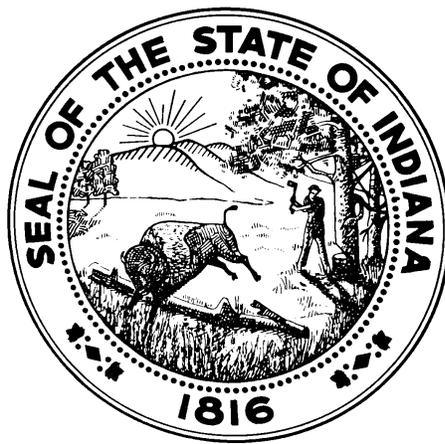


STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

AUDIT REPORT
OF

DEPARTMENT OF PUBLIC WORKS
CITY OF SOUTH BEND
ST. JOSEPH COUNTY, INDIANA

January 1, 2007 to December 31, 2007



FILED
08/27/2008

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
City Officials	2
Transmittal Letter	3
Audit Results and Comments:	
Overpayment Collections	4
Guaranteed Energy Savings - Items Not Causally Connected	4
Guaranteed Energy Savings - Performance Bond	4
Exit Conference.....	5
Official Response	6-8

CITY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
President of the Board of Public Works	Gary A. Gilot	01-01-07 to 12-31-08
Mayor	Stephen J. Luecke	01-01-04 to 12-31-11
President of the Common Council	Timothy A. Rouse	01-01-07 to 12-31-08



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 SOUTH BEND

We have audited the records of the Department of Public Works for the period from January 1, 2007 to December 31, 2007, 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 Audit Results and Comments. The financial transactions of this office are reflected in the Annual Report of City of South Bend for the year 2007.

STATE BOARD OF ACCOUNTS

June 12, 2008

DEPARTMENT OF PUBLIC WORKS
CITY OF SOUTH BEND
AUDIT RESULTS AND COMMENTS

OVERPAYMENT COLLECTIONS

The construction contract for Lafayette Boulevard and Bartlett Street Roadway and Sewer Reconstruction was overpaid by \$1,000.00 on August 27, 2007. As a result of our audit, the error was detected and officials requested and received a refund from the contractor on March 20, 2008.

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

GUARANTEED ENERGY SAVINGS - ITEMS NOT CAUSALLY CONNECTED

The City's guaranteed energy savings project included items not causally connected. No cost itemization was provided for our audit to verify compliance with the 15% limitation.

Indiana Code 36-1-12.5-12 states in part: "An improvement that is not causally connected to a conservation measure may be included in a guaranteed savings contract if: (1) the total value of the improvement does not exceed fifteen percent (15%) of the total value of the guaranteed savings contract; . . ."

GUARANTEED ENERGY SAVINGS - PERFORMANCE BOND

The guaranteed energy savings agreement with Johnson Controls, Inc., did not provide for a performance bond.

Indiana Code 36-1-12.5-3 states in part: "(a) As used in this chapter, "qualified provider" means the following: . . . (2) After June 30, 1999, the term means a person that satisfies all of the following: . . . (F) The person submits to the school corporation or political subdivision a performance bond to ensure the qualified provider's faithful performance of the qualified provider's obligations over the term of: (i) the guaranteed energy savings contract; or (ii) the guaranteed savings contract."

DEPARTMENT OF PUBLIC WORKS
CITY OF SOUTH BEND
EXIT CONFERENCE

The contents of this report were discussed on June 12, 2008, with Gary A. Gilot, President of the Board of Public Works.

This report was also discussed on June 12, 2008, with Stephen J. Luecke, Mayor; M. Catherine Fanello, City Controller; and Timothy A. Rouse, President of the Common Council. The official response has been made a part of this report and may be found on pages 6 through 8.

COUNTY-CITY BUILDING
227 W. JEFFERSON BLVD.
SOUTH BEND, INDIANA 46601-1830



PHONE 574/ 235-9216
FAX 574/ 235-9928
TDD 574/ 235-5567

CITY OF SOUTH BEND STEPHEN J. LUECKE, MAYOR

DEPARTMENT OF ADMINISTRATION AND FINANCE

M. CATHERINE FANELLO
CONTROLLER

June 25, 2008

State Board of Accounts
302 West Washington St., Room E 418
Indianapolis, IN 46204-2765

RE: OFFICIAL RESPONSE

To Whom It May Concern:

Please accept this letter as our official response to the audit comments concerning the Board of Public Works energy savings contract and the collection of amounts due for the Blackthorn lease.

Energy Savings Contract

The State Board of Accounts commented that the project included items not causally connected and that no cost itemization was provided to verify compliance with the 15% limitation. A letter from Johnson Controls is attached that does indeed confirm that the pre-emptor (red light hold) portion of the contract does not exceed 15% of the total value of the contract. The total contract amount, according to Johnson Controls, is \$1,480,000 and the cost of the pre-emptor portion of the contract is less than \$25,000.

Based on the facts provided by Johnson Controls, the City disagrees with the State Board on their audit finding and comment.

Collection of Amounts Due

The State Board commented that two lease payments should be refunded to the City because they were made in error and were not pursuant to the new lease agreement dated effective December 31, 2007. One lease payment was refunded by the original lessor. City Legal Department has reviewed the old lease agreement, and subsequent new lease

JANICE L. HALL
DIRECTOR
HUMAN RESOURCES

JOHN MURPHY
ASSISTANT CONTROLLER

ROBERT ALLEN
DIRECTOR
INFORMATION TECHNOLOGY

agreement, and is of the opinion the City is due no refund or payments based on current information provided. We believe the City has pursued this matter to the fullest extent.

Thank you for the opportunity to respond to your comments.

Sincerely,

A handwritten signature in black ink that reads "M. Catherine Fanello". The signature is written in a cursive style with a large, sweeping "M" and "F".

M. Catherine Fanello, CPA

Johnson Controls, Inc.
9797 Midwest Avenue, Cleveland, OH 44125-2498



RECEIVED

June 13, 2008

JUN 16 2008

CITY OF SOUTH BEND
DIV OF ENGINEERING

Mr. Rob Nichols
Engineering
City of South Bend
227 W. Jefferson
1300 County City Bld
South Bend, Indiana 46601

Re: *Questions on the contract from the Indiana State Board of Accounts*

Dear Rob:

This letter responds to your question from the State Board of Accounts regarding the item in the South Bend traffic signal LED performance contract dated 29 May 2007 (the "Contract"), specifically regarding the scope of work related to conservation measures and improvements not causally connected to the conservation measures as described in Indiana Code § 36-1-12.5.

Please note that the pre-emptor (red light hold) portion of the Contract cost does not exceed 15% of the total value of the Contract, thereby comporting with IC § 36-1-12.5-12. The total contract amount of the project is \$1,480,000, and the cost of the pre-emptor (red light hold) portion of the Contract is less than \$25,000.

In addition, the actuators about which you asked in emergency vehicles were not purchased in the Contract and are the sole responsibility of the fire, police and other first responders. I hope this answers your concerns. If you have any other questions, please feel free to contact me.

Best Regards,

A handwritten signature in black ink, appearing to read "D.M. Peters", with a stylized flourish at the end.

David M. Peters
Regional Solutions Manager