



Town of Lyndon

Purchasing

Report of Examination

Period Covered:

January 1, 2012 — April 26, 2013

2013M-149



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

September 2013

Dear Town 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 Town Board 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 Town of Lyndon, entitled Purchasing. 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 Town of Lyndon (Town) is located in Cattaraugus County and has 700 residents. The Town is governed by a five-member elected Town Board (Board), which comprises the Town Supervisor and four Councilpersons. The Board is responsible for the general management and control of the Town's financial affairs. The Town provides various services to its residents, including street maintenance, snow plowing and general government support. For the 2012 fiscal year, budgeted appropriations totaled \$184,000 for the general fund and \$323,000 for the highway fund. Expenditures are funded primarily by property taxes, sales tax, and State aid.

The Highway Department is supervised by an elected Highway Superintendent and has two employees. The Highway Department has five trucks, a loader, a grader, a tractor and an excavator.

Objective

The objective of our audit was to evaluate internal controls over purchasing and addressed the following related question:

- Did the Board adopt a procurement policy to help ensure that goods and services of desired quality were obtained at the lowest possible cost?

Scope and Methodology

We examined the Town's internal controls over purchasing for the period January 1, 2012, through April 26, 2013. We extended our scope back to January 1, 2010, to review fuel purchases.

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 B of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with Town officials and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials generally agreed with our findings and recommendations and indicated that they will initiate corrective action.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit*

Report, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Town Clerk's office.

Purchasing

The General Municipal Law (GML) requires bidding when an item or commodity group exceeds established dollar limits. Current dollar thresholds require local governments to advertise for bids for purchase contracts that equal or aggregate to more than \$20,000, and public works contracts that equal or aggregate to more than \$35,000. Purchases made through State or County contracts need not be competitively bid. GML also requires the Board to adopt a written procurement policy governing the purchase of goods and services that are not subject to competitive bidding. This policy should indicate when Town officials must obtain quotations or request for proposals, describe the procedures for determining which method will be used, and provide for adequate documentation of the actions taken. The adoption and required annual review of this policy should ensure that local governments purchase goods and services of desired quality at the lowest possible cost under the given circumstances.

The Board did not adopt a procurement policy as required. In August 2011 the Board adopted a resolution stating that although it is understood that the Town is required to have written policies, the resolution directed Town officials to consult the Office of the State Comptroller's publications for guidance. However, this resolution did not satisfy the requirement to adopt a written procurement policy, where the Board would specify the number of written or verbal quotes or bids to be obtained for various dollar thresholds, among other things. The Board also annually¹ adopted resolutions requiring that it approve all purchases costing more than \$1,500; however, these resolutions made no mention of quotes or bids to be obtained prior to such approval. The Highway Superintendent indicated that he obtained quotes for certain purchases, but did not retain them or attach them to the claim for review by the Board prior to payment.

We tested purchases for 11 vendors,² totaling \$155,000, made in 2012 for compliance with GML and to determine if the Board approved purchases in amounts greater than \$1,500. We found the following:

- A purchase from one vendor to rebuild a dump truck bed costing approximately \$38,100 was not competitively bid as

¹ Resolutions were adopted at the Board's organizational meeting, which is generally held in January each year.

² One vendor purchase totaling \$38,132 and diesel fuel purchases aggregating \$21,741 met the GML thresholds for competitive bidding. The remaining nine vendor purchases, totaling \$95,127, were subject only to Board approval and cost in excess of \$3,000 each. See Appendix B for information on the sample selection.

required. Town officials told us they solicited three quotes, but did not advertise for bids in the Town's official newspaper as required by statute. Instead, they contacted three vendors, received only one bid, and the Board awarded the contract to that vendor.

- Five purchases totaling approximately \$35,000 had no evidence of quotes being obtained by Town officials. However, the Board minutes indicated it approved more than half of these purchases (\$20,064) before they were made.

Because Town officials did not make appropriate use of competition the taxpayers cannot be assured that goods and services were procured at the desired quality, lowest possible cost, in the most prudent and economical manner.

