



Town of New Baltimore Procurement Practices

Report of Examination

Period Covered:

January 1, 2012 — March 1, 2013

2013M-203



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

November 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 New Baltimore, entitled Procurement Practices. 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 New Baltimore (Town) is located in Greene County (County) and has a population of approximately 3,370. The Town is governed by an elected Town Board (Board) composed of a Town Supervisor (Supervisor) and four Board members. The Board is responsible for overseeing the Town's operations, finances and overall management and provides guidance through the enactment of policies and procedures, adoption of the annual budget, and approval of all contracts. The Supervisor, who serves as the Town's chief executive and chief fiscal officer, is responsible for implementing Board policy and overseeing the financial management of the Town's moneys. As chief fiscal officer, the Supervisor is responsible for overseeing most of the Town's financial duties. The Town's Highway Superintendent is an elected official and is responsible for overseeing highway operations.

The Town provides various services to its residents, including highway, water, sewer, recreation, and general government support. For the 2013 fiscal year, the Town's budgeted appropriations were approximately \$1.68 million for the general and highway funds, which were financed primarily by real property taxes.

Objective

The objective of our audit was to evaluate the Town's procurement practices. Our audit addressed the following question:

- Did Town officials procure goods and services according to General Municipal Law and Town policy?

Scope and Methodology

We examined procurement practices of the Town for the period January 1, 2012, to March 1, 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 C 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. Except as indicated in Appendix A, Town officials generally agreed with our recommendations and indicated they would take corrective action. Appendix B contains our comments on issues raised in the Town's response.

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 Town to make this plan available for public review in the Clerk's office.

Procurement

A good system of internal controls over purchasing includes policies and procedures to help ensure that an organization is using its resources effectively and complying with applicable laws and regulations. Town officials are responsible for designing internal controls that help safeguard Town assets, ensure the prudent and economical use of Town moneys when procuring goods and services, and protect against favoritism, extravagance, and fraud. It is important that Town policies are current, describe the procurement methods to be used and when to use each method, and require adequate documentation to support and verify procurement decisions.

General Municipal Law (GML) requires that purchase and public work contracts in excess of \$20,000 and \$35,000, respectively, during a fiscal year be publicly advertised for bids and awarded to the lowest responsible bidder. In lieu of advertising for bids, local governments may use certain contracts awarded by the New York State Office of General Services (OGS) or the county in which the local government resides, as such contracts are competitively bid and awarded for a specific duration and a specific product or service. The law also requires local governments to adopt written policies and procedures governing all procurements of goods and services not required by law to be competitively bid, including the dollar levels at which written and verbal quotes will be required and the documentation of actions taken. The procurement policy should also contain guidelines for purchasing exceptions, including emergency purchases and purchases from preferred or sole sources, and should be reviewed and adopted annually.

The Board did not ensure that Town officials followed statutory bidding requirements or the Town's procurement policy. We identified approximately \$301,000 in purchases that were not properly bid as required by law, and approximately \$94,000 in purchases that did not have quotes as required by Town policy. Additionally, Town officials stated that items were purchased through State or county contract but they did not confirm that they received the appropriate contract pricing and did not have documentation to that effect. Our comparisons of items and prices against State and county contracts indicated that the purchases were not made through OGS or county contracts. Further, the required prior Board approvals of purchases exceeding policy thresholds were not obtained. As a result, the Board does not have adequate assurance that goods and services have been acquired at the lowest cost.

Competitive Bidding

Town officials did not comply with GML requirements for competitive bidding of purchases. We examined 29 purchases¹ subject to competitive bidding requirements totaling \$545,168 from seven vendors, and found that purchases totaling \$301,137 paid to four vendors were not competitively bid or purchased under valid OGS or county contracts. Purchases not competitively bid included:

- Road Paving Services – The Town paid \$127,908 to a company for paving services. The Highway Superintendent said he contacted road paving companies in the area and asked them to submit quotes. The Board was aware of how the prices were obtained and even approved the selection of the vendor by resolution. However, the company doing the paving work did not submit the lowest quote.
- New Truck – The Town purchased a 2013 truck cab and chassis for \$120,740 from a vendor that was originally awarded the OGS contract. However, the contract expired prior to the purchase of the vehicle. In addition, the Town purchased the truck’s dump body and plow for about \$25,000 without properly soliciting bids.
- Pickup Truck – The Town purchased a pickup truck with a plow for about \$27,000. While Town officials claimed that the truck was purchased under State contract, the vendor was not the OGS contract holder and there was no documentation to link this local dealer to an approved OGS vendor.

