

Town of New Hartford

Procurement

MARCH 2018



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

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Report Highlights

Town of New Hartford

Audit Objective

Determine whether Town officials used competitive methods when procuring goods and services.

Key Findings

- Town officials appropriately sought competition for nearly \$1.4 million in purchases that were over the competitive bidding thresholds.
- Town officials did not consider the aggregate amount to be expended for storm water remediation projects that totaled \$401,510 over a two-year period.
- Town officials did not seek competition for three professional service contracts totaling \$332,262.
- Town officials did not comply with the procurement policy requirements for obtaining quotes and documenting emergency and sole source determinations for 10 purchases totaling \$82,928.

Key Recommendations

- Consider the aggregate amount projected to be expended for the same or similar type of work when determining if competitive bidding is required.
- Seek competition when acquiring professional services and document emergency and sole source purchases as required by the procurement policy.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action. Appendix B includes our comment on the issue raised in the Town's response letter.

Background

The Town of New Hartford (Town) is located in Oneida County. The elected five-member Town Board (Board) is the legislative body responsible for general management and control over the Town's finances and operations. The Town Supervisor (Supervisor)¹ is a Board member and serves as the Town's chief executive officer and chief fiscal officer. The Town Attorney (Attorney) is appointed by the Supervisor and confirmed by the Board.

Quick Facts

Population	22,166
2017 Appropriations	\$14 million
Total Purchases in 2015 and 2016	\$12.7 million

Audit Period

January 1, 2015 through December 31, 2016

¹ The current Supervisor began his term on January 1, 2018.

Procurement

How Should a Town Procure Goods and Services?

New York State (NYS) General Municipal Law (GML) states that goods and services must be procured in a manner to ensure the prudent and economical use of public funds, in the best interest of residents, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost or best value basis. Towns are generally required to seek competition when procurements exceed certain dollar thresholds and must adopt their own policies and procedures for procuring goods and services not required by law to be competitively bid. These procurement policies and procedures provide guidance to employees involved in the purchasing process and help ensure that competition is sought in a reasonable and cost effective manner when competitive bidding is not required.

Major Purchases Generally Complied With Competitive Bidding Statutes

GML generally requires towns to solicit competitive bids for purchase contracts that aggregate to more than \$20,000 and public works contracts that aggregate to more than \$35,000 within a 12-month period. The Town's adopted procurement policy requires employees and officials to competitively bid purchases based on established GML thresholds. In lieu of soliciting competitive bids, the Town may use certain contracts awarded by the NYS Office of General Services (OGS) or a county.

GML provides an exception to competitive bidding requirements for emergency purchases. The Town's procurement policy states that only those situations that require immediate action, apart from normal procedures, would be classified as emergency. The Town policy outlines that emergency situations are to be immediately brought to the responsible department head's attention who should take action to correct the situation. The policy requires written notification by the department head to the Supervisor and Town Comptroller/Director of Finance describing the situation, what action was taken and what further action is required. The policy also requires the Supervisor, Comptroller/Director of Finance and responsible department head to apprise the Board of the situation at the next Board meeting unless an emergency meeting is necessary. Furthermore, the policy stipulates that a situation can only be declared an emergency by a Board resolution and that a permanent file for each emergency will be maintained in the Finance Department. Finally, the policy requires that any vouchers issued or expenses incurred due to the emergency must be authorized by the Supervisor prior to being processed.

We reviewed payments to nine vendors totaling approximately \$2.2 million for purchases over the competitive bidding thresholds and found that payments to seven vendors totaling \$1.4 million complied with competitive bidding statutes and

were for appropriate Town purposes. Town officials solicited competitive bids or used either county or OGS contracts for these seven purchases.

Figure 1: Purchases Complying with Competitive Bidding Statutes

Goods or Services	Expenditure	Method Used
Trail Work Project	\$683,018	Competitive Bidding
Wheel Loaders	\$276,517	OGS Contract
Manhole Repairs and Installation Including Labor	\$116,557	Oneida County Contract
Police Vehicles	\$104,825	Onondaga County Contract
Road Materials	\$81,730	OGS Contract ^a
Road Salt	\$50,243	OGS Contract
Diesel Fuel	\$41,098	OGS Contract
Equipment Rental	\$37,500	Oneida County Contract ^a
Total	\$1,391,488	

^a One vendor's invoice was part State contract and part County contract.

However, we found that the Town did not always comply with its purchasing policy for emergency purchases. For example, the Town paid \$379,834 for an emergency sewer repair without soliciting bids or seeking competition. The Board meeting minutes indicated that the Highway Superintendent distributed a memo to the Board explaining the situation, what was done and an expected completion date. Based on our review of the situation, the work performed appeared to constitute an emergency as evidenced by the Town notifying the NYS Department of Environmental Conservation. However, the Board did not formally declare it as an emergency by passing a resolution and the Finance Department did not maintain a permanent file as required by the policy.

Aggregate Purchases Were Not Competitively Bid

Local governments must consider the aggregate amount reasonably expected to be spent on all purchases of the same commodities or services to be made within the 12-month period commencing on the purchase date, whether from a single vendor or multiple vendors. If the aggregate amount exceeds GML thresholds, competitive bidding is required.

The Town paid a vendor a total of \$401,510 during our audit period (2015 and 2016) for storm water drainage and remediation work without soliciting bids.² A review of the vouchers submitted by the vendor showed that the work performed was similar in nature,³ which, if aggregated, each year would exceed the statutory

² The Town paid the vendor a total of \$437,048 during our audit period for all work performed. This includes road, sewer and emergency work in addition to the water remediation.

