Office of the New York State Comptroller

Division of Local Government
& School Accountability

Ulster County Resource Recovery Agency

Selected Financial Operations

Report of Examination

Period Covered:

January 1, 2010 — October 11, 2011

2012M-65

Thomas P. DiNapoli

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State of New York
Office of the State Comptroller

Division of Local Government
and School Accountability

November 2012

Dear Agency 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 Agency Board 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 the Ulster County Resource Recovery Agency, entitled Selected Financial Operations. 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

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

The Ulster County Resource Recovery Agency (Agency) is a public benefit corporation[1] located in Ulster County. The Agency's primary function is to develop, finance, and implement a comprehensive county-wide solid waste management program. The Agency is governed by a five-member Board of Directors (Board) and an Executive Director.

The Agency's 2011 budgeted appropriations totaled approximately $15.4 million, funded primarily by tipping fees ($11.7 million), recyclable materials sales ($1.1 million), the annual net service fee[2] ($1.4 million) paid by the County, and other general business functions such as roll-off rentals, grants, fuel surcharges, and pulling fees. The net service fee essentially makes the Agency whole on an annual basis.

Scope and Objective

The objective of our audit was to review selected Agency financial operations for the period January 1, 2010, to October 11, 2011. Our audit addressed the following related questions:

- Are Agency officials purchasing goods and services according to the requirements set forth by Agency policy?
- Is the Agency receiving the most economic value for its services and saleable commodities?
- Are cash disbursements for Agency business purposes?

Audit Results

The Board has not established procedures to monitor compliance with the Agency's procurement policy. Consequently, of the $16.7 million in purchases we tested that required public bidding or solicitation of multiple quotes, $8.5 million in purchases did not conform to the policy guidelines. For example, since 1999, the Agency has primarily used the same landfill, which happens to be 235 miles from the Town of Ulster transfer station, without considering other facilities that were closer. For the audit period, the Agency paid this landfill about $4.6 million. The Agency also did not use competition to procure fuel and some hauling services. Finally, the Agency awarded a contract for

[1] Pursuant to Public Authorities Law Section 2050-c

[2] Pursuant to a legal agreement between the County and the Agency, the Agency accepts, processes, and disposes of all solid waste and accepts, processes, and markets the regulated recyclable materials collected within the County. In return, the County pays the Agency a net service fee, to the extent required pursuant to the terms of the agreement.

the hauling of waste to landfills to a vendor, who was paid $388,515 during the audit period, who did not meet the requirements set forth in the bidding documents. As a result, there is no assurance that 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, and that procurement decisions are not influenced by favoritism, extravagance, fraud and corruption.

The Agency receives recyclable materials from numerous municipalities, residents, commercial haulers, and industrial and institutional establishments. The subsequent sale of the recyclable materials is not performed in an open and competitive fashion. Rather, the Agency sells the recyclables periodically using an informal process of contacting one or more private brokers who provide price quotes. Further, we found that this process only involved a few selected brokers and businesses. Although the Agency had adopted a policy entitled "Acquisition Use and Disposal of Property", which meets the minimum standards set forth by law, the policy lacks specificity and instructions regarding using, awarding, monitoring and reporting of contracts for the disposal of property. We selected five vendors who had purchased the Agency's recyclable materials during our audit period and found that 31 of the 44 monthly bulk sales transactions reviewed were made without the benefit of competitive pricing. The absence of comprehensive guidelines and procedures prevents Agency officials from ensuring that the Agency receives the best possible economic value for the sale of its personal property, and the risk of favoritism and abuse is heightened.

The Agency has implemented internal controls over cash disbursements. However, controls over cash disbursements could be strengthened through a more effective oversight process. While our testing of cash disbursements did not indicate any misappropriation of assets, the risk is present without compensating controls being in place.

Comments of Agency Officials

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, Agency officials generally agreed with our findings and recommendations and indicated they plan to initiate corrective action. Appendix B includes our comments on the issues raised in the Agency's response letter.

Introduction

Background

The Ulster County Resource Recovery Agency (Agency) is a public benefit corporation[3] located in Ulster County (County). The Agency's primary function is to develop, finance, and implement a comprehensive county-wide solid waste management program. The Agency is governed by a five-member Board of Directors (Board) appointed by the County Legislature. The Executive Director is appointed by the Board, serves at the pleasure of the Board and has general supervision over the administration of the Agency's business affairs.

The Agency is empowered to collect, receive, transport, process, dispose of, sell, store, convey, and recycle, in any lawful manner and way, solid waste, and any products or by-products thereof, in the County. To comply with the New York State Solid Waste Management Act, which requires the separation of reusable and recyclable materials from solid waste, the County Legislature adopted a Mandatory Source Separation and Recycling Law requiring all waste generators to separate newspaper, corrugated cardboard, glass bottles and jars, metal cans, and plastic bottles and jugs for recycling.

The Agency's 2011 budgeted appropriations totaled approximately $15.4 million, funded primarily by tipping fees, recyclable materials sales, and the annual net service fee[4] imposed on the County. The net service fee subsidizes any annual operating losses.

The Agency employs about 40 employees and contracts with several independent vendors for its long-haul trucking of solid waste to landfills. The Agency accepts waste and recyclable materials at its primary location in the Town of Ulster and maintains two transfer stations, one located in the Town of Ulster and a smaller sub-location in the Town of New Paltz. The Agency collects solid waste from independent trash collectors, contractors, town transfer stations, and the general public. A charge or "tipping fee" is imposed based on the weight of the waste. Fees vary based on the volume and negotiated contracts with each customer. The Board sets the standard rates annually.