Recommendations

1. The Board should adopt and annually review a purchasing policy, in accordance with statutory requirements, to provide guidance for Town officials when making Town purchases.
2. The Board should ensure that Town officials are properly adhering to the competitive bidding requirements and monitor compliance with the adopted policy before approving purchases.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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

Town Supervisor – Dale Carlson
Councilwoman – Betty Benjamin
Councilman – Sid Emmons
Councilman – Don Gietl
Councilman – Terry Bush

Town of Lyndon
852 Lyndon Center. Rd.
Cuba, NY 14727
Ph. (716) 676-9928
Fax (716) 676-2077

Town Clerk – Nancy Carlson
Town Justice – Wayne Holden
Highway Supt. – George Schneider
Assessor – Bobbi Elderkin
Dog Control Officer – James Morgan

Office of the State Comptroller
PSU – CAP Submission
110 State Street, 12th Floor
Albany, NY 12236

14 August 2013

The Town Board thanks the auditors for their courteous and professional assistance during Lyndon's educational audit process. The Board concurs with the audit findings and has already taken corrective action. This letter is intended to serve as both a response letter and corrective action plan. As soon as we were notified our procurement policy was not acceptable to OSC, we took steps to comply. The attached procurement policy was amended during the audit and was reviewed by the auditors prior to the end of the audit and adopted by the Board during the April 9th meeting. Since then, the adopted policy has been instituted and followed whenever applicable..

Thank you & sincerely,

Dale Carlson, Supervisor
Town of Lyndon

CC: Robt Meller, Buffalo region, chief examiner

Procurement Policy Town of Lyndon, NY

A. Purpose

1 - This document sets forth the policies and procedures of the Town of Lyndon to meet the requirements of General Municipal Law § 104-b.

2 - Goods and services which are not required by law to be procured pursuant to competitive bidding must be procured in a manner so as to assure the prudent and economical use of public moneys, in the best interests of the taxpayers, 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 corruption. To further these objectives, the Lyndon Town Board is adopting internal policies and procedures governing all procurements of goods and services which are not required to be made pursuant to the competitive bidding requirements of the General Municipal Law, § 103 or of any other general, special or local law.

B. Procedures for determining whether procurements are subject to bidding.

1 - The procedures for determining whether a procurement of goods and services is subject to competitive bidding and documenting the basis for any determination that competitive bidding is not required by law is as follows.

2 – Procedure: The New York State minimum bid requirements are \$20,000 for standard purchase contracts and \$35,000 for Public Works Contracts. There are no exceptions.

3 - The Lyndon Superintendent of Highways is authorized to make Public Works purchases and standard purchases. The Town of Lyndon Supervisor is also authorized to make standard purchases. The Superintendent of Highways and the Town Supervisor must provide the documentation of each purchase. All purchases over \$1,500 must have documentation reflecting written, verbal quotes, state and county bid contracts or emergency purchases.

4 - Except when directed by the town board, no solicitation of written proposals or quotations shall be required under the following circumstances:

- a. Acquisition of professional services;
- b. Emergencies;
- c. Sole source situations, properly documented;
- d. Goods purchased from agencies for the blind or severely handicapped;
- e. Goods purchased from correctional facilities;
- f. Goods purchased from another governmental agency;
- g. Goods purchased at auction;
- h. Goods purchased under New York State awarded contracts;
- i. Goods purchased under Cattaraugus County awarded contracts;

5 - Every attempt should be made to purchase locally, provided that the costs are competitive and under the New York State established limits and rules. State bid pricing should always be considered.

6 – Documentation: Emergency purchases must be approved by the Lyndon Town Board and documentation explaining the emergency and reasons for purchasing the equipment or services without bid will be kept in the official minutes of the Lyndon Town Board. A majority of the Board must be contacted by phone and approve of the emergency purchase if timing prohibits a regularly scheduled Board meeting.

7 - A copy of any state and county bid contract must be kept on file for two years to verify any purchases of those contracts. Purchases from other governments must be kept in a specific file for the equipment with a copy of the contract and kept at the Superintendent of Highways's office.

8 - All purchases must assure that goods will be bought at the lowest price and show no favoritism. Any deviation must be explained in the documentation.

