

Village of Islandia

Procurement

MAY 2022



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

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Report Highlights

Village of Islandia

Audit Objective

Determine whether Village of Islandia (Village) officials used a competitive process to procure goods and services.

Key Findings

When purchasing goods or services, Village officials did not always seek competition as required by law or the Village's procurement policy. Village officials purchased:

- \$1 million of goods and services from 18 vendors and 10 professional service providers without using competitive methods.
- \$68,087 through 42 credit card purchases with no documented pre-approval by the Mayor or Deputy Mayor, as required by the procurement policy.
- \$161,278 from a Trustee's incorporated gas station and auto repair business, which was a prohibited interest.

Key Recommendations

- Obtain the required number of competitive bids, quotes, proposals or pre-approval when required by GML or the Village's procurement policy, and preserve this documentation.
- Revise the procurement policy to provide a detailed method for procuring professional services.
- Ensure that officials and employees are familiar with and follow the requirements of GML relating to conflicts of interest.

Village officials disagreed with certain findings in our report. Appendix B includes our comments on issues Village officials raised in their response.

Background

The Village, located in Suffolk County, is governed by an elected Board of Trustees (Board), which includes the Mayor, the Deputy Mayor and three trustees.

The Board is responsible for oversight and general management and control of finances.

Quick Facts

2020 Appropriations	\$4,403,106
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Vendor Payments

2020	\$3,722,726
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2019	4,708,227
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Total	\$8,430,953
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Bids	\$2,034,557
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Professional Services	536,481
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Quotes	167,365
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Total Reviewed	\$2,738,403
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Audit Period

January 1, 2019 – December 31, 2020

Procurement

How Should a Village Procure Goods and Services?

GML Section 103 generally requires competitive bidding for purchase contracts greater than \$20,000 and public work contracts greater than \$35,000. In determining the necessity for competitive bidding, the aggregate amount to be expended for the same or substantially similar commodity or service within the 12-month period beginning on the date of the first purchase must be considered. Using a prior year's expenditures can be a good way to estimate whether purchases of a commodity, such as gasoline, will exceed the bid limit for the current year.

GML Section 104-b further requires a board to adopt and annually review written policies and procedures governing the procurement of goods and services not subject to competitive bidding requirements, such as professional services and purchases under the bidding thresholds. Specifically, goods and services that are not required by law to be competitively bid must be procured in a manner to ensure the prudent and economical use of public money in the taxpayers' best interests and is not influenced by favoritism, extravagance, fraud or corruption. Therefore, these policies and procedures should describe the methods and procedures for promoting competition for purchases not subject to competitive bidding (i.e., using written requests for proposals (RFPs) or obtaining written or verbal quotes to ensure that the desired goods or services are received at the best price), require documentation of actions taken with each procurement method and identify the name and title of individuals responsible for the process.

Although not required by State law, the village should award professional service contracts after soliciting competition. Using written RFPs or obtaining written or verbal quotes is an effective way to ensure that the village receives the desired goods or services at the best price. Issuing RFPs for professional services helps ensure the village obtains the needed services at the most favorable terms and conditions and avoids the appearance of partiality when awarding such contracts.

The Board adopted a procurement policy, as follows, for the purchase of goods and services not subject to competitive bidding requirements (Figure 1).

Figure 1: Procurement Criteria

	Dollar Range	Number & Type of Quotes
Purchase Contracts	\$1,500 - \$4,999	Verbal quotes
	\$5,000 - \$19,999	3 written quotes or RFPs
	\$20,000 and up	Competitive bidding
Public Works	\$1,500 - \$4,999	2 verbal quotes
	\$5,000 - \$6,999	2 written quotes
	\$7,000 - \$34,999	3 written quotes or RFPs
	\$35,000 and up	Competitive bidding
Credit Card Purchases	Greater than \$500	Prior approval from Mayor or Deputy Mayor

GML Section 103 generally requires competitive bidding for purchase contracts greater than \$20,000 and public work contracts greater than \$35,000.

The policy also sets forth circumstances when, or types of procurement for which, in the Village's sole discretion, the solicitation of alternative proposals or quotations will not be in the Village's best interest.

The policy further requires that a good faith effort must be made to obtain the required number of quotes. If the purchaser is unable to obtain the number of quotes required by the policy, the purchaser must document the efforts made to obtain the quotes. Similarly, if the purchaser determines that competition is not required, the rationale for that decision must be documented. The policy requires documentation of each action taken in connection with each procurement.