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[3] Pursuant to Public Authorities Law Section 2050-c

[4] Pursuant to a legal agreement between the County and the Agency, the Agency accepts, processes, and disposes of all solid waste and accepts, processes, and markets the regulated recyclable materials collected within the County. In return, the County pays the Agency a net service fee, to the extent required pursuant to the terms of the agreement.

Solid waste is transported primarily to landfills in western New York State using long-haul trucking companies. Recyclable materials received by the Agency are sorted and sold as a commodity rather than shipped to a landfill, netting about $1.1 million in Agency revenue annually.

Objective

The objective of our audit was to examine selected Agency financial operations. Our audit addressed the following related questions:

- Are Agency officials purchasing goods and services according to the requirements set forth by Agency policy?
- Is the Agency receiving the most economic value for its services and saleable commodities?
- Are cash disbursements for Agency business purposes?

Scope and Methodology

We examined selected Agency financial operations for the period January 1, 2010, through October 11, 2011.

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 C of this report.

Comments of Agency Officials and Corrective Action

The results of our audit and recommendations have been discussed with Agency officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as indicated in Appendix A, Agency officials generally agreed with our findings and recommendations and indicated they plan to initiate corrective action. Appendix B includes our comments on the issues raised in the Agency's response letter.

The Board has 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 Board to make this plan available for public review in the Secretary's office.

Purchasing

The Board is responsible for establishing policies regarding the procurement of goods and services and must implement, and monitor those policies to help ensure that the Agency obtains services, materials, supplies and equipment of the desired quality, specified quantity, and at the lowest price. Such policies also help to protect against favoritism, extravagance, fraud, and corruption.

The Board established a procurement policy in 1993 and subsequently amended the policy in December 2009. The procurement policy describes the type and form of quotes to be obtained by Agency personnel when procuring goods and services depending on the purchase price. However, the Board has not established procedures to monitor compliance with the Agency's procurement policy, and consequently, significant purchases were made that did not conform to the policy guidelines which required public bidding.

The Agency incurs significant costs for disposing waste in landfills, trucking the waste, purchasing fuel, and providing employee benefits. We selected 10 vendors supplying these types of services, including landfill operators, long-haul trucking vendors, and employee benefits providers. In addition, we selected another 10 vendors that supplied fuel for the long-haul trucks, and fuel for Agency use and operational needs (e.g., conveyer belts, machine parts, and equipment). The combined sample selections represented expenditures totaling $16.7 million during our audit period.

We found that Agency personnel did not procure eight of 20 services totaling $8.5 million according to the procurement policy. The other remaining contracts were either awarded after proper bidding was performed or were for professional services which were not required under the policy to be bid. Also, while testing cash disbursements, we found two additional non-compliance exceptions, totaling about $152,800, for the cost to landfill sludge and collection services for household waste for a town by a third-party collector. The Agency also awarded a contract for hauling waste to landfills to a vendor, who was paid $388,515 during our audit period, who did not meet the requirements set forth in the bidding documents.

- The Agency paid $4.6 million during the audit period to a landfill located in western New York about 235 miles from the Town of Ulster transfer station. The original contract was bid

in 1999 and has been subsequently renewed multiple times[5] without any consideration of alternative options. During this period, New York State had about 28 different active landfills and 10 waste-to-energy facilities in operation in 2009 that could have been solicited for requests for bids.

- The Agency provides fuel to long-haul trucking contractors on a 'per trip' basis. The fuel is either pumped directly at the Town of Ulster location or at a fuel service station in western New York. The total expenditures for both amounted to $3.1 million during the audit period. The Agency never properly bid the purchase of this fuel.

- Although the Agency solicited bids and awarded contracts in May 2010 for the hauling of waste to the landfills in western New York, they never bid the hauling of sludge to another landfill near Buffalo. The hauler for the Agency received about $393,000 during the audit period and also used Agency-supplied fuel to haul the sludge.

- The Agency purchased heating fuel and off-road diesel fuel from a local company without seeking competition. The total cost for this fuel was about $233,000 during the audit period.

- The Agency incurred $75,700 in expenditures purchasing tires and employee uniforms. Annual aggregate payments to both vendors exceeded the $10,000 threshold for like commodities, which required formal bidding. For example, the Agency generally purchases the same size and type of tire. The Agency paid approximately $41,500 for tires during the audit period (2010 - $24,700 and in 2011 - $16,800).The Agency is paid about $34,200 for uniforms during the audit period (2010 - $18,800 and in 2011 - $15,400).

- The Agency received sludge from local municipalities and transported it to a landfill in Buffalo. The Agency paid landfill costs totaling about $102,000 during the audit period and disposal alternatives had not historically been considered. According to Agency officials, they plan to review alternatives when the contract expires at the end of 2012.

- The Agency contracted with a third-party vendor for the period December 2005 through December 2010 for curbside collection of refuse and recyclables for an Ulster County town.

[5] The contract was amended on January 1, 2003. The most recent amendment to the contract is dated July 1, 2008 and is extended through 2014.

The Agency paid about $50,800 in 2010 before the contract was canceled. This service was provided for the town through the Agency and was never properly bid.

- Agency officials awarded a contract to a vendor, who did not meet the requirements set forth in the request for proposal. The vendor, who was paid $388,515 during the audit period, did not possess the required experience, qualifications, and insurance coverage as detailed in the request for proposal. The request for proposal explicitly required the vendor be regularly engaged in the hauling of solid waste and possess or have under its control sufficient equipment. The vendor did not possess the required qualifications and insurance coverage as detailed in the request for proposal. The Board was aware of and discussed the incompleteness of this vendor's proposal, including that he did not have the equipment necessary to perform the contractual services.[6] In addition, the vendor had not obtained the required workers' compensation insurance and the Agency was billed and paid for the lapse in insurance coverage disclosed during an audit by the New York State Insurance Fund.[7] By awarding this contract to an unqualified vendor, the Agency hindered competition by excluding other trucking companies with experience, qualifications, and necessary equipment.

