

Penfield Central School District

Procurement

OCTOBER 2022



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

Contents

- Report Highlights 1**

- Procurement of Goods and Services 2**
 - How Should School District Officials Procure Goods and Services? . 2
 - Officials Did Not Demonstrate Compliance With Competitive Bidding and Purchasing Policy Requirements 2
 - Officials Did Not Always Seek Competition When Procuring Professional Services 4
 - District Officials Did Not Monitor Contract Compliance 5
 - What Process Should a Board Use in Procuring Land? 5
 - District Officials Did Not Perform a Cost-Benefit Analysis 6
 - What Do We Recommend? 7

- Appendix A – Response From District Officials 8**

- Appendix B – OSC Comment on the District’s Response. 14**

- Appendix C – Audit Methodology and Standards 15**

- Appendix D – Resources and Services. 17**

Report Highlights

Penfield Central School District

Audit Objective

Determine whether Penfield Central School District (District) officials made procurements in accordance with District policies, statutory requirements and good business practices.

Key Findings

District officials did not make procurements in accordance with District policies, statutory requirements and good business practices.

- District officials could not support they properly sought competition for purchases totaling \$7.9 million:
 - Subject to competitive bidding requirements totaling \$4.6 million.
 - From seven professional service providers totaling \$3.3 million.
- District officials did not complete a comprehensive cost-benefit analysis for the District's land purchase inclusive of State transportation aid, route times, etc., that totaled \$802,000. Officials could not provide written justification for selecting the parcel that was purchased or an analysis or documentation for how they negotiated the price of the parcel, which was between \$1,500 and \$10,200 higher per acre than other parcels reviewed.

Key Recommendations

- Adequately document compliance with competitive bidding requirements.
- Comply with purchasing policies and procedures for procuring professional services.
- Complete a cost-benefit analysis for major District initiatives.

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

Background

The District serves the Towns of Brighton, Penfield, Perinton and Pittsford in Monroe County, and the Towns of Macedon and Walworth in Wayne County.

The District is governed by a seven-member Board of Education (Board) responsible for the general management and control of educational and financial affairs. The Superintendent of Schools (Superintendent) is the chief executive officer and is responsible, along with other administrative staff, for day-to-day management under the Board's direction.

The Assistant Superintendent for Business oversees the District's business operations. The District's purchasing agent is responsible for overseeing purchasing and approving purchase orders.

Quick Facts

2020-21 General Fund Appropriations	\$102.6 million
Audit Period	
Total Purchases	\$163.2 million
Payments for Professional Services	\$13 million
Payments Reviewed	
Purchases and Public Works	\$7.7 million
Professional Services	\$3.6 million

Audit Period

July 1, 2019 – November 30, 2021

We extended our audit period back to February 27, 2018 to review procurement matters related to capital projects.

Procurement of Goods and Services

How Should School District Officials Procure Goods and Services?

A school board is responsible for overseeing financial activities and safeguarding resources. New York State General Municipal Law (GML) Section 103 generally requires school districts to solicit competitive bids for purchase contracts above \$20,000 and public works contracts above \$35,000. In lieu of soliciting bids, a school district is authorized to make purchases using certain other publicly awarded government contracts, such as those by the New York State (NYS) Office of General Services (State contracts) or certain contracts awarded by other governments. For this exception to apply, the other government contract must be let in a manner consistent with NYS law and made available for use by other governmental entities. School district officials are responsible for reviewing each proposed procurement to determine, on advice of the school district's legal counsel as appropriate, whether the procurement falls within the exception. School district officials should maintain appropriate documentation to demonstrate that they met the prerequisites to support this exception. Additionally, as an alternative, school districts may award purchase contracts on the basis of best value, as defined in Section 163 of the NYS Finance Law.

A school board is required to adopt and annually review written policies and procedures governing the procurement of goods and services, such as professional services, that are not subject to competitive bidding requirements, to help ensure the prudent and economical use of public money and help guard against favoritism, improvidence, extravagance, fraud and abuse. In general, the procurement policy should require that alternative proposals for goods and services be secured through written requests for proposals (RFPs), written or verbal quotes or any other appropriate method of competitive procurement. The procurement policy may set forth circumstances or types of procurement for which solicitation of alternative proposals will not be in the school district's best interest and should describe procedures for maintaining adequate documentation to support and verify actions taken.