Officials Did Not Competitively Bid Certain Goods and Services

To determine whether the Village used competitive methods to procure purchase and public works contracts, we reviewed 16 contracts (totaling \$2,034,557) procured through seven vendors subject to competitive bidding requirements. We found that seven of the purchases and public works contracts (totaling \$367,972) paid to two vendors were not competitively bid. Further, one of the two vendors was the Trustee's gas station and auto repair business¹ discussed later in this report when the Trustee had a prohibited interest in contracts with the Village. The remaining vendor was paid the following:

- \$150,608 between 2019 and 2020 for snow removal services, based on a bid awarded in 2009. Village officials claim that they continue to use this vendor as the price has not increased in the 12 years since that bid; however, as the contract amounts continue to exceed the statutory threshold set forth in GML section 103, the Village was required to periodically solicit new competitive bids.
- \$88,000 between 2019 and 2020 for street sweeping based on an RFP that was issued, and subsequently awarded, in 2007. Village officials claim that they continue to use this vendor as the price has not increased since the original RFP was issued in 2007. However, as the contract amounts have typically exceeded the statutory threshold set forth in GML section 103, the Village was required to periodically solicit competitive bids to procure this service.

The Village's failure to seek competition in accordance with State statutes and Village policy prevents it from facilitating the acquisition of goods and services of maximum quality at the lowest possible cost and guard against favoritism, improvidence, extravagance, fraud and abuse.

¹ The gas station and auto repair business was paid a total of \$161,278; \$31,913 paid in 2020 for auto repair services did not meet the statutory bid threshold in that year.

Certain Goods and Services Were Not Procured in Accordance with Village Policy

According to the Village's procurement policy, all goods and services not requiring competitive bidding must be procured by use of written proposals, written or verbal quotes, or any other method that assures that goods and services are purchased at the lowest price and that favoritism will be avoided. The policy provides that purchasers must make a good faith effort to obtain the required number of proposals or quotes and that documentation is required of each action taken in connection with each procurement.

We reviewed 54 purchases not subject to competitive bidding requirements set forth in GML Section 103, (totaling \$167,365) and found 48 purchases (totaling \$133,231) that did not have any proposals, quotes, or other documentation of actions taken attached to the related claims packets. Further, for one purchase with quotes, the quotes were filed separately from the claim and for another purchase, the Village obtained only one quote, which is not a true competitive measure, even though the policy does not specify the number of quotes required. The Building Inspector told us that a number of these purchases were made from vendors based on a referral from another vendor, so no quotes were obtained. However, the Village's procurement policy does not provide an exception to the requirement to obtain quotes or proposals due to referrals from vendors.

Since the Village procurement policy generally indicates that all actions taken in connection with each procurement must be documented, any required quotes obtained by the Village should have been attached to the related purchase documents. Alternatively, any rationale or reasons for not obtaining competition should have been documented in a memorandum that was then attached to the claim in question. By not seeking competition, Village officials cannot demonstrate they are facilitating the acquisition of goods and services of maximum quality at the lowest cost and guarding against favoritism, improvidence, extravagance, fraud and abuse.

Additionally, the Building Inspector, the Commissioner of Parks and Recreation (Parks Commissioner) and a Highway Mechanic used Village credit cards to make 794 purchases (totaling \$163,773). According to the Village procurement policy, the use of a credit card to make purchases greater than \$500 required prior approval from the Mayor or Deputy Mayor. However, these individuals made 42 credit card purchases (totaling \$68,087) that each exceeded \$500 but did not have documentation of the policy-required authorization for exceeding \$500 attached to the purchase.

Alternatively, any rationale or reasons for not obtaining competition should have been documented in a memorandum that was then attached to the claim in question.

The Village Did Not Seek Competition for Most Professional Services

Although the Village’s procurement policy requires Village officials to maintain documentation for each action taken in connection with each procurement, it does not specify what documentation should be maintained to support decisions pertaining to the procurement of professional services. The policy also states that soliciting competition, such as written proposals or quotations, for the procurement of professional services may not be in the Village’s best interest. Consequently, the Board and Village officials did not solicit competition, such as issuing RFPs, when procuring professional services, nor did they document their rationale for selecting particular service providers. As a result, the Board has little assurance that the Village obtained the most favorable terms and conditions in the best interest of its taxpayers when selecting professional service contracts.

