

Jefferson-Lewis-Hamilton- Herkimer-Oneida Board of Cooperative Educational Services

Procurement

DECEMBER 2022



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Jefferson-Lewis-Hamilton-Herkimer-Oneida Board of Cooperative Educational Services

Audit Objective

Determine whether Jefferson-Lewis-Hamilton-Herkimer-Oneida Board of Cooperative Educational Services (BOCES) officials used competitive methods when procuring goods and services.

Key Findings

BOCES officials did not always use competitive methods when procuring goods and services. We examined purchases totaling \$8.2 million and found purchases totaling \$1.2 million were either not competitively procured or not procured as required by the BOCES' regulation on purchasing procedures (Purchasing Regulation).

BOCES officials did not:

- Competitively bid three lease purchases and one straight lease for equipment totaling \$318,454, as required by the Purchasing Regulation.
- Have support that they obtained the required number of quotes for six purchases totaling \$39,758.
- Use a competitive method to procure professional services and insurance coverage from seven vendors totaling \$855,265.

Key Recommendations

- Competitively procure goods and services as required by the Purchasing Regulation and ensure all proper documentation is maintained.
- Ensure competition is sought periodically for all professional service and insurance coverage vendors.

BOCES officials agreed with our findings and indicated they plan to initiate corrective action.

Background

BOCES provides educational services to 18 component school districts and is governed by a nine-member Board of Education (Board) elected by the boards of the component school districts.

The Board is responsible for the general management and control of financial and educational affairs. The District Superintendent (Superintendent) is the chief executive officer, responsible, along with other administrative staff, for the day-to-day management and regional planning and coordination.

The Board appointed the Assistant Superintendent for Business (Assistant Superintendent) as the Purchasing Agent responsible for ensuring goods and services are procured in compliance with the Board-adopted policy and procedures. The Business Manager assists in the purchasing approval process.

Quick Facts

2020-21 Expenditures	\$71.8 million
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2020-21 Non-Payroll Expenditures	\$30.8 million
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Purchases Reviewed	\$8.2 million
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Audit Period

July 1, 2020 – May 16, 2022

Procurement

How Should BOCES Officials Competitively Procure Goods and Services?

New York State General Municipal Law (GML) Section 103 generally requires BOCES to solicit competitive bids for purchase contracts exceeding \$20,000 and contracts for public work exceeding \$35,000, with certain exceptions. To determine whether the dollar threshold will be exceeded, BOCES must consider the aggregate amount reasonably expected to be spent on “all purchases of the same¹ commodities, services or technology to be made within the 12-month period commencing on the date of the purchase,” whether from a single vendor or multiple vendors. Moreover, BOCES should not artificially divide a contract, by making a series of purchases for lesser amounts, to avoid the procurement requirements.

BOCES officials should ensure all contracts comply with competitive purchasing requirements or can be excluded from competition. There are several exceptions to the competitive bidding requirements, including, but not limited to, professional services and insurance coverage, and purchases made from a legitimate sole source. Professional services generally require specialized skills, training and expertise, use of professional judgment and/or a high degree of creativity. For example, professional services can include legal, medical, architectural, and auditing services. Another exception to competitive bidding allows BOCES to make purchases by “piggybacking” on contracts awarded by the New York State Office of General Services (State contract) or on other governmental contracts, provided BOCES can demonstrate that certain statutory prerequisites are met.

BOCES must also adopt a written procurement policy governing the procurement of goods and services that are not subject to competitive bidding requirements. The procurement policy should indicate when officials must seek competition and outline procedures for determining the competitive method that will be used for procurements that are not subject to bidding requirements. For example, competitive methods could include using a request for proposals (RFPs) process or obtaining written or verbal quotes. The procurement policy may set forth circumstances or types of procurement for which solicitation of alternative proposals will not be in BOCES’ best interest and should describe procedures for maintaining adequate documentation to support and verify the actions taken.

Such policies and procedures help ensure the prudent and economical use of public money, and help guard against favoritism, improvidence, extravagance, fraud and abuse. They also provide guidance to employees involved in the procurement process and help ensure that competition is sought in a reasonable and cost-effective manner.

¹ For this purpose, commodities, services or technology that are similar or essentially interchangeable should be considered “the same.”