A written agreement or contract is essential for clearly establishing the services to be provided and the costs for the services. It is equally important that school district officials closely monitor contract provisions throughout the service period and when making payments to ensure vendor invoices comply with contract terms.

Officials Did Not Demonstrate Compliance With Competitive Bidding and Purchasing Policy Requirements

The District has a comprehensive purchasing policy detailing competitive bidding and documentation requirements. However, District officials could not demonstrate that the purchases were made in compliance with statute and District policies, and that the District acquired the desired quality of goods and services

at the lowest available cost. We reviewed \$7.7 million in purchase and public works contracts from 36 vendors and found seven vendors were paid \$5.1 million without evidence competition was sought.

Competitive Bidding – We reviewed a sample of 26 vendors with payments totaling more than \$7.65 million that were above competitive bidding thresholds. District officials did not maintain sufficient documentation demonstrating that they had complied with competitive bidding requirements for three contracts from two vendors totaling \$4.56 million (60 percent). These contracts were for roofing services. The District procured roofing services from two different group purchasing organization (GPO) contracts at two separate times during our audit period. District officials did not document whether the bid processes used for those contracts were consistent with GML bidding requirements, including compliance with the lowest bidder requirement. Instead, they obtained a letter from their construction manager stating that the prices quoted “appear to be within current market pricing for our region.” Bidding these projects would help ensure the District received the best pricing in compliance with GML.

Additionally, the District purchased technology solutions totaling \$354,000 from a vendor with a GPO contract. We reviewed payments to this vendor totaling \$19,000 and determined that District officials did not adequately document that the procurement process used by the GPO was consistent with GML bidding requirements.

The District’s purchasing agent provided us a list of the District’s most frequently used contracts. We selected four additional vendors listed as having been selected through a GPO for review. The District paid these four vendors approximately \$209,000 during the audit period. We reviewed approximately \$16,000 of these payments and determined that District officials did not obtain the necessary documentation to ensure the GPO contracts were awarded consistent with GML bidding requirements.

Quotes – We reviewed 11 purchases from 10 vendors with disbursements totaling \$57,105.¹ We found that District officials generally followed the purchasing policy and obtained the required number of quotes and selected the lowest priced offer.

However, the District purchased four non-contractual sensory equipment items totaling \$5,994 from a GPO vendor without obtaining quotes. District officials provided us with a sole source letter from the vendor. While it is possible that this vendor is the only supplier of a particular branded item, there may be other comparable brands. Therefore, District officials did not sufficiently justify this vendor as a sole source and did not adequately seek competition per the purchasing policy.

District officials did not maintain sufficient documentation demonstrating that they had complied with competitive bidding requirements for three contracts from two vendors totaling \$4.56 million. ...

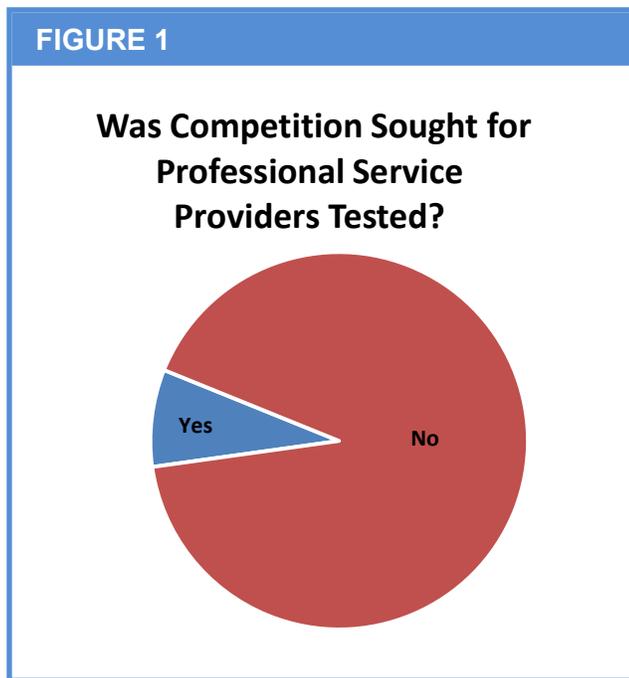
¹ Two of these purchases totaling \$21,775 were discussed under the Competitive Bidding section above because they aggregated to more than the \$20,000 bidding requirement.

When District officials do not seek or document competition, they cannot assure taxpayers that purchases are made in the most prudent and economical manner, without favoritism and in compliance with statute.