The Village procured professional services from 11 providers (totaling \$536,481) during the audit period. We found that Village officials sought competition for audit services from one provider with total expenditures of \$22,500. However, there was no documentation of the Village seeking competition for services from the remaining 10 providers, with total expenditures of \$513,981. While Village officials explained to us why they chose some of the service providers (e.g., past experience), they did not maintain written documentation of these explanations.

We found that the professional services procured appeared to be for legitimate and appropriate Village purposes. However, when a competitive process is not used, the Board has less assurance that professional services are being procured with the most advantageous terms and conditions and in the best interest of taxpayers.

How Should a Board Address Conflicts of Interest?

New York State General Municipal Law (GML) Article 18 limits the ability of municipal officers and employees to enter into contracts in which their personal financial interests and public powers and duties conflict. Unless a statutory exception applies, municipal officers and employees are prohibited from having an interest in contracts with the municipality that they serve when they have the power or duty – either individually or as a board member – to negotiate, prepare, authorize or approve the contract; authorize or approve payment under the contract; audit bills or claims under the contract; or appoint an officer or employee with any of those powers or duties. For this purpose, a “contract” includes any claim, account, demand against or agreement with the municipality. Municipal officers and employees have an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract with the municipality they serve. A municipal officer or employee would also be deemed to have an interest in the contracts of, among others, a corporation of which they are an officer, director, or employee, or of which they own or control any stock.

We found that the professional services procured appeared to be for legitimate and appropriate Village purposes.

Municipal officers and employees have an interest in a contract when they receive a direct or indirect monetary or material benefit as a result of a contract with the municipality they serve.

A Trustee Had a Prohibited Interest in Contracts

A Board Trustee has, since 2014, been the sole owner of an incorporated gas station and auto repair business from which the Village purchases gasoline and vehicle repairs. During our audit period, the Village paid this business \$80,222 for the purchase of gasoline and \$81,056 for repairs performed on Village vehicles.

For the purposes of GML Article 18, each invoice submitted to the Village by the Trustee's business for gasoline purchases or vehicle repairs is an "agreement" and, thus, a "contract." As the sole owner of the incorporated business, the Trustee has an interest in each contract because the Trustee either receives a direct or indirect monetary or material benefit as a result of the contracts or is deemed to have an interest by virtue of being a 100 percent stockholder of the corporation. Furthermore, as a member of the Board, the Trustee also has one or more of the powers and duties that can give rise to a prohibited interest, including the ability to authorize or approve contracts, authorize or approve payments under contracts, audit bills or claims under the contracts or appoint someone to perform that function. Therefore, unless a statutory exception applies, the Trustee's interest in each contract is prohibited.

GML Section 802(2)(e) provides an exception when a municipal officer or employee has an interest in a contract when that interest would not be legally prohibited provided that the total compensation payable under all of the contracts during a fiscal year does not exceed \$750. The total consideration of all the contracts in which the Trustee had an interest for his business was \$90,657 during the 2019 fiscal year and \$70,621 during the 2020 fiscal year. Therefore, the exception found in GML Section 802(2)(e) does not apply to the contracts listed.

GML Section 802(1)(j) also provides an exception for purchases by a municipality, located wholly or partly within a county with a population of 200,000 or less when the following factors are met: (1) the member of the governing board is elected and serves without salary; (2) the purchases, in the aggregate, are less than \$5,000 during the fiscal year; (3) the governing board has followed its procurement policies and procedures; (4) the procurement is with the lowest dollar offeror and; (5) the governing board approved the purchases with the interested member of the board abstaining from the vote. According to the Village, the Trustee's business is the only full-service automotive service and gas station in the Village, or within a reasonable distance from the Village, that is also capable of meeting the Village's needs for vehicle maintenance, and equipment repair and replacement. However, given the circumstances above, the exception set forth in GML Section 802(1)(j) would not apply. As no other statutory exceptions appear to apply here, under these circumstances, the Trustee has a prohibited interest in each of the contracts between the Village and his business.

Additionally, we observed that there were a number of gas stations and service stations within a reasonable distance of the Village.

Due to the Trustee's prohibited interest in the contracts between the Village and his business, we reviewed all of the invoices submitted by his business during our audit period. While our testing did not reveal any significant irregularities in pricing, Village officials are accountable to the public, especially when the expenditure of taxpayer money is involved. When Village officials, in their private capacities, conduct business with the Village, the public may question the appropriateness of the transactions. Such transactions may create an actual conflict of interest or the appearance of impropriety and/or may result in improper enrichment at taxpayer expense.