BOCES must also adopt a written procurement policy governing the procurement of goods and services that are not subject to competitive bidding requirements.

Officials should ensure compliance with the BOCES' Purchasing Regulation that establishes written quote requirements for purchases that are not required to be competitively bid and various permitted exceptions to these requirements. Furthermore, while the law does not require BOCES to seek competition for awarding leases, the Purchasing Regulation indicates that competitive bidding is required for leases of personal property that exceed \$20,000. The Purchasing Regulation also indicates that installment purchases of equipment, machinery and apparatus are subject to bidding.

In addition, the Purchasing Regulation requires BOCES to obtain quotes for insurance coverage in three- to five-year intervals and to provide summaries of the quotes for Board review. The Purchasing Regulation also states that it may be in BOCES' best interest to use an RFP process for soliciting professional services from time to time and it provides criteria for determining when it may not be in BOCES' best interest to solicit such competition.

When procuring professional services, it is a good business practice to solicit as much competition as possible so officials can better identify and evaluate potential options and select the one that best meets BOCES' needs. Using an RFP process periodically would be an effective way to identify and evaluate potential professional service options.

Officials Did Not Always Seek Competition in Compliance with the BOCES' Purchasing Regulation

BOCES officials did not always ensure that purchases or leases had adequate supporting documentation demonstrating that they were properly made in compliance with the Purchasing Regulation. We reviewed procurements totaling approximately \$4.8 million to determine whether appropriate competitive methods were used. Officials were unable to provide support that they sought competition, obtained the correct number of quotes or used an allowed exception within GML or the Purchasing Regulation, for 10 of 60 purchases (17 percent) totaling \$358,212.

Competitive Bidding – We reviewed 25 purchases, totaling approximately \$4.6 million, that required BOCES to seek competitive bids pursuant to GML or the Purchasing Regulation.² While officials generally solicited bids or made purchases by piggybacking on other government contracts, they did not appropriately seek competition for three lease purchases and one straight lease of equipment, totaling \$318,454, as required by the Purchasing Regulation. This equipment was used to provide students with training and hands-on experience in operating heavy equipment (Figure 1).

² See Appendix B Audit Methodology and Standards for details on sample selection.

BOCES entered into three separate lease agreements in September 2018, for a track loader, an excavator and a wheel loader. The total lease cost for each piece of equipment exceeded \$20,000 (Figure 2). According to the Purchasing Regulation, the lease or rental of personal property in excess of \$20,000 is subject to competitive bidding. Although BOCES officials sought multiple quotes from vendors prior to awarding the lease agreements, they did not solicit competitive bids.

Additionally, each of the three leases included an option to purchase the equipment at the end of the lease. We found that BOCES exercised this option with all three pieces of equipment and purchased the equipment for a total cost of \$92,640. Each purchase exceeded the \$20,000 competitive bidding threshold for purchase contracts. Therefore, BOCES officials should have sought competitive bids, in accordance with GML, prior to purchasing the equipment.

BOCES also executed a four-year lease of a crawler dozer for \$97,356 without soliciting competitive bids. BOCES officials sought an additional written quote for this transaction, but they were required to solicit competitive bids under the Purchasing Regulation. By using a formal bidding process, BOCES officials may have identified additional vendors that could have provided the equipment at a lower cost.

