Office of the New York State Comptroller

Division of Local Government & School Accountability

Monroe County

Use of a Local Development Corporation to Contract for Public Safety and Security Systems

Report of Examination

Period Covered:

January 1, 2010 — February 29, 2012

2012M-123

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of Local Government and School Accountability

October 2012

Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and County governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of Monroe County, entitled Use of a Local Development Corporation to Contract for Public Safety and Security Systems. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

Office of the State Comptroller
Division of Local Government
and School Accountability

Introduction

Background

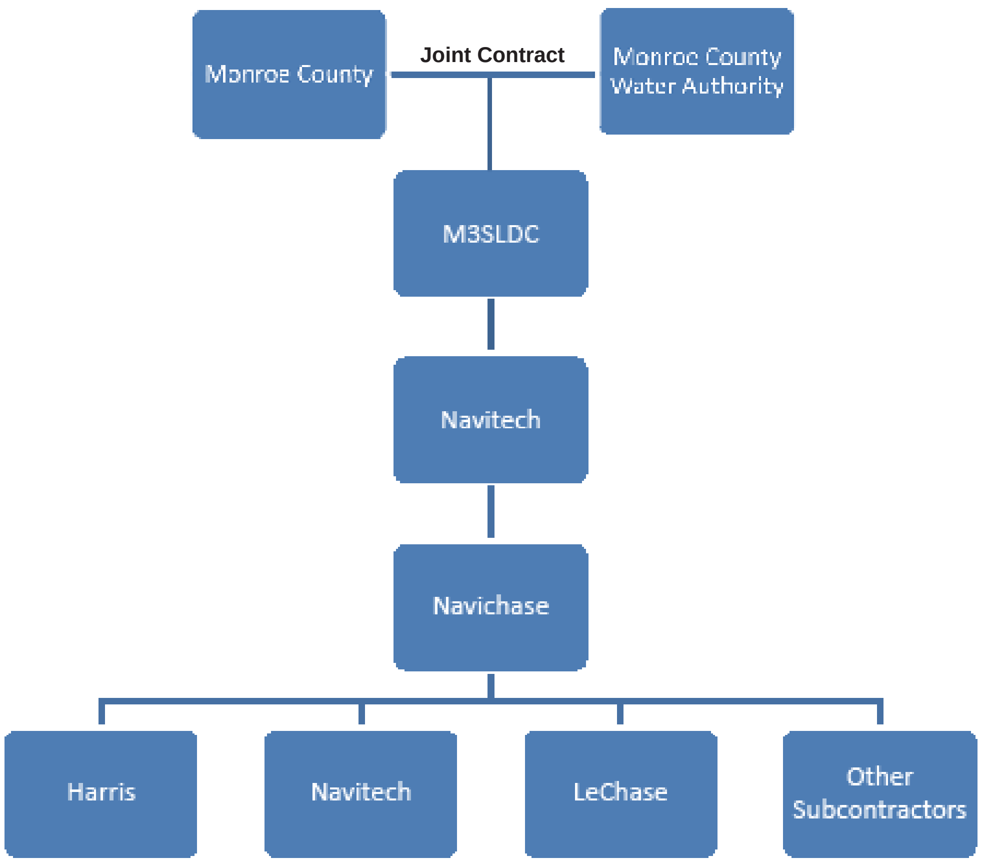
Monroe County (County) is located in Western New York on the south shore of Lake Ontario. The County is comprised of 19 towns, 10 villages, and the City of Rochester, and has a population of approximately 750,000 residents. The County Executive and 29-member County Legislature (Legislature) govern County operations. The County's operating budget appropriations for the 2012 fiscal year are $939.8 million.

The County's organizational structure includes the Public Safety Department (Department), which falls under the general direction of the County Executive. The Department is headed by the Director of Public Safety (Director). The Director administers the County's provision of public safety services with the exception of those services provided by the sheriff, district attorney, and public defender. The Department provides education, prevention, technical support, inter-agency coordination, and direct services to courts, individuals, and the public and private agencies receiving these services. Further, the County Charter assigns the Director the following responsibilities: to assist, coordinate, and guide all County agencies providing public safety services; to be the lead County agency for coordinating public safety budgeting; to coordinate radio communications among all public safety agencies in the County; and to operate and maintain public safety radio equipment for which the County is responsible. The Department's operating budget appropriations for 2012 are $66.9 million.

A local development corporation (LDC) is a private, not-for-profit corporation which often is created by, or for the benefit of, local governments for economic development or other public purposes. Although created by, or for the benefit of a local government, an LDC is a separate private corporation, distinct from the local government, having its own set of powers under the governing statutes. In exercising these powers, LDCs generally are not subject to the same requirements and procedures as local governments with respect to borrowing, procurements, and certain other matters that relate to implementing a capital project. These requirements and procedures applicable to local governments are intended for the protection of taxpayers. As a result, LDCs can be used to avoid constitutional or statutory provisions that would apply to projects undertaken directly by a local government.

