

# Mount Vernon City School District

## Procurement of Natural Gas

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APRIL 2022

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

# Contents

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- Report Highlights . . . . . 1**
  
- Procurement of Natural Gas. . . . . 2**
  - What Is a Prudent Procurement of Natural Gas? . . . . . 2
  - Officials Could Not Demonstrate that Natural Gas Was Procured  
in Accordance with GML or in the Taxpayers’ Best Interest . . . . . 3
  - Officials Did Not Monitor the Rates Billed by the ESCO . . . . . 4
  - Officials Were Unable to Provide a Written Agreement with the ESCO 4
  - What Do We Recommend? . . . . . 5
  
- Appendix A – Comparison of Rates Charged . . . . . 6**
  
- Appendix B – Response From District Officials . . . . . 8**
  
- Appendix C – OSC Comments on the District’s Response . . . . . 11**
  
- Appendix D – Audit Methodology and Standards . . . . . 12**
  
- Appendix E – Resources and Services . . . . . 13**

# Report Highlights

## Mount Vernon City School District

### Audit Objective

Determine whether the Mount Vernon City School District (District) Board and District officials procured natural gas at the most favorable terms and in the best interest of District taxpayers.

### Key Findings

The Board and District officials did not procure natural gas in accordance with New York State General Municipal Law (GML), at the most favorable terms or in the best interest of District taxpayers. The Board and District officials:

- Did not monitor the natural gas rates charged by the energy supply company (ESCO) or enter into a written contract with the ESCO for the procurement of natural gas.
- For nearly a decade, paid natural gas rates that were on average two times the benchmark rates.
- May have been able to reduce its natural gas costs by 40 percent or approximately \$911,000 during our audit period had competition been sought for the supply of natural gas.

### Key Recommendations

- Procure natural gas in accordance with GML.
- Fully evaluate and compare benchmark rates before entering into a contract for the supply of natural gas.

Except as specified in Appendix B, District officials generally agreed with our recommendations and indicated they have taken corrective action. Appendix C includes our comments on the District's response.

### Background

The District serves the City of Mount Vernon in Westchester County.

The nine-member Board of Education (Board) is responsible for the general management and control of financial and educational affairs, which includes approving contracts and providing adequate oversight to ensure goods and services are procured in the most prudent and economical way.

The Superintendent of Schools is the chief executive officer and, along with other administrative staff, is responsible for day-to-day management and budget development and administration under the Board's direction.

#### 2017-18 Quick Facts

Appropriations	\$246.2 million
Natural Gas Costs	\$1.2 million

### Audit Period

July 1, 2011 – June 30, 2018

# Procurement of Natural Gas

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In the 1990s, the natural gas industry in New York State was opened to competition. The reform provided an opportunity for customers to choose who provides their energy supply – either their local utility company (LUC) or a third-party supplier known as an ESCO.

An ESCO is an entity eligible to sell natural gas using the transmission or distribution system of a LUC. The LUC may also continue to provide natural gas. Utility rates are regulated by the NYS Public Service Commission and are generally based on service classifications, such as high usage and whether the customer is commercial or industrial.

## What Is a Prudent Procurement of Natural Gas?

GML, Section 103 generally requires that purchase contracts in excess of \$20,000 be awarded to the lowest responsible bidder or on the basis of best value (e.g. competitive offer). In determining whether the dollar threshold will be exceeded, a school district must consider the aggregate amount reasonably expected to be spent on all purchases of the same commodities (commodities that are similar or essentially interchangeable should be considered the same), services or technology to be made within the 12-month period beginning on the date of the purchase, whether from a single vendor or multiple vendors.

Moreover, the school district may not artificially divide a contract, by making a series of purchases for lesser amounts, to avoid the procurement requirements set forth in GML. For purposes of competitive bidding, the procurement of natural gas qualifies as a purchase contract. Therefore, when procuring natural gas in excess of \$20,000, a school district is required to seek competition for the procurement.

However, there are instances when an exception to the competitive bidding requirements may apply. For example, GML allows school districts to make certain procurements without competitive bidding through contracts of the NYS Office of General Services (State contract), a county, or other local government that has been extended to the school district.<sup>1</sup>

While use of a State, county or other local government contract extended to a school district has the potential to produce cost savings, it does not guarantee a lower price. Therefore, in addition to ensuring natural gas is procured in accordance with GML, district officials should fully evaluate the school district's procurement options and compare benchmark rates before entering into a contract for the procurement of natural gas. State contracts, along with LUC rates, can provide benchmarks to assist in assessing the reasonableness of the contract rates and terms being considered.