The Board has not established procedures to ensure that its procurement policy requirements are followed. When policy requirements are not satisfied, the Board does not have sufficient assurance that all 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, and that procurement decisions are not influenced by favoritism, extravagance, fraud and corruption.

Recommendations

1. The Board should develop procedures to ensure that the requirements concerning quotes or bids included in the procurement policy are being met.

2. The Board should only award contracts to those vendors that meet all specifications in the bidding documents.

[6] The vendor had to purchase the required equipment to fulfill the contract.
[7] The Agency deducted the amount paid from payments made to the vendor.

Agency Revenues

Agency operations are funded primarily through the revenue received from disposal fees, the sale of recyclable materials sorted into marketable commodities, and the annual County net service fee which basically subsidizes any operating losses. The Agency sets standard pricing for the disposal of waste and also negotiates disposal contracts with vendors to allow for volume pricing. Recycled materials are sold periodically to brokers. Generally, brokers are willing to pay prices based on market conditions and other factors such as cost to transport. During the audit period, the Agency received revenues of $2.1 million for recyclable materials.

An effective system of financial oversight includes policies, procedures, and best practices that provide reasonable assurance that the Agency is receiving the most economic benefit when negotiating contracts and selling its assets in compliance with applicable law. We reviewed the contracts with the 10 largest waste haulers (by tonnage) to determine if the contracts and fees were negotiated in good faith. We also reviewed 20 voided and 20 edited weigh scale slips.[8] We found no significant discrepancies in the contracts, fees, or weigh scale slips for accepting waste. However, we found some deficiencies in the Agency's procedures for selling recyclables.

Generally, when there is no procedure prescribed by statute, local governments selling or disposing of unneeded personal property have a fiduciary duty to secure the best price obtainable in their judgment or in the most beneficial terms in the public interest for any lawful use. The method of sale chosen is within the discretion of the appropriate local officials, but generally should be the one that will yield the best price or maximum financial benefits. To fulfill this fiduciary duty, a local government should take appropriate measures to ensure that the sales prices it receives for recyclable materials is based upon the best or most beneficial terms.

Public Authorities Law (PAL) provides, among other things, that every local authority adopt, by resolution, comprehensive guidelines which detail the policy and instructions regarding using, awarding, monitoring and reporting of contracts for the disposal of property. According to the PAL, "property" is defined, in part, as personal property in excess of $5,000 in value. Such guidelines can help to ensure that Agency officials obtain the most economic benefit for the disposal of Agency assets, at competitive market prices, and increase the transparency of Agency operations.

[8] See Appendix C for sample selection information

PAL generally provides that public authorities may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property. Unless an exception applies, the legal requirements for disposal of recyclables by the Agency vary depending on the value of items sold.

- For monthly bulk or bundled sales of items valued at $5,000 or less, the general rule for the disposal of property is that Agency officials take appropriate measures to ensure that the sales price is based upon the best or most beneficial terms; possibly, a best practice standard.

- For monthly bulk or bundled sales of items valued, in the aggregate, at greater than $5,000 but less than $15,000, the sales must be for at least fair market value. The sales need not be pursuant to competitive bidding, but may be sold by negotiation or public auction, subject to the Agency obtaining competition as is feasible under the circumstances.

- For monthly bulk or bundled sales of items valued, in the aggregate, at $15,000 or more the sales must be for at least fair market value and also must be pursuant to the bidding requirement of PAL.

Although the statute generally does not permit disposal of property below fair market value, provided that there is an exception in PAL, the sale of recyclables below fair market value may be permissible by negotiation or public auction. If an exception were to apply, the statute requires that certain information be provided to the Board as well as the public when disposing of property below fair market value. Moreover, the Board is required to provide a written determination that there is no reasonable alternative to the proposed below market transfer.

The Agency has not developed comprehensive procedures to ensure that the sale of recyclable materials results in optimal revenue. The Agency receives recyclable materials (e.g., paper, glass, aluminum, rubber, etc.) from numerous municipalities,[9] County residents, commercial haulers, and industrial and institutional establishments. The subsequent sale of the recyclable materials is not performed in an open and competitive fashion. Rather, the Agency periodically sells the recyclables using an informal process of contacting one or more private brokers who provide price quotes based on commodity market conditions and other factors such as cost of transport. This process generally involved a few selected brokers and businesses.

[9] Each of which has entered into contractual agreements with the Agency to collect and dispose of such products

On a monthly basis, the Agency prepares and sends invoices to the vendors who buy the recyclable materials based on the quantity and type of material picked up. We selected five vendors who had purchased the Agency's recyclables during our audit period, reviewed 19 corresponding monthly invoices totaling approximately $687,000, and summarized the invoices based on the type of commodity picked up per month. This resulted in 44 different monthly bulk aggregated amounts. We found that only 13 of the 44 monthly bulk aggregated amounts were sold with some documented evidence of competition.

The following table presents a breakdown, by statutory threshold amount, of the 31 monthly bulk sales transactions that were made without the benefit of competitive pricing.

Table 1: Sales Transactions Made Without Competitive Pricing

Statutory Threshold	Number of Monthly Bulk Sales
Under $5,000	6
Between $5,000 and $15,000	12
Over $15,000	13

We also found that the Agency disposed of recyclable glass materials in a manner inconsistent with statutory requirements applicable when property is disposed of at below fair market value. In these cases, we found that the Board did not provide a written determination that there was no reasonable alternative to the proposed below-market transfers and would achieve the same purpose of such transfer.[10] Agency officials also could not provide any documented cost analysis to support the decision to sell the glass for less than the fair market value.