On February 20, 2009, the County issued a multi-faceted request for proposals (RFP) for a comprehensive public safety solution. This

RFP did not mention the use of an LDC as a conduit for the contract, and consisted of 10 components,[1] which respondents could respond to in total or individually. On August 25, 2009, Monroe Security and Safety Systems LDC (M3S) was created with the mission and purpose of "lessening the burdens of government." On September 29, 2009, the Legislature adopted a resolution authorizing the County Executive to contract with M3S for the provision of providing public safety and security systems and services (Contract). On January 1, 2010, the County Executive entered into the Contract with M3S, with average annual payments of $11.2 million for the life of the 20-year Contract, totaling approximately $212 million.[2] M3S then entered into a contract with Navitech Services Corporation (Navitech) which passed all the terms of the Contract through to Navitech. Navitech further passed the terms on to Navichase, LLC (Navichase) as depicted in the following diagram.



[1] See Appendix A for information about the 10 components.

[2] The contract between the County and the LDC states that the payments will "not exceed an average annual amount over the term of this agreement (20 years) of $11.2 million." This calculation is approximately $224 million; however, the payment schedule for the contract totals $212 million.

Although the County contracted with M3S, the operation of the project passed through the layers to Navichase, which is a joint venture of LeChase Construction Services, LLC (LeChase) and Navitech. These two entities each did some of the components of the contract, Harris Corporation (Harris) was a supplier of radio equipment and various other subcontractors were used for additional components, as shown on the bottom row of the diagram.

Over the last 10 years, the County has increasingly used LDCs to perform County functions. The LDCs are governed by unpaid Boards of Directors, the majority of whom are appointed by the County Executive; however, the LDCs contract with management companies to oversee their daily operations. Navitech is the management firm for two of the LDCs with County contracts, Upstate Telecommunications Corporation (UTC) and M3S. Navitech is run by a former County official[3] and contracts with firms for consulting services whose principals have been paid significant sums, and one principal who has significant ties to the County.[4]

Objective

The objective of our audit was to examine the activities surrounding the use of an LDC for the provision of the County's public safety and security systems and services. Our audit addressed the following related question:

- Was the County's use of an LDC to procure public safety and security systems and services in the best interests of County taxpayers?

Scope and Methodology

We examined the activities surrounding the use of an LDC for the provision of public safety and security systems and services for the period January 1, 2010 to February 29, 2012. We expanded our scope back to June 1, 2006 for the review of the RFP process. The evidence we used during this audit included documentation gathered by subpoena because County officials were not forthcoming with documentation we requested.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix D of this report.

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[3] Stephen Gleason is Navitech's Chief Operating Officer, but was the County's former Chief Financial Officer.

[4] For the period January 1, 2010 to September 30, 2011, we identified over $1 million in consulting fees to Treadstone Development Corporation ($822,000) and Hyde Park Solutions LTD ($273,732). The principal owners of these two companies, Daniel Lynch and Glenn Hyde, were directly paid $369,000 and $185,907, respectively, by their firms. Daniel Lynch worked for Siemens Corporation (Siemens) during the creation of the Newpower LDC. Lynch left Siemens to help form Navitech and then Treadstone Development Corporation during the creation and use of the UTC.

Comments of County Officials and Corrective Action

The results of our audit and recommendations have been discussed with County officials and their comments, which appear in Appendix B, have been considered in preparing this report. Appendix C includes our comments on issues raised in the County's response.

The County Executive and Legislature have the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. 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. We encourage the County Executive and Legislature make this plan available for public review in the County Clerk's office.

Questionable Use of an LDC to Perform a County Function

County officials have a duty to manage County operations as economically as possible in compliance with statutory requirements. However, County officials did not meet this standard in obtaining public safety and security systems and services, which they are procuring from M3S over the course of a 20-year, $212 million Contract. We found that:

- The RFP process utilized to procure the Contract was not competitive and favored one vendor, Navitech.
- The Contract's terms were not reflective of those solicited by the RFP.
- The County will minimally pay $20.6 million more than the value of the systems and services to be received through the Contract.
- The County will pay $30.3 million in administrative and management fees that has already monetarily benefited individuals with previous ties to the County.
- Vendor discounts totaling $12.7 million will not be passed through to the County.
- County officials circumvented the County's Capital Improvement Program (CIP) and bound future governing boards.
- The County inappropriately issued approximately $5.5 million in debt to pay for public safety communication equipment replacement and coverage enhancements that should have been incurred by the LDC.

Furthermore, County officials were unable to demonstrate how the establishment and use of an LDC to perform a County function would lessen government burdens[5] or provide services more economically. As a result, County taxpayers are likely overpaying for public safety and security systems and services, and will continue to do so over the 20-year life of this $212 million contract.

