

Kenmore-Town of Tonawanda Union Free School District

Capital Project Change Orders

AUGUST 2022



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

Contents

- Report Highlights 1**

- Capital Project Change Orders 2**
 - How Should a School District Properly Manage Capital Project Change Orders? 2

 - The Board and District Officials Did Not Properly Manage Capital Project Change Orders 3

 - Original Bid Specifications Did Not Include Alternates for Design Changes 6

 - The Board and District Officials Did Not Review Credit Change Orders 7

 - How Should District Officials Procure Goods and Services Below the Statutory Bidding Requirements? 8

 - District Officials Did Not Comply With the District’s Procurement Policies and Regulations. 8

 - How Should the Board and District Officials Approve and Monitor Change Orders? 10

 - Change Orders Were Not Signed or Reviewed Prior to Performing the Work 10

 - What Do We Recommend? 11

- Appendix A – Response From District Officials 13**

- Appendix B – Audit Methodology and Standards 15**

- Appendix C – Resources and Services. 17**

Report Highlights

Kenmore-Town of Tonawanda Union Free School District

Audit Objective

Determine whether the Kenmore-Town of Tonawanda Union Free School District (District) Board of Education (Board) and District officials properly managed capital project (Project) change orders.

Key Findings

The Board and District officials did not properly manage Project change orders. The Board and District officials did not:

- Aggregate 31 change orders, totaling over \$860,000 that were for the same or similar types of material or service. As a result, we question whether the change orders may have been split to avoid having to seek competitive bids for the additional work.
- Properly approve 296 change orders totaling \$3.8 million.
- Comply with the District's procurement policies and regulations. Competitive pricing was not obtained for 199 change orders, totaling over \$3.5 million.

Because District officials did not always comply with New York State General Municipal Law (GML) and the District's procurement policies and regulations, or properly review and approve change orders, they cannot demonstrate that taxpayer dollars were expended in the most prudent and economical manner.

Key Recommendations

- Carefully evaluate change orders, to ensure they are appropriately aggregated to determine whether it is necessary to obtain Board approval or use competitive bidding or quotes.
- Include a list of other desired items as alternates in original project plans and bid specifications.
- Solicit competition using bids, request for proposals or quotes as required.

District officials generally agreed with our recommendations and plan to initiate corrective action.

Background

The District has nine schools with numerous athletic fields and eight playgrounds that are located in the Town of Tonawanda in Erie County.

The Board is responsible for managing and controlling the District's financial and educational affairs. The Superintendent of Schools (Superintendent) is responsible for the District's day-to-day management which includes oversight of the District's capital project change orders. The Assistant Superintendent for Business and Finance (Assistant Superintendent) reports to the Superintendent and is responsible for the District's financial operations. Effective July 6, 2020 and October 26, 2020, the Board appointed a new Superintendent and Assistant Superintendent, respectively.

The District's Treasurer and Chief Accountant are responsible for maintaining the District's capital project accounting and financial records.

Quick Facts

2019-20

District-wide Capital Project Budget	\$51.6 million
--------------------------------------	----------------

Change Orders That Increased Total Project Costs

Number Processed	297
------------------	-----

Amount	\$3.9 million
--------	---------------

Audit Period

September 9, 2014 – March 12, 2020

Capital Project Change Orders

In December 2014, the District's voters approved two propositions for the District-wide project which involved constructing, renovating and improving various buildings and sites. According to the propositions, the Project's total estimated cost was not to exceed \$51.6 million. The Project would be paid using approximately \$6 million from the District's capital improvement reserve fund, as well as long-term debt. A significant portion¹ of the capital improvement costs were eligible for State aid. The Board hired a construction management firm (Construction Manager) to oversee the Project.

The Project was completed in February 2019, at a total cost of approximately \$50 million. During the course of the Project, the District entered into a total of 364 change orders. This included 297 change orders, totaling almost \$3.9 million, which added additional costs to the Project and 67 change orders which were credits to the District, reducing costs by approximately \$800,000.

How Should a School District Properly Manage Capital Project Change Orders?

