



Delaware County

Third-Party Contractual Services

Report of Examination

Period Covered:

January 1, 2013 — June 9, 2014

2014M-287



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	1
INTRODUCTION	2
Background	2
Objective	2
Scope and Methodology	3
Comments of County Officials and Corrective Action	3
THIRD-PARTY CONTRACTUAL SERVICES	4
Procurement	4
Disclosures of Interests	5
Monitoring	7
Recommendations	8
APPENDIX A Response From County Officials	9
APPENDIX B OSC Comments on the County's Response	12
APPENDIX C Audit Methodology and Standards	13
APPENDIX D How to Obtain Additional Copies of the Report	14
APPENDIX E Local Regional Office Listing	15

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2015

Dear County Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and County 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 Delaware County, entitled Third-Party Contractual 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 New York State 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 County of Delaware (County) is located in the east central part of New York State and has approximately 48,000 residents. The County includes 19 towns and 10 villages and covers 1,446 square miles. The County is governed by the Board of Supervisors (Board) which comprises 19 elected members. The Board is responsible for the general management and control of the County's financial affairs. The Chairman of the Board is the chief executive officer and is responsible, along with other administrative staff, for the day-to-day management of County business. Budgeted appropriations for the 2014 fiscal year were approximately \$129.6 million for all funds, primarily funded with real property taxes, sales and use taxes and State and federal aid.

The County provides a variety of services to its residents, including public safety, maintenance of roads and parks, employment assistance, health care, mental health services, aging services and temporary assistance to individuals and families. The Departments of Aging, Public Health, Mental Health and Social Services are responsible for providing assistance to eligible individuals and families with social service and financial needs to assist them with leading safe, healthy and independent lives. Many of the services are provided through contracts with various third-party agencies. Appointed Department heads oversee the day-to-day management of each Department, including approving contracts. In 2013, the payments for contracted third-party services within those four departments totaled \$8.7 million.

Objective

The objective of our audit was to review the County's policies and procedures for contracting with third-party service providers. Our audit addressed the following related question:

- Are County officials providing proper general administration and oversight over the various third-party contractual services, specifically:
 - o Procuring services to promote competition and ensure compliance with applicable laws,
 - o Ensuring no conflicts of interest exist during the approval process and
 - o Monitoring contracts to ensure that services provided to County residents were in accordance with contractual agreements?

**Scope and
Methodology**

We examined the County’s general administration and oversight of third-party contractual services for the period January 1, 2013 through June 9, 2014.

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
County Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with County officials, and their comments, which appear in Appendix A, have been considered in preparing this report. County officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on the issues raised in the County’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 Clerk of the Board’s office.

Third-Party Contractual Services

The Board is responsible for the general administration and oversight of third-party contractual services to provide taxpayers with assurance that services are procured in the most prudent and economical manner, that services of desired quality are being acquired at the lowest possible price and that procurement is not influenced by favoritism, improvidence, extravagance, fraud or corruption. To accomplish these tasks, the Board should adopt policies and procedures over procurement and a code of ethics. In addition, the Board should ensure that contracts are monitored to verify that services are provided in accordance with contractual agreements.

The County Departments of Aging, Public Health, Mental Health and Social Services provide assistance to individuals and families with social service and financial needs through contracts with third-party agencies. Payments to these agencies total approximately \$8.7 million per year. However, the Board does not provide proper administration and oversight. Although the Board has adopted a procurement policy, the County has awarded nine third-party contracts totaling \$1.9 million without soliciting competition or documenting a justifiable reason for not soliciting competition and has paid three vendors \$770,000 for various services without any written contracts with the vendors. In addition, there is no Board of Ethics and no one else helping to ensure that individuals are free from potential conflicts of interest in fulfilling their public responsibilities. Finally, although Department heads have various procedures to monitor contract performance and payments, the Board does not ensure that contracts are adequately monitored. As a result, there is a heightened risk that services are not being provided in the most prudent and economical manner. In addition, there is little, if any, recourse in the event conflicts arise in instances where written contracts are not in place with service providers.

Procurement

General Municipal Law (GML) requires that the Board adopt written policies and procedures for the procurement of goods and services not subject to competitive bidding. The policies or procedures should indicate when County officials must obtain quotations or issue requests for proposals (RFPs), indicate the procedures for determining which method will be used and describe the type and amount of documentation required for officials to retain to support the actions that they have taken. An RFP process is an effective way to procure goods and services not subject to competitive bidding requirements. The RFP process for each procurement should be documented to reflect the efforts in seeking competition. In addition, when acquiring services, the Board and service provider should enter into a written

agreement indicating the contract period, the services to be provided and the basis for compensation.

