



Jericho Fire District Professional Services

Report of Examination

Period Covered:

January 1, 2011 — July 31, 2012

2012M-236



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

February 2013

Dear Fire District Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Commissioners governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Jericho Fire District, entitled Professional Services. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Jericho Fire District (District) is a district corporation of the State, distinct and separate from the Town of Oyster Bay and the County of Nassau in which it is located. The District covers 4.1 square miles and services approximately 13,600 residents.

An elected five-member Board of Fire Commissioners (Board) governs the District. The Board is responsible for the District's overall financial management. The District Treasurer is the chief fiscal officer and is responsible for the receipt, custody, disbursement, and accounting of District funds. The District's total expenditures for the 2011 fiscal year were approximately \$3.5 million.

Objective

The objective of our audit was to examine the District's internal controls over the procurement of professional services. Our audit addressed the following related question:

- Did the District use competitive methods when procuring professional services?

Scope and Methodology

We examined the District's process for procuring professional services for the period January 1, 2011 to July 31, 2012.

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard District assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial condition and oversight, control environment, cash receipts and disbursements, payroll and personal services, professional services, procurement, capital assets and inventories, length of service award program (LOSAP), and information technology (IT). Based on that evaluation, we determined that controls appeared to be adequate and limited risk existed in most of the financial areas we reviewed. We did determine that risk existed in the area of professional services and, therefore, we examined internal controls over professional services.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

Comments of District Officials and Corrective Action

The results of our audit and recommendations have been discussed with District officials and their comments, which are included in Appendix A, have been considered in preparing this report. Appendix B includes our comments on the issues raised in the District's response letter.

The Board has the responsibility to initiate corrective action. Pursuant to Section 181-b of the Town Law, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. 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. We encourage the Board to make this plan available for public review in the Secretary's office.

Professional Services

Competitive bidding is generally not required for the procurement of professional services that involve specialized skill, training and expertise, the use of professional judgment or discretion, and/or a high degree of creativity. However, General Municipal Law (GML) requires written policies governing the procurement of goods and services when competitive bidding is not required. A request for proposal (RFP) process is an effective way to ensure that the District receives the desired service for the best price. Sound policies should require the use of written agreements to establish the contract period, describe the services to be provided, and document a clearly defined and mutually agreed-upon basis for determining entitlement to payments. The Board's approval of written agreements and/or changes to these agreements should be documented in the Board meeting minutes.

The District's procurement policy does not require the use of competitive methods when procuring professional services. We reviewed all five professional services providers who received at least \$20,000 in payments during our audit period. District officials did not solicit competition for the services provided by any of the five professionals, who were paid a total of \$343,289. The payments comprised \$143,989 to an insurance agency, \$79,134 for physical training services, \$54,181 for legal services, \$39,500 for accounting services, and \$26,485 for engineering consulting services.

In addition, although the District entered into written agreements with the physical trainer and the engineering consultant, there are no Board resolutions approving these contracts. Further, the payments to the physical trainer were not in accordance with the written agreement. While the written agreement, dated May 2007, states that the trainer is to be paid \$40 per hour, during our audit period he was paid \$50 per hour for his services. District officials stated that the Board had discussed the increase and were aware of the rate of pay because they approve the claims. However, the Board's approval of this rate change was not documented in the minutes.

The appropriate use of competition provides taxpayers with the greatest assurance that services are procured in the most prudent and economical manner and without favoritism. Without a competitive process, and Board approval of all written agreements and rates of pay, the District may not be procuring professional services in the most prudent and economical manner.

Recommendations

1. The Board should consider amending the District's procurement policy to include the use of competitive methods when procuring professional services.
2. The Board should ensure that District officials enter into written agreements with all professional service providers. The Board's approval of these contracts, along with any contractual changes, such as changes in pay rates, should be documented in the Board's minutes.

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

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

BRUCE L. FRIEDMAN, D.C.
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DAVID J. MARMANN
Vice Chairman

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VIA E-MAIL [Muni-Hauppauge@osc.state.ny.us]
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January 17, 2013

Mr. Ira McCracken
Chief Examiner of Local Government
And School Accountability
Office of the State Comptroller
NYS Office Building, Room 3A10 Veterans Memorial Highway
Hauppauge, New York 11788-5533

Re: Jericho Fire District;
Professional Services;
Report of Examination;
2012 M-236;
Response

Dear Mr. McCracken:

This communication will confirm that the Board is in receipt of your draft report and would like to submit our comments as well as our concept for the development of a corrective action plan. The Board views the audit and the report as an opportunity to review and improve upon our practices and procedures and we certainly intend to take this opportunity to improve these practices and policies.