Capital improvement projects are generally long-term and require large sums of money to acquire, develop and improve various facilities. A school district's board of education (board) is ultimately responsible for the oversight and management of a school district's capital projects, including ensuring that projects are properly planned and managed, funding is authorized, and costs are within an approved budget.

With any construction undertaking, changes or amendments to the project will likely occur as certain variables may not be known at the start of a capital project. Therefore, it is expected that a board will enter into change orders during the course of the construction undertaking. In the case of a capital improvement project, change orders typically are a formal construction contract modification, agreed upon by school district officials and the contractor, to authorize an alteration of the capital improvement project's scope, cost or estimated completion time. However, prior to entering into a change order, a board and school district officials must ensure that the change order complies with New York State procurement laws, including a school district's procurement policies and regulations.

According to New York State General Municipal Law (GML) Section 103, a board is generally required to competitively bid purchase contracts exceeding \$20,000 and contracts for public work involving expenditures exceeding \$35,000. Therefore, if the original construction contract was subject to competitive

¹ The District's 2019-20 building aid ratio is 0.748. The formula for building aid is aidable expenditures multiplied by the building aid ratio.

bidding, an agreement by school district officials and a contractor to modify the original contract may not occur, without further competitive bidding, if the agreed modification materially varies from the original contract specifications. Otherwise, allowing for the modification places unsuccessful bidders and potential bidders at a material disadvantage because such bidders or potential bidders were not afforded an opportunity to compete on the amended agreement.

When determining whether the dollar threshold will be exceeded (i.e., \$20,000 for purchase contracts and \$35,000 for public work contracts), a board must consider the aggregate amount reasonably expected to be spent on all purchases that are similar or essentially interchangeable within a 12-month period commencing on the date of purchase, whether from a single vendor or multiple vendors. If, in the aggregate, the purchase contract or contract for public work exceeds the dollar threshold, competitive bidding is required under GML. For example, change orders which are submitted by the same contractor, for the same or similar type of good or public work, that occur within a few days of one another should be closely reviewed by school district officials to assess whether the change orders should be aggregated and potentially subject to competitive bidding. Purchase contracts or public work contracts may not be artificially divided by making a series of purchases for lesser amounts to avoid the procurement requirements in GML Section 103.

A school district should also comply with the New York State Education Department (SED) guidance with respect to building aid and change orders.² According to SED's website, change orders relating to capital construction projects are subject to additional reporting requirements and SED approval. For example, change orders are to be submitted to SED with a fully executed change order certification form. The school district must also be able to justify that issuing a change order, instead of initiating a new public bid for the proposed work, is in the best interest of the school district. In addition, these guidelines also require that a change order may not expand the scope of the work already under contract unless a "shopping list" of desirable items are included in the original plans and specifications as "add" alternates.

The Board and District Officials Did Not Properly Manage Capital Project Change Orders

During the course of the Project, District officials authorized 297 change orders, resulting in approximately \$3.9 million in additional costs to the District.³ Only one of the 297 change orders exceeded the statutory dollar threshold necessary to

² See, e.g., Facilities Planning - Building Aid Guidelines at https://www.p12.nysed.gov/facplan/publicat/building_aid_guidelines_072804.html; see also, https://www.p12.nysed.gov/facplan/articles/D01_change_orders.html

³ We also identified 67 change orders that credited the District for a total cost of approximately \$800,000.

competitively bid (\$20,000 for purchase contracts and \$35,000 for public work contracts).

However, we assessed whether any of the 297 change orders were similar or essentially interchangeable, and therefore, potentially subject to aggregation and should have been competitively bid. Of the 297 change orders, we identified 123 change orders (totaling approximately \$2.5 million) in which two or more of the change orders were initiated on the same date, provided by the same contractor, and involved work performed at the same school building. From a sample of 62 of these change orders we identified 31 change orders, totaling over \$860,000, in which two or more were for the same or similar types of material or service. Therefore, although each of the 31 change orders was below the statutory dollar threshold (i.e., \$35,000), GML may have required the District to aggregate the change orders that were for the same or similar type of materials or service. When aggregated, it appears the change orders also materially varied from the original public work contract competitively bid by the District. Under such circumstances, the District would have been required to seek competitive bids for the additional service work. Instead, we found that the change orders were based on a corresponding estimate provided by the contractor who was awarded the initial public work contract and that no competition was sought by the District before awarding the additional work to the contractor.