The County's procurement policy does not ensure that competition is sought in a reasonable and cost effective manner for contracts exempt from bidding. Specifically, the policy does not require that contracts be awarded through the use of competitive procedures or require documentation of a justifiable reason for not soliciting competition. County officials have been using the same vendors year after year without using any competitive method to procure services. We reviewed 10 contracts totaling \$2.5 million across four Departments¹ and found that the Department of Public Health's use of an RFP for one of its contracts, for \$604,000, was the sole instance where competition was sought. Although three vendors responded to that RFP, when the Department head asked for additional information from the vendor with the lowest bid, that vendor decided it was not able to provide the services at the price quoted and did not want to be considered for the contract. The Department then chose the vendor with the next lowest proposal. Additionally, the Department of Mental Health paid three vendors approximately \$770,000 for various services without any written contracts with the vendors.

County officials informed us they were not seeking competition because their geographic location limits the choice of providers. However, they could not provide any documentation to support this nor does the policy address how to determine and document procuring from sole source providers. The Mental Health Department head told us the Department relies on contract templates from prior years and State rates for contracted services. However, the lack of competition creates a risk that services will not be provided in the most prudent and economical manner. In addition, the absence of a contract to provide written terms of performance and payment creates a risk that expectations could differ between the Department and the service provider. In those cases, the respective programs' success could be at risk with little, if any, recourse available to correct the conflicts.

Disclosures of Interests

Article 18 of GML limits the ability of municipal officers and employees to enter into contracts in which both their personal financial interests and their public powers and duties conflict. In addition to prohibiting certain "interests"² in "contracts" of a municipality, GML provides that any municipal officer or employee who has, will have or later acquires an interest (or whose spouse has, will have, or later acquires

¹ Aging, Public Health, Mental Health and Social Services

² For purposes of Article 18 of GML, municipal officers and employees are deemed to have an interest in the contracts of their spouse, minor children and dependents (except employment contracts with the municipality).

an interest) in any actual or proposed contract or other agreement with a municipality generally must disclose the nature and extent of such interest. The disclosure must be in writing to the municipal officer or employee's immediate supervisor and to the governing board of the municipality. The written disclosure is to be made part of the official record of the proceedings of the Board.

Although not required by GML, the County may also establish a Board of Ethics. According to a resolution passed by the County, a Board of Ethics was to be established, with the function of rendering advisory opinions, upon written request, to County officers and employees with respect to the provisions of Article 18 of GML and the County's code of ethics. However, no such Board convenes and there is no one else helping to ensure that individuals are free from potential conflicts of interest in fulfilling their public responsibilities. Further, January 2014 was the first time that any of the County Supervisors publicly disclosed their potential financial interests, when three of the County's 19 Supervisors filed disclosures with the Board.

We made inquiries of 24 individuals³ about possible interests in contracts pursuant to GML. Six individuals disclosed they had an interest. We concluded that none of the interests were prohibited.⁴ Moreover, three of the individuals who indicated they had an interest were the same three who disclosed their interests publicly in January 2014 and, hence, appeared to satisfy the disclosure requirements of GML. We found that one individual, however, had not complied with GML. This individual had not publicly disclosed the interest, in writing, to the Board in 2013,⁵ and there was no record of a disclosure in the Board minutes.

County officials informed us they have typically dealt with the disclosure of potential conflicts of interest in an informal manner. It is important for the Board, however, to ensure that disclosures are reviewed to help verify that individuals are impartial and free from potential conflicts of interest in fulfilling their public responsibilities. The Board also acknowledged that its code of ethics should be reviewed for possible updates. The absence of rigorous ethical oversight can result in failure to provide the County's taxpayers and

³ These individuals included the 19 members of the Board of Supervisors, four Department heads and the County Attorney.

⁴ We concluded that one individual did not have an interest as defined in GML. Another individual had an interest, but the interest was not prohibited as a statutory exception applied. Moreover, disclosure of the interest was not required by GML (see GML Sections 802[2][e] and 803[2]).

⁵ There were no disclosure requirements pursuant to GML for this individual in 2014 because this individual's spouse was no longer working for the County as an independent contractor.

residents with assurance that the public trust endowed to elected officials is consistently upheld.