Although the Agency had adopted a policy entitled "Acquisition Use and Disposal of Property," which meets the minimum standards set forth by law, the policy lacks specificity and instructions regarding using, awarding, monitoring and reporting of contracts for the disposal of property. In practice, the Director of Operations has been granted the authority to sell the Agency's recyclables based solely on an informal conversation with the Executive Director. According to Agency personnel, attempts were made to obtain pricing from multiple brokers; however, they were unable to provide us evidence to demonstrate that sufficient actions had been taken with these sales transactions.

The sale of recyclable materials is significant to funding Agency operations. The absence of comprehensive guidelines and procedures prevents Agency officials from ensuring that the Agency receives the

[10] See Public Authorities Law Section 2897(7)(c)

best possible economic value for the sale of its personal property, and the risk of favoritism and abuse is heightened.

Recommendation

3. The Board should develop comprehensive guidelines and procedures to ensure that the sale of recyclable materials is performed in an open, transparent, and competitive way, with documented oversight and approvals.

Cash Disbursements

An effective control system over cash disbursements includes establishing policies and procedures to ensure that cash disbursements are for appropriate Agency purposes and that cash is safeguarded to prevent loss or theft. An effective system also provides for an appropriate segregation of financial duties so that no single person controls all phases of a transaction without proper oversight. If it is not practical to adequately segregate duties because of limited staff resources, the Board must establish internal controls, such as reviewing bank reconciliations, to compensate for this control weakness.

The Agency has implemented internal controls over cash disbursements. However, controls over cash disbursements could be strengthened through more effective oversight. Some duties were properly segregated by design. For example, the mail, including vendor invoices, is opened by the Agency receptionist which she compares to the purchase order and creates a voucher, vouchers are approved by department heads, vouchers are reviewed by the Controller and entered into the accounting system by an accounting clerk, an abstract is printed and reviewed by the Executive Director, and checks over $4,000 require the Treasurer's (Board appointed) signature. However, the Controller has capabilities that reduce the effectiveness of these controls. The Controller has access to blank checks, the authority to sign checks, the ability to make electronic withdrawals, and performs all accounting and reconciliation functions. As such, there is increased risk for misappropriation of assets and/or abuse to occur and go unnoticed.

We reviewed 89 disbursements, totaling about $476,000, to determine whether payments/purchases were made according to the purchasing policy and/or statutory bidding requirements, goods/services were received prior to payment, vouchers were supported with adequate documentation and detail, disbursements were for a proper Agency purpose, and checks were signed by authorized signers as required. The 89 disbursements consisted of 50 computer-processed cash disbursements, 10 disbursements made with manually-prepared checks, 18 payments for credit card purchases, and 11 payments to key officials. Our testing disclosed no exceptions with these cash disbursements.

In addition, we tested two months of electronic and automated withdrawals, consisting of 11 transactions totaling about $125,000, to verify that the disbursements were for proper Agency-related

purposes. All of the transactions were for proper business purposes. We also tested the accuracy of long-haul transportation and landfill invoices to determine whether the Agency was appropriately charged by tracing 40 weight slips generated by the scales at the two Agency locations.[11] We found that haulers and landfills were charging for appropriate trips and weights and were consistent with Agency-produced waste. While our testing did not indicate any misappropriation of assets, the risk is present without compensating controls being in place.

Recommendation

4. The Board should adopt a policy and set of procedures to ensure that compensating controls are in place so that any duties that cannot be practically and properly segregated are effectively monitored.

[11] 20 weight slips each from the Kingston and New Paltz transfer stations

APPENDIX A

RESPONSE FROM AGENCY OFFICIALS

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

As part of their response, Agency officials refer to exhibits that are not included with the final report. We did not include these exhibits because the information contained in the Agency officials' response was sufficient to address the findings in the report.

Ulster County Resource Recovery Agency
P.O Box 6219 • 999 Flatbush Road
Kingston, New York 12402
845-336-0600 Fax 845-336-4129

August 24, 2012

New York State Comptroller
Newburgh Regional Office
33 Airport Drive
Suite 103
New Windsor, New York 12553

Re: Response to Preliminary Draft Audit Findings

Ladies and Gentlemen:

The purpose of this letter is to respond to the preliminary draft findings submitted to the Ulster County Resource Recovery Agency (the "Agency") by the New York State Comptroller's Office ("OSC") by letter dated July 13, 2012. The preliminary draft audit findings concern the examination of selected financial operations of the Agency during the period of January 1, 2010 to October 11, 2011. As I have advised, this response is being submitted later than the date requested by OSC in order to permit review by the Agency's Board of Directors. Please note that the response has been reviewed by members of the Agency Board, and the Board agrees with the contents of the response.

The preliminary draft audit findings are divided into three sections: Purchasing, Agency Revenues and Cash Disbursements. This response will address each section in the order presented. We have attached certain materials to the response for your information. We are prepared to provide further documentation upon request.

Purchasing

The New York State Legislature provided the Agency, a public authority, with far greater flexibility in its method of purchasing services and materials than counties, municipalities and school districts.The Agency is subject to the procurement requirements of the New York State General Municipal Law (Article 5-A and Section 120-w) only in connection with procurements related to "construction", as that term is defined in the Agency's enabling act (Section 2050-b(7) of the Public Authorities Law). The Agency Board established its own procurement policy in 1993 for procurement of all materials and services for which there were no State law requirements. None of the purchases discussed in the preliminary draft audit findings were related to "construction".