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<sup>1</sup> Refer to GML, Sections 103(3), 103(16) and 104.

Once a vendor is selected by a school district, it is important to have a written contract between the parties clearly defining the terms and conditions mutually agreed upon. For example, the contract should include the price, the contract's duration, the process for terminating the contract without penalty (should termination become a necessary option) and procedures for changing suppliers, if needed. District officials should also monitor the contract, including rates, throughout the contract's duration to ensure it is in the best interest of taxpayers.

### Officials Could Not Demonstrate that Natural Gas Was Procured in Accordance with GML or in the Taxpayers' Best Interest

District officials could not provide written documentation demonstrating that, before entering into an arrangement to procure natural gas, they sought competition in accordance with GML or they evaluated or compared benchmark rates. As a result, the District could not demonstrate that natural gas was purchased in the most economical way.

The District's arrangement consisted of having an ESCO supply natural gas to 14 of the District's 18 buildings. Three of the 18 buildings received its supply of natural gas from the LUC, and one building received its supply of natural gas from the ESCO and LUC via two separate meters. The LUC continued to deliver natural gas to all the buildings, including those supplied by the ESCO on the ESCO's behalf.

We found that the ESCO charged rates that were, on average, two times the rates charged by the LUC for the supply of natural gas. Even at the building where the ESCO and LUC both supplied natural gas, the ESCO charged higher rates.

We obtained natural gas bills for the audit period and analyzed the rates charged by both companies for each building. We found that during the audit period, the ESCO charged the District approximately \$911,000 more than other benchmark rates at that time (Figure 1).<sup>2</sup>

... [T]he ESCO charged rates that were, on average, two times the rates charged by the LUC for the supply of natural gas.

**Figure 1: Cost Savings Analysis Based on Use**

Year	Amount ESCO Charged	Cost Based on Benchmark Rates <sup>a</sup>	Potential Savings
2017-18	\$735,857	\$426,542	\$309,315
2016-17	413,570	202,106	211,464
2015-16	177,349	77,506	99,843
2014-15	286,545	215,044	71,501
2013-14	276,225	187,441	88,784
2012-13	151,038	98,753	52,285
2011-12	199,718	121,908	77,810
<b>Totals</b>	<b>\$2,240,302</b>	<b>\$1,329,300</b>	<b>\$911,002</b>

a) For 2015 -16 and 2016-17 we compared the ESCO rate with the OGS contract rate. For all other years, we compared the ESCO rate to the LUC rate. Refer to Appendix D for information on our methodology.

<sup>2</sup> District officials did not provide us with billing records from July 1, 2005 through June 30, 2011 to enable us to determine what the District paid the ESCO during that period.

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## Officials Did Not Monitor the Rates Billed by the ESCO

District officials did not monitor the cost of natural gas to ensure that the rates charged by the ESCO were reasonable. As a result, the District purchased the supply of natural gas from the ESCO at rates varying from 15 to 641 percent above rates charged by the LUC or the State contract during this same period.<sup>3</sup>

Had District officials monitored the natural gas bills and taken action to acquire natural gas at a lower rate, the District had the potential to save at least \$911,000, either by, purchasing the supply of natural gas through a State contract or competitively bidding for the supply of natural gas.

In April 2015, officials advertised for competitive bids for the supply of natural gas and three vendors submitted bids. However, the Board did not award a contract for the supply of natural gas and rejected each of these bids. District officials rejected the bids because they were advised by their energy consultant that the District should use a State contract vendor for the supply of natural gas at a lower cost.

In June 2015, the Board approved a resolution to enter into a contract with the State contract vendor for the supply of natural gas. However, the resolution was later determined by the District officials to be faulty and put on hold, and no subsequent action was taken to approve a new resolution at the time. As a result, the ESCO continued to supply the District with natural gas for three more years, until our audit field work.

After we raised concerns with the rates charged for the supply of natural gas several times with District officials, the District and the ESCO signed a confidential settlement and general release agreement on April 13, 2018 for a one-time payment of \$156,965 whereby the ESCO and its associates and affiliates were released from any kind of liability. As a result of this agreement, the District paid the ESCO nearly \$911,000 more than necessary over the past seven years and settled for \$754,000 less than it was charged.

## Officials Were Unable to Provide a Written Agreement with the ESCO

Records provided by officials showed that the relationship between the ESCO and the District was established in October 2005 but did not show how the ESCO was selected and whether there was a written contract. However District officials were unable to provide a service contract or agreement between the District and the ESCO for the supply of natural gas.