Monitoring

The Board should ensure that all services are provided in accordance with the contractual agreements and that Department heads have implemented procedures to verify that invoices for payments are properly supported and contain sufficient documentation. Furthermore, the Department heads responsible for monitoring contracts should ensure that payments are periodically reconciled to the contractual provisions and the accounting records.

Although the Board does not have any formal written policies or procedures to ensure that contracts are being monitored, every County Department has a Board sub-committee that is responsible for oversight of the Department's finances and various programs. Departments also have established community advisory Boards⁶ and meet with those Boards regularly to discuss program effectiveness. Each of the four Departments⁷ we reviewed has employees that interact with the third-party providers on a regular basis to ensure that they know how the services are being provided. These informal procedures assist County officials and employees with monitoring that the programs are obtaining the desired performance results. For example, the Department of Social Services monitors the parent aid and child welfare services program to ensure that a certain number of families demonstrate improvements in specific parenting skills by meeting with the third-party providers and reviewing goal worksheets and caseworker notes prepared by the professionals overseeing the programs.

Furthermore, the Departments of Aging and Mental Health also formally reconcile payments to the annual contract provisions and the accounting records; however, the Department of Social Services does not. For example, one contract for foster homes and preventative services went over the contracted amount due to additional mandated services. Payments were reconciled by the agency providing the services, but not by the Department of Social Services. The Department of Public Health did not need to formally reconcile payments because it was paying providers for services only when they were incurred and did so on a pay-as-you-go basis. We tested 20 contractual payments across the four Departments and found three payments made by the Department of Mental Health that did not have supporting documentation from third-party providers prior to the Department head's approval of the payment. County officials

⁶ The existence, makeup and powers of these Boards are all mandated by various New York State or federal laws, rules and regulations.

⁷ Aging, Public Health, Mental Health and Social Services

informed us that they are performing these monitoring procedures informally and because of the relatively small size of their programs, they are able to be extensively involved with the contracted service providers. However, even with the close interactions between County personnel and their contractors, without the Board ensuring that contracts are being adequately monitored, there is a heightened risk that the services being provided and the amounts paid are not in accordance with the contracts.

Because the County's procurement and ethics policies have not been updated and there are no formal procedures in place to ensure proper monitoring of contracts, County officials cannot be certain that third-party contractual services are contracted and provided for in the most prudent and economical manner.

Recommendations

The Board should:

1. Amend its procurement policy to ensure that it awards contracts to service providers only after soliciting competition through the use of competitive procedures or document a reason for not soliciting competition.
2. Ensure that Department officials have entered into written contracts with all third-party service providers that indicate the contract period, services to be provided and the basis for compensation.
3. Ensure that the County code of ethics is being followed in regard to the established Board of Ethics or update it accordingly.
4. Review the code of ethics for any possible updates and ensure that any potential conflicts of interest are properly documented and disclosed.
5. Ensure that Department officials implement procedures to verify that service providers are meeting contractual provisions in providing services to County residents and that invoices are adequately supported for payment.

The Department of Social Services should:

6. Reconcile the payments made to third-party providers per the accounting records to the contract provisions on an annual basis.

The Department of Mental Health should:

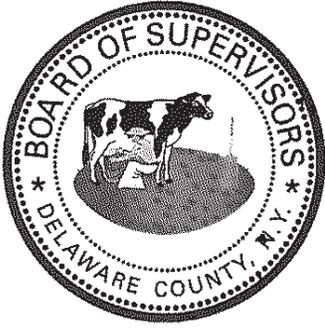
7. Ensure that all payments to third-party providers are adequately supported prior to payment.

APPENDIX A

RESPONSE FROM COUNTY OFFICIALS

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

The County's response letter refers to page numbers that appeared in the draft report. The page numbers have changed during the formatting of this final report.



**DELAWARE COUNTY
BOARD OF SUPERVISORS**

Senator Charles D. Cook County Office Building
111 Main Street
Delhi, New York 13753

Telephone: 607-832-5110
Fax: 607-832-5111

James E. Eisel, Sr., Chairman
Christa M. Schafer, Clerk

February 19, 2015

H. Todd Eames
Chief Examiner
Office of the State Comptroller
Binghamton Regional Office
44 Hawley Street
Binghamton, NY 13901-4417

Dear Mr. Eames:

In response to the draft report number 2014-287 of the NYS Comptroller's Office, the Delaware County Board of Supervisors (hereinafter Board) submits the following.

