



# City of Batavia

## Awarding Contracts for Goods and Services

### Report of Examination

Period Covered:

April 1, 2012 — September 6, 2013

2013M-296



Thomas P. DiNapoli

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# State of New York Office of the State Comptroller

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## Division of Local Government and School Accountability

January 2014

Dear City 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 City Council 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 City of Batavia entitled Awarding Contracts for Goods and Services. 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 City of Batavia (City) is located in Genesee County and has a population of 15,645. The City is governed by a City Charter (Charter), general laws of the State of New York and local laws and ordinances. The City has an appointed City Manager who also performs the duties of the Director of Finance and a nine-member elected City Council (Council). The City Manager appoints the Deputy Director of Finance and the Clerk-Treasurer. The Council develops policies and enacts laws, ordinances and resolutions. The Council President is responsible for signing contracts and agreements on behalf of the City. The City Manager, fulfilling his duties as Director of Finance, audits all bills and authorizes the warrant directing the Clerk-Treasurer to pay vendors.

The City provides services to its residents including police and fire protection, street maintenance, water, wastewater and a parks and recreation program. The City's 2013-14 fiscal year general fund budget totaled approximately \$15.5 million and was funded primarily by property taxes, sales tax and State aid.

The Charter and relevant statutes govern the procedures that personnel must follow when procuring goods and services. The Council also adopted a procurement policy in March 2003 providing further guidance to City officials and employees.

## Objective

The objective of our audit was to review the City's purchasing process and addressed the following related question:

- Does the City properly award contracts for goods and/or services?

## Scope and Methodology

We examined various financial reports and other records related to the awarding of contracts for the period April 1, 2012 through September 6, 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 is included in Appendix C of this report.

## Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with City officials and their comments, which appear in Appendix A, have been considered in preparing this report. City officials generally agreed with the recommendations and indicated they have taken, or

will take, corrective action. Appendix B includes our comments on issues raised in the City's response letter.

The Council 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 Council to make this plan available for public review in the Clerk-Treasurer's office.

## Contracts for Goods and Services

We found that the City did not properly award all contracts and has not annually reviewed the procurement policy, as required by General Municipal Law (GML). In addition, City officials did not regularly seek competition or indicate the selection basis, such as using requests for proposals (RFPs), when procuring professional services. By not consistently using competition when procuring goods and/or services, City officials cannot assure taxpayers that they are obtaining goods and services at the most favorable terms and without favoritism.

We selected a judgmental sample of 20 vendors, which were paid approximately \$1.5 million during our audit period, to determine if the contracts with those vendors were properly awarded. We found that 17 vendors' contracts totaling approximately \$1 million were not executed by the Council President as required by the Charter, but rather by the City Manager. We also found no indication in the Council minutes that these contracts were approved by the Council. City officials stated that the Council approved the contracts by adopting the annual budget which included appropriations for the acquisition of these goods and/or services. Adopting budget appropriations does not serve as a substitute for Council action to approve contracts.

We also found exceptions with the procurement of goods and/or services from certain vendors. GML requires certain purchase and public work contracts to be publicly advertised for competitive bidding. There are also certain exemptions to this requirement, such as professional services procurements. GML does not require competitive bidding for professional services that involve specialized skill, training and expertise; use of professional judgment or discretion; and/or a high degree of creativity. The City's procurement policy states that professional service providers must be chosen based on many factors, including accountability, reliability, responsibility, skill, education, training, judgment, integrity and moral worth. However, without obtaining comprehensive proposals from multiple vendors, City officials are not in a position to compare the relevant factors, including total cost, and thereby ensure they select the most suitable vendor. Although the policy does not address how frequently the City should be requesting proposals for professional services, periodically requesting such proposals is a good business practice.

We found that the City awarded contracts to four out of seven professional service providers without evidence of any cost benefit analysis or having applied and evaluated the procurement policy factors. Generally, the City selected these vendors as a result of their

past history of providing services to the City. Payments to these four vendors totaled \$260,987 during our audit period for legal services (\$131,257), insurance (\$73,699), engineering services (\$36,915) and financial software support (\$19,116).

In addition, we found that the City paid another professional service provider approximately \$129,000 for insurance. While the City had initially requested a comprehensive proposal and awarded a one year contract with an option for annual renewals to this provider in 2008, it did not renew the contract or request any subsequent proposals.

These issues occurred because the Council, in effect, delegated its authority to award contracts to the City Manager without providing adequate monitoring and oversight. Contracts should be awarded in accordance with statute and Charter and policy requirements to foster honest competition. It is essential that City officials comply with GML and their own procurement policy requirements and monitor the goods and/or services provided.

We also discussed with City officials other minor procurement deficiencies we identified.

## **Recommendations**

1. The Council and City officials should annually review the procurement policy, as required, and update as needed.
2. The Council President should execute all contracts in accordance with the Charter.
3. The Council and City officials should periodically seek requests for proposals for professional services to ensure they are receiving the desired service at a competitive price.

