



Town of Darien

State Contract Loader Purchases

Report of Examination

Period Covered:

January 1, 2011 — January 30, 2013

2013M-88



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

June 2013

Dear Town 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 Town 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 Town of Darien, entitled State Contract Loader Purchases. 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

The Town of Darien (Town) is located in Genesee County and has approximately 3,200 residents. The Town is governed by an elected five-member Town Board (Board) consisting of the Supervisor and four Council members. The Board provides guidance through the enactment of policies and procedures, the approval of all contracts, and the adoption of annual budgets. The Town's adopted budget for 2013 totaled \$3.2 million and includes appropriations for, among other things, general administration, street maintenance, snowplowing, and fire protection. These services are funded with real property taxes, sales tax, and State aid.

The Highway Department is supervised by an elected Highway Superintendent and has four employees. The Highway Department has eight trucks, two loaders, two tractors, and an excavator. The Town has been purchasing loaders from a vendor awarded a State contract for this equipment. The most recent loader purchases are as follows: June 2011 - \$123,761, November 2011 - \$124,299, September 2012 - \$139,970, and January 2013 - \$140,731.¹

Objective

The objective of our audit was to examine Highway Department purchasing practices. Our audit addressed the following related question:

- Are Town officials verifying that the loaders purchased by the Highway Department are billed in accordance with State contract pricing?

Scope and Methodology

During this audit, we examined loader purchases made by the Town's Highway Department for the period January 1, 2011, through January 30, 2013.

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 B of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and planned to initiate corrective action.

¹ The Town took delivery in January 2013. At the time we completed fieldwork, payment had not yet been made.

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 Town Clerk's office.

State Contract Loader Purchases

Town officials are authorized to purchase vehicles and equipment through State contracts in lieu of seeking competitive bids.² Town officials making purchases through a State contract should be familiar with the terms and conditions governing the use of the contract, and should hold the vendor accountable for charging the Town the correct price. Town officials should verify the price by comparing relevant list prices, reduced by contract discounts, to a detailed invoice from the vendor. This price verification should be attached to the vendor's claim voucher and reviewed by the Board prior to approving it for payment.

Town officials did not verify that they received the correct State contract prices for the four loaders they purchased in 2011, 2012 and 2013. Town officials did not obtain the relevant State contract price lists, apply the appropriate contract discounts,³ or compare the resultant prices with the invoice prices. As a result, Town officials cannot demonstrate that they are paying the correct prices for the loaders.

All four of the invoices for the loaders were poorly itemized. The invoices only included the make, model, vehicle number, a brief description of the specifications of the base model available from the State contract, and total price. The invoices did not indicate the options the Town added to the base model. Moreover, before the Town purchased each loader, the vendor provided the Highway Superintendent with a detailed proposal listing the specifications of the loader the Town intended to purchase. Although the price of the loader listed on the vendor's proposal matched the invoice price, it was not possible to determine if the loader described in the detailed proposal was the same loader sold to the Town as noted on the vendor's invoice. The proposals were not attached to the vendor's invoices; we obtained them from the Highway Superintendent.

We inspected the loader the Town purchased in late 2012 and found that it included the components described in the base model available under the State contract and the additional options on the proposal submitted by the vendor. We also calculated the State contract prices for the two loaders the Town currently owns based on the

² See General Municipal Law

³ The State contract provided a 50.45 percent discount on the price of standard equipment, a 16 percent discount on original equipment manufacturer (OEM) options, and a 15 percent discount on non-OEM options.

specifications included in the vendor's proposals. We found that the vendor calculations of the State contract prices were incorrect. The vendor used incorrect list prices and applied the wrong State contract discount rates. In total, the vendor overcharged the Town \$10,563 for the two loaders.⁴

We were unable to inspect the two loaders the Town purchased in 2011 to verify what equipment the machines had on them because the Town had sold them before we commenced our fieldwork.⁵ Assuming that the loaders received by the Town matched the specifications in the vendor's proposals, the vendor's calculations of the State contract prices were correct.

We discussed the overcharges for the two loaders that the Town currently owns with the Highway Superintendent and the vendor. The vendor subsequently submitted revised proposals that recalculated the prices⁶ for the two loaders. However, on the revised proposal for the loader that was purchased in September 2012, the vendor applied the lower 16 percent "options" discount rate to certain components discounted in their original proposal at 50.45 percent off list, which increased the price. The vendor then claimed that the amount paid by the Town was lower than the State contract price. However, the vendor's revised proposal appears to be inaccurate in three respects: first, the vendor incorrectly priced the loader tires as options; second, the loader bucket and coupler listed on the revised proposal were different models and different prices than those listed on the original proposal; and third, the revised proposal included "secondary steering"⁷ which was not included on the first proposal. The Highway Superintendent told us that none of the four loaders the Town purchased had secondary steering.

In addition, the vendor's recalculated cost for the loader purchased in January 2013 resulted in a reduction in the invoice price of \$6,968. However, the invoice price should have been reduced by \$9,916, primarily because the vendor continued to apply the wrong discount rate for the tires. At the time we concluded our fieldwork, the Town had not yet paid the invoice for the 2013 loader purchase. The Highway Superintendent stated that he planned to discuss the overcharge with the vendor before approving the claim for payment.

⁴ The Town was overcharged by \$647 for the loader purchased in September 2012, and \$9,916 for the loader purchased in January 2013.