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<sup>3</sup> Refer to Appendix A for a comparison of rates charged by ESCO to the benchmarks (LUC or State contract rates) for each month of the audit period.

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Previous and current administrations and Boards allowed the ESCO to supply the District for nearly a decade without any apparent knowledge of what was officially agreed upon.

Because District officials do not have an agreement with the ESCO, we could not assess whether the payments made by the District were consistent with the agreed upon rates for the supply of natural gas.

The current Assistant Superintendent for Business told us that he asked the ESCO to stop supplying natural gas to the District in August 2017. However, the ESCO continued to supply natural gas to the District through July 2018. Officials could not explain why the ESCO continued to supply natural gas when they were asked to stop doing so.

Had the District had a written contract or agreement with clearly stated terms and conditions, including provisions for contract renewal and procedures for changing to other suppliers, if needed, it may have been able to stop the ESCO from supplying natural gas in a timelier manner without significant additional effort and saved significant taxpayer dollars.

District officials' failure to monitor the rates charged by the ESCO for natural gas supplied without a written contract and the officials' willingness to pay, on average, two times the benchmark rates for more than a decade was not in the best interest of taxpayers and increased the risk for fraud, waste or abuse.

### **What Do We Recommend?**

The Board and District officials should:

1. Procure natural gas in accordance with GML.
2. Fully evaluate and compare benchmark rates before entering into a contract for the supply of natural gas and analyze and review the various procurement options before entering into contracts to ensure the lowest possible prices for natural gas or other commodities are obtained.
3. Ensure the District has a written contract with clearly stated terms and conditions before making payments to a vendor.

District officials should:

4. Monitor utility rates charged to ensure that the District is not overcharged.

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# Appendix A: Comparison of Rates Charged

**Figure 2: Rates Comparisons from 2011-12 Through 2017-18**

Month	2011-12				2012-13			
	ESCO	LUC	Rate Difference	Percentage Difference	ESCO	LUC	Rate Difference	Percentage Difference
July <sup>a</sup>		\$0.480			\$0.899	\$0.305	\$0.594	195%
August	\$1.013	\$0.455	\$0.558	123%	\$0.868	\$0.344	\$0.525	153%
September	\$0.966	\$0.526	\$0.440	84%	\$0.843	\$0.318	\$0.525	165%
October	\$0.894	\$0.486	\$0.408	84%	\$0.817	\$0.339	\$0.478	141%
November	\$0.804	\$0.497	\$0.307	62%	\$0.793	\$0.443	\$0.350	79%
December	\$0.780	\$0.497	\$0.283	57%	\$0.762	\$0.393	\$0.369	94%
January	\$0.753	\$0.498	\$0.255	51%	\$0.715	\$0.436	\$0.279	64%
February	\$0.737	\$0.453	\$0.284	63%	\$0.696	\$0.515	\$0.181	35%
March	\$0.736	\$0.469	\$0.267	57%	\$0.723	\$0.563	\$0.160	28%
April	\$0.668	\$0.333	\$0.335	101%	\$0.810	\$0.584	\$0.226	39%
May	\$0.697	\$0.277	\$0.420	152%	\$0.938	\$0.598	\$0.340	57%
June	\$0.859	\$0.315	\$0.544	173%	\$1.005	\$0.532	\$0.473	89%
Month	2013-14				2014-15			
	ESCO	LUC	Rate Difference	Percentage Difference	ESCO	LUC	Rate Difference	Percentage Difference
July	\$1.017	\$0.533	\$0.484	91%	\$1.058	\$0.533	\$0.525	99%
August	\$0.945	\$0.480	\$0.465	97%	\$1.025	\$0.480	\$0.545	113%
September	\$0.918	\$0.466	\$0.452	97%	\$0.954	\$0.466	\$0.488	105%
October	\$0.783	\$0.526	\$0.257	49%	\$0.804	\$0.526	\$0.279	53%
November	\$0.756	\$0.508	\$0.248	49%	\$0.725	\$0.508	\$0.217	43%
December	\$0.758	\$0.526	\$0.232	44%	\$0.775	\$0.526	\$0.249	47%
January	\$0.785	\$0.554	\$0.231	42%	\$0.750	\$0.554	\$0.196	35%
February	\$0.882	\$0.533	\$0.349	66%	\$0.708	\$0.533	\$0.175	33%
March	\$0.906	\$0.723	\$0.183	25%	\$0.718	\$0.723	\$0.005	1%
April	\$0.929	\$0.598	\$0.331	56%	\$0.687	\$0.598	\$0.089	15%
May	\$0.980	\$0.532	\$0.448	84%	\$0.783	\$0.532	\$0.251	47%
June	\$1.051	\$0.381	\$0.670	176%	\$0.952	\$0.381	\$0.571	150%

a) We were not provided with the ESCO rates for July 2011.