The following are examples from four dates:

- On September 22, 2016, estimates for two change orders were submitted by the same contractor, one for \$25,521 to install raised curbing on an athletic field track's east side and another for \$21,855 to install curbing on the same track's west side. Given that the change orders were for a service similar in nature, along with being completed on the same athletic field, it appears that the service should have been aggregated for purposes of competitive bidding. If aggregated, both change orders would have totaled over \$47,000. Two additional estimates for change orders were initiated on the same date for additional concrete work at this same athletic field. One change order totaled \$30,136 for the removal of deteriorated pavement, excavation and installation of a new concrete pad. The second change order totaled \$24,320 for adding additional pavement and removing unsuitable soil. In total, the four change orders totaled over \$100,000.
- On July 10, 2017, two estimates totaling over \$56,000, were submitted for nearly identical masonry and window restoration work at an elementary school. One change order was for masonry and window restoration work on the south side, the other for masonry and window restoration work on the west side of the same building. Given the timing and type of work and that both change orders were initiated on the same day, would be performed by the same contractor and for the same type of work, it would appear that the

two change orders should have been aggregated for purposes of competitive bidding.

- On May 5, 2018, three estimates totaling over \$86,000 were submitted by the same contractor for additional improvements at an elementary school gymnasium; \$29,487 for the material for ceiling panels for the “boys” side of the gymnasium, \$24,322 for the material for ceiling panels for the “girls” side of the gymnasium, and \$32,269 for the labor to install these ceiling panels at both sides of the gymnasium. However, given that all three estimates resulting in change orders were issued by the same contractor, on the same date and for the same type of work and materials, at the same location (i.e., elementary school gymnasium), it appears that the purchase and installation of the ceiling panels should have been aggregated for purposes of competitive bidding.

Further, on this same day, the same contractor provided three additional estimates, resulting in change orders totaling \$87,113, to install ceiling tile (material and labor) at a middle school boys’ and girls’ gymnasium which is one large gymnasium with a divider. Once again, it would appear that the three change orders should have been aggregated for purposes of competitive bidding.

- On September 27, 2018, estimates for five change orders were submitted by a contractor, totaling over \$137,000 for various materials and labor to replace lighting at an elementary school auditorium. Two of the five estimates were for different quantities of lighting fixtures and trim rings (i.e., quote for \$29,795 and quote for \$32,957). Under such circumstances, it appears the District should have aggregated the two estimates, which when totaled, exceeded the dollar threshold necessary for competitive bidding. The change orders indicate that these changes were made at the District’s request near the completion of the capital project.

Due to the high number of instances in which it appears change orders should have been aggregated, we question whether the change orders may have been split to avoid having to seek competitive bids for the additional work. In addition, we noted of the 297 change orders totaling approximately \$3.9 million only one change order exceeded the \$35,000 threshold. The risk of artificially splitting change orders would also enable the District to avoid certain additional SED reporting requirements. Further, upon subsequent SED audit of the change orders, there is a risk the additional costs on the change orders may be disallowed and ineligible for State building aid. For example, according to SED guidelines, change orders that exceed competitive bidding thresholds may be disapproved.

When we inquired with the District regarding these change order concerns, the former Assistant Superintendent told us that the District was relying on previously

...[W]e question whether the change orders may have been split to avoid having to seek competitive bids for the additional work.

published guidance from the New York State Office of the State Comptroller regarding incidental capital project change orders that may be issued without the need for competitive bidding even if the increased cost exceeds the bidding limit. However, there was nothing adopted by the Board, or indicated in the District's procurement policies or regulations to incorporate this guidance. Furthermore, we do not consider 297 change orders totaling approximately \$3.9 million to be incidental.