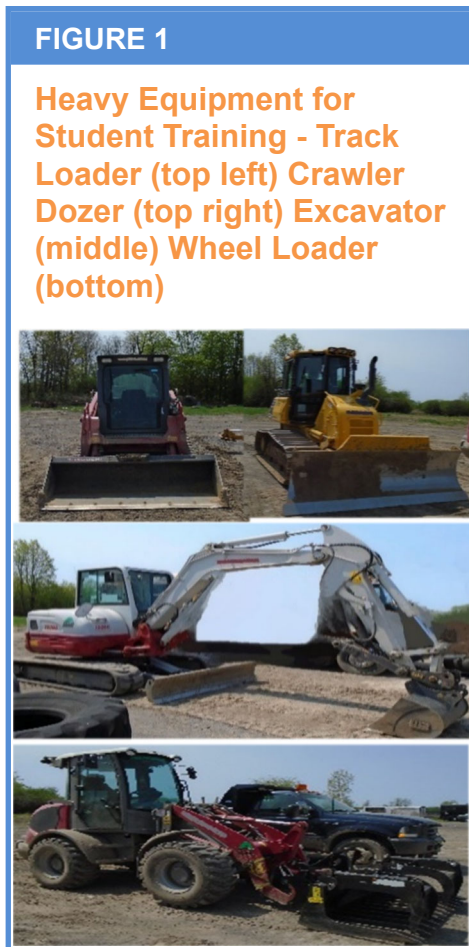


Figure 2: Equipment Leases and Purchases

Equipment	Annual Lease Payment	Lease Length (In Years)	Total Lease Payments	End of Lease Purchase
Compact Wheel Loader	\$17,439	3	\$52,317	\$37,729
Excavator	14,437	3	43,311	31,235
Track Loader	10,943	3	32,829	23,676
Crawler Dozer	24,339	4	97,356	-
Total	\$67,158		\$225,813	\$92,640

The Purchasing Agent and Business Manager told us that they did not solicit bids for these leases because the annual amount paid for each piece of equipment did not exceed the bidding threshold, which they perceived to be \$35,000. However, the bidding threshold is \$20,000 and they should have used the total cost of the lease for each piece of equipment, as opposed to the cost of the lease per year, to determine whether bidding was required by the Purchasing Regulation.

Quotes – The Purchasing Regulation generally requires at least two written quotes for purchases over \$2,000 but under \$10,000, and at least three written quotes for purchases over \$10,000 but under \$20,000. We reviewed 35 purchases, totaling \$242,084, within these thresholds. BOCES' records did not support that quotes were obtained, or an exception applied, for six purchases (17 percent) totaling \$39,758. For example:

- Records indicate a State contract was used to purchase nursing education supplies, totaling \$23,005. However, we found that only \$4,505 worth of items from this purchase were on the State contract. A medical manikin in the amount of \$18,500 was not on the State contract. Therefore, this item met the threshold of requiring at least three written quotes. The Business Manager told us that BOCES officials generally ensured that vendors were awarded a State contract, but often did not verify the contract or price list for each of the items purchased.
- Three equipment repairs totaling \$8,602, were made without obtaining any quotes. Each repair individually cost over \$2,000, thus requiring two written quotes per the Purchasing Regulation. Officials did not seek the required quotes, because they used a “professional services criteria rating sheet” (rating sheet) to classify these purchases as professional services that did not need quotes. However, these repairs were not professional services and quotes were required. For a further discussion on the rating sheet, see Officials Did Not Always Seek Competition for Professional Services and Insurance Coverage section.
- BOCES officials purchased metal sheets, for a total amount of \$10,031, based upon six separate quotes from the vendor, each for less than \$2,000. All six of the quotes had the same quote date and similarly had the same ship date. The Business Manager told us that they placed separate orders for different individual class projects as requested by the teacher. If this had been one purchase, the Purchasing Regulation would have required a minimum of three written quotes. Here, officials only received quotes from the vendor who was awarded each purchase. Officials should have aggregated these like-kind purchases and sought the required quotes.

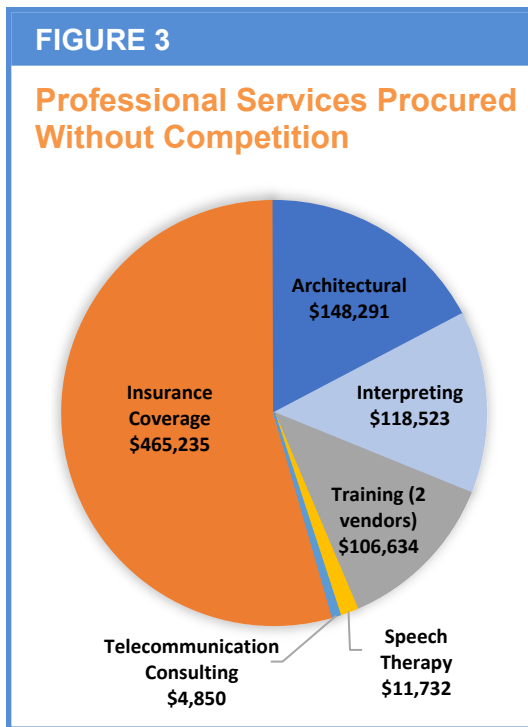
When BOCES officials do not seek appropriate competition, there is less assurance to taxpayers that purchases are made in the most prudent and economical manner, without favoritism.