## **APPENDIX A**

### **RESPONSE FROM CITY OFFICIALS**

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



December 31, 2013

[REDACTED]  
NYS Comptroller's Office, Buffalo Region  
Local Government and School Accountability  
295 Main Street, Suite 1032  
Buffalo, NY 14203-2510

Dear [REDACTED]:

The City has received the Office of State Comptroller's draft audit report on the City of Batavia for the period April 1, 2012 – September 6, 2013. We greatly appreciate the time and effort of the Comptroller's Office and employees have spent reviewing the City's operations and making recommendations to improve operations. We also appreciate the opportunity to have met with your staff at the exit conference on December 10, 2013, which afforded us the opportunity to address findings and further clarify certain items noted in your preliminary report. The City views the audit and the report as an opportunity to review and improve upon our current practices, procedures and policies.

While the City acknowledges the findings and recommendations, we feel that the audit report, at times, is misleading, has contradicting views and lacks facts of the City's procedures for awarding contracts for goods and services and procuring goods and services in general. In addition, statements regarding aspects of the City Council's oversight practices were not appropriately represented in the audit. They were at times, illusory, insinuating that the City has not assured "taxpayers that they (the City) are obtaining goods and services at the most favorable terms and without favoritism." When considering the City of Batavia's financial recovery over the past seven years, significant improvements to internal controls is what has ultimately led to the achievement of being one of three Cities in New York State to have a bond rating upgrade in 2012. As such, to broadly suggest that monitoring and oversight has not been properly maintained by the City Council is simply not consistent with the City's financial processes and successes of recent years.

#### **Recommendation #1**

The City acknowledges that it has not updated the Purchasing Manual since 2003. Updating the manual was a project outlined in the City's Strategic Plan for FY 2012/13, and as such is expected to be completed and presented to City Council for adoption prior to the end of the FY 2013/14. The revision will incorporate recommendations outlined in the State Comptroller's audit report.

*Office of the City Manager*  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6330  
Fax: 585-343-8182  
[www.batavianewyork.com](http://www.batavianewyork.com)

## Recommendation #2

A discrepancy outlined in the audit report was that all contracts “were not executed by the Council President as required by the Charter, but rather the City Manager.” This is not contested by the City, however, when discussing this issue with the Associate Examiner, it was outlined that for reasons of continuity of government and efficiency, the City’s historical practice has involved the City Manager executing contracts as long as: 1) the appropriations were authorized in the adopted budget by City Council and 2) the proper procurement procedures were followed in accordance with the General Municipal Law (GML) and the City’s Purchasing Manual. On an annual basis, there are over 4,000 purchase orders (POs), vouchers and invoices which constitute contracts for the procurement of goods and services. Pragmatically, in order for the Council President to have authority to sign each and every contract, the City Council would have to pass a resolution for each and every transaction before it occurs. The literal interpretation of this section of the City Charter is taken out of context, as it would be completely ineffective and impossible to have every single purchase of good or service signed for by the Council President prior to purchasing which would require City Council action prior to signing.

See  
Note 1  
Page 11

In response to the audit report, the City will review the procedure for signing contracts and the GML in consultation with the City Attorney, to ensure review and oversight is balanced with practicality and efficient operations in the revised Purchasing Manual. In addition, the City Council will review and adopt the City’s procurement policy annually.

Significantly, despite the issue of the City Manager signing contracts, all sample expenditures that were reviewed in this audit were within their adopted budgets. Furthermore, there were no deficiencies or findings in procurement of goods and services or contract awards identified under the GML or the City’s Purchasing Manual.

See  
Note 2  
Page 11

## Recommendation #3

With respect to the procurement of professional services, the City acknowledges the audit’s recommendation to periodically utilize requests for proposals (RFPs) to ensure competitive review and selection of professional services. Several facts, however, were not identified in the audit report that are representative of the City’s procurement practice and are consistent with the audit’s recommendation.

During the course of the audit the City provided over thirteen RFPs that the City has issued since 2008 covering a variety a services including but not limited to insurance, engineering, consulting and legal services, and respective City Council resolutions awarding each service. When considering the extensive list of RFPs issued by the City in the past five years, the City has demonstrated efforts to periodically seek RFPs for professional services to ensure the City receives the desired service at a competitive price. This is consistent with the audit’s recommendation, and the City will continue this practice in the future.

However, the audit states “...without obtaining comprehensive proposals from multiple vendors, City officials are not in a position to compare relevant factors, including total cost, and thereby ensure they select the most suitable vendors.” This is misleading when reviewing the City’s procurement practices, contrary to information provided during the audit and absent of specific facts. For example, with respect to the legal and engineering vendors, the fees reviewed during the audit were in relation specific legal work, including litigation, and project specific engineering work conducted by the City’s engineers on behalf of the City. The City continues to use these vendors for reasons outlined in GML 104-b and the Purchasing Manual which governs procurement of professional services. When discussing this with the Associate Examiner it was explained that the City lacked documentation outlining the specific criteria under GML 104-b as to why the City continues to procure services from these vendors, however the reasons for using these vendors were

*Office of the City Manager*  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6330  
Fax: 585-343-8182  
[www.batavianewyork.com](http://www.batavianewyork.com)

consistent with GML 104-b. While the City understands this procedure and has already implemented the practice into our operations, the broad statement that the City awarded contracts "...without evidence of any cost benefit analysis, or having applied and evaluated the procurement policy factors" is overreaching and leaves the perception that the blanket procurement of these services was not done properly, when in fact the purchases were reasonable, necessary and within the guidelines and criteria set forth in GML 104-b and the City Purchasing Manual. The City was simply missing a document explaining it.