What Do We Recommend?

The Board and Village officials should:

1. Ensure that competitive bidding statutes are followed and ensure that Village officials and employees adhere to the procurement policy.
2. Revise the Village's procurement policy to include the specific documentation that must be maintained to support procurement decisions for professional services and develop procedures to provide a detailed method for procuring professional services.
3. Procure professional services by soliciting some form of competition, such as RFPs or quotes, at reasonable intervals established in the revised procurement policy.
4. Ensure that officials and employees are familiar with and follow the requirements of GML Article 18 relating to conflicts of interest.

Appendix A: Response From Village Officials



INCORPORATED VILLAGE OF **ISLANDIA**

Village of Islandia . . .
Second to None

By email to: Muni-Hauppauge@osc.ny.gov

April 4, 2022

Ira McCracken
Chief Examiner
Office of the New York State Comptroller
New York State Office Building
250 Veterans Memorial Highway
Room 3A10
Hauppauge, New York 11788

Re: Village of Islandia
Response to Draft Audit Report
Procurement Report of Examination 2021M-203

Dear Mr. McCracken:

Please allow this letter to serve as the Village of Islandia's ("Village") official response ("Response") to the Office of the New York State Comptroller's ("OSC") draft "Village of Islandia Procurement Report of Examination 2021M-203" ("Report"), issued for the two-year period of January 1, 2019 through December 31, 2020 ("Audit Period"). Please note that a Corrective Action Plan will be submitted as required.

THE COVID-19 PANDEMIC

Prior to addressing the Reports specific findings, it is important to contextualize the Audit Period, which covered the two calendar years of 2019 and 2020. As we are all keenly aware, March 2020 commenced the onset of the worst global pandemic in at least 100 years. It goes without saying that it completely altered the life of each Village official, employee, vendor, contractor and citizen.

Without any assistance from New York State, the Village and its officials and employees, remained a critical resource for Village residents and community throughout 2020 by obtaining, distributing and providing, amongst other things, critical PPE, information and support. The Village even continued to provide community programs and services in 2020, on a modified basis, to provide some form of continuity and normalcy, while ensuring the safety of the businesses, institutions, and families in the Village. The Village is very proud of the job it did in this regard during the height of the pandemic.

Notwithstanding that the later nine (9) months of the 24 month Audit Period were subsumed by the Pandemic, the Report never even mentions the Pandemic, or its obvious effects on the Village's (and all other governmental institutions') operations and the heroic efforts of the Village during that time.

See
Note 1
Page 14

Many of the transactions reviewed by the OSC occurred during the height of the Pandemic, and concerned necessary emergency responses, aimed at providing support for the safety of the Village residents and employees. The impact of the COVID-19 pandemic cannot be discounted, and should properly have been referenced in the Report.

THE REPORT DOES NOT QUESTION THE PROPRIETY OF ANY GOODS OR SERVICES PROCURED BY THE VILLAGE DURING THE AUDIT PERIOD

Before addressing the factual findings contained in the Report, it is important to highlight that the Report does not take issue with the propriety of *any* of the goods or services procured by the Village over the two year Audit Period. Rather, the Report merely highlights select areas of Village procurement where — according to the Comptroller — the Village can improve upon its current procedural controls, to ensure that it is receiving its good and services at the best possible price, and upon the most favorable terms.

THE HEADERS USED BY THE OSC IN THE REPORT DO NOT ACCURATELY STATE THE FINDINGS OR THE REPORT OR THE PROCEDURES FOLLOWED BY THE VILLAGE WITH RESPECT TO PROCUREMENT

See
Note 2
Page 14

For reasons stated in response to the findings and the statements made below the Village notes that the statements made by the OSC in the headers contained in the Report were largely conclusory all-inclusive statements that are not supported by the Audit and were instead stated in that manner to unfairly sensationalize the Report in a manner adverse to the dedicated officials, employees and professionals of the Village.