Under the procurement policy, which was amended by the Board of Directors in 2009 and twice in 2012, the Board of Directors reserved the right to supersede the requirements of the policy regarding certain purchases if it was, in its opinion, appropriate and in the public interest to do so. Some procurements, such as landfill capacity procurements, were initially bid, and then renewals were negotiated with the original successful bidder. Other materials and services were procured at New York State Bid prices,

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which did not require a formal bidding process. Other procurements involved the receipt of at least three informal vendor quotations by management before the Board approved the procurement. See Section 7 of the procurement policy. In all instances, the Agency staff and Board of Directors strove to act in the best economic interests of the Agency's constituents.

OSC cites eight instances where "Agency personnel did not procure services …according to the procurement policy". These instances are addressed, specifically, below:

1. Landfill Contract with Seneca Meadows Landfill. The Agency initially bid this service in 1999, and then subsequently negotiated renewals. The prices obtained in negotiations were always substantially less than any alternatives available to the Agency based on the extensive reviews of alternatives conducted by Agency staff. In analyzing the cost, the Agency took into account the charges to haul solid waste to the landfill. When it compared the tipping fee at Seneca Meadows, plus the cost to haul solid waste with the tipping fees and cost to haul to other potential facilities, Seneca Meadow's total cost was always lower. While the Agency chose not to solicit formal bids for landfill capacity, it did procure the services of Seneca Meadows after careful scrutiny of all available alternatives. The results of these analyses were provided to the Board of Directors which approved the negotiated contracts by official action. Even though Seneca Meadows was the least expensive alternative, it was also the most reliable alternative. The Agency has never suffered any delays or failures in service caused by Seneca Meadows. Its service has always been excellent. It is a fully permitted facility, which is well-operated. Agency haulers are able to gain access to the facility without inordinate delay. The stability provided by the Seneca Meadows agreements have been extremely important to the Agency. Since the Agency does not have its own disposal facility, DEC regulators and Bond Rating agencies require that the Agency have stable-long term disposal services. The current five year contract with Seneca Meadows (expiring at the end of 2014), was an important factor in the Agency's recent refunding of certain revenue bonds, and is required for DEC approval of the Agency's proposed Supplemental Local Solid Waste Management Plan. Indeed, DEC required a statement in the proposed Supplemental Local Solid Waste Management Plan that landfill capacity would be available for the duration of the Plan. Seneca Meadows supplied such assurance. The statement in the OSC draft audit findings that there were "about 28 different active landfills and 10 waste-to-energy plants in New York State that could have been solicited for requests for bids in 2009" is speculation which ignores the following realities: many of those facilities were public facilities that had capacity sufficient to serve only the needs of the locality; many were located on Long Island or in Northern or Western New York, even father away from the Agency's transfer stations; resource recovery plants charge significantly higher rates than landfills which makes even the closest plants noncompetitive; and all available options were reviewed in detail by the Agency staff before it presented the Seneca Meadows proposal to the Board of Directors for review and approval. Finally, even though Seneca Meadows has provided high quality service and stability and at the fairest price, the Agency has, historically, sought redundancy in this service, and, accordingly, has contracted with other landfills. (See, table attached as Exhibit A). In sum, the services of Seneca Meadows Landfill have been procured after staff's careful analysis of the market and

See Note 1 Page 25

rigorous negotiations of the terms of the agreements which reflect the lowest cost and best service available. The agreements have been approved by official action of the Board of Directors which lawfully and properly superseded the procurement policy.

2. Fuel Replenishment Policy. The Agency provides diesel fuel to its long-distance haulers, thus reducing the cost of transportation of solid waste. Procurement of diesel fuel for this purpose is handled by the Agency Controller, who purchases fuel as needed from a local vendor, at least at the New York State Bid Price. The Agency Board authorized this procedure by resolution in 2003, which selected the current vendor after staff had obtained three quotations from local vendors. No bidding is required when purchasing at the New York State Bid Price, and the procurement is in accordance with the procurement policy. From time to time, the Controller has been able to obtain a price lower than the New York State Bid Price. This, of course, results in further savings to the Agency. In fact, the Agency saved over $60,000.00 during the audit period. The statement in the report that the "Agency never did properly bid the purchase of fuel" is incorrect. The Agency did not have to bid the procurement of fuel at the State Bid Price, and it can supersede its procurement policy by official action when it is appropriate to do so. The fact that the Agency receives even greater savings on the occasions when the price paid is less than the State Bid Price is not a violation of the procurement policy. However, to clarify this matter, and to provide more transparency in the diesel fuel procurement process, the Board of Directors approved an amendment to the procurement policy on May 14, 2012. (A copy is attached as Exhibit B).

See Note 2 Page 25

3. Hauling of Sludge. The Agency publically procured the services of a hauler effective January 1, 1999 to haul sludge to the licensed sludge disposal facility in Niagara Falls, NY. The Agency Board approved the contract. The Agency Board approved two subsequent amendments of the contract in 1999 and 2001. This hauler also was a long-distance solid waste hauler for the Agency during this time. This hauler was not a successful proposer in the Agency's 2010 procurement of long-distance solid waste transportation services. However, it agreed to continue to haul sludge under the then existing terms. In 2012, the Agency issued a public procurement of the service and the hauler was the successful proposer. The agreement which resulted from that process will expire at the end of 2012. If the Agency is not successful in negotiating a pending interagency agreement, the Agency will request the permission from the Board of Directors to conduct a public procurement of these services.

4. Heating Fuel and Off-Road Diesel Fuel Purchases. This fuel was purchased at competitive prices without public bidding and the Board did not specifically approve the purchase of the fuel. This discrepancy will be corrected, and future procurements will be made in accordance with the procurement policy.

5. Purchase of Tires and Uniforms. See item 4 above. These purchases exceeded the bid limits set forth in the procurement policy prior to its amendment in 2012. Future procurements will be made in accordance with the procurement policy.