At the outset we note that the initial review of Internal Controls as stated in your report included the following areas:

- financial condition and oversight,
- control environment,
- cash receipts and disbursements,
- payroll and personal services,
- professional services,
- procurement,
- capital assets and inventories,
- length of service award program (LOSAP), and
- information technology (IT),

and resulted in a determination that, “controls appeared to be adequate and limited risk existed in most of the financial areas” your staff reviewed.

Your staff did determine that some level of risk existed in the area of professional services and decided to focus its review on that area. This shall serve as our response those findings.

The Board has addressed the procurement of professional services in its written purchasing and procurement policy. The Board adopted a comprehensive written purchasing and procurement policy that complies with state law [Sections 104-b and 103 of the General Municipal Law] and in particular addresses the issue of professional services contracts. Professional services contracts have historically been treated under the law as exempt from competitive bidding due to the nature of the specialized skills and training that are required to render these services. The Board has always been of the opinion there are a number of factors not associated with price that factor into the selection of a provider of professional services.

See
Note 1
Page 12

With regard to the professional service provider contracts entered into by the district the Board reviewed the pricing and qualifications of the professional service providers and was confident that it was paying a fair amount for the services obtained.

See
Note 2
Page 12

The procurement policy of the Jericho Fire District provides that contracts for the purchase of professional services will not be subject to a RFP process because the Board of Fire Commissioners determined that the specialized training and experience that relates to these types of services is not amenable to a competitive bidding process nor is it amenable to a request for proposal process. In the end, when it comes to professional services it is the knowledge and skills of the professional or the professional firm that is at issue and how that knowledge and skill set fits the needs of the Board and the Fire District.

See
Note 3
Page 12

More importantly Section 104-b (at paragraph 2-g) of the General Municipal Law makes it clear that in designing its procurement policy, the Board is permitted to “*set forth any circumstances when, or types of procurements for which, in the sole discretion of the governing body (or in the case of cities with a population of one million or more, the procurement policy board), the solicitation of alternative proposals or quotations will not be in the best interest of the political subdivision or district therein.*”

Our Board of Fire Commissioners has the discretion to make this determination and has done so with regard to contracts for professional services. Our Board has followed the law and in our opinion has made the best choice for our fire district. Our Board interviews professionals and professional firms and makes a selection of a professional or professional firm based upon our analysis of its credentials and a review of references. Very often at association meetings, conferences and conventions we speak with fire commissioners and other members of other types of government boards concerning the credentials of professionals and recommendations they may provide.

See
Note 4
Page 12

See
Note 5
Page 12

We evaluate their proposals and do not pay excessive fees.

We change professionals when we determine that their performance does not meet our requirements. We retain professionals when they display excellence in guiding us in the performance of our duties.

As a further example of this process we note that the Board retained a law firm with expertise in construction law to address defects on a construction project. It also retained an engineering firm with specific expertise in the type of construction defect being addressed.

See
Note 6
Page 12

The fees paid to the law firm on this construction defect issue do not reflect the fact that it assisted the district in obtaining substantial savings by recommending spending district funds on correcting the problem rather than litigation which would have involved significant additional attorneys' fees and costs. In other words, the firm we selected advised us against spending more money on their litigation services. There is simply no way to quantify that type of professionalism in an RFP process.

Our general counsel recommended that we select a specialized firm to address the particular type of case rather than reserving the work and fees for itself. Again, that level of professionalism does not translate in an RFP.

The engineering firm we selected assisted us in the development of a scope of work for the defect correction process and supervised the work to make certain it was done correctly. Once again the selection of an engineering firm to guide us in this area was not amenable to an RFP process. We took advice from the construction law firm and other engineering firms to assist us in locating the correct professional to deliver the services necessary.

Our policy does not require us to use an RFP process, but the Board is certainly open to doing so when the circumstances lend themselves to an RFP. However, when circumstances call for a high level of specialization we do not believe an RFP is effective. We also do not believe an RFP is an effective tool when it comes to continuing a relationship with a professional that has demonstrated a high degree of effectiveness and continues to offer valuable advice to us on an ongoing basis.