With respect to the financial software support vendor, the City's financial software is proprietary software, the vendor is a sole source provider, and the vendor has a State contract for services. The City is somewhat perplexed by the audit's reference to this vendor as it would be a misuse of resources to issue an RFP for this service as it is currently on a State contract and is a sole source provider. Regardless, the City has included a procedure for obtaining services from sole source vendors in the revised Purchasing Manual.

See  
Note 3  
Page 11

Also, with regard to the identified insurance provider the City feels this statement again lacks specific relevant facts. The referenced one year contract with the City's insurance broker specifically states the contract may be extended by mutual written agreement of the parties. The City acknowledges there was not a formal letter written to renew the relationship, however continued service by the broker and marketing of insurance on behalf of the City continued annually since 2008. In the future the City will formally write a letter to the insurance broker to reflect continued service.

See  
Note 4  
Page 11

In closing, the general statement "these issues occurred because the Council, in effect delegated its authority to award contracts to the City Manager without providing adequate monitoring and oversight" is unsupported and misrepresentative of the facts. The conclusion that the awards for goods and services was improper is not factually accurate as the deficiencies outlined in the audit were centered around formalities and hyper-technicalities such as, whose signature was on a contract for goods and services and that specific documentation for the reasons for procuring goods was not in the procurement record, even though the reasons were within the criteria outlined in the GML and City's Purchasing Manual. City Council adopts an annual budget, receives monthly financial statements, receives quarterly financial presentations and has an independent audit conducted annually; the City does not feel it warrants the blanket statement that the City Council does not monitor or have appropriate oversight over procurement matters. Moreover, it was clearly demonstrated that the City performed price comparisons to ensure the lowest price was obtained as required under the GML and the City's Purchasing Manual. This was evident as nothing to the contrary was presented as a finding in the audit report.

See  
Note 5  
Page 11

The City thanks the Office of the State Comptroller and staff for their time and effort to review the City's operations and provide recommendations to improve our internal controls and public trust. In fact, the City feels the audit's findings are important and have already been implemented into the City's operations. While acknowledging that there are areas for improvement, we are pleased to note that there were no instances of misappropriations of funds, fraudulence, corruption or instances of the City paying more than necessary for goods and services. We continue to monitor the City's policies and procedures and continuously look for ways to better improve.

Sincerely,

Jason Molino  
City Manager

Cc: Honorable City Council

**Office of the City Manager**  
One Batavia City Centre  
Batavia, New York 14020

Phone: 585-345-6330  
Fax: 585-343-8182  
[www.batavianewyork.com](http://www.batavianewyork.com)

## APPENDIX B

### OSC COMMENTS ON THE CITY'S RESPONSE

#### Note 1

The audit focused on significant and material contracts. If City officials believe that the Charter could be misconstrued to require the Council President to approve all payments, then the Council should clarify its expectations and, if necessary, amend the Charter.

#### Note 2

This statement is inaccurate. The audit report noted deficiencies and findings with respect to the procurement of professional services.

#### Note 3

City officials did not provide evidence they selected this vendor from the State contract. Furthermore, financial software support vendors are typically not sole source providers and the fact that this vendor is on State contract further supports that position.

#### Note 4

The report was amended to reflect the information provided.

#### Note 5

The audit report identified instances where City officials did not comply with Charter or policy requirements. If City officials believe that these requirements are merely formalities, then the Council should revise the Charter and/or any applicable policies.

## APPENDIX C

### AUDIT METHODOLOGY AND STANDARDS

Our objective was to review the City's process for awarding contracts for goods and/or services and determine if the Council provided sufficient oversight of the award process, contracts and related projects. To accomplish our audit objective and obtain relevant audit evidence, our procedures included the following steps:

- We interviewed appropriate City officials and employees regarding the procurement policy and procedures.
- We reviewed the Charter, minutes of the Council's proceedings, contracts, quotes and various other purchasing documents to determine if contracts were properly awarded.
- We reviewed the City's procurement policy to determine if it adequately addresses the procurement of goods and/or services.
- We reviewed bid documents and supporting documentation to determine if purchases were made in compliance with GML and the procurement policy.
- We obtained City vendor history reports for the period April 1, 2012 through August 7, 2013 and selected a sample of vendors for testing. For our sample, we judgmentally selected vendors based on professional judgment and factors such as total annual payments, type of vendor and unusual vendors.
- We reviewed one payment voucher to each of these vendors to determine if a proper claims audit was conducted.

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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