Officials Did Not Always Seek Competition When Procuring Professional Services

We reviewed documentation for 10 professional service providers paid \$3.6 million. District officials did not have documentation showing that they properly sought competition and complied with the purchasing policies and related regulations for seven providers totaling \$3.3 million (Figure 1). The District’s purchasing regulation anticipates that the typical term of engagement for a professional services provider, after issuing an RFP, will be between five and seven years. We found that the District did not issue RFPs within the last five to seven years for:

- One architect paid \$1.6 million and a construction manager paid \$1.4 million for the 2018 Elementary Additions Project approved by the voters in May 2018. The Treasurer told us they typically issue RFPs at the start of each construction project; however, they did not issue RFPs for these services at the start of this project.
- Four legal firms paid approximately \$372,000. The District’s purchasing agent told us they have not issued RFPs for legal services since October 2010.
- One professional development provider paid \$10,670. The Superintendent told us this vendor is the best in the area.



When District officials do not use competitive methods to procure professional services, they are at an increased risk of overpaying for those services and appearing they used favoritism or impropriety. They also are unable to assure taxpayers that they procured goods and services in the most prudent and economical manner.

District Officials Did Not Monitor Contract Compliance

In addition to receiving quotes for goods and services purchased, District officials often used State, County and Board of Cooperative Educational Services (BOCES) contracts, and piggybacked off GPO contracts. We tested payments made to 13 vendors totaling \$332,948 and found that District officials did not verify the invoice pricing agreed with the pricing in the contracts. As a result, the District was overcharged \$22,549 by three vendors. The three that billed incorrectly were as follows:

- One vendor billed \$144,852, the amount they quoted for maximum labor hours, without regard to actual labor costs for mechanical and plumbing services. At our request, the Director of Buildings and Grounds reached out to the vendor, who determined they overbilled the District by \$12,704 (8.7 percent). The vendor provided the District with a credit. However, District officials could not verify this credit was accurate because the cost report was not supported.

Due to the vendor overbilling, we tested five additional purchase orders totaling \$147,621 and determined the vendor also overbilled the District by at least \$8,400 (6 percent). However, we were not able to test the materials portion of the billing because the vendor's bills did not include detailed information for materials as required by the contract. While District officials subsequently requested another billing adjustment, officials should work with the vendor to obtain the documents the vendor was contractually required to provide and use this information to determine whether additional billing adjustments are needed.

- The District purchased books totaling \$5,098 but did not receive the full contract discount, resulting in an overpayment of \$1,073 (21 percent).
- We tested diesel fuel vendor bills totaling \$30,753; which exceeded the State contract price by \$372 (1 percent).

When District officials do not ensure they have a clear understanding of all contract provisions and closely monitor them prior to processing invoices, they have no assurance that the vendor is providing the agreed upon price, in compliance with all contract terms.

What Process Should a Board Use in Procuring Land?

When acquiring property, a board and school district officials should analyze factors affecting the acquisition, including how much it will cost to buy certain properties compared to others and how State aid may be affected. By completing an appropriate cost-benefit analysis of each available option, school district officials have greater assurance that the option selected is the most economical and operational way to meet their needs.

District Officials Did Not Perform a Cost-Benefit Analysis

In October 2021 the District purchased a 40-acre parcel for \$802,000 to construct a combined transportation and buildings and grounds facility. Several District officials indicated they have been looking at land purchase options for years. During this time, District officials reviewed four different land parcels (Figure 2).

Figure 2: Properties Considered for New Joint Transportation and Buildings-and-Grounds Facility

Property Location, Sale Status	Total Acreage	Wetland Acreage	Asking Price	Price Per Acre	Price Per Developable Acre
Berry Turkey Farm – Purchased by District 1440 Jackson Road	40.1	11.89	\$802,000	\$20,000	\$28,430
Pending, Private Buyer 1921 Harris Road Sold August 15, 2018, Private Buyer	57.2	Unknown No known wetland	\$560,560	\$9,800	Unknown
Berry Turkey Farm - 1394 Jackson Road (previous District offer)	11	Approx. 3	\$203,500	\$18,500	\$25,438

District officials also gave consideration to using part of the Shadow Pines property recently acquired by the Town of Penfield.² They sent a proposal letter to the Town expressing interest in using a portion of this property. However, District officials indicated that Town officials determined the property would be kept as green space and, therefore, was not available to the District for the proposed use.