9 - In the event that a purchase is a "sole source," namely there is only one source from which the item may be purchased, the requestor must attach a written explanation as to why there is only a sole source for such item and also must attach a copy of the quote for such item.

10 - Purchases may not be split in order to avoid the requirements for competitive bidding. Purchases may not be split in order to reduce the requirements for the number of written or verbal quotes. In all purchases requiring quotes, the lowest reasonable quote shall be accepted.

C. Purchases and Purchase Contracts

1 - Purchases and purchase contracts involving the expenditure of more than \$20,000.00 are subject to the competitive bidding requirements set forth in GML Section 103, including advertising and handling of sealed bids.

2 - On purchases and purchase contracts valued from \$5,000.00 to \$19,999.99, the requestor must obtain three (3) written quotes which must be submitted to the Town Board along with the written purchase request.

3 - For purchases and purchase contracts from \$1,500.00 to \$4,999.99, the requestor must obtain three (3) verbal quotes which must be documented and submitted to the Town Board along with the written purchase request.

4 - For purchases and purchase contracts less than \$1,500.00 no written or verbal quote is required from the requestor.

5 - The following Town officers and/or employees are authorized to make purchases:
Town Highway Superintendent, Town Supervisor, and Town Clerk.

D. Contracts for Public Works

1 - Public Works contracts involving the expenditure of \$35,000.00 or more shall be subject to the competitive bidding practices set forth in GML Section 103, including advertising and handling of sealed bids.

2 - For contracts for Public Works involving expenditures from \$10,000.00 to \$34,999.99, inclusive, the requestor must obtain three (3) written quotes which must be submitted to the Town Board, along with the written contract request.

3 - For contracts for Public Works involving expenditures from \$1,500.00 to \$9,999.99, the requestor must obtain three (3) verbal quotes which must be documented and submitted to the Town Board along with the purchase request.

4 - For Public works contracts less than \$1,500.00 no written or verbal quote is required from the requestor.

5 - All information gathered in complying with the procedures of this policy shall be preserved and filed with the documentation supporting the subsequent Public Works contract.

D. Lowest Responsible Proposal

The lowest responsible proposal or quote shall be awarded the purchase or Public Works contract unless the requestor prepares a written justification providing reasons why it is in the best interest of the Town of Lyndon and its taxpayers to make an award other than to the lowest bidder. If a bidder is not deemed responsible, facts supporting that judgment shall also be documented and filed with the records supporting the procurement. The Town Board shall have the final authority to accept, approve and/or award, as appropriate, the purchase or Public Works contract.

E. Good Faith Effort

A good faith effort shall be made by the requestor to obtain the required number of written or verbal quotes, as applicable. If the requestor is unable to obtain the required number of written or verbal quotes, as applicable, the requestor shall document the attempt made at obtaining the written or verbal quotes. In no event shall the inability to obtain the written or verbal quotes be an impediment to the procurement.

F. Annual Review

This policy should be reviewed annually by the Town Board at its organizational meeting or as soon thereafter as is reasonable practicable. This policy may be revised or amended as deemed appropriate by the Town Board, in conformance with applicable section of New York State law, including, but not limited to, GML Sections 103.

Board approved: 4/09/13

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to determine whether the Town was purchasing goods and services of desired quality at the lowest possible price. To accomplish our audit objective and obtain valid audit evidence, we interviewed officials, tested selected purchases, and examined pertinent documents for the period January 1, 2012, through April 26, 2013. We performed the following procedures:

- We reviewed Board minutes, and relevant State and County contracts.
- We selected all vendors whose purchases aggregated more than \$3,000 during 2012, reviewed purchasing records, and examined pertinent documents to determine whether these purchases complied with GML's competitive bidding provisions and Board requirements. For those purchases that did not meet the competitive bidding thresholds, we asked Town officials if they obtained any quotes prior to making the purchase. When necessary, we requested additional documentation to ascertain compliance.
- We reviewed fuel purchases from January 1, 2010, through December 31, 2012 to determine if there would have been cost savings by using an OGS vendor.

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.

APPENDIX C

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Andrew A. SanFilippo, Executive Deputy Comptroller
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