THE REPORT'S FINDINGS

The Report's findings were indicated by the OSC in three numbered findings, but were actually summarized under the following seven (7) headers:

- 1) How Should a Village Procure Goods and Services (p. 4)
- 2) Officials Did Not Competitive Bid Goods and Services (p. 5)
- 3) Goods and Services Were Not Procured In Accordance With Village Policy (p. 5)
- 4) How Should a Board Address Conflicts of Interest (p. 7)
- 5) The Village Did Not Seek Competition for Professional Services (p. 6)
- 6) A Trustee Had a Prohibited Interest in Contracts (p. 7).
- 7) What Do We Recommend (p. 8)

Headings 1, 4 and 7 provide municipal guidance concerning the referenced matters, and are not addressed herein. Headings 2, 3, 5 and 6 make substantive factual findings concerning Village

practices, procedures and procurements during the Audit Period. The later four headings (2, 3, 5, 6) (underlined, above) are addressed separately, below.

Header 2: Officials Did Not Competitively Bid Goods and Services.

The Report states that it reviewed 16 contracts, procured through 7 vendors totaling \$2,034,557. Of the contracts claimed to have been reviewed by the OSC (which the OSC does not identify), the Report takes issue with 7 contracts, procured through 2 vendors, totaling \$367,972 (Report, p. 5).

One of two vendors at issue supplied the Village with both snow removal services and street sweeping services. As conceded in the Report, the Village awarded those contracts through competitive bidding in 2009 and 2007, respectively. Since then, the vendor agreed to continue performing those services *at the original price*. In other words, the Village has been receiving snow removal services and street sweeping services without any increase in price, since 2009 and 2007, respectively. The Report criticizes the Village for not re-bidding these services since 2009 and 2007, respectively, and reminds the Village that the failure to re-bid “prevents [the Village] from facilitating the acquisition of goods and services of maximum quality at the lowest possible cost”

As indicated in the Village’s corrective action plan, the Village will competitively bid these contracts, as recommended by the OSC. However, it cannot be understated that by *not* competitively bidding these two services, the Village was receiving these services “at the lowest possible cost.” Now, as a result of renewed competitive bidding, we expect the cost of snow removal and street sweeping to *significantly* increase — perhaps by more than 100% — which will cost the average Village household hundreds of dollars. In this particularly instance, the inflexible application of the OSC’s competitive bidding guidance will eviscerate the cost savings that the taxpaying public of the Village has enjoyed over the last 15 years.

See
Note 3
Page 14

As to the second vendor referenced, the Village’s only gas and full service repair station, this matter is addressed in response to header number “6,” below.

Lastly, it is noted that, although the Report’s header states that “Officials Did Not Competitively Goods and Services,” the Report concedes that, *at worst*, 82% of the value of the Village’s contracts reviewed by the OSC (\$367,972 / \$2,034,557) *were* properly competitively bid. When the value of the snow removal and street sweeping contracts are removed from that equation — which the Village was uncontrovertibly receiving at a deep discount — almost 94% of the value of the Village’s contracts reviewed by the OSC (\$129,364 / \$2,034,557), were properly competitively bid. Thus, it was misleading for the OSC to state that Village Officials Did Not Competitively Bid Goods and Services,” when the Report itself verifies that contracts were largely competitively bid.

See
Note 2
Page 14

Header 4: “Goods and Services Were Not Procured In Accordance With Village Policy.”

In support of header number “4,” the Report states that, for goods and services that did not meet the competitive bidding threshold, the Village did not follow its procurement policy. The Report states

that during the Audit Period, the Village Building Inspector, Parks Commissioner and a Highway Mechanic used the Village credit card to make 794 purchases totaling \$163,773. The Report states that for 44 of these purchases that exceeded \$500, there was not record of the “policy-required authorization” (Report, p. 6).

The Report overlooks, however, that the Village procurement policy in effect during the Audit Period did not require *written* authorization — just authorization. The Village maintains that each of these 44 purchases were authorized. In any event, each of the purchases involved was subsequently approved and ratified, in writing, through Board action.

See
Note 4
Page 14

It is also worth highlighting that the Report takes no issue with the vast majority of credit card purchases (750 of 794), and, as noted above, the Report does not take issue with the propriety of any of the purchases — merely that a small percent of the purchases did not have written pre-approval-which was not required. Lastly, also as noted above, the Report fails to account for the fact that a significant percentage of these purchases were for necessary Village goods and services during the COVID-19 pandemic, when, of course, the Village’s ability to uniformly document the small number of cited purchases in writing was hindered.

See
Notes 1 and 5
Page 14

Header 5: “The Village Did Not Seek Competition for Professional Services.”