In addition to land acquisition costs, there are other factors which also must be considered with such a project, such as what effect the facility's location will have on the District's State transportation aid ratio, route times, etc. While officials provided a slide show that indicated State aid on the property's acquisition cost was expected to be 70 percent and said they planned to leave some busses at the current transportation facility to reduce the number of miles driven prior to picking up the first student, these miles are generally not eligible for State aid. District officials did not complete a comprehensive cost-benefit analysis for the parcel acquisition and/or complete an analysis indicating how many busses would be stationed at each location and how the various scenarios might affect the

² The Town of Penfield purchased the Shadow Pines property after voters approved two referendums on February 27, 2018.

District's revenues (e.g., State transportation aid) and expenditures (e.g., salaries, fuel). Furthermore, District officials could not provide written justification for selecting the parcel that was purchased or an analysis or documentation for how they negotiated the price of the parcel, which was between \$1,500 and \$10,200 higher per acre than other parcels reviewed. Without completing a detailed cost-benefit analysis, District officials do not have assurance this purchase was completed in the most cost-beneficial manner possible and in the District's and taxpayers' best interest.

As of the end of our audit fieldwork in November 2021, the project was awaiting voter approval, so construction had yet to start.

What Do We Recommend?

The Board should:

1. Ensure a competitive process is used to procure goods and services.

District officials should:

2. Procure goods and services in accordance with statute.
3. Issue RFPs for professional services in accordance with the District's purchasing policy and regulations.
4. Review State and other government contracts to ensure the District is being charged in accordance with contract terms.
5. Work with the vendor to obtain the documents the vendor was contractually required to provide and use this information to determine whether additional billing adjustments are needed.
6. Contact vendors to obtain refunds for overpayments.
7. Conduct and document a thorough analysis of alternatives before making major financial commitments.
8. Conduct and document a comprehensive cost-benefit analysis for real estate transactions to ensure the purchase is in the District's and taxpayers' best interest.

Appendix A: Response From District Officials



THOMAS K. PUTNAM, Ed.D.
SUPERINTENDENT

P.O. BOX 900, Penfield, NY 14526
PHONE 585.249.5700 • FAX 585.248.8412
www.penfield.edu

October 4, 2022

Mr. Edward V. Grant Jr.
Chief Examiner, Office of the New York State Comptroller
The Powers Building
16 West Main Street, Suite 522
Rochester, New York 14614

Dear Mr. Grant:

This correspondence serves as the Penfield Central School District's response to your Office of the State Comptroller (OSC) audit report #: 2022M-76, conducted from June 2021 to November 2021, spanning a scope period from February 27, 2018, to November 30, 2021, in the focus area of procurement. We would first like to thank your office for the local government partnership and for the professionalism exhibited by your team throughout the audit process. Penfield Central always seeks continuous improvement in our operations and is grateful for the analysis and opinions offered. We are pleased to affirm that there were no instances of fraud, abuse, or waste discovered in the extensive review process.

This response will serve as the District's required corrective action plan. The plan was reviewed and approved by the District's audit committee on September 29, 2022 and was approved by the Penfield Board of Education at its October 4, 2022 regular meeting. In general, the District agrees with the report but disagrees with some of the subjective contents which will be discussed below.

- **Recommendation #1:** Ensure a competitive process is used to procure goods and services.
- **Recommendation #2:** Procure goods and services in accordance with statute.

The District disagrees with the primary report finding that resulted in these recommendations. The District contends that procurement has been made in accordance with all applicable purchasing regulations. Pulling from the report itself: "We found that District officials generally followed the purchasing policy and obtained the required number of quotes and selected the lowest priced offer." It was further noted in the exit interview by an OSC representative, that Penfield Central was "better than most" when it came to procurement processes. The District's internal auditor also completed a procurement focus audit dated February 21, 2021 which reported that "the controls over the purchase orders, requisitions, and purchasing agent procedures are operating effectively with no exceptions noted."