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[5] One of the statutory purposes of an LDC is "lessening the burdens of government." (Not-For-Profit Law Section 1411[a])

RFP Issuance and Evaluation

An RFP is a document used to solicit competition, in certain cases when bidding is not required by law, or when authorized by statute as an alternative to bidding. In general, an RFP would specify the minimum acceptable functional, technical, contractual requirements, and the evaluation criteria that will govern the contract award. An RFP serves to inform vendors that a contract is being let and solicits from them a proposal, alerts vendors that the selection process is competitive, sets forth for vendors what information must be provided in order to be responsive to the identified requirements, and sets forth the criteria pursuant to which vendors will be evaluated. The appropriate use of a competitive process can ensure that goods and services are procured in the most prudent and economical manner on the most favorable terms and conditions, and that the procurement is not influenced by favoritism, extravagance, fraud or corruption.

On February 20, 2009, the County issued a multi-faceted RFP for a comprehensive solution that would provide for public safety efficiencies.[6] The RFP consisted of 10 components to which vendors could respond to as a whole or individually and also requested 10-year projections. All vendor proposals were required to be received by April 2, 2009 so that a review committee[7] could evaluate all properly submitted proposals using predefined criteria prior to making a recommendation(s) to the County Executive. The RFP clearly stated that the County intended to enter into a contract or contracts with one or more selected respondents, so it was reasonable that vendors would have anticipated the award of multiple contracts.

We found significant concerns with the content of the RFP, the assessment of the proposals submitted and with the subsequent award of the contract for a period twice as long as the projections requested in the RFP.

Three years prior to the issuance of the RFP, County officials began discussions with Contract beneficiaries concerning the creation of an LDC to satisfy the County's public safety and security systems needs. In addition, Navitech was provided a "draft" RFP dated November 6, 2008, which outlined the use of an LDC. The LDC language was not included in the RFP issued by the County; therefore, only Navitech was informed of the County's intent to use an LDC as a conduit for the contract. Consequently, only Navitech, a vendor with both prior

[6] For purposes of this portion of the report, we assume that the agreement constitutes a professional services contract and/or true leases, and that competitive bidding was not required for the agreement.

[7] The review committee consisted of five individuals including the Director, Chief Information Officer, representatives from the purchasing and environmental services departments, and the Chief Finance Officer of the Monroe County Water Authority.

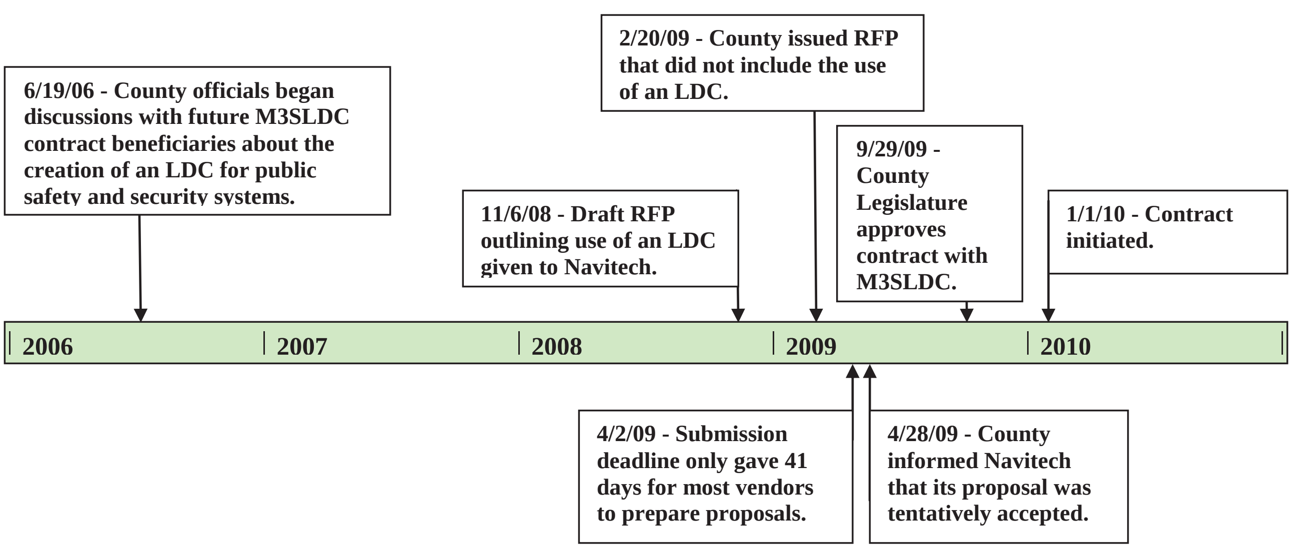
knowledge of the RFP requirements and significant connections to current and former County officials, provided a proposal that included the use of the LDC.

The County received seven proposals in response to the RFP:

- One proposal from Navitech responded to all 10 components, but only completed cost proposal forms for two of the 10 components.
- One vendor's proposal responded to eight components and completed the cost proposal form for all eight components.
- Five vendors' proposals responded to one component each and two of the five respondents completed the cost proposal form for the component to which they responded.