There are circumstances when contracts previously awarded pursuant to competitive bidding may be amended without additional competition when the amendment is merely incidental. However, we advise local officials that parties may not agree, without further competitive bidding, to modify a contract awarded pursuant to competitive bidding in a manner that materially varies from the original specifications. To do so, would place the unsuccessful bidders and potential bidders at a material disadvantage because each were not afforded an opportunity to compete on the amended agreement. In the examples cited above, we believe the change orders provided by the contractors to the District, when aggregated, qualified as material changes to the original contracts in excess of the statutory dollar thresholds set forth in GML Section 103.

Original Bid Specifications Did Not Include Alternates for Design Changes

On August 9, 2016, the Board approved a change order in the amount of \$50,600 for additional field graphics to Adams Field, which is the District's athletic field located at Kenmore East High School. While the Board approved the change order and reflected this approval in the Board minutes, the original bid specifications did not include alternates for design changes to the athletic field.

As a result, the scope of the work was materially altered without the benefit of appropriate competition. SED allows school districts to prepare a shopping list of desired items in the original plans and specifications as added alternatives, in the event appropriations remain at the end of a project. However, alternative items should be included in the original bids in order to afford all potential bidders an opportunity to compete fairly.

We obtained the change order and supporting documentation and found that the change order was to:

1. Change the artificial turf graphics and incorporate the District's logo,
2. Color the end zones blue instead of green,
3. Change lettering of end zones from "Ken-Ton" to "Adams Field", and
4. Add sideline lettering.

Although the change order exceeded the statutory dollar threshold for public work contracts (i.e., \$35,000), the District did not seek competitive bids before awarding the change order.

According to an email from the District's Construction Manager, dated October 29, 2019, the District did not seek competition for the change order because the turf surface is manufactured as a single integral surface. Therefore, the additional field graphics requested by the District could not be applied after the installation of the turf surface.

Instead, the award of the original turf field had been competitively bid as part of the overall capital project. The District's site contractor was awarded that portion of the contract. The manufacturer of the turf field, who was awarded the change order, had contracted with the District's site contractor to install the turf field. Nonetheless, by not seeking competition for the change order, District officials have less assurance that the District obtained the lowest possible price for the field graphic alterations. To avoid this issue in the future, the District could include design changes, as an alternative option, in the original capital project bid specifications.

The Board and District Officials Did Not Review Credit Change Orders

We reviewed two credit change orders totaling approximately \$255,000 which reduced the cost of existing contracts. Both change order credits were submitted by the same contractor and lacked supporting documentation of how the credits were calculated. At our request, the District made an inquiry with the Construction Manager who provided supporting documentation detailing how the credits were calculated. Nonetheless, in the absence of supporting documentation to show how the credits were calculated, it is unclear as to how the former Superintendent was able to certify the authenticity and appropriateness of the change order credits. In addition, we found no evidence that the Board was made aware of these credit change orders.

Although credit change orders reduce the cost of the project, District officials should carefully review the calculations used to determine the amount of the reduction to ensure the amount is correct. Without someone monitoring or verifying that the credits are reasonable, officials cannot be sure that the contract has been reduced by an appropriate amount and the District could pay more than necessary.

How Should District Officials Procure Goods and Services Below the Statutory Bidding Requirements?

In addition to following the competitive bidding requirements set forth in GML Section 103, New York State GML Section 104-b requires a school district to establish and follow its own procurement policies and procedures. The District's procurement policy stipulates that goods and services, which are not required by law to be competitively bid, must be procured in a manner to assure the prudent and economical use of public money, in the taxpayers' best interest, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and abuse. To help accomplish this goal, the District developed administrative regulations to establish procedures for the procurement of goods and services. According to the District's procurement regulations, three written quotes are required for public works projects when the cost of the public work is between \$5,000 and \$35,000.

Officials told us that they did not obtain quotes because usually there was insufficient time to obtain quotes from other contractors.

District Officials Did Not Comply With the District's Procurement Policies and Regulations

During the Project, there were 199 change orders, totaling over \$3.5 million, that were between \$5,000 and \$35,000. According to the District's procurement policies and regulations, purchases of supplies and equipment between \$5,000 and \$20,000 generally require the District to obtain three formal written quotations. Three formal quotes are also generally required for public work contracts between \$5,000 and \$35,000. However, officials did not obtain written competitive quotes from different contractors for any of these change orders.