6. Disposal of Sewage Sludge. See item 3 above. The transportation and hauling of sewage sludge was originally contracted by the Agency by public procurement. The subsequent procurements were based on extensive market reviews by staff for disposal sites and haulers either directly or through a solid waste broker. In 2001 the Agency contracted with the present facility in Niagara Falls, NY for disposal only through 2004. All agreements were approved by Board action. The Agency has continued to utilize the facility, and has negotiated rates for the service. Staff will recommend to the Board of Directors that a public procurement of such services be commenced if a pending proposal for an interagency agreement does not materialize.

7. Third Party Collection Contract. The Agency contracted with a small town in Ulster County to collect and dispose of its solid waste and to collect and process its recyclable material. These agreements were approved by the Board of Directors. A policy determination by a subsequent Board of Directors to terminate all collection services caused the town to request that the Agency continue to provide the services through a private collector/hauler. A collector/hauler acceptable to the town was procured through negotiation. The agreement was accepted by the town. The Agency extended its contract with the town to provide the service through the private collector/hauler. The collector/hauler billed the Agency and the Agency collected the amount billed from the town. The Agency was essentially a pass-through or broker in this transaction. The initial two year agreement covered 12 months from December 31, 2005 through December 31, 2006. Subsequent amendments covered the years 2007 through 2010. This service terminated at the end of 2010.

8. Award to Unqualified Proposer. The Agency Board reviewed the proposals for the hauling of solid waste. This proposer was one seeking a smaller hauling contract. The Agency had bifurcated the procurement – one contract was for hauling large amounts of solid waste and the other for smaller amounts. It was done this way in order to open the process to small, local haulers, as well as regional or national companies. This proposer submitted the lowest price proposal. Upon review, it was determined by staff that this proposer did not have all of the appropriate equipment required, and had no prior experience in hauling solid waste. This was reported to the Board of Directors. The Board determined to waive those factors because there would be substantial savings because of the low proposal price and the proposer had agreed to procure the proper equipment. After award, it was determined that the proposer did not have the appropriate insurance coverage. The proposer was given a deadline to comply or lose the contract. He complied, and paid for any costs related to the deficiency. The draft audit findings speculate that the Agency lost money because the Agency Board did not reject the low proposer and award the contract to a higher, more qualified proposer. The contrary has, in fact, obtained – by proceeding with the lowest proposer the Agency has paid to date $11,652.00 less than if the Board had not waived the deficiencies and awarded the contract the next lowest proposer. Furthermore, the proposer bore all costs of making up the discrepancies in his proposal. Finally, it should be noted that the Board reserved the right in the request for proposals to reject any and all proposals, to waive any and all informalities or irregularities, to disregard all non-conforming or

See Note 3 Page 25

conditional proposals, to accept more than one proposal and to negotiate with successful proposers. The method of procurement described in the request for proposals placed price as the number one criteria. This procurement was proper and in the best financial interests of the Agency and its constituents.

Agency Revenues

The OSC draft audit findings found "some deficiencies in the procedures for selling recyclables".

The Agency has generally sold recyclables on a "spot market basis", although in some instances contracts, generally short-term, have been negotiated. The Agency firmly believes that the process it has followed has resulted in the highest revenues it could expect from the sale of these products, the market for which is the most volatile of all commodities. Furthermore, by following a spot market procedure, the Agency is not constrained by contractual obligations, and is able to negotiate the best deals for the sale of the various products. It is also able maximize profits and minimize costs by maintaining marketing flexibility. For instance, the Agency obtained two prices for the recent sale of mixed news. One proposer agreed to pay $50.00 per ton. The other proposer agreed to pay $45.00 per ton. However, the second proposer also agreed to send one load of commingled recyclables to the Agency as part of its proposal. Thus, the second proposal was more lucrative for the Agency even though the second proposer did not provide the highest price per ton. The difference is significant – had the Agency followed the Public Authorities Law and selected the high proposal, it would have expected a revenue of $1,350.00. By accepting the second proposal, the Agency is expecting a revenue of $5,415.00. (See the documentation attached as Exhibit C). The Agency has also negotiated arrangements where Agency vehicles hauling materials to certain markets have been able to haul other materials on the return trip, as opposed to returning with empty trailers. The Agency is also able to stockpile certain products until the ever fluctuating prices improve, rather than being forced under a contract to deliver such products at a specifically defined frequency. The instability of the markets also militates against bidding such contracts. In the Agency's experience, many contractors have ceased doing business during the contract period, requiring the Agency to struggle to find alternatives.

Nor is the Agency's process non-transparent. The Agency staff reports to the Board of Directors on a monthly basis on the financial status of the Materials Recovery Facility ("MRF") and its operations, including the revenues received from sales of products, or the status of such sales. The report is a public document and the report is discussed in public session. The Agency recently procured an analysis by third party consultants on the MRF and its operations, including marketing of materials recovered. No advice was received that the marketing procedure was in anyway deficient.

The draft audit findings state that recyclables are "property" and are therefore governed by the Public Authorities Law (PAL) and the Agency's Purchase and Sale of Property policy. The Agency respectfully disagrees that recyclables are property as that term is used under the PAL section or the Agency's policy. When recyclable materials are disposed by the end user at curbside or in designated collection

See Note 4 Page 25

receptacles, they are in a condition that renders them worthless. They are often commingled and often contaminated with solid waste, dirt, broken glass, etc. The Agency doesn't purchase these materials, it receives them at no cost, or, in the case of some materials, the Agency is paid to take them. Recyclable materials are then, at the point of receipt, are essentially solid waste, which is not purchased, but rather the Agency is paid to receive and dispose of it. Recyclables are a raw material which is made into a product which has value in the recycling market only after processing by the Agency, which cleans, sorts and appropriately stores the materials. In other words, the Agency takes in a worthless raw material, which it processes in to a product for sale on the limited and volatile recycling market, which routinely rejects contaminated products.