According to the review committee's evaluation sheets, the responding vendors were graded on how well they responded to the entire RFP and were not evaluated by each component, as stated in the RFP. The review committee selected Navitech's proposal. The Director and Chief Information Officer (CIO) stated that because the County was looking for a universal solution, the review committee recommended the Navitech proposal to the County Executive.

Our review of activities related to the RFP illustrates a seriously flawed process that provided an unfair advantage to the successful respondent, Navitech, because it pretended to objectively evaluate proposals from all interested parties, when only one vendor was informed about the County's desire to use an LDC, and had advance notice of the RFP. Further, the evaluation of the proposals submitted was not done in accordance with predefined criteria stated in the RFP. The following timeline shows events leading up to the award of this contract.



As the timeline shows, while the parties that ultimately benefited from the contract began planning for the upcoming public safety overhaul in 2006, the other vendors only had 41 days to submit a proposal. Given the short timeframe to reply, and the statement in the RFP that vendors could submit proposals for all or any subset of the 10 components, it is not surprising that other vendors did not find partners to allow them to submit proposals responsive to all 10 components. If the County wanted a universal solution, it should have stated this expectation in the RFP and given potential vendors adequate time to respond. Although the RFP was issued in February 2009, the contract was not initiated until January 2010. Clearly, the County could have allowed potential vendors more time to prepare proposals. The short time frame to submit proposals provided another advantage to the one vendor with prior knowledge of the RFP: Navitech.

Because the County's RFP process for the procurement of public safety and security system and services was flawed, giving one vendor an unfair advantage, taxpayer funds were not used to obtain the best possible terms and conditions.

Contract Weaknesses

Written contracts specify the mutually agreed upon terms and conditions of the parties involved, such as the duration, description of goods and services to be provided, and compensation to be paid/received. It is also important that County officials effectively monitor contracts to ensure that vendors are providing the County with the goods and services agreed upon in the terms of the contract.

On January 1, 2010, the County entered into a 20-year contract with the newly created M3S to provide public safety and security systems and services at an average annual cost of $11.2 million[8] per year. The total cost is expected to be $212 million.

We found that County officials failed to properly negotiate and contract for terms and conditions that were favorable to the County and reflective of what was solicited during the RFP process. The County could not provide any documentation to substantiate how the $11.2 million average annual payment was negotiated or even who negotiated this amount. Further, the Contract does not discuss the pass-through of any vendor discounts. As a result of these unfavorable contract terms, the County will overspend approximately $39 million for the County's public safety and security systems and services Contract with M3S.

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[8] The contract between the County and the LDC states that the payments will "not exceed an average annual amount over the term of this agreement (20 years) of $11.2 million." This calculation is approximately $224 million; however, the payment schedule for the contract totals $212 million.

Duration — According to the RFP, respondents must detail the proposed method of compensation for the services by completing a response form for each component. A response form template was provided in an appendix to the RFP which outlined a forecast for 10 years. Given this criteria, vendors responded to the RFP with forecasts for just that: 10 years. However, the Contract was changed to a period of 20 years. Entering into a contract for twice as long as the projections requested in the RFP specifications would constitute, in effect, a material alteration of the specifications after the RFP process. Not affording all respondents the opportunity to revise their RFPs inhibits competition and could have provided an advantage to the successful respondent. None of the County officials we questioned, including the Director, CIO, Special Counsel to the County Executive (Special Counsel) or Chief Financial Officer (CFO), could explain how the contract length was negotiated or by whom.

The Contract length also raises concerns about the vendor's ability to accurately predict costing of the total project over its lifetime. Given the rapid pace of technological change, it is very likely that the present-day mobile voice and data systems, products, services, and delivery processes included in this contract will significantly change over such an extended period of time. In addition, a 10-year procurement contract in a fast changing environment diminishes the County's ability to adequately prepare for unknown conditions in the future. Extending the contract to 20 years further reduces the County's ability to respond effectively to changes in operations and technology. County officials have no explanation for doubling the Contract's length, even though doing so provided the County with no apparent benefit to compensate for the loss of flexibility.

Compensation — The Contract requires the County to pay an average annual amount not to exceed $11.2 million. The Contract states the total annual payment will be used by M3S to fund the individual launch projects, ongoing and refresh services, and debt service payments. The Contract also states that the County will make payments based on the submission of properly executed claim vouchers that are substantiated with necessary information and documentation.

We reviewed the two claims submitted[9] by M3S during our audit totaling $9.2 million and found that these claims did not match the amounts detailed in the payment schedule and were not substantiated by sufficient supporting documentation. M3S submitted invoices to the County that provided an amount due per the Contract. There

[9] These M3S invoices were dated May 14, 2010, and February 15, 2011.

was no additional information that detailed how much of the project was completed or what was received for this amount. When we questioned County officials[10] on June 22, 2011, no one could provide an answer about how the payment amounts were derived or how the payment schedule was developed. Moreover, on July 18, 2011 a month after our meeting with County officials, the County entered into a fourth contract amendment altering the payment schedule to align it with those payments already made.