The central theme of these two first recommendations revolved around the application of subdivision 16 from General Municipal Law (GML) § 103 which provides an exception from competitive bidding requirements by way of “piggybacking” off the bid pricing from allowable governmental contracts. This permitted provision of State law, recently extended by the Governor, has also been authorized at the local level by the Board of Education. The requisites for eligibility of such contracts include:

1. Public solicitation of bids or, in the case of best value, offers.
2. Submission of sealed bids or offers, or analogous procedures to secure and preserve the integrity of the process and confidentiality of the bids or offers submitted.
3. Preparation of specifications, or a similar document that provides a common standard for bidders or offerers to compete fairly.
4. Award to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder, or in the case of a best value process, an award to the responsive and responsible offerer which optimizes quality, cost and efficiency, reflecting objective and quantifiable analysis, whenever possible.

The District provided bidding documentation to the OSC representatives for all four of these GML tenets. During multiple discussions with the OSC representatives, it was indicated that the District had not provided enough documentation to justify the best value award tenet of item four above, despite its professional service construction manager partners explicitly evaluating and recommending the service and pricing within the context of the regional construction market prior to award approval. Additionally, the OSC’s own memo from October 2021 subject: *“Piggybacking” Law - Exception to Competitive Bidding (Updated)*¹, reads in endnote 12 that if a best value determination was based upon an objective and quantifiable process, which in this case it was by way of a standardized objective scoring matrix, justification need not even be required, let alone the further vetting from the District’s expert professional service provider.

See
Note 1
Page 14

It is also important to mention this award was made in the spring of 2020, amidst the height of the COVID-19 pandemic, whereby best-value, non-price factors such as “reliability”, “ability to meet needs regarding timeliness of performance”, and “experience of a service provider with similar contracts” are explicitly called out to be weighed in a best-value determination. All of which were highly material best-value factors in such an unusual and unnerving time.

Lastly, it is relevant to note that the work was awarded to a local company that finished the associated work on time and on budget.

To avoid any further legalese semantic parsing, the District will seek attorney opinion on such contractual procurement utilization moving forward.

Corrective Action Implementation Plan	Individual(s) Responsible	Implementation Date
---------------------------------------	---------------------------	---------------------

¹ State of New York Office of the State Comptroller. *“Piggybacking” Law - Exception to Competitive Bidding (Updated)*. October 2021.

The District will seek counsel opinion on future contractual “piggybacking” awards.	Assistant Superintendent for Business	Completed as of 10/4/22
---	---------------------------------------	-------------------------

- **Recommendation #3:** Issue RFPs for professional services in accordance with the District’s purchasing policy and regulations.

The District agrees with this recommendation as a useful suggestion while noting this is not a violation of procurement law, policy, nor regulation. School district boards of education across the state are entrusted to annually appoint certain professional service providers at the July organizational meeting; appointments that are made by weighing “specialized skills, training, professional judgment, expertise, and creativity.” This local control mechanism is important and valued.

District Regulation 5411R.1 indicates that while the anticipated typical term of engagement with such specialized professional partners will be five to seven years, it further notes that the District purchasing agent, in consultation with the Assistant Superintendent for Business and Finance, has the authority to establish longer terms of engagement when the term is prudent and maximizes value in their professional judgment.

There is significant value in architects and engineers being familiar with a District: not only their physical building envelopes and associated grounds, but also personnel, policy, regulation, and institutional context. The switching costs for such service are vast and would need to align to a five-year cycle of the State-required building condition survey (BCS) analysis. Further, the District continuously measures and benchmarks pricing for these services and upon last county-wide analysis in the spring of 2022, these professional services were being provided at a better-than-average rate amongst Monroe County school districts.

Regarding legal partners, it should be noted that the District annually appoints and utilizes the three primary law firms in the region that have specialties in the public K-12 education domain and secures annual pricing considerations for each before engagement.

The District will weigh the decision to issue non-required requests for proposals (RFPs) for certain professional services in the year ahead.

Corrective Action Implementation Plan	Individual(s) Responsible	Implementation Date
The District will evaluate whether request for proposals (RFPs) should be issued for certain professional services.	Assistant Superintendent for Business	By 6/30/23

- **Recommendation #4:** Review State and other government contracts to ensure the District is being charged in accordance with contract terms.

- **Recommendation #5:** Work with the vendor to obtain the documents the vendor was contractually required to provide and use this information to determine whether additional billing adjustments are needed.
- **Recommendation #6:** Contact vendors to obtain refunds for overpayments.

The District agrees with these recommendations and appreciates the vendor invoicing error that was discovered in the review process. This vendor’s invoicing errors should have been caught within the parameters of the District’s procedures and these report’s findings are valuable and appreciated.

