental units should collect any overpayments made. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

Funds misappropriated, diverted or unaccounted for through malfeasance, misfeasance, or nonfeasance in office of any officer or employee may be the personal obligation of the responsible officer or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

We consider Lacy Francis, Jr., former Street Superintendent; Pro Form Pipe Lining Company; and Marc Campbell, Owner/President of Pro Form Pipe Lining Company, to be jointly and severally liable to the City of Warsaw for overpayments in the amount of \$318,569. (See Summary of Charges, page 9)

AUDIT COSTS - OVERPAYMENTS

The State of Indiana incurred additional costs of \$15,164.88 related to the investigation of overpayments.

Audit costs incurred because of theft or shortage may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

We are requesting reimbursement jointly and severally from Lacy Francis, Jr., former Street Superintendent; Pro Form Pipe Lining Company; and Marc Campbell, Owner/ President of Pro Form Pipe Lining Company. (See Summary of Charges, page 9)

PUBLIC WORKS LAW

During the period from January 1, 2011 through December 31, 2013, the City of Warsaw (City) contracted to have various storm sewers in the City lined. This work was divided into 11 projects over the three years. The Contractor for all of these projects was Pro Form Pipe Lining Company of Mishawaka, Indiana (Pro Form). Quotes were prepared and presented to the Board of Public Works and Safety only for the actual lining of the storm sewers on a unit price per lineal foot basis. Cleaning, video, and repair work that was required prior to installing the linings was all done by Pro Form on a time and material basis with no prior Board of Public Works and Safety approval. These projects are listed in the table below.

CITY OF WARSAW
EXAMINATION RESULTS AND COMMENTS
(Continued)

<u>of Works Approval Date</u>	<u>Project #</u>	<u>Lining Installation Invoiced</u>	<u>Additional Time and Materials</u>	<u>Totals</u>	<u>Sealed Bids/ Quotes</u>
06-17-11	2011-1	\$90,155.00	\$61,525.00	\$151,680.00	
06-17-11	2011-2	77,805.00	14,830.00	92,635.00	
06-17-11	2011-3	53,105.00	2,250.00	55,355.00	
06-17-11	2011-4	21,612.50	17,472.50	39,085.00	
11-02-12	2012-4	156,965.00	133,339.50	290,304.50	✓
05-17-13	2012-3	112,850.00	16,275.00	129,125.00	✓
01-20-12	2012-2	24,013.00	21,487.50	45,500.50	
04-05-12	2012-5	55,725.00	12,268.74	67,993.74	
05-19-11	2011-5	149,950.00	20,725.00	170,675.00	
04-05-12	2012-1	148,850.00	28,637.50	177,487.50	
03-01-13	2013-1	148,000.00	79,878.55	227,878.55	✓

Sealed bids or quotes were received and opened in a public meeting for only 3 of the 11 projects. The work on the other 8 projects was awarded based on quotes received, opened, and summarized, by Lacy Francis, Jr., former Street Superintendent, prior to the Board of Public Works and Safety meeting during which they were approved.

Indiana Code 36-1-12-5(b)(2) applies whenever a public work project is estimated to cost less than \$50,000; and Indiana Code 36-1-12-4.7(b)(2), applies whenever a public work project is estimated to cost at least \$50,000 and less than \$150,000. Both of these subsections of the Indiana code state: "The board may not require a person to submit a quote before the meeting at which quotes are to be received. The meeting for receiving quotes must be open to the public. All quotes received shall be opened publicly and read aloud at the time and place designated and not before."

The first 4 projects listed in the table above, all approved on the same date, were for contiguous sections of storm sewer designated the Central Park Storm Sewer. The combined cost of these projects was \$242,677.50 for the liner alone. The City did not follow the requirements of the public works law that apply to projects greater than \$150,000.

Indiana Code 36-1-12-19 states in part:

"(a) For purposes of this section, the cost of a public work project includes the cost of materials, labor, equipment rental, and all other expenses incidental to the performance of the project.

(b) The cost of a single public work project may not be divided into two (2) or more projects for the purpose of avoiding the requirement to solicit bids. . . ."

ANTI-COMPETITIVE BIDDING PRACTICES

Documents were found in Lacy Francis, Jr., former Street Superintendent's files indicating he had provided Pro Form Pipe Lining Company (Pro Form) with information related to a competitor's quotes. The documents indicated this occurred prior to Pro Form submitting a quote for a sewer lining job, giving Pro Form an unfair advantage in the quote process.