Without detailed claims from M3S, County officials cannot show that they received value for these annual payments. As a result, we reviewed the various costs outlined in the Contract to determine if they were comparable to the $212 million total cost of the Contract. We were unable to account for approximately $20.6 million of the total cost. According to the Contract, approximately $161.4 million can be attributed to the value of the goods and services to be received by the County. However, we question the ability of the County and the LDC to estimate these costs 20 years into the future. Although the Contract does not specifically detail the administration and management services to be received or their related costs, we estimate these costs to be approximately $30.3 million.[11]

In July 2010 the County issued improvement bonds totaling $84.7 million. We found that approximately $5.5 million of these bonds were used for public safety communication equipment replacement and coverage enhancements that occurred subsequent to the County's entering into the Contract, and should, therefore, have been covered by the Contract. As a result, the County incurred debt to pay for substantial improvements that should have been the LDC's responsibility. The CFO explained that the $5.5 million of taxpayer money was used to pay expenses on existing County equipment; however, the Contract made funds available for the maintenance and replacement of existing County equipment and thus should not have been paid for by County funds or by financing.

Without clear and concise Contract language, the County has no idea what services it is paying for and if the cost is reasonable. Furthermore, it appears that County employees are still responsible for much of the public safety and security day-to-day operations, overseeing the launch of projects, and coordinating ongoing services.

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[10] We met with the Director, CFO, and Special Counsel to the County Executive.

[11] Our estimate is based on our review of the Development and Implementation Agreement between M3S and Navitech, executed on January 1, 2010, which provides for approximately $15.1 million in Monitoring and Reaction Center management fees, $9.2 million in business management fees, and an estimated $6 million in LDC management and essential services fees (i.e., accounting, legal, etc.).

Discounts — The Contract did not specifically address vendor discounts. As a result, the County will overpay approximately $12.7 million for radios and related equipment. According to a Navitech letter dated September 1, 2010, to the Director, Navitech stated that Harris offered a discount on radios as part of their independent contract. Navitech then provided the County with a detailed schedule listing various radio components at a 20 percent per unit discount off the $30.4 million list price. Therefore, the total cost to the County for the radios would be $24.3 million, according to the letter from Navitech. However, the County had not contracted directly with Harris for this equipment; instead, the County contracted with the LDC, which contracted with Navitech, which contracted with Navichase for the equipment. Navichase purchased the equipment from Harris. According to the Navichase/Harris contract and pricing schedule, Navichase had paid only $11.6 million for this equipment – a 62 percent "lot" discount from list price. Therefore, the County did not benefit from the deep discount that was provided to Navichase, because the full discount was not passed through the layers of entities involved in the purchase. As a result, the County will not realize approximately $12.7 million in additional savings on this large equipment purchase. Because the Contract is silent about how the County will benefit from vendor discounts, there is no guarantee the County will benefit from additional future discounts or price reductions.

The County failed to enter into a contract with clear terms that were in the County's best interest, such as ensuring that the County benefited from the pass through of discounts. The County also failed to effectively ensure that contractual payments are in line with actual and necessary expenditures. As a result, the County will be overpaying approximately $39 million of taxpayers' money for this Contract over the course of 20 years.

Diminishing Legislative Oversight

The Legislature is the lawmaking, appropriating, policy-determining, and governing body of the County. As such, the Legislature has an important role in overseeing County operations to ensure that policies are implemented as intended, that moneys are spent appropriately, and that officials are obeying the law and legislative intent. This oversight is an important internal control feature to give reasonable assurance that the goals and objectives of County operations are effectively and efficiently achieved, that resources are used in compliance with laws and regulations, and that resources are safeguarded against unauthorized use or disposition.

County officials have used an LDC to sidestep the requirement of Legislature involvement in the approval process of issuing debt. In addition, by entering into a 20-year contract, the County has limited the oversight future Legislatures can exercise on this sizable Contract.

Capital Asset Acquisition — Acquisition of capital assets can routinely require the use of debt as a financing source. An important control in assuring the County's fiscal health is the requirement that long term debt be authorized by resolution, which requires a two-thirds majority of the Legislature rather than a simple majority. Pursuant to the County Charter, the process for identifying, prioritizing, and acquiring the County's capital needs begins with the development of the CIP.[12] The CIP forecasts capital budgets six years into the future. The capital budget is the financing plan for the prioritized list of projects contained in the first year of the CIP. The capital budget is adopted as part of the County's annual budget. As the next item of business, the Legislature adopts resolutions authorizing the issuance of obligations or other financing resolutions that may be needed to finance the capital projects contained in the capital budget for the ensuing year. Under this capital acquisition model, sound fiscal management is encouraged because the process encourages transparency, allows the County to reassess priorities, and requires the issuance of debt to be broadly supported.