It is submitted that the PAL sections and purchase and sale of property policy applies to items that have value and are purchased by the Agency at procurement , or gifted to the Agency, and may be subsequently sold by the Agency as items that retain value (albeit decreased or, in some cases increased value). Recyclable materials are not subject to the policy because they are not purchased; they have no value unless processed by the Agency. They are a product produced by the Agency.

Thus, neither the provisions of the PAL or the Agency's policy apply.

It is further submitted that even if recyclable materials are considered property as defined in the PAL and the Agency's policy, the PAL provisions and the Agency's policy do not apply to recyclable materials because the PAL provides that bidding requirements do not apply to dispositions of property which are regulated by a specific statute. See, PAL Section 2897(6)(c)(iv). PAL Section 2050-e(8) is just such a statute as it provides, in relevant part, the Agency with power to " …. collect or receive …solid waste for the purpose or treatment or disposal thereof, with the right of the agency to sell and dispose of any products or by-products (including energy) of such process or treatment or disposal, as the Agency may deem proper….".

Finally, in order to increase transparency of its operations and ensure that the Agency will continue to obtain fair and competitive prices for sale of the recyclable products it produces, the Agency Board approved a further amendment to the property procurement and sale policy on May 14, 2012. (A copy is attached as Exhibit D).

Cash Disbursements

The OSC draft findings gives the impression that the Agency has a weak internal control structure over cash disbursements, and a lack of compensating controls, due to a lack of segregation of duties related to certain abilities of the Controller to mitigate current controls in place.

See Note 5 Page 26

Each of the examples cited in the draft findings as lacking compensating controls is inaccurate and is discussed below:

Review of bank reconciliations – during the audit for the fiscal year ended December 31, 2009,the Agency's independent auditors recommended this additional control be put in place. It was implemented in March, 2010 and continues monthly.

The Controller has access to blank checks – whoever cuts checks does not sign the checks. Any checks cut by the Controller are signed by the Executive Director.

The Controller has authority to sign checks – whoever cuts the checks does not sign the checks. Any checks cut by the Controller are signed by the Executive Director.

The Controller has the ability to make electronic withdrawals – any such transaction also appears on the bank statement. All of these transactions are reviewed and reconciled within the Agency's accounting computer system by the accounting clerk. The Executive Director reviews these transactions during his review of the bank reconciliations and approves all outgoing wires.

The OSC draft findings state that the Controller performs all accounting and reconciliation functions.This statement is not correct. Any transaction, including, but not limited to journal entries, credit card transactions, cash transfers, is reviewed by different employees. For example, when the Controller writes up a journal entry, the Accounting Clerk enters it into the system and the Executive Secretary reviews the posting of the journal entry for accuracy.

See Note 6 Page 26

Substantive testing by the OSC based on the Agency's internal controls was conducted, and showed no exceptions or findings. The OSC still reported that a "risk is present without compensating controls being in place" for cash disbursements. Aside from the specific compensating controls noted above, prior to every board meeting a listing of all expenditures of the Agency is entered into a spreadsheet with invoice date, vendor name, details of the expense, and the amount. This spreadsheet is emailed to every board member for review and inquiry.

Review of the Agency's internal control structure by the Agency's management, Board of Directors and independent auditors is a continuous process.

Thank you for the opportunity to respond to the report.

Sincerely,

Timothy B. Rose, P.E., BCEE, QEP, M.P.A.
Executive Director

Cc: Board Members
Timothy DeGraff, Agency Controller
Stephen Wing, Esq., Agency Counsel

APPENDIX B

OSC COMMENTS ON THE AGENCY OFFICIALS' RESPONSE

Note 1

We acknowledge that the Agency's procurement policy does expressly provide that the governing Board "reserves the right to waive specific requirements" of the procurement policy "in cases in which it determines that the public interest will be served by such waiver. Such waiver can occur only in accordance with law and after adoption of a resolution setting forth the precise reasons therefor adopted by the governing body." Therefore, we recognize under certain circumstances, the Agency may not be required to publicly bid in accordance with GML Section 103, as suggested in its policy.

However, we found no written indication that Agency staff scrutinized all available alternatives, prepared any analyses, or rigorously negotiated the terms of the agreement. On multiple occasions we requested that Agency officials provide us the results of the analyses staff prepared of the available alternatives that were provided to the Board of Directors. Agency officials were unable to provide us with any documentation of the purported analyses. Furthermore, the Controller stated to us that he attended the meeting with landfill officials the last time the contract was renewed and he was surprised that the Executive Director had entered into an agreement without reviewing other possible alternatives.

Note 2

The Agency spent approximately $2.3 million for fuel during the audit period with only one local vendor. The Agency's response indicates that the procurement policy has an exception for purchases "at the New York State Bid Price." While the Agency's procurement policy provides an exception for goods or services purchased "from another government agency ….", we found no exception for purchases at New York State Bid Price. With respect to the Agency's assertion that it can supersede its procurement policy, Agency officials did not provide us any written documentation that supported a waiver for the purchase of diesel fuel.

Note 3

From a business practice perspective, the Agency either: (1) should not have waived these requirements as other potential competitors, who declined to submit proposals, may have submitted proposals had they been aware that the Agency may waive certain requirements set forth in the RFP; or (2) should have rejected and re-advertised the RFP instead of waiving the particular requirements and negotiating with the low-dollar vendor.