⁵ The loaders purchased in 2012 and 2013 were financed with the sale proceeds from the loaders purchased in 2011.

⁶ The Town already paid for the one loader in September 2012 when the vendor submitted the revised proposals.

⁷ Backup steering in case of engine failure

The loader that was purchased in June 2011 for \$123,761 was sold for \$142,250 in June 2012, and the loader that was purchased in November 2011 for \$124,299 was sold for \$141,000 in December 2012. As indicated in the vendor's proposals, the two loaders the Town purchased in 2011 and sold in 2012 had nearly identical specifications, except for the loader buckets. The Town's formal solicitation for sealed bids on the sale of the loaders indicated that the buckets to be sold with these loaders were new equipment. The Highway Superintendent explained that the new buckets from the Town's two newest loaders (purchased in 2012 and 2013) were installed on the two older loaders by Town employees prior to their sale.⁸ One of the buckets was a standard original equipment manufacturer (OEM) bucket that cost \$4,477, which was installed on the loader that sold for \$141,000. The other bucket was a more expensive non-OEM bucket that cost \$13,502, including an attachment, which was installed on the loader that sold for \$142,250.

Recommendations

1. The Highway Superintendent should request the appropriate price lists from the vendor when purchasing equipment on State contract, and compare the vendor's pricing with the State contract list prices, as adjusted for State contract discounts. This comparison should be documented and attached to the vendor's claim for review by the Board prior to approving it for payment.
2. The Board should recover any overpayments the Town made to the State contract vendor.

⁸ The two "used" buckets that were purchased with the old loaders were installed on the two newest loaders that the Town presently owns.

APPENDIX A
RESPONSE FROM LOCAL OFFICIALS

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

**Town of Darien
10569 Allegheny Road
Darien Center, NY 14040
585-547-2274 TDD 1-800-662-1220
Fax 585-547-3331**

Supervisor-David Hagelberger
Councilman-Stephen J Ferry Jr., Councilman-Christopher Nicastro,
Councilwoman-Kathryn Phelps, Councilman-Michael Plitt

June 4, 2013

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RESPONSE FROM LOCAL OFFICIALS and CORRECTIVE ACTION

For a number of years, the Town has purchased loaders through State contracts. In turn, the replaced old loaders were sold through competitive sealed bids. The price of the new loaders were always covered by the accepted sale price of the used loaders. Often, there was a net gain from the sale with the Town receiving a larger selling price for the used loader than the State bid purchase price of the new unit. This process ensured that the loaders are always under warranty.

The Town has determined that installing oversize tires on the loader is an advantage in loading the town trucks. Also, the town has experienced less wear on the bucket than some commercial operations. Switching the tires and bucket from the new loader to the used loader prior to its sale enhanced its value and does not adversely impact their Town function.

Recently, the town decided to order one of the two new loaders with a quick disconnect attachment. In addition, next generation low emissions diesel engines have been added to the new loaders by the manufacturer which has raised the base price on the standard unit. These changes increase the purchase price on the newer loader. The quick disconnect feature is a difference in configuration of the two loaders.

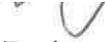
While the Town Board authorize purchase of the loaders in accordance with State bid price, the vendor in their proposal represents their price as the State bid price. In the past, the Town has not validated the calculation of the price. Based on the work of the OCS audit team, the town will now require the vendor to provide a detailed list of equipment with options and any calculations of the State bid prices including discount factors in their proposal. The Town will then review the State of New York Executive Department Office of General Services (OGS) website to compare and validate the proposed price.

This institution is an equal opportunity provider, and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410, or call (800)795-3272 (voice) or (202)720-6382 (TDD)

In accordance with the OCS audit, the loader vendor was contacted regarding the State bid price of the two loaders in question. After reviewing the State Bid price calculation of the first loader, they determined that they had under bid the State bid price on that unit by \$2,545.12. They determined that the low amount the Town paid was acceptable and they chose not seek an additional payment.

The vendor reviewed the second loader State bid price and determined their proposed price was \$6,967.62 higher than the current State contract for that unit. They determined this occurred because the John Deere 624K State Bid Loader machine pricing had not been approved by New York State prior to the sale of that machine to the Town. Since the Town had not paid for the second loader prior to this determination, a credit was given to the Town for this amount. The Town then paid the reduced amount for this loader.

All vendor positions on the State Bid Price of these loaders have been documented in letters from the vendor's Territory Manager. Copies of these letters have been submitted to the OCS audit team.

David Hagelberger 
Supervisor, Town of Darien

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To accomplish our objective, we interviewed appropriate Town officials and employees, tested selected records, and examined pertinent documents for the period January 1, 2011, through January 30, 2013. Our procedures included the following:

- We interviewed Town officials to obtain an understanding of the purchasing process when using State contracts.
- We reviewed the minutes of Board meetings to obtain an understanding of the Board's oversight of purchases from State contracts.
- We obtained relevant price lists and detailed invoices from the vendor that sold the loaders to the Town.
- We compared the vendor's pricing with the State contract list prices, as adjusted for State contract discounts. We discussed the differences with Town officials and the vendor.
- We contacted officials from the Office of the State Comptroller Bureau of Contracts and the Office of General Services Procurement Services Group to discuss the vendor's billing for the loaders.

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.

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Andrew A. SanFilippo, Executive Deputy Comptroller
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