By contracting with the LDC, the County has removed the purchase of public safety and security systems from the normal capital asset acquisition process and removed an important piece of Legislative oversight and public transparency. By having the related debt issued by the LDC rather than the County sidesteps the two-thirds approval requirement by the Legislature.

According to the Director, the Contract would allow the County to obtain all its public safety and security needs without obtaining the Legislature's approval through the CIP. Furthermore, the CFO stated that the Contract with M3S allows the County to "pay-as-you-go," placing the Contract payments into operating expenses instead of capital expenses under the CIP. Under this method, the CFO stated the money could not be cut by the Legislature. Such circumvention of the Legislature's approval reduces legislators' oversight of how taxpayers' money is spent.

Contract Terms — It is a general rule that, absent express statutory authority, local governments may not enter into contracts concerning governmental matters for terms that bind successor governing boards. Because the duration of the Contract is for a period of 20 years, it may effectively bind successor governing boards, whose members will not have had any input on the terms and conditions of the Contract. The agreement contains an executory or so-called "non-

[12] The Charter authorizes the Director of Planning to prepare the CIP in accordance with guidelines and a timetable approved by the County Executive.

appropriation" clause which allows the County to terminate the agreement if "sufficient funds" are not appropriated for the total annual payment during the next fiscal period. It is not clear, however, based on judicial interpretations of such clauses, that the County will be able to unilaterally terminate the contract with impunity, for any and all reasons, by not appropriating moneys to fund the agreement. Moreover, if the non-appropriation clause were to be exercised, the County could potentially lose its public safety infrastructure.

Recommendations

1. When an RFP process is authorized, County officials should thoroughly review and analyze all proposals using formal and consistent evaluation/rating criteria, free from bias or favoritism. No one vendor should be given an unfair advantage by having information and additional time that other interested vendors do not have.

2. County officials should properly negotiate future contracts and ensure that contracts contain clear contract language that thoroughly details all parties' rights and responsibilities and schedules that set timeframes for contract deliverables. Material changes to contracts should be supported by contract addendums that have been properly authorized.

3. The County Controller should only authorize payments for sufficiently itemized and supported vouchers or invoices for goods received and services rendered after a proper audit of the claim. The County Controller should also analyze M3S's total annual expenses and compare that amount to the contract payment to monitor the value of the goods and services received from M3S.

4. The County should not deliberately structure capital expenditures into long-term contracts as a means of reclassifying these expenses as operating expenditures, thus diminishing legislative oversight and public transparency.

5. County officials should adhere to the requirements of County Charter/policy when procuring goods and services to help ensure goods and services are procured in the most prudent and economical manner, that goods and services of desired quality are being acquired at the lowest possible price or in the case of procurements that are exempt from bidding requirements, upon the most favorable terms and conditions, and that the procurement is not influenced by favoritism, extravagance, fraud or corruption.

6. County officials should commit to acquiring capital assets in a manner that is transparent and allows for Legislative oversight, including broad support for the issuance of debt to finance such acquisitions.

APPENDIX A

EXCERPT FROM COUNTY DOCUMENT

The following is from the Monroe County document titled “Public Safety and Security Systems.”

SECTION 2 – PROJECT OVERVIEW

2.1 Project Overview

The Public Safety and Security Systems consist of the following components:

A. Wireless and Mobile Communications Systems

1. Radio Frequency (“RF”) Communications Infrastructure - integrated voice and data communications infrastructure that will consolidate the transmission, reception, and transport of voice and data from fixed and mobile points to control stations.

2. Law Enforcement Voice System Equipment – mobile and portable radio devices for all law enforcement agencies in the County.

3. Fire and EMS Voice-Data-Alerting System – integrated voice, data and paging system to enhance coverage and increase access to communication channels.

4. Mobile Data System – mobile system setup including integrated mobile computer, vehicle mount, routing device, antenna device and appropriate installation including cable and software.

5. Public Service Voice and Data System – non-public safety voice and data system for public service entities.

B. Physical Security and Monitoring Systems

6. Access and Security System – card access and security system to provide a platform for consolidation and integration of all security and monitoring systems such as video surveillance, fire alarm system, etc.

7. Video Surveillance – closed circuit television video system including cameras, servers, encoders, decoders, and other video related equipment.

8. Fire Alarm System – fire alarm system including control panels, detection devices, notification appliances, and other fire alarm related equipment.

9. Perimeter and Physical Security – security fencing, lighting, barriers, bollards, physical design, and other related physical security.

10. Security Services – guard services, monitoring and reaction center, and other related security services.

Each of the requirements of these components is detailed in the Component Scope Sections 1-10 in Appendix A, Sections A1 through A10. Respondents are directed to respond to each or multiple Components individually. (Excerpt from Page 7)

APPENDIX B

RESPONSE FROM COUNTY OFFICIALS

The County officials' response to this audit can be found on the following pages.