CITY OF WARSAW
EXAMINATION RESULTS AND COMMENTS
(Continued)

For each of the 11 sewer lining projects, Lacy Francis, Jr., former Street Superintendent, solicited quotes from other contractors based on overstated lineal footage. Pro Form had previously provided cleaning and video services on these lines and was aware of the actual footages. Knowing that they were going to be charging the City for the full length in the specifications, but actually installing substantially less liner, Pro Form was able to quote a lesser unit price, and was therefore, virtually assured of being the low quote.

On May 9, 2011, Lacy Francis, Jr., former Street Superintendent, received an email from a company providing an estimate of the cost per lineal foot to install lining in sewers of various diameters. The email clearly stated that it was not a quote. For 5 sewer lining projects, Lacy Francis, Jr., former Street Superintendent, applied the unit prices from the email to the lineal footage specified and presented it as a quote from that company on the quote summary he presented to the Board of Public Works and Safety.

Indiana Code 36-1-12-4(b)(1) states in part: "The board shall prepare general plans and specifications describing the kind of public work required, but shall avoid specifications which might unduly limit competition."

Indiana Code 24-1-2-3 states: "A person who engages in any scheme, contract, or combination to restrain or restrict bidding for the letting of any contract for private or public work, or restricts free competition for the letting of any contract for private or public work, commits a Class A misdemeanor."

INTERNAL CONTROLS

The City completed public works projects to line storm sewers as listed in the comment entitled "Public Works Law." For those projects, Lacy Francis, Jr., the former Street Superintendent, developed specifications, solicited quotes, in some instances opened the quotes prior to Board of Public Works and Safety meetings, made recommendations for awarding the contract, and approved the invoices for payment, all without oversight by a civil engineer knowledgeable about the work to be performed. This concentration of duties without adequate oversight represents a material weakness in internal control.

Governmental units should have internal controls in effect which provide reasonable assurance regarding the reliability of financial information and records, effectiveness and efficiency of operations, proper execution of management's objectives, and compliance with laws and regulations. Among other things, segregation of duties, safeguarding controls over cash and all other assets, and all forms of information processing are necessary for proper internal control. (Accounting and Uniform Compliance Guidelines Manual for Cities and Towns, Chapter 7)

INSURANCE COVERAGE

The City of Warsaw had insurance coverage for public employee dishonesty in the amount of \$25,000 per employee through policy number 3-981-911 from The Ohio Casualty Insurance Company, which has been acquired by Liberty Mutual Group. The initial policy period began January 1, 2008, and the coverage has been renewed annually through calendar year 2014.

CITY OF WARSAW
EXIT CONFERENCE

The contents of this report were discussed on April 28, 2014, with Lynne Christiansen, Clerk-Treasurer; Joseph M. Thallemer, Mayor; Diane Quance, President of the Common Council; Michael L. Valentine, City Attorney; and James W. Emans, City Engineer.

New information presented by City officials at the exit conference necessitated additions to the report. These additions were discussed during the exit conference. The revised report was reviewed via email on May 19, 2014, with Lynne Christiansen, Clerk-Treasurer; Joseph M. Thallemer, Mayor; and Diane Quance, President of the Common Council.

CITY OF WARSAW
SUMMARY OF CHARGES

	<u>Charges</u>	<u>Credits</u>	<u>Balance Due</u>
Lacy Francis, Jr., former Street Superintendent; Pro Form Pipe Lining Company; and Marc Campbell, Owner/President of Pro Form Pipe Lining Company; jointly and severally: Overpayments, pages 4 and 5	\$ 318,569.00	\$ -	\$ 318,569.00
Audit Costs - Overpayments, page 5	<u>15,164.88</u>	<u>-</u>	<u>15,164.88</u>
Totals	<u>\$ 333,733.88</u>	<u>\$ -</u>	<u>\$ 333,733.88</u>

This report was forwarded to the Office of the Indiana Attorney General and the local prosecuting attorney.

(This page intentionally left blank.)

AFFIDAVIT

STATE OF INDIANA)
)
Howard COUNTY)

We, Stanley W. Willmert and Lyle D. Gerlach, Field Examiners, being duly sworn on our oaths, state that the foregoing report based on the official records of the City of Warsaw, Kosciusko County, Indiana, for the period from January 1, 2011 to December 31, 2013, is true and correct to the best of our knowledge and belief.

Stanley W. Willmert
Lyle D. Gerlach
Field Examiners

Subscribed and sworn to before me this 14th day of July, 2014

Deborah L. Holcomb
Notary Public

My Commission Expires: _____
County of Residence: White