Officials told us that they did not obtain quotes because usually there was insufficient time to obtain quotes from other contractors. However, we found no indication in the District's procurement policies and regulations that permitted the District to waive the requirement to receive three formal written quotes solely for scenarios when there would be insufficient time to obtain such quotes.

We reviewed 15 of the 199 change orders,⁴ which included the quotes provided by the contractors already under contract with the District, to assess the timing from when the quote was given to the District by the contractors to the time the District approved the change order. We found that, on average, 31 days elapsed between the date the contractor provided the quote to the District and the date the Construction Manager made a recommendation to the Architect and the former Assistant Superintendent to accept the change orders. Generally, this would have been sufficient time to obtain the two additional written quotes from other

⁴ See Appendix B for our sample selection methodology

competitors, as required by the District's procurement policies and regulations. For example:

- A contractor, who had already been awarded a contract on the Project, submitted two quotes, both dated June 5, 2017, for additional electrical work. Based on the quotes, the additional electrical work would total over \$65,000. The Construction Manager made a recommendation in a memo to the Architect with a copy to the former Assistant Superintendent to accept the two quotes on August 22, 2017, or 78 days after the quotes had been submitted to the District.
- Another contractor who had already been awarded a contract on the Project, submitted three quotes, all dated August 2, 2017, for additional heating, ventilation and air conditioning work. The quotes totaled nearly \$100,000. The Construction Manager made a recommendation to the Architect and former Assistant Superintendent to accept all three of these quotes on October 2, 2017, or 61 days after the quotes had been submitted to the District.

Officials also told us that they did not seek the required number of quotes set forth in the District's procurement policies because using the same contractors, who were awarded the original Project work, would help ensure the Project would be finished in a timely manner, avoiding additional contractual costs due to delays. While this may be prudent, by not complying with the District's procurement policy and regulations, officials cannot demonstrate that the District received the best possible price had the work been awarded through a competitive process.

We also found that District officials did not comply with the procurement policy and did not competitively bid out unfinished work after the District had to terminate a contract. The District contracted with and paid an additional \$430,000 to other contractors already working at the District to complete the unfinished work.

For example, one contractor was paid \$68,000 to replace tactile warning surfaces and work commenced on June 22, 2018 or 72 days after the letter of termination was issued. In an email, the Construction Manager indicated that this work was not competitively bid, despite being required by the procurement policy, because of insufficient time to complete by the beginning of the school year in September. However, with more than 10 weeks of notice between the time of the termination letter and the date the work commenced, there would have been sufficient time to publicly advertise for competitive bids. Because the change order work was negotiated with existing contractors, it may have been more costly than work awarded through a competitive process.

The District's procurement regulations also required the former Assistant Superintendent to conduct a periodic review of the procurement policy and for an evaluation of the internal control structure established to ensure compliance with

the District's procurement policy. However, we found no indication that a periodic review or evaluation occurred.

Because the former Assistant Superintendent did not monitor policy compliance, officials did not comply with the District's procurement policy and regulations and the District may have paid more than it would have had quotes been obtained through a competitive process.

How Should the Board and District Officials Approve and Monitor Change Orders?

To operate in a more transparent manner, the Board should approve change orders totaling \$35,000 or more in its Board meeting minutes and receive and review detailed reports of all capital project change orders. Upon the recommendation of the Architect, former Superintendent and Construction Manager, the Board approved a resolution, on December 8, 2015, that authorized the Superintendent to sign change orders that do not exceed \$35,000.

Change Orders Were Not Signed or Reviewed Prior to Performing the Work

The former Superintendent did not sign certain change orders prior to additional work being performed and the change orders were not presented to the Board for review and documented in the Board minutes. Therefore, the public would not have been made aware of the change orders.

We reviewed 15 change orders, totaling approximately \$490,000 (with totals ranging from \$30,136 to \$34,843), and found that 13 change orders, totaling approximately \$423,000, had the work already completed prior to the change order receiving sign-off from the former Superintendent. On average, the former Superintendent signed these 13 change order certifications 31 days after the work was completed; one of which was signed about four months after the work was completed.