Officials Did Not Always Seek Competition for Professional Services and Insurance Coverage

We reviewed the procurement of professional services and insurance coverage from 16 different vendors. BOCES paid approximately \$3.4 million to these vendors from July 1, 2020 through November 30, 2021. BOCES officials could not support they sought competition for the professional services and insurance coverage provided by seven vendors totaling \$855,265 (Figure 3).

BOCES officials told us that RFPs were not issued for various reasons. For example:

- The architectural firm was initially selected using an RFP process in 2015 related to building condition survey work. However, payments made during our audit period were related to a capital project and BOCES officials did not use an RFP process for these services. The Assistant Superintendent told us they have continued to use this same firm because they have maintained a longstanding relationship with the firm.
- With respect to insurance coverage, the Purchasing Agent and Business Manager told us that due to the BOCES' geographical location and the types of insurance coverage BOCES needs, there are limited options for insurance providers. The Superintendent told us the only other choice would be a reciprocal insurer, but the Board prefers to procure traditional insurance from its current agent. However, officials did not maintain documentation showing they attempted to identify other potential insurance providers in an effort to seek quotes. The Purchasing Regulation requires competitive quotes for insurance coverage to be obtained every three to five years. Without seeking competition, it is difficult for officials to determine whether they are procuring the most cost-effective coverage.
- The Business Manager told us that an RFP process was not used prior to awarding contracts for interpreting, speech therapy and training services, because the Purchasing Regulation does not require competition and they used the rating sheet as justification for selecting the provider. The rating



sheet lists various criteria for recommending the selected provider such as the continuity, confidentiality and cost effectiveness of the service; expertise of the provider; and the provider's knowledge of BOCES' needs and its ability to meet those needs in a timely manner. Department managers utilized the sheet to select the criteria they felt applied, and they used this form as their basis for not needing to solicit any competition from other potential providers. However, no supplemental documentation or explanation was provided for how they determined the provider was the most cost-effective option or why it would not be in BOCES' best interest to solicit competition.

Although the Purchasing Regulation states it may be in the BOCES' best interest to use an RFP process for soliciting professional service from time to time, it does not provide clear guidance on when and how frequently officials should use an RFP process.

When BOCES officials do not seek competition, they cannot assure taxpayers that purchases are made based on the most favorable terms and conditions, without favoritism. Furthermore, using competitive methods can increase officials' awareness of other service providers who could offer similar services at a more favorable cost.

What Do We Recommend?

The Board and Superintendent should:

1. Ensure that officials and staff competitively procure goods and services in accordance with the Purchasing Regulation and GML and retain documentation of compliance.
2. Review and update the Purchasing Regulation to include more detailed guidance for when officials should seek proposals using an RFP process for the procurement of professional services and how often the RFP process should be completed.

BOCES officials should:

3. Review State and other government contracts and price lists to ensure that all items purchased are included in, and made in accordance with, the contracts and retain the contracts and documentation of the review.
4. Aggregate the amount projected to be expended for like-kind goods and services when determining whether competitive quotations are required.
5. Obtain, document and retain written quotes as required by the Purchasing Regulation, for goods and services below the competitive bidding threshold.

...[U]sing competitive methods can increase officials' awareness of other service providers who could offer similar services at a more favorable cost.

Appendix A: Response From BOCES Officials



20104 STATE ROUTE 3
WATERTOWN, NY 13601
BOCES.COM

(315) 779-7000
(315) 377-7000
(800) 356-4356

FAX:
(315) 779-7009
(315) 377-7009

Stephen J. Todd
DISTRICT SUPERINTENDENT

Leslie A. LaRose-Collins
ASSISTANT SUPERINTENDENT
FOR PROGRAMS

Michele A. Traynor
ASSISTANT SUPERINTENDENT
FOR BUSINESS

November 16, 2022

Rebecca Wilcox, Chief Examiner
Office of the New York State Comptroller
Syracuse Regional Office
State Office Building,
Room 409,
333 East Washington Street,
Syracuse, NY 13202-1428

Re: Audit Report Number 2022M-128

Dear Ms. Wilcox:

The Jefferson Lewis Hamilton Herkimer Oneida BOCES is in receipt of the Office of the State Comptroller's draft audit report of the BOCES procurement processes for the audit period of July 1, 2020 through May 16, 2022.