Directives have been provided to the department to ensure this vendor’s invoices are representative of labor hours in accordance with contract pricing and not solely based upon upfront pricing quotes. The District has requested and received a refund associated with the overpayment.

Corrective Action Implementation Plan	Individual(s) Responsible	Implementation Date
Ensure that pricing arrangements based upon labor hours are reflected on the invoice not only by this specific, but all service partners, moving forward. A refund for the overpayment was requested and secured by the District.	Assistant Superintendent for Business	Completed as of 10/4/22

- **Recommendation #7:** Conduct and document a thorough analysis of alternatives before making major financial commitments.
- **Recommendation #8:** Conduct and document a comprehensive cost-benefit analysis for real estate transactions to ensure the purchase is in the District’s and taxpayers’ best interest.

The District agrees with the premise of these recommendations but disagrees with the verbiage used as it does not reflect the reality of the exhaustive ten-years plus of diligence measures that went into securing a location for the District’s new transportation and buildings and grounds facility. The report fails to mention the extensive search process and research that was done in securing a location and inadequately portrays the fiscal analysis that went into ensuring the parcel was of market value and that the land purchase would generate applicable New York State building aid.

The District agrees that thorough analysis and a comprehensive cost benefit analysis are vital aspects of all decision making, particularly within the public realm. The OSC representatives indicated to District officials that the slice of “comprehensive” analysis missing in this endeavor was the omission of New York State transportation aid in the decision making. The lack of full analysis of New York State transportation aid in this parcel commitment decision was simply a result of the limited availability of a suitable parcel; it would not have been enough of a consideration to negate the need to replace a crumbling garage. In reality, considering other planned residential development in the area, an analysis in 2019-20 would not have been accurate once the site was to be operational years later. Further, the potential change to

transportation aid by way of unaidable “deadhead mileage” amounts to an immaterial alteration of eligible aid criteria.

Regarding the “alternatives” considered for this development, the report mentions four parcels in Figure 2 but does not mention the District considered other areas of vacant land that it owns on Atlantic Ave and Gloria Dr, nor retrofitting the existing Five Mile Line Rd site, nor the various other sites for sale over the years that failed to materialize in a suitable outcome. The report does indicate that the District proactively sought an intermunicipal arrangement with the town which further reflects the creativity and fiscal mindedness that were involved in this process.

The report also questions the negotiation process of the determined sale price: the District noted to the OSC representatives that on nine separate occasions (November 27, 2018, December 11, 2018, January 8, 2019, February 26, 2019, September 10, 2019, January 21, 2020, February 25, 2020, March 10, 2020, and April 21, 2020) the board of education meeting agendas reflect executive sessions for purposes of discussing land acquisition.

As to ensuring the parcel was of market value, the final price-per-acre cost listed in the report (\$20,000) was well within the range of comparable parcels sold within the available area from 2018 to 2021:

Date	Price	Acres	Cost per Acre
3/25/2021	\$ 200,000	36.2	\$ 5,529
1/29/2021	\$ 390,000	33.3	\$ 11,712
12/31/2020	\$ 375,000	57.2	\$ 6,556
12/29/2020	\$ 130,000	6.02	\$ 21,595
5/13/2020	\$ 450,000	76.5	\$ 5,885
2/26/2019	\$ 850,000	25.1	\$ 33,851
11/28/2018	\$ 48,000	1.4	\$ 34,783
4/24/2018	\$ 240,000	2.7	\$ 88,889
2/28/2018	\$ 3,650,000	212.0	\$ 17,217
2/9/2018	\$ 170,000	10.2	<u>\$ 16,683</u>
		Average:	<u>\$ 24,270</u>

It should further be noted that this decision was not made unilaterally by District officials and the Board of Education, as the purchase of the parcel was put to a community referendum in which all Penfield Central residents had the opportunity to voice their opinion as to the prudence of the decision-making (approved by a vote of 2,216 to 882). It is also of note that the real estate market has significantly changed within the years of this report process and the cost retrospectively looks more than fair. Lastly, shortly after the audit scope period was complete, the community voted to approve a project through community referendum to build a transportation and facilities headquarters at the parcel in question.

With any future operation changes to start and end locations of school buses, the District will consider potential alterations to transportation aid in its comprehensive cost-benefit analysis.