For example, a contractor submitted a change order, totaling over \$30,000, for athletic field renovations which were completed by October 1, 2016. The Construction Manager and Architect later (October 20, 2016 and November 16, 2016, respectively) certified that the work had been completed. However, the former Superintendent did not sign the change order until January 26, 2017, or 117 days after the work was completed. Furthermore, work for change orders was completed, on average, 48 days prior to SED receiving the change order from the District. In addition, the District's policies did not address requirements for scenarios in which the Superintendent was unavailable to sign change orders when work needed to be performed immediately.

...13 change orders, totaling approximately \$423,000, had the work already completed prior to the change order receiving sign-off from the former Superintendent.

In addition, the former Superintendent did not provide the Board with an itemized report of the number and extent of the change orders he signed. Of the \$3.9 million in change orders that increased the Project's cost, the Board only reviewed and approved one change order, totaling \$50,600. The remaining 296 change orders were not presented to the Board for its review.

While reviewing the Board minutes, we noted that the District frequently includes documents and reports on its website. However, we reviewed minutes from July 2017 through December 2017, when over 45 percent (162 of 364) of the change orders occurred, and found nothing to indicate that the former Superintendent provided detailed information on the change orders to the Board or to the public. It was only during the December 2018 Board meeting that the final Project cost report was presented to the Board and was then made available to the public. This report, prepared by the Construction Manager, showed net change orders of over \$3 million. However, no additional detail or itemization was presented.

A change order represents the mutual consensus between the District and the Contractor on a change to the work, the price, the schedule or some other term of the contract. Significant levels of poorly controlled change order activity greatly increase the risk for both cost overruns and schedule delays. Therefore, it is essential the Superintendent and Board maintain control over change order activity and monitor project progress. Further, because the Board did not approve change orders, the changes were not made in a transparent manner.

What Do We Recommend?

The Board should:

1. Approve all change orders that increase or decrease costs, \$35,000 and over.
2. Include a list of other desired items as alternates in original project plans and bid specifications.
3. Periodically, obtain and review itemized reports of change orders and ensure the District Clerk includes the reports in the Board minutes.

The Board and District officials should:

4. Solicit competition for change orders in compliance with statute and the District's procurement policy and regulations.
5. Carefully evaluate change orders to ensure they are appropriately aggregated to determine whether obtaining Board approval, public bidding or competitive quotes is necessary and in compliance with statute and the District's procurement policy and regulations.

-
6. Review the calculations used to determine the amount of credit change orders to ensure the amount is correct and contracts are reduced by an appropriate amount.
 7. Approve change orders prior to the contractor starting the work unless indicated otherwise by Board policy.

The Superintendent should:

8. Periodically, provide itemized written updates or reports to the Board regarding the change orders that were approved.

Appendix A: Response From District Officials



Kenmore-Town of Tonawanda Union Free School District

Office of the Superintendent

Sabatino Cimato

Superintendent of Schools
1500 Colvin Blvd.
Buffalo, New York 14223
(716) 874-8400 ext. 20342
scimato@ktufsd.org

July 15, 2022

Ms. Melissa A. Myers
Chief Examiner
295 Main Street, Suite 1032
Buffalo, NY 14203-2510

Dear Ms. Myers,

Kenmore - Town of Tonawanda Union Free School District acknowledges receipt of your draft Report of Examination, 2022M-41, concerning the Capital Project Change Orders of the District for the period covering September 9, 2014 - March 12, 2020.

Please note that the District submits this letter as both our response to the draft audit and our corrective action plan. The Corrective Action Plan was developed as a collaborative effort by the Superintendent, District Staff and the Board of Education.

Response to Key Findings and Recommendations

Audit Recommendation 1: Carefully evaluate change orders, to ensure they are appropriately aggregated to determine whether it is necessary to obtain Board approval or use competitive bidding or quotes.