Month	2015-16				2016-17 <sup>b</sup>			
	ESCO	LUC	Rate Difference	Percentage Difference	ESCO	LUC	Rate Difference	Percentage Difference
July	\$1.013	\$0.354	\$0.659	186%	\$1.161	\$0.292	\$0.869	298%
August	\$1.020	\$0.366	\$0.654	179%	\$1.008	\$0.267	\$0.741	278%
September	\$0.947	\$0.341	\$0.606	178%	\$0.986	\$0.285	\$0.701	246%
October	\$0.749	\$0.333	\$0.415	125%	\$0.836	\$0.295	\$0.541	183%
November	\$0.683	\$0.280	\$0.403	144%	\$0.676	\$0.276	\$0.400	145%
December	\$0.673	\$0.298	\$0.375	126%	\$0.656	\$0.323	\$0.333	103%
January	\$0.650	\$0.314	\$0.336	107%	\$0.777	\$0.393	\$0.384	98%
February	\$0.634	\$0.296	\$0.338	114%	\$0.667	\$0.339	\$0.328	97%
March	\$0.603	\$0.248	\$0.355	143%	\$0.755	\$0.263	\$0.492	188%
April	\$0.640	\$0.267	\$0.373	140%	\$0.756	\$0.190	\$0.566	297%
May	\$0.850	\$0.277	\$0.573	207%	\$1.138	\$0.200	\$0.938	469%
June	\$1.078	\$0.273	\$0.805	294%	\$1.454	\$0.196	\$1.258	642%

  

Month	2017-18			
	ESCO	LUC	Rate Difference	Percentage Difference
July	\$1.052	\$0.358	\$0.694	194%
August	\$1.052	\$0.455	\$0.597	131%
September	\$1.013	\$0.358	\$0.656	183%
October	\$0.923	\$0.393	\$0.530	135%
November	\$0.780	\$0.436	\$0.344	79%
December	\$0.690	\$0.441	\$0.249	56%
January	\$0.812	\$0.598	\$0.214	36%
February	\$0.872	\$0.545	\$0.327	60%
March	\$0.844	\$0.598	\$0.246	41%
April	\$0.880	\$0.532	\$0.348	65%
May	\$1.111	\$0.381	\$0.730	192%
June	\$1.155	\$0.381	\$0.774	203%

b) The comparison rate used for 2016-17 was the OGS contract rate.

# Appendix B: Response From District Officials

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## Mount Vernon City School District

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Kenneth R. Hamilton, Ed. D.  
Superintendent of Schools

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January 7, 2022

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**Re: Mount Vernon City School District  
Response to Draft Report of Examination - 2019M-91**

Dear Chief Examiner Reynolds:

On behalf of the Mount Vernon City School District (the "District"), I would like to thank you and your staff for providing us with an opportunity to respond to the Procurement of Natural Gas, Report of Examination, 2019M-91 (the "Draft Report"). Please accept this letter as the District's formal response to the Draft Report.

At the outset, the District welcomes any recommendations by the Office of the State Comptroller to improve its procurement processes and is proud of the actions, which the District has taken, and continues to take to promote prudent fiscal management and oversight. To that end, while the District may disagree with some of the findings as described in the Draft Report, we provide the following responses to the recommendations offered by the Office of the State Comptroller in the Draft Report. Many of the recommendations suggested by the Office of the State Comptroller were already addressed and implemented by the District some 3 ½ years ago. Notwithstanding, the District's formal corrective action plan to the Final Report of Examination will be submitted under separate cover.

We take note of the fact that your examination covers the period from July 1, 2011 through June 30, 2018 and that the audit was conducted by your Team in the winter/spring of 2018.

**Comptroller Recommendation No. 1:** *The Board and District Officials should procure natural gas in accordance with General Municipal Law.*

### **District Response to Recommendation No. 1:**

As noted in the Draft Report, the current District Administration undertook a review of the procurement options for natural gas available to it during the audit period. The District is a

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participant of the State Contract for the supply of natural gas through a contract issued by the Office of General Services.

**Comptroller Recommendation No. 2:** *The Board and District Officials should fully evaluate and compare benchmark rates before entering into a contract for the supply of natural gas and analyze and review the various procurement options before entering into contracts to ensure the lowest possible prices for natural gas or other commodities are obtained.*

**District Response to Recommendation No. 2:**

The District has and will continue to monitor and compare benchmark rates for the procurement of natural gas before it enters into new arrangements for the procurement of natural gas. Natural gas will be procured in a manner that is in the best interest of the District. Once purchase options have been identified and/or contracts have been entered into, the District will make purchases in accord with the contractual terms for such procurement, which we note varies between and among contracts.