Department of Finance

Monroe County, New York

Maggie Brooks
County Executive

Scott Adair
Chief Financial Officer

October 1, 2012

Mr. Edward V. Grant Jr., Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street- Suite 522
Rochester, New York 14614-1608

Re: Use of a Local Development Corporation to Secure Public Safety Communications Technologies for First Responders

Dear Mr. Grant:

We would like to thank you and your staff for attempting to, once again, assist Monroe County in reviewing our use of a Local Development Corporation (LDC). This being the third such evaluation of a Monroe County function by your Office in the past year alone, we again welcomed the opportunity to confirm the success of an innovative public-private partnership in achieving significant savings for local taxpayers.

As a result of this series of reviews, in connection with Comptroller DiNapoli's numerous public statements on the matter, we acknowledge that your office's opinion of the LDC model is, and will remain, negative. Indeed, it has become abundantly clear that your established position regarding LDCs is unlikely to change despite the documented evidence that Monroe County provided to your staff during the course of their review. This negative predisposition stands in stark contrast to the fact that the LDC model was established by New York State law to enable local governments to accomplish exactly what Monroe County is doing now – taking on a critical capital project, while achieving savings for local taxpayers.

See Note 1 Page 23

Your office's stated goal for this report was to answer "Was the County's use of a Local Development Corporation to procure public safety and security systems in the best interests of County taxpayers?"

The fact-based answer to this question is a simple one - Yes. Monroe County's use of an LDC to procure public safety and security systems, which was necessary due to Federal Communications Commission (FCC) requirements for narrow-banding of radio equipment, is in the best interest of County taxpayers. The public-private partnership model achieves an overall savings of $10 million County tax dollars while efficiently putting state-of-the art equipment into the hands of first responders. It is also noteworthy that Monroe County's model for this initiative was developed only after the State of New York proved itself incapable of developing a statewide solution to the FCC narrow-banding challenge.

See Note 1 Page 23

Your office's report asserts that the procurement process used by Monroe County in this matter favored one vendor and did not reflect the terms originally solicited. On the contrary, the County's Request for Proposal (RFP) process was completed in full compliance with State law. Therefore, allegations to the contrary by your office are meritless and represent pure speculation. During the course of any contract negotiation after an RFP award, terms such as contract length and performance measures can - and often do - change based on specific delivery requirements. Indeed, it is in the best interest of taxpayers for any government entity to have the ability to negotiate specific beneficial contract terms within the scope of a larger project. And despite statements to the contrary by financial auditors who do not understand the realities of government

See Note 2 Page 23

procurement, vendors regularly approach local governments with detailed ideas and proposals to save local taxpayer dollars prior to the issuance of the RFP. This interaction is common, and often involves discussing details of a proposed project to assist a local government in determining whether seeking solutions from the private sector through an RFP process is in the best interest of taxpayers.

See Note 3 Page 23

Your office also makes an unfounded allegation that vendor discounts achieved through the LDC contract are not being passed through to the County. This allegation is false. In fact, the savings identified by your office do accrue to the County. All achieved savings allow for first responders in our community to receive a higher quality of communications equipment than originally projected with a faster equipment refresh schedule, which results in an improved overall system that will increase radio transmission coverage beyond nationally-accepted standards. Your inaccurate conclusion also fails to recognize that all radios initially purchased during the start-up of the project will eventually need to be replaced with newer technology. And that this replacement will be funded based on the fixed contract price at no additional cost to the County.

See Note 4 Page 23

Your report also alleges that the County will pay $20.6 million more than the value of the systems and services received through the contract, and that the County Controller does not audit the claim for payment. Incredibly, this statement ignores the fact that the County Controller serves as an ex-officio member of the LDC Board who attends Board meetings and serves on its audit Committee. Additionally, various other members of the County's Public Safety division are actively engaged in ensuring that services are being rendered exactly as required by the contract. Because there is not a shred of factual support in your report regarding how your office arrived at the $20.6 million figure, it is impossible for us to assist you in determining the specific errors in this flawed logic.

See Note 5 Page 23

The report goes on to provide recommendations that seem to suggest the County should not have issued certain debt and circumvented its Capital Improvement Program. The County's Capital Improvement Program was completed for virtually all of the items included in this project and was the subject of various full Legislature meetings, Legislative Committee meetings, planning board meetings, and public forums. Moreover, any funds borrowed were used for previously authorized capital projects that were not included under the scope of your examination. Sadly, these facts were specifically pointed out to your staff during the course of the review but ignored. Although this is disappointing, it is not surprising that your staff of financial auditors with no practical experience in the workings of County government would not understand the County's Capital Improvement Program and the related issuance of debt.