In support of header number 5, the Report concedes that the Village solicited proposals for certain professional services during the Audit Period; however, the Report criticizes the Village for not uniformly doing so for all its professional services (Report, p. 6 – 7). The Village emphasizes that State law specifically exempts professional services from competitive bidding requirements, and, as such, the Report is placing a burden on the Village that does not exist at law.

See
Note 6
Page 15

The Village would also like to highlight the following:

- i. The Village sought competitive bids for certain professional services, including but not limited to, Village auditors and accountants.
- ii. The Village has written agreements with all professional service providers, and those agreements recite the key material terms, such as the term, the services to be performed, and the method/amount of compensation.
- iii. The Village has had several unique and highly specialized circumstances and litigations, which require specific areas of expertise, which rendering formulaic bidding/RFPs superfluous.
- iv. A significant percentage of the engineering and legal professional services fees are reimbursed back to the Village by applicants, property owners or adverse litigants.
- v. All professional service contracts and appointments were reviewed and approved by the Board of Trustees.

-
- vi. State Village Law grants the Mayor the authority to take action including the retaining counsel to protect Village interests in threatened or actual litigation, and in any event, as stated above, all professional service retainers were approved by the Board of Trustees.
 - vii. The approved retainers for professional services were consistently at rates significantly below standard market rates.

See
Note 7
Page 15

Header 6: “A Trustee Had a Prohibited Interest in Contracts.”

The Report’s fourth header takes issue with the Village’s patronage of a full service gas and vehicle repair service station owned by a Village Trustee (Report, pp. 7 –8).

First, within the geographic bounds of the Village, there exists only one full service gas and vehicle repair service station — the station at issue. No other such station exists. The station at issue was also unique in that: (a) it can accommodate the necessary Village servicing, purchasing and billing requirements; (b) it operates 24 hours a day, and can thus support the Village’s 24-hour public service vehicles; and (c) it can provide a billing and accounting system that allows each individual purchase to be billed to, and approved by, the Village Board of Trustees. Although there is no legal or policy limitation to gas and service vendors located within the Village, the vehicles being serviced or fueled were often in-service public safety vehicles that required immediate fuel, attention or repairs and there was no proximately located station that could provide the service within the necessary parameters.

See
Note 8
Page 15

Second, the Village began purchasing gas and vehicle repairs from this station *well* before the trustee in question joined the Board. The Village’s patronage of this station did not change as a result of the Trustee being elected.

Third, it was only during the pendency of this audit that the Village became aware that the station was owned by a (then recently elected) trustee and of the conflict. Once the Village became aware that the relationship was a conflict, the proper disclosure were made, and the Village stopped patronizing the station. Now, the Village patronizes two other gas stations within the Village, and, with hardship and additional expense, a vehicle service station nearly ten miles outside of the Village.

See
Note 9
Page 15

Last, and unrelated to this Report, the trustee at issue has since resigned. Nonetheless, the Village has not resumed its patronage of the station in question.

RESPONSE TO KEY RECOMMENDATIONS

Recommendation 1: Obtain the required number of competitive bids, quotes, proposals or the pre-approval when required by GML or the Village’s procurement policy, and preserve this documentation.

Response to Recommendation 1: The Village is in the process of re-bidding the snow removal and street sweeping contracts in question.

Recommendation 2: Revise the procurement policy to provide a detailed method for procuring professional services.

Response to Recommendation 2: In compliance with applicable law, the Village will continue to retain what it considers the best legal services available to represent the Village's interests at the most reasonable cost to the Village. The Village will continue its programs whereby professional services are reimbursed to the Village. Where possible and appropriate the Village will issue a request for proposals for such professional services.

Recommendation 3: Ensure that officials and employees are familiar with and follow the requirements of GML, relating to conflicts of interest.

Response to Recommendation 3: The Village will continue to meet the requirements for providing information and policies to officials and employees, to avoid and prevent conflicts of interest. The Village is in the process of scheduling training in ethics and best practices for its officers and employees and is otherwise providing information to its officers and employees.

Sincerely, 

Allan Dorman, Mayor
Village of Islandia

Appendix B: OSC's Comments on the Village's Response

Note 1

Our review of the Village's records demonstrated no difference in the Village's procurement procedures before or during the pandemic. While two non-COVID-related emergency purchases were inadvertently included in the total purchases not having pre-approval, these have been removed from the report. Therefore, the audit report contains no criticism of emergency or COVID procurements.