Corrective Action Implementation Plan	Individual(s) Responsible	Implementation Date
The District will explicitly weigh any potential change to New York State transportation aid when specific school bus route beginnings and ends are altered in the future.	Assistant Superintendent for Business	Completed as of 10/4/22

Penfield Central’s core commitment to fiscal responsibility, recognized as one of three primary District goals, is evident in regional rankings for cost per pupil², true value tax rates, and recent below-the-cap tax levies. We would like to thank your office again for the opportunity to partner in ensuring our District continues to effectively serve our students, our families, and our community.

Sincerely,



Lisa Benati-Chidsey
President of the Board of Education



Thomas K. Putnam, Ed.D.
Superintendent of Schools

² Rochester Business Journal. *RBJ Schools Report Card 2022*. June 17, 2022.

Appendix B: OSC Comment on the District's Response

Note 1

OSC's position is that there are three prerequisites that must be met for a procurement of apparatus, materials, equipment and supplies, and related installation, repair and maintenance services, to fall within the exception set forth in GML Section 103(16). The third prerequisite, which is in question here, requires that the contract must have been "let to the lowest responsible bidder or on the basis of best value in a manner consistent with this section." In our view, "consistent with this section" refers to GML Section 103 (and related case law) applicable to New York State political subdivisions.

As identified by the District in its response, based on the provisions of GML Section 103, as construed by the courts in this State, and the underlying purposes of GML Section 103, it has been our view that there are four fundamental elements (referred to as "tenets" by the District) that should be present in the procedures used by the non-New York entity in letting its contract in order for the process to have been let to the lowest responsible bidder or on the basis of best value consistent with GML Section 103.

In this case, we acknowledge that the District provided documentation to OSC representatives with respect to each of these elements. However, in our view, District officials did not adequately evaluate the documents to verify that each of the "tenets" satisfied the requirements set forth in GML Section 103(16). In particular, the fourth element requires that the contract be awarded to the lowest bidder who materially or substantially meets the bid specifications and is determined to be a responsible bidder, or in the case of a best value process, an award to the responsive and responsible offeror which optimizes quality, cost and efficiency, reflecting objective and quantifiable analysis, whenever possible. Here, the District obtained a letter from its construction manager stating that the prices quoted "appear to be within current market pricing for our region." However, we were not provided with any further documentation to support that the contract selected by the District had been awarded to a single lowest responsible bidder or, alternatively, to a single vendor who provided the "best value." Under such circumstances, we question whether the fourth element was satisfied, and, therefore, whether the District met the requirements set forth in GML Section 103(16) when it awarded such contracts. Therefore, as the District acknowledges in its response, we encourage the District to seek an attorney's opinion on such contractual procurement utilization moving forward.

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 District officials and employees and reviewed policies, regulations and Board meeting minutes to gain an understanding of the procurement process.
- We used our professional judgment based on the dollar value and nature of the purchases to select a sample of purchases from 36 vendors who were collectively paid or contracted for a total of \$7.7 million during our audit period, that were above the purchasing policy quote and competitive bidding thresholds. We reviewed the related purchase orders, invoices and purchasing documentation to determine whether officials obtained quotes in compliance with their purchasing policy, established per GML Section 104-b, made purchases through competitive bidding in compliance with GML Section 103 or used exceptions to competitive procurement (e.g., State contract, group purchasing organizations, cooperative contracts, sole source vendors) and documented the purchase decisions as required by District policy and GML. We followed up with District officials and employees to discuss purchases that did not have adequate supporting documentation.
- To test the procurement of professional services, we reviewed cash disbursement data to identify vendors that provided professional services. We selected 10 professional service providers with purchases totaling \$3.6 million and reviewed them to determine whether RFPs were issued to procure these services and whether the selection process was adequately documented. We followed up with District officials to discuss professional service providers that did not have adequate supporting documentation.
- We reviewed a sample of payments totaling \$332,948 for 13 vendors to determine whether the District was invoiced in accordance with the written contract terms.
- We discussed the land purchase with District officials and requested documentation related to the District's process for selecting this property. We reviewed the documents provided and asked District officials follow-up questions.

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 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

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

ROCHESTER REGIONAL OFFICE – Edward V. Grant Jr., Chief Examiner

The Powers Building • 16 West Main Street – Suite 522 • Rochester, New York 14614-1608

Tel (585) 454-2460 • Fax (585) 454-3545 • Email: Muni-Rochester@osc.ny.gov

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



Like us on Facebook at facebook.com/nyscomptroller

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