The Board generally concurs with the Comptroller's findings and has taken steps to address each and every one of the seven (7) recommendations in that draft report. The Board however strenuously objects to the tone and tenor of the draft report in several places because, as written, a reader is likely to make erroneous inferences which are not supported by the Comptroller's findings. The Board respectfully requested six (6) minor revisions so as to clarify those findings and eliminate the potential for inaccurate inferences. Unfortunately, when presented the Comptroller's office categorically refused to consider the Boards reasonable requests.

Specifically:

- 1.) The Board requested that on page 6, in the second to last sentence in the section on Third-Party Contractual Services, the word "heightened" be removed. This minor revision slightly adjusts the tenor of the sentence and removes the potential for an inaccurate inference.
- 2.) The Board requested that on page 7, at the end of the section on procurement, the following sentence be added. "While we have identified these matters as potential risks, our investigation did not reveal that any negative outcomes have resulted due to those potential risks". While the Board acknowledges the risks identified and has undertaken an entire review, update and re-write of its procurement policy so as to address the Comptroller's recommendations, the Board reasonably requested that the report reflect the fact that the identified risks have not resulted in any known negative outcomes for the County or its taxpayers.
- 3.) The Board requested that on page 8, in the final sentence of the section on disclosure of interests the word "absence" be replaced with "implementation" and

See
Note 1
Page 12

See
Note 2
Page 12

See
Note 3
Page 12

the word “can” be replaced with the word “will”. These minor revisions more accurately reflect the Comptroller’s recommendations and remove the potential for an improper inference.

- 4.) The Board requested that on page 8, in the second paragraph, second sentence in the section on monitoring, the words “must establish” be replaced with “have established”. This minor revision adjusts the unnecessary, declaratory tone of the sentence and removes the potential for an inaccurate inference. (Note: This change was made by the Comptroller’s Office at the request of the Board Chairman.)
- 5.) The Board requested that on page 9, in the last sentence of the first paragraph in the section on monitoring, the word “heightened” be removed. This minor revision slightly adjusts the tenor of the sentence and removes the potential for an inaccurate inference.
- 6.) The Board requested that on page 9, in the first sentence of the final paragraph, the words “are inadequate” be replaced with “have not been updated”. This minor revision adjusts the unnecessary, declaratory tone of the sentence and removes the potential for an inaccurate inference.

See
Note 4
Page 12

See
Note 5
Page 12

See
Note 6
Page 12

In addition, as the Chairman of the Delaware County Board of Supervisors I have asked the appropriate committees to commence a review of both the current procurement policy and the code of ethics. The procurement policy will include the implementation of procedures to ensure service providers are meeting contractual obligations. Upon completion updated versions of each will be presented to the entire Board for review and adoption. Steps have already been taken to address the reconciliation of payments made to third party providers in accordance with contract provisions and the submission of sufficient supporting documentation shall accompany requests for payments.

Respectfully,

James E. Eisel, Sr.
Chairman of the Board,

JEE:cms

APPENDIX B

OSC COMMENTS ON THE COUNTY'S RESPONSE

Note 1

This revision was not made because the lack of Board oversight heightens the risk that services may not be provided in the most prudent and economical manner.

Note 2

This revision was not made because the Office of the State Comptroller (OSC) did not conduct an investigation; our audit reviewed the County's policies and procedures for contracting with third-party providers for a specific snapshot in time. We cannot attest to the statement the County has requested. Furthermore, because the County's procurement policy does not ensure that competition is sought, the County cannot demonstrate there are no negative outcomes.

Note 3

These revisions were not made because the County Board does not provide adequate oversight; therefore, we have not made an improper inference. We are explaining the potential risks that can occur due to the absence of rigorous oversight.

Note 4

As discussed at the exit conference, OSC auditors made this revision per the request of a Department head.

Note 5

This revision was not made because the lack of Board oversight heightens the risk that the services provided and amounts paid are not in accordance with the contracts.