The BOCES appreciates the feedback and comments provided within the report, and agrees that BOCES purchasing policies and regulations should define how BOCES Officials competitively procure goods and services.

We have already begun to address the key findings of this report, and our staff has engaged our Internal Auditor to assist with the incorporation of the recommended best practices and clarification of:

- Competitively procuring goods and services
- Maintaining proper documentation to support purchases

The BOCES corrective action plan will be written upon the acceptance of the final audit report.

The BOCES would like to thank the staff of the New York State Office of the State Comptroller's Office for thoroughly reviewing the procurement processes. We appreciate the guidance and recommendations to improve our policies and regulations to ensure fiscal responsibility of public monies.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen J. Todd", is written over a horizontal line.

Stephen J. Todd
District Superintendent

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Appendix B: Audit Methodology and Standards

We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed BOCES officials and employees and reviewed relevant laws and the BOCES' Purchasing Regulation to gain an understanding of the procurement process.
- We obtained electronic cash disbursement data for the period July 1, 2020 through November 30, 2021 and sorted the data by vendor name and payment amount. We then excluded payments made for purchases less than \$2,000 that did not require competitive quotes per the Purchasing Regulation, and payroll, debt service and payments to other BOCES or school districts. We identified 881 payments totaling approximately \$24.4 million. From this population, we used our professional judgement to select a sample of purchases for further testing to determine whether officials solicited competition and complied with the requirements of the Purchasing Regulation. We selected procurements totaling approximately \$8.2 million subject to bids, quotes and RFPs for further testing.
- We used our professional judgment to select 25 vendors who were collectively paid approximately \$4.6 million from July 1, 2020 through November 30, 2021 for purchases that were above the Purchasing Regulation competitive bidding threshold and 35 vendors paid \$242,084 above the quote threshold. We reviewed the related claims and supporting documentation to determine whether officials obtained competitive bids or written quotes as required by the Purchasing Regulation or used exceptions to competitive procurement (e.g., State contract, federal government contracts and sole source vendors). We followed up with BOCES officials and employees to discuss specific purchases.
- To test the procurement of professional services and insurance coverage, we reviewed the cash disbursement data to identify vendors that provided professional services and insurance coverage. We selected 15 professional service providers who were collectively paid approximately \$2.9 million and one insurance coverage provider who was paid \$465,235 during the period July 1, 2020 through November 30, 2021 and reviewed these purchases to determine whether an RFP or quotation process was used to procure these services. We inquired with BOCES officials and employees for explanations for specific services.

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.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The CAP should be posted to BOCES' website for public review.

Appendix C: Resources and Services

Regional Office Directory

www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf

Cost-Saving Ideas – Resources, advice and assistance on cost-saving ideas

www.osc.state.ny.us/local-government/publications

Fiscal Stress Monitoring – Resources for local government officials experiencing fiscal problems

www.osc.state.ny.us/local-government/fiscal-monitoring

Local Government Management Guides – Series of publications that include technical information and suggested practices for local government management

www.osc.state.ny.us/local-government/publications

Planning and Budgeting Guides – Resources for developing multiyear financial, capital, strategic and other plans

www.osc.state.ny.us/local-government/resources/planning-resources

Protecting Sensitive Data and Other Local Government Assets – A non-technical cybersecurity guide for local government leaders

www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf

Required Reporting – Information and resources for reports and forms that are filed with the Office of the State Comptroller

www.osc.state.ny.us/local-government/required-reporting

Research Reports/Publications – Reports on major policy issues facing local governments and State policy-makers

www.osc.state.ny.us/local-government/publications

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

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Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

www.osc.state.ny.us/local-government

Local Government and School Accountability Help Line: (866) 321-8503

SYRACUSE REGIONAL OFFICE – Rebecca Wilcox, Chief of Municipal Audits

State Office Building, Room 409 • 333 E. Washington Street • Syracuse, New York 13202-1428

Tel (315) 428-4192 • Fax (315) 426-2119 • Email: Muni-Syracuse@osc.ny.gov

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