We prefer to resort to an RFP process when we determine that it is time to change professionals.

With regard to the insurance agency in question, we would note that the \$143,989 reportedly paid was for insurance policies selected with the assistance of the insurance broker. We periodically request quotes on insurance policies, but did not do so during the audit period. A significant number of claims are made under the many types of insurance policies maintained by fire districts that operate volunteer fire departments and emergency medical service operations, and there are administrative benefits to not changing policies on an annual basis. We do monitor the market on insurance policy

offerings for the fire service. We believe that the last review and solicitation of RFP's for insurance were done when I first came on the Board in 2008. I know that this was done because the work done on the RFP was my first major task as a new Board member.

We are of the opinion that we should solicit quotes on the insurance every five (5) years and plan to do so with the next renewals.

While we do not agree that a competitive RFP process is the best practice for the selection of professionals and professional service firms in many of these circumstances; we do agree that each professional and professional service firm should perform its work based upon a written contract which the Board has approved by resolution, and that our Board minutes should accurately reflect the agreement, the rate of pay and any increases approved.

We will take steps to make certain that written agreements are on file, that resolutions have been adopted and recorded in our minutes to reflect approval of agreements and rates of payment, and that any amendments to the agreements are similarly recorded.

We also agree that claims should be reviewed and audited in order to make certain that the billing rates accurately reflect the current contractual agreement.

The Board has addressed the recommendations stated in the report and will convert the plans stated above to a corrective action in plan after we receive the final version of the report of audit.

Very truly yours,

Bruce Friedman
Chairman
Board of Fire Commissioners

APPENDIX B

OSC COMMENTS ON THE DISTRICT'S RESPONSE

Note 1

The District's procurement policy states that professional services are not subject to competitive bidding. The policy does not mention competition for such services or offer any guidelines to ensure that the District obtains qualified professional services at the best value.

Note 2

Unless the District evaluates the pricing and qualifications of professionals through a competitive process, the District has no basis for determining that they are paying a fair amount for the services obtained.

Note 3

In an RFP process, professional service providers are generally evaluated based on a number of factors such as specialized skills, training, experience, and cost. As such, the most qualified provider may not be the provider with the lowest price. However, without establishing guidelines and evaluation criteria, the District cannot be certain that it is obtaining the best service at the best price.

Note 4

The Law requires that the District obtain goods and services of the required quantity and quality at the best price, and to protect against favoritism, extravagance, fraud, and corruption. A policy which requires a competitive process, such as a request for proposals, is one method for achieving this goal.

Note 5

District officials did not provide us with documentation that they had followed such a process for selecting professionals.

Note 6

In an RFP process, professional service providers are generally evaluated based on a number of factors which may include specific expertise and experience in order to obtain the most qualified professional at the best price.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to assess the adequacy of the internal controls put in place by officials to safeguard District assets. To accomplish this, we performed an initial assessment of the internal controls so that we could design our audit to focus on those areas most at risk. Our initial assessment included evaluations of the following areas: financial condition and oversight, control environment, cash receipts and disbursements, payroll and personal services, professional services, procurement, capital assets and inventories, length of service award program (LOSAP), and information technology (IT).

After reviewing the information gathered during our initial assessment, we determined where weaknesses existed, and evaluated those weaknesses for the risk of potential fraud, theft, or professional misconduct. Based on that evaluation we determined that controls appeared to be adequate and limited risk existed in most of the financial areas we reviewed. We then decided on the reported objective and scope by selecting for audit the area most at risk. We selected the RFP process followed by the District to hire professional service providers for further audit testing.

To accomplish our audit objective and obtain relevant audit evidence for the period January 1, 2011 to July 31, 2012, our procedures included the following:

- We interviewed District officials involved in the District's business operations to gain an understanding of the procurement process.
- We reviewed the District's policies and procedures, Board minutes, and supporting documentation provided by District officials as they related to the procurement of professional services.
- We reviewed disbursement records and selected all professional service providers that were paid over \$20,000 in a year during our audit period.
- We reviewed contracts with vendors who provided professional services to the District and examined claims to determine if payments were in accordance with agreed upon rates.

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.

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