See Note 6 Page 23

Your recommendation that County officials should, "adhere to the requirements of County Charter/policy when procuring goods and services to help ensure goods and services are procured in the most prudent and economical manner, that goods and services of desired quality are being acquired at the lowest possible price, or in the case of procurements that are exempt from bidding requirements, upon the most favorable terms and conditions, and that the procurement is not influenced by favoritism, extravagance, fraud or corruption," is the exact manner in which the County operates for each and every contractual transaction it enters into. Finally, your report does not dispute that Monroe County fully complied with New York State law in this LDC transaction, as it did during the two other transactions that your office has reviewed this year.

See Note 2 Page 23

We also take particular exception with your implication that the County will pay "$30.3 million in Administrative and Management fees" entirely to "individuals with previous ties to the County." In reality, the bulk of the $30.3 million in question will be used to employ approximately one dozen local employees - over the next quarter of a century - who will be responsible for operating the rapid response monitoring center established under Monroe County's innovative public safety communications project. These funds will also pay general administrative, legal, and professional fees associated with the operation of any successful business model.

See Note 7 Page 24

We recognize that, in all likelihood, your office will never see eye to eye with Monroe County on the use of a public-private partnership to better equip first responders and best protect local taxpayers. Yet, we should be in agreement that the brave men and women of Monroe County's public safety community deserve state-of-the art tools at their disposal, and that the County has an obligation to seek innovative solutions to provide those tools at as low of a cost as possible.

There is no question that the County's public-private partnership successfully satisfies those dual goals of protecting both the safety and financial interests of our taxpayers. And we need look no further than the lack of substantive corrective recommendations in your report to confirm the overall effectiveness and propriety of this essential public safety project.

Sincerely,

Scott M. Adair, CPA
Chief Financial Officer

Stephen C. Bowman
Public Safety Director

Xc: Maggie Brooks, Monroe County Executive
Daniel Delaus, Monroe County Deputy Executive

APPENDIX C

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

Our audit conclusions are based on the facts related to this issue, not any pre-established position. The County did not present any documented evidence to refute our findings. For example, the County states that the process they used will save taxpayers $10 million without any evidence to support this number. Lacking such documentation, it appears the figure was just made up by County officials.

Note 2

The County's RFP process was replete with problems and clearly favored one vendor, as outlined in this report, and the County's response does not address any of the specifics we raised. Because the County's RFP process was deeply flawed, taxpayer funds were not used to obtain the best possible terms and conditions.

Note 3

We recognize that there might be interaction between a local government considering soliciting RFP responses and potential respondents to the RFP. However, providing a copy of the RFP far in advance to one vendor, and then giving all other vendors limited time to prepare a response to a complex RFP is not an open and competitive process.

Note 4

Replacement costs were included in our calculation as part of the ongoing services included in the Contract. In addition, as a result of the County purchasing equipment through the LDC, which purchased through another entity (Navichase), not all cost savings that accrued to the purchase of the equipment were passed on to the County. Had the County purchased the equipment directly from the supplier, or included contract language to allow the County to benefit from vendor purchase discounts, the County could have realized the $12.7 million in additional discounts.

Note 5

The County could not substantiate the costs of individual line items they included in the Contract with the LDC. We therefore conducted our own analysis of Contract costs. Our analysis included the use of state and federal pricing lists for individual items included in the Contract, as well as reviewing and quantifying the costs of launch projects and ongoing services included in the Contract.

Note 6

The CFO stated that the Contract with M3S allows the County to "pay-as-you-go," placing the Contract payments into operating expenses instead of capital expenses under the CIP. The County issued debt to pay for replacement costs on items covered under the Contract after its initiation. Failure to ensure that these costs were properly paid for by the LDC has resulted in County taxpayers paying for these items twice.

Note 7

The Contract does not specify the administrative and management services to be provided, so we could not verify these claims. In addition, some of the administrative and management fees could have been avoided had the County managed the Contract themselves, utilizing their extensive network of attorneys, accountants and in-house professionals.

APPENDIX D

AUDIT METHODOLOGY AND STANDARDS

To accomplish the objective of this audit and obtain valid evidence, we expanded our scope period back to June 1, 2006 to cover the complete transaction period, in addition the evidence we used during this audit included documentation gathered by subpoena because County Officials were not forthcoming with documentation requested. We also included the following audit procedures:

- We reviewed County procurement policies and procedures to gain an understanding of the guidelines applicable when procuring public safety and security systems and services, including reviewing the County's CIP.

- We reviewed the two claims paid to M3S totaling $9.2 million for the Contract.

- We reviewed the Contract terms and conditions to determine if they were in accordance with those identified during the RFP process.

- We reviewed financial records and reports and other relevant documentation pertaining to the provision of the Contract for M3S and its subcontractors.

- We reviewed available documentation for the selection of vendors through the RFP process along with vendor responses to the RFP.

- We interviewed key County personnel to obtain an understanding of the procurement process and how the County negotiated and monitors the Contract for the public safety and security systems and services. During each of these interviews the CFO and/or Special Counsel were/was in attendance.

- We reviewed financing documentation where available for both the County and LDC.

- We compared the cost of the Contract deliverables to the total cost of the Contract.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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.

APPENDIX E

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