Note 6

As discussed with the Clerk of the Board on February 3, 2015, OSC auditors made this revision per the request of County officials.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess four of the County's Departments to determine if the Board adequately monitored third-party service providers to ensure that services provided and payments made were in accordance with contractual agreements and were procured competitively and not by individuals with prohibited interests. To accomplish the objective of this audit and obtain valid audit evidence, we performed procedures that included the following steps:

- We reviewed the County's policies and interviewed key officials to determine the processes in place for contracting with third-party service providers, including procurement, monitoring of performance and review and approval of payments.
- We obtained a list of third-party contracts for services to individuals from each Department. We verified that all significant vendors were included by reviewing the general ledger for contractual payments. We judgmentally selected vendors to examine based on the individual providing the services, and the type and size of the agency providing services.
- We selected and reviewed 10 contracts to determine if contracts were procured according to the County's procurement policy.
- We selected and reviewed 17 contracts to determine if contracts contained performance measures and how the County was monitoring that performance.
- We selected and examined 20 payments from the 17 contracts tested including one from each contract in 2013 and three additional payments from 2014, for proper support to ensure that the County received the services contracted for and payments went to the proper vendor.
- We obtained an understanding of the disclosure requirements for the financial interests of individuals involved in the procurement process.
- We solicited information regarding outside employment and business interests from all current 19 Board members and four Department heads and the County attorney, because they were involved in the procurement process, to determine if any County official or employee had a potential prohibited conflict of interest.

We conducted this performance audit in accordance with 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

HOW TO OBTAIN ADDITIONAL COPIES OF THE REPORT

To obtain copies of this report, write or visit our web page:

Office of the State Comptroller
Public Information Office
110 State Street, 15th Floor
Albany, New York 12236
(518) 474-4015
<http://www.osc.state.ny.us/localgov/>

APPENDIX E
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Andrew A. SanFilippo, Executive Deputy Comptroller
Gabriel F. Deyo, Deputy Comptroller
Nathalie N. Carey, Assistant Comptroller

LOCAL REGIONAL OFFICE LISTING

BINGHAMTON REGIONAL OFFICE

H. Todd Eames, Chief Examiner
Office of the State Comptroller
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313
Email: Muni-Binghamton@osc.state.ny.us

Serving: Broome, Chenango, Cortland, Delaware,
Otsego, Schoharie, Sullivan, Tioga, Tompkins Counties

BUFFALO REGIONAL OFFICE

Jeffrey D. Mazula, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo, New York 14203-2510
(716) 847-3647 Fax (716) 847-3643
Email: Muni-Bufferalo@osc.state.ny.us

Serving: Allegany, Cattaraugus, Chautauqua, Erie,
Genesee, Niagara, Orleans, Wyoming Counties

GLENS FALLS REGIONAL OFFICE

Jeffrey P. Leonard, Chief Examiner
Office of the State Comptroller
One Broad Street Plaza
Glens Falls, New York 12801-4396
(518) 793-0057 Fax (518) 793-5797
Email: Muni-GlensFalls@osc.state.ny.us

Serving: Albany, Clinton, Essex, Franklin,
Fulton, Hamilton, Montgomery, Rensselaer,
Saratoga, Schenectady, Warren, Washington Counties

HAUPPAUGE REGIONAL OFFICE

Ira McCracken, Chief Examiner
Office of the State Comptroller
NYS Office Building, Room 3A10
250 Veterans Memorial Highway
Hauppauge, New York 11788-5533
(631) 952-6534 Fax (631) 952-6530
Email: Muni-Hauppauge@osc.state.ny.us

Serving: Nassau and Suffolk Counties

NEWBURGH REGIONAL OFFICE

Tenneh Blamah, Chief Examiner
Office of the State Comptroller
33 Airport Center Drive, Suite 103
New Windsor, New York 12553-4725
(845) 567-0858 Fax (845) 567-0080
Email: Muni-Newburgh@osc.state.ny.us

Serving: Columbia, Dutchess, Greene, Orange,
Putnam, Rockland, Ulster, Westchester Counties

ROCHESTER REGIONAL OFFICE

Edward V. Grant, Jr., Chief Examiner
Office of the State Comptroller
The Powers Building
16 West Main Street – Suite 522
Rochester, New York 14614-1608
(585) 454-2460 Fax (585) 454-3545
Email: Muni-Rochester@osc.state.ny.us

Serving: Cayuga, Chemung, Livingston, Monroe,
Ontario, Schuyler, Seneca, Steuben, Wayne, Yates Counties

SYRACUSE REGIONAL OFFICE

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428
(315) 428-4192 Fax (315) 426-2119
Email: Muni-Syracuse@osc.state.ny.us

Serving: Herkimer, Jefferson, Lewis, Madison,
Oneida, Onondaga, Oswego, St. Lawrence Counties

STATEWIDE AUDITS

Ann C. Singer, Chief Examiner
State Office Building - Suite 1702
44 Hawley Street
Binghamton, New York 13901-4417
(607) 721-8306 Fax (607) 721-8313