Note 2

The headers are intended to briefly summarize the statements of fact, supported by evidence that included Village documents, that follow. Considering Village officials' concerns with the report headers, we made some minor heading revisions.

Note 3

New York State courts have held that competitive bidding laws have two central purposes. The first is to guard against favoritism, improvidence, extravagance, fraud and corruption and the second to foster honest competition in order that a political subdivision obtain the best goods and services at the lowest possible price. The New York State Court of Appeals has further noted that "[t]hese separate goals are not incompatible. Favoritism or irregularity in the bidding process may ostensibly produce monetary savings. However, the use of such means to meet that singular end is still unsustainable because the complete public interest is ultimately promoted by fostering honest competition" (see, *Acme Bus Corp. v Bd. of Educ.*, 91 NY2d 51, 55 [1997]). Therefore, while not competitively bidding may have resulted in the Village saving money, it is not a defense for failing to comply with the competitive bidding law set forth in GML Article 5-A. By not soliciting competition, the Board also has less certainty that it is achieving the desired quality goods and services at the "lowest possible cost" from a responsible party.

Note 4

While the Village's procurement policy does not require written authorization, documenting the required pre-approvals are received before credit card purchases are made would help ensure these purchases comply with the Village's procurement policy.

Note 5

We examined credit card purchases of more than \$500 for compliance with the Village's procurement policy that required pre-approval. Credit card purchases under \$500 were not examined.

Note 6

Our report acknowledges that State law does not require the Village to solicit competition for professional services. However, we recommend soliciting competition for these services as a best practice. Using written RFPs or obtaining written or verbal quotes is an effective way to ensure that the Village receives the desired goods or services at the most favorable terms and conditions, avoids the appearance of partiality when awarding such contracts and could save both the Village and taxpayers money. Additional guidance is available in our Local Government Management Guide *Seeking Competition in Procurement* (available at <https://www.osc.state.ny.us/files/local-government/publications/pdf/seekingcompetition.pdf>) and our publication *Professional Service Procurement: Considerations for Local Officials* (available at <https://www.osc.state.ny.us/files/local-government/publications/pdf/professional-service-procurement.pdf>).

Note 7

The Board cannot be certain that this claim is accurate without soliciting competition for professional services and comparing available rates.

Note 8

There is no requirement that the Village purchase gasoline from the same vendor that repairs its vehicles and requiring that a facility operate 24-hours may be restrictive with respect to how the Village selects a vehicle repair facility. In addition, most, if not all, auto repair facilities can bill individual transactions. Removing these restrictions from the Village's requirements for a vehicle repair facility may result in dozens of auto repair facilities and gas stations located within a five-mile radius of Village Hall, including several within the Village itself, competing for the Village's business.

Note 9

The Trustee had a prohibited interest and the Trustee's subsequent ownership disclosure did not negate the prohibited interest.

Appendix C: 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 Village officials and employees and reviewed Board minutes and polices to gain an understanding of the Village's procurement processes.
- We evaluated the adequacy of the Village's procurement policy.
- We made inquiries of Village officials to identify their outside employment interests or business ownerships to determine whether any officials had a prohibited conflict of interest. We then reviewed vendor reports and Board approved abstracts to calculate the number of times and total dollar amounts a business owned by a Trustee was paid.
- We reviewed the 2019 and 2020 vendor history reports to identify vendors subject to competitive bidding and professional service providers. We identified seven purchase and public works vendors awarded 16 contracts over the two years (totaling \$2,034,557) subject to competitive bidding and 11 professional service providers (totaling \$536,481). We then reviewed available documentation and made inquiries to Village officials to determine whether the Village had solicited competitive bids for each identified purchase and public works contract or issued RFPs for each identified professional service provider.
- We used our professional judgment to select a sample of 21 vendors that appeared to involve purchases that would have required quotes in accordance with the policy (totaling \$167,365). We reviewed claims, invoices and supporting documentation to determine whether the appropriate number of quotes had been obtained to comply with the Village's policy. We also reviewed all 23 credit card statements containing 794 purchases (totaling \$163,773) to determine whether any purchases in excess of \$500 had been pre-approved by the Mayor or Deputy Mayor, as required by the Village's policy.

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 should be prepared and provided to our office within 90 days, pursuant to Section 35 of 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 the CAP available for public review in the Clerk's office.

Appendix D: 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

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

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