Note 4

We acknowledge the Agency's enabling act does provide, in part, that the Agency has the authority to sell real, personal or mixed property without limitations (see, e.g., PAL Section 2050-e[3]). However, we believe that the Agency's enabling act must also be read together with the Public Authorities Accountability Act of 2005 (PAAA), as amended in 2009, which provides, among other things,

additional limitations on the disposal of property. These additional restrictions on the disposal of property, in our view, are not inconsistent with, but instead supplement, the more general provisions of the Agency's enabling act.

As discussed in the report, the PAL provides that every authority adopt by resolution comprehensive guidelines which shall detail the public authority's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of "property." According to the PAAA, "property" is defined, in part, as personal property in excess of $5,000 in value. In our view, it is appropriate to apply this definition to the estimated total aggregate value of recycled materials sold in bulk or bundled by the Agency after processing by the Agency.

Therefore, the fact that the Agency may consider these items "worthless" at the time of their initial receipt by the Agency, in our view, is not relevant. Rather, it is the value of the recyclables at the time of disposal by the Agency that is pertinent under the PAAA. As addressed in the report, under these circumstances, we believe the Agency is also subject to the additional requirements set forth in the PAL for disposing of property (see PAL Section 2897).

Note 5

The report expressly acknowledges the Agency's implementation of internal controls over cash disbursements and simply suggests that internal controls could be strengthened through more effective oversight. Even when internal controls are well-designed and effective, the same controls may be overridden by management because managers generally have the authority to direct that controls be bypassed or ignored at any time. Enhanced oversight can help to mitigate the possibility of management override for personal gain or other fraudulent purposes.

For example, implementing control activities in the form of formalized policies and procedures would enhance the Agency's system of internal controls over the disbursement of funds. Agency officials should prepare written policies and procedures governing the disbursement of Agency funds for adoption by the Board. Each Board member should then carefully review and seek to understand the policies and procedures presented to them for ratification, and conduct ongoing monitoring of the effectiveness of the control-related policies and procedures.

Note 6

Segregation of duties is one of the key concepts of internal controls. It is also one of the most effective internal controls in combating employee fraud. Compensating controls should be executed by an independent, supervisory-level employee who does not have custody, recordkeeping, authorization or reconciliation responsibilities for the process. This review cannot be delegated to staff who can perform all the key activities of a transaction, as it would defeat the effectiveness of this compensating control.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard Agency assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial condition, control environment, cash management, purchasing, payroll and personal services, cash receipts and disbursements, and information technology.

During the initial assessment, we interviewed Agency officials, performed limited tests of transactions, and reviewed pertinent documents such as Agency policies and procedures, Board minutes, and financial records and reports. In addition, we obtained information directly from computerized financial records and then analyzed this information using computer-assisted techniques. Further, we reviewed the Agency's internal controls and procedures over computerized financial records to determine whether the information produced by these systems was reliable.

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed and evaluated those weaknesses for the risk of potential fraud, theft and/or professional misconduct. We then decided upon the reported objective and scope by selecting for audit those areas most at risk. We selected purchasing, Agency revenues, and cash disbursements for audit testing. Our audit included various procedures to gather relevant evidence concerning our stated objective.

To determine if Agency officials were purchasing goods and services according to the requirements set forth by Agency policy:

- We reviewed the highest paid 10 vendors based on aggregate amounts paid during the scope period for significant services (e.g., haulers, trucking, building and equipment maintenance, etc.) to determine if contracts with vendors were being properly administered.

- We selected a non-biased judgmental sample of the highest paid 10 vendors that supplied tangible commodities, including fuel for the long-haul trucks, and fuel for Agency use and operational needs (e.g., conveyer belts, significant machine parts, and equipment) to determine if supplies and materials were being properly procured in a transparent and competitive fashion according Agency policy.

- We selected a random sample of haulers that received fuel as part of their contract to determine if fuel had been properly administered to ensure that the vendors had received the appropriate number of gallons based pre-set allocations and final destinations.

To determine if the Agency was receiving the most economic value for its services and saleable commodities:

- We reviewed the top 10 customers based on aggregate tonnage amounts received during the scope period to determine if contracts with haulers were being properly administered and fees were negotiated in good faith to determine how much revenue was lost by those customers under contract who were receiving lower costs versus if the Agency charged each like hauler the same amount (excluding the general public, which would not normally be entitled to volume pricing).

- We selected a non-biased judgmental sample of the top five vendors that had benefited from the commodities sold by the Agency and sampled five random sales made to each to determine if recyclables were being sold at the best possible rate and awarded to a vendor in a transparent and equitable manner.

- We selected a random sample of 20 voided and 20 edited transactions to determine the validity of each voided and edited weight slip.

To determine if cash disbursements were for actual Agency business purposes:

- We selected a non-biased judgmental sample of 50 claims, 10 credit card purchases, and 100 percent of the payments made to key officials (Board members, Executive Directors (past and present), attorneys, Controller, and Treasurer) to determine if: the purchase was made according to the Agency purchasing policy; goods/services were received prior to payment; vouchers were supported with enough details to properly identify what, by whom, and for what purpose the item was purchased (e.g., packing slip, cash register receipt, etc); the purchase was for a proper Agency purpose; and checks were signed by authorized signers in accordance with established policy thresholds.

- We selected a non-biased judgmental sample of 20 trips from the Agency to the landfills to determine if the Agency was incurring inappropriate costs for disposal; and compared weight slip dates with number sequence to ensure that weight slips were not being substituted for billing purposes.

- We selected a non-biased judgmental sample of two months to review the bank statements and determine if each disbursement, other than by check, (e.g., electronic transfers, wires, automatic withdrawals) were for proper Agency purposes and were appropriately supported with substantiating documentation.

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 D

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APPENDIX E

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