Implementation Plan of Action: The District, with the Board of Education Policy Committee, will review the purchasing policy related to capital projects and make any necessary revisions. District Officials will evaluate the change orders to ensure they are competitively bid or quoted following Board of Education Purchasing Policy. In addition, the Board of Education will approve all change orders \$35,000 and over and periodically review itemized reports of change orders.

Implementation Date: The District is currently following the procedures above for the current Capital Improvement Project and in the process of making revisions to enhance current policies to include these revisions. This will be completed by June 30, 2023.

Person Responsible for the Implementation: The Superintendent, the Assistant Superintendent for Finance, Director of Facilities and the Board of Education.

Audit Recommendation 2: Include a list of other desired items as alternates in original project plans and bid specifications.

The Ken-Ton school community will provide our students with the supports, tools and diverse opportunities needed to meet the challenges of an ever changing world.

Implementation Plan of Action: The District will evaluate other desired items as alternates and add them to the bid specifications in the original project plans as necessary and as the budget allows.

Implementation Date: This process has been implemented as of June 30, 2022.

Person Responsible for the Implementation: Assistant Superintendent for Finance

Audit Recommendation 3: Solicit competition using bids, requests for proposals or quotes as required.

Implementation Plan of Action: The District is currently following the procedures above for the current Capital Improvement Project and in the process of making revisions to enhance current policies to include these revisions. This will be completed by June 30, 2023.

Implementation Date: The District is currently following the procedures above for the current Capital Improvement Project and in the process of making revisions to enhance current policies to include these revisions. This will be completed by June 30, 2023.

Person Responsible for the Implementation: The Superintendent, the Assistant Superintendent for Finance, Director of Facilities and the Board of Education.

Sabatino Cimato, Superintendent

Matt Chimera, Board President

We educate, prepare and inspire all students to achieve their highest potential.

Appendix B: Audit Methodology and Standards

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

- We interviewed District officials (former Superintendent, former Assistant Superintendent, Treasurer, Chief Accountant, District Clerk and claims auditor) and reviewed Board meeting minutes, correspondence, relevant laws, District policies and regulations, monthly reports and SED guidance to gain an understanding of the District's management of capital project change orders.
- We reviewed the District's procurement policies, procedures and written procurement regulations and related Board resolutions to assess whether they addressed capital project change orders, were adequate and whether the District complied with them.
- From the population of 297 change orders that increased Project costs, totaling approximately \$3.9 million, and 67 credit change orders totaling approximately \$800,000, we selected the following samples:
 - We reviewed a risk-based sample of 62 change orders that increased costs, totaling over \$1.5 million, to determine whether there was documentation to support the change order amount. To select this sample, we eliminated all change orders that: 1) were over \$35,000, 2) related to a contractor with a settlement agreement, 3) did not have the same initiation date by the same contractor for the same school building and 4) in aggregate totaled less than \$35,000 for the same contractor, initiation date and school building. We also reviewed the change orders to determine if they could have been aggregated.
 - Using a risk-based sample, we reviewed 15 change orders, totaling approximately \$490,000, to determine whether change orders were properly approved and submitted to SED in a timely manner and complied with District policies and procedures and SED guidance. To select this sample, we eliminated all change orders that: 1) were over \$35,000, 2) related to a contractor with a settlement agreement, 3) did not have the same initiation date by the same contractor for the same school building and 4) in aggregate totaled less than \$35,000 for the same contractor, initiation date and school building. We further refined this sample to eliminate all change orders that were individually less than \$30,000.
- We examined the payment of claims related to the change orders in each of our samples to assess whether the payments were in accordance with the change order, properly approved and supported by sufficient documentation.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. The CAP should be posted on the District's website for public review.

Appendix C: Resources and Services

Regional Office Directory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contact

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

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

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

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

BUFFALO REGIONAL OFFICE – Melissa A. Myers, Chief Examiner

295 Main Street, Suite 1032 • Buffalo, New York 14203-2510

Tel (716) 847-3647 • Fax (716) 847-3643 • Email: Muni-Bufferalo@osc.ny.gov

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



Like us on Facebook at facebook.com/nyscomptroller

Follow us on Twitter [@nyscomptroller](https://twitter.com/nyscomptroller)