Please note that the District disagrees that it paid natural gas rates that were on average two times the benchmark rates. By way of example, certain monies recouped by the District (unrelated to the audit) were not included in the annual analysis contained in the Draft Report. In addition, the District has requested the source of the information provided in the Draft Report for the LUC and ESCO rates selected. The District has not yet received the requested information.

See  
Note 1  
Page 11

See  
Note 2  
Page 11

See  
Note 1  
Page 11

**Comptroller Recommendation No. 3:** *The Board and District Officials should ensure the District has a written contract with clearly stated terms and conditions before making payments to a vendor.*

**District Response to Recommendation No. 3:**

The District acknowledges that certain documents identifying the source of procurement of natural gas dating back to 2005 and prior were not available for review by the State auditing team during the 2018 calendar year. It should be noted, however, that there is no documentation to suggest that the initial arrangement for procurement of natural gas with the ESCO was undertaken incorrectly. The District agrees that, once a vendor is selected, it is important to have a written contract between the parties defining the terms and conditions mutually agreed upon. Contracts with the Office of General Services, i.e., State contracts, are generally available online and include terms that were previously agreed to by the Office of General Services. Often, these terms are not subject to modification. Notwithstanding the foregoing, the District will ensure that the procurement contracts are on file with the District.

**Comptroller Recommendation No. 4:** *District Officials should monitor utility rates charged to ensure that the District is not overcharged.*

**District Response to Recommendation No. 4:**

The District does and will continue to monitor utility rates in an effort to ensure that the District is not overcharged for the supply of natural gas.

See  
Note 3  
Page 11

In conclusion, the District recognizes the Office of the State Comptroller's role in guiding school districts towards prudent procurement processes and the Office's recommendations are appreciated. As we have moved forward since the audit was conducted by your Office in 2018, we believe that our

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current fiscal practices are in alignment with the Office of the State Comptroller's recommendations. To the extent that the same are not already being implemented, they will be addressed in our forthcoming corrective action plan.

I thank you for your efforts and your continued guidance.

Yours for the sake of all children,

Dr. Kenneth R. Hamilton  
*Superintendent of Schools*

# Appendix C: OSC Comments on the District's Response

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## Note 1

We obtained the LUC and ESCO rates from the gas bills that the District provided during the fieldwork. For each billing period, the LUC rate came from its bills for the buildings it supplied and the ESCO rate was obtained from the bills for the buildings the ESCO supplied. LUC rates and OGS rates (when LUC rates were not available) formed the benchmark rates and are detailed in Appendix A. When averaged, ESCO rates were two times the benchmark rates. We updated the audit methodology, Appendix D, with the information.

## Note 2

The report contains information on the confidential settlement and the amount refunded.

## Note 3

During the audit period, District officials did not monitor the cost of natural gas in a timely manner to ensure that the rates charged by the ESCO were reasonable.

## Appendix D: Audit Methodology and Standards

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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 and employees to gain an understanding of the natural gas procurement process and the business rationale behind buying natural gas from the ESCO at rates significantly higher than the rates charged by the LUC or OGS.
- We reviewed Board minutes for information related to the procurement of natural gas from the ESCO.
- We reviewed all available natural gas bills from 2011-12 through 2017-18. For each billing period, we obtained the rates charged by both the ESCO and the LUC and the usage for the period. For 2013-14 we used the 2014-15 gas rates for Franko Elementary school to calculate the difference in rates charged by the ESCO and those charged by the LUC because we were not provided with the monthly natural gas bills for 2013-14. We reviewed the rates charged by the ESCO and calculated the quantity of natural gas used expressed in heating therms. For 2015-16 and 2016-17, District officials provided us with OGS rates that were determined using the New York Mercantile Exchange rates plus a state contract markup. We used this rate for our calculations for these years, in lieu of the LUC rates, because the officials used this method to determine the amount the District was overcharged by the ESCO from the time it was asked to stop supplying the natural gas but did not comply with the time it effectively stopped.

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.

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 E: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf](http://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](http://www.osc.state.ny.us/local-government/publications)

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### **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](http://www.osc.state.ny.us/files/local-government/publications/pdf/cyber-security-guide.pdf)

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[www.osc.state.ny.us/local-government/required-reporting](http://www.osc.state.ny.us/local-government/required-reporting)

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## Contact

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