We requested supporting documentation for these purchases on several occasions, but Town officials simply reiterated that purchases were made through State or county contract. By circumventing GML requirements, the Board has not provided the taxpayers with assurance that significant contracts were awarded in a transparent and open process, and that the expenditures were prudent.

Policy Requirements

The Town’s procurement policy requires that a determination be made if the aggregate amount to be expended on goods or services is subject to competitive bidding. The policy requires that all goods and services be secured by use of written requests for proposals (RFPs), written quotes, verbal quotes, or any other method that ensures goods will be purchased at the lowest price and favoritism avoided. In addition, the policy requires a good-faith effort to obtain the required number of written quotes; in the absence of the required number of written quotes, the official initiating the purchase is required to document the

¹ Our sample represented all 15 checks over \$20,000 issued during the audit period. Many of the associated claims contained multiple vouchers.

attempt to obtain quotes. The policy requires three written quotes (or, alternatively, the use of State or county contracts) for general contract purchases between \$2,501 and \$19,999 and for public work contract purchases between \$2,501 and \$34,999. The procurement policy also requires prior Board approval for general purchases over \$2,500 and for Highway Department purchases over \$5,000.²

Town officials did not provide sufficient oversight to ensure compliance with the procurement policy requirement for three written quotes. Of the \$143,031 in applicable purchases in our sample that required three written quotes, purchases totaling \$94,120 did not have the required quotes or were not alternatively purchased through State or county contract. The Highway Superintendent stated that he believed almost all of his purchases were made from OGS or Greene County contracts. For all such purchased items, we obtained county and OGS contract awards but were unable to match contract pricing to prices paid by the Town. Major purchases included:

- Low-Sulfur Diesel Fuel – The Town paid an aggregate of \$21,824 for two types of low-sulfur diesel fuel for Highway vehicles and equipment, which the Highway Superintendent said was purchased under county contract. He told us that he contacted county suppliers citing the county contract when making purchases, believing he was getting county bid pricing, but did not verify that the price paid was in fact county contract pricing. The prices that the Town paid did not match either OGS or county pricing, and Town officials did not have documentation to show that the fuel was purchased under either contract.
- Plastic Pipes and Connections – The Town purchased \$14,758 in materials to repair culverts. This product was claimed to be purchased under county contract; however, the specific delivered item was not listed as a product available through a county contract, nor did the supplying vendor hold the OGS contract.
- Pole Barn Addition – The Town purchased building materials totaling \$9,755 to construct an addition to a Town building but had no supporting quotes.
- Uniform Service – Uniform rental and laundry services of \$7,011 for Highway Department uniforms had no supporting quotes.

²The procurement policy states: “Purchases of over \$2,500 will require prior Board approval; except the Highway Superintendent for whom purchases over \$5,000 will require prior Board approval or a Special Meeting of at least 3 Board members.”

- Material and Services – The Town paid \$34,278 to multiple vendors for gravel, processed stone, crusher run (crushed stone) and road paving preparation material, waste management, and other products/services. The Highway Superintendent said that he had obtained written quotes as required by policy and that he verbally presented them to the Board but did not retain the written quotes.

Additionally, prior Board approval was required, but was not documented, for individual and aggregate purchases totaling \$135,377 of our sample of \$165,455. Town officials said the approvals were given in committee meetings. The Supervisor and Deputy Supervisor told us that they meet regularly in committee meetings with the Highway Superintendent to discuss planned Highway Department purchases, but do not ask for or receive copies of quotes.

By not enforcing Town procurement policy, requiring evidence of compliance with guidelines of OGS and county purchasing contracts, and ensuring that written quotations or prior Board approvals were obtained when required, the Board cannot be certain purchases are made at the lowest cost and without favoritism.

Recommendations

1. Town officials should ensure compliance with GML and the Town's adopted procurement policy by properly soliciting bids and obtaining quotes as required, and maintaining adequate documentation.
2. Town officials should ensure all purchases made under OGS or county contracts are properly documented and adhere to contract guidelines.
3. The Board should ensure that Board approval prior to purchase, when required, is obtained and properly documented in compliance with Town policy.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



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October 8, 2013

Ms. Tenneh Blamah, Chief Examiner
Office of the State Comptroller
Newburgh Regional Office
33 Airport Center Drive, Suite 103
New Windsor, NY 12553

Dear Ms. Blamah

We thank the Comptroller's office for their time in reviewing the Town's procurement policy related to highway purchases. We would offer the following comments to the report.

Purchases made under Competitive Bidding

International Truck - The Highway Superintendent and Town Board started negotiations in December with the vendor who held the OGS contract; the vendor was uncertain at that time if the contract would be renewed. The Town Board wanted to purchase the vehicle in December and financing needed to be secured before the vehicle could be purchased. The vendor agreed to hold the contract price until February 1, giving the Town the time to secure funding. The Highway Superintendent surveyed the state contract pricing available from several other vendors and found it to be much higher than the pricing on the OGS contract. The Town Board was concerned about putting the vehicle out to bid and losing the lower pricing that had been guaranteed through February 1 by International, so the Town Board chose to go with the guaranteed price through International. We agree that the International truck was technically not on the OGS contract when the purchase was actually approved by the Town Board, but its purchase saved the Town taxpayers money.

Road Paving - The Town purchased the paving material off state contract, PC #64943 (see attached letter from vendor confirming they met the contract price). The Town Board agrees with the auditors' opinion that documentation on state contract pricing should be attached to the invoice and has implemented that practice.

Pickup Truck - The Town Highway Superintendent did not have internet access or a computer at the highway garage; he relied on the vendor representative who said he was the local distributor for the state contract on this truck. The auditor brought to the Board's attention that the particular vendor was *not* on the state contract and the contract number that was supplied was *not* a valid number. To ensure this does not happen again the Town Board has provided internet access and a computer to the Highway Superintendent at the highway garage; now he can verify contact vendors and distributors.

See
Note 1
Page 12

Purchases Made on Town Policy

We respectfully disagree with the audit team’s interpretation of the Town’s recently adopted procurement policy. The Town Board and the Highway Superintendent felt they were in compliance with the Town’s policy; the Town Board will now review and determine the changes needed to that policy to address the ambiguities brought to our attention by the auditors. Having an outside party review and interpret the policy was very helpful and, if changes are needed to the policy, we will do so within the next 60 days.

Use of recording device

Regarding the use of recording devices during the audit team’s interview process, the Town of New Baltimore would like to suggest to the New York State Comptroller’s Office that there are statements in the report attributed to certain officials, which the officials disagree with having made. The Town asked to use a recording device and was denied by the auditors as it was a violation of the Comptroller’s Office policy. We suggest for all parties involved that the use of a recording device is a helpful tool to insure that statements made are accurately reflected in the report.

See
Note 2
Page 12

Sincerely,

Susan ~~ORRICK~~
Town Supervisor

Denis Jordan
Highway Superintendent

The Town of New Baltimore is an equal opportunity provider and employer. Discrimination is prohibited by Federal Law. Complaints of discrimination may be filed with USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6832 (TDD)

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

The Town's response letter references a vendor's letter. Because the purpose of the referenced letter is adequately explained, we have not included it in Appendix A.

Note 1

While the vendor in question was awarded the OGS contract for similar products and services, the specific bituminous hot-mix asphalt that the Town purchased was not included in the award. The Highway Superintendent told us that the vendor supplies the Town with a custom mix that meets the Town's preference.

Note 2

Two examiners from the audit team were present during the referenced interviews. The statements in this report that are attributed to Town officials are accurate representations of discussions held with audit staff.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

The objective of our audit was to determine if Town officials procure goods and services according to Town policy and General Municipal Law. To achieve our objective:

- We documented internal controls and related procedures for purchasing and procurement.
- We determined a sample by sorting the Town's vendor ledgers to exclude all purchases to which the Town purchasing policy does not apply (such as government payments or services). We sorted the entire population by purchase size in order to test adherence to purchasing policy and GML requirements. We selected 100 percent of purchases between \$2,500 and \$19,999 to test for written quotes in accordance with the procurement policy. We selected 100 percent of purchases over \$20,000 to test for adherence to GML and the procurement policy.
- We tested the sample of purchases between \$2,500 and \$19,999 for adherence to the Town purchasing policy and determined whether:
 - There was prior Board approval obtained for general purchases of over \$2,500 and Highway purchases of over \$5,000
 - There were at least three written quotes documented for each purchase
 - There was proper documentation and an explanation when a contract was not awarded to the lowest bidder.
- We tested a sample of purchases of over \$20,000 for adherence to GML and determined whether:
 - The purchase was subject to competitive bidding requirements and was bid; and if not bid, whether it was purchased under valid State or county contract
 - The bids were properly published (newspaper of record and minimum days notice)
 - The bid specifications were reasonable (with adequate, non-restrictive product descriptions)
 - The purchases were awarded to the lowest bidder (or an explanation was provided of why the lowest bidder was not selected)
 - The bids were publicly opened.
- We obtained a list of items purchased and traced at least five to their locations to determine whether:

- The purchases were recorded in departmental inventory/asset records
- The goods purchased were still in the Town's possession.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX D

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Nathalie N. Carey, Assistant Comptroller

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