³ Most of the vouchers submitted by the contractor describe the services provided as storm water remediation and list the location of the work performed for such services.

dollar threshold for seeking competition as set forth in GML. We question whether Town officials should have considered the aggregate amount of the planned storm water drainage and remediation work in determining whether bidding was required.

We reviewed payments made to the vendor in 2015 totaling \$192,590 for work on nine storm water improvement and remediation projects from previous years.⁴ In July 2014, the Board passed a resolution retaining the services of three excavation vendors⁵ for storm drainage work to be performed in 2014 at the hourly rate of \$135. However, the vendor's invoices do not show the hourly billing rates charged to the Town for equipment, labor and mobilization of equipment or the number of hours charged for the equipment and labor. Without detailed invoices, officials cannot be sure the Town was billed at the agreed-upon hourly rate or for the appropriate number of hours for these projects.

Although we question whether all of the projects should have been aggregated and therefore competitively bid, we identified one storm water remediation project payment totaling \$96,300 that was clearly over the competitive bidding threshold and subject to bidding requirements. The Supervisor told us that the project was not competitively bid because it constituted an emergency. However, the Board did not pass a resolution to declare the situation an emergency as required by Town policy. Additionally, we question the emergency's legitimacy as Board meeting minutes⁶ indicate there were discussions on the project that occurred as early as August 2013 and a review of invoices show work starting in January 2014. Therefore, the situation does not appear to be unforeseen to the extent that it prohibited Town officials from formally soliciting bids for the work.

Similarly, we reviewed payments made to the same vendor in 2016 totaling \$208,920 for 15 storm water remediation and improvement projects completed in 2015. Town officials did not solicit bids or seek competition for any of these projects. The Attorney advised the Board, after the work was completed, that the work constituted different jobs for bidding purposes and that individually none of them reached the competitive bidding threshold limit of \$35,000. The Highway Superintendent indicated that the Town had these storm water remediation and improvement projects on a list of planned projects to start once work was completed on the Town's trail system projects. This indicates that the work was not unanticipated and was part of a single plan to undertake similar remediation work at various sites, rather than several individual self-contained projects.

⁴ A total of \$1,700 was for the end of 2013 and the balance was done in 2014.

⁵ Including the selected vendor

⁶ The Town Clerk provided us with Board meeting minutes with mention of the project in August, September and November 2013.

The 2016 invoices submitted by the vendor also lacked sufficient detail concerning hours and billing rates for labor and equipment. Although the invoices included additional detail regarding individual daily equipment use and the number of laborers used, they still lacked sufficient detail to determine daily billed amounts. The Board subsequently rejected the invoices as originally submitted and required the vendor to resubmit more detailed invoices that were ultimately approved by the Board for payment.

Given the significant dollar amount, the similarity of the scope of work for the projects and the fact that Town officials were aware of the work to be done, the Board could have planned ahead and competitively bid the projects which may have fostered additional competition and potentially enabled the Town to procure the work at a lower cost. Awarding the contracts through competitive bids could also have helped the Board avoid any potential appearance of favoritism towards the selected vendor.

Confirming Purchase Orders Were Used Inappropriately

A confirming purchase order is issued after the goods or services have already been ordered or received. Town officials must strictly control and limit the use of confirming purchase orders because they circumvent the normal procurement process. There is limited assurance that confirming purchases are made at the best price and quality and there is an increased risk that unauthorized or inappropriate purchases could be made when purchases are not approved in advance.

All 24 purchase orders (POs) for the storm water remediation and improvement projects were confirming POs, created and approved after the invoices were received. In addition, 23 of 24⁷ POs were signed by the Supervisor's secretary and not by the Highway Superintendent as required by the Town's procurement policy.⁸

The Town Did Not Always Solicit Competition for Professional Services

GML's competitive bidding requirements do not apply to the procurement of professional services that involve a specialized skill, training and expertise; the use of professional judgment or discretion; or a high degree of creativity. In addition, insurance coverage (e.g., health, fire, liability and workers' compensation) is not subject to competitive bidding requirements. The Town's procurement policy should describe the methods and procedures for promoting competition in the procurement of professional services.

⁷ The Highway Superintendent signed one PO totaling \$19,500 for work in 2014 that was paid in 2015.

⁸ The procurement policy states POs must be signed by the department head only and sent to the Supervisor.

The Town's policy states that formal price quotes for some professional services, insurance and maintenance/service on all office equipment may be obtained. The Town's process for obtaining formal price quotes includes selecting specified vendors based on previous work history with the Town and considering all potentially new vendors based on recommendations and experience level. The Town will then request formal quotes from the selected vendors and the Supervisor and Finance Director will analyze the quotes received and present a recommendation to the Board for award by resolution.

We reviewed the Town's procurement of services from seven professional service providers totaling \$940,974. Town officials solicited formal quotations for four of the seven services totaling \$608,712, including for insurance (\$355,593), engineering services for a trail project (\$121,913), general engineering services (\$80,506) and audit services (\$50,700).⁹ The Town did not seek competition by soliciting proposals or quotations for services totaling \$332,262 for an information technology consultant (\$145,826), appraisal services (\$107,923) and legal services for tax certioraris (\$78,513).

In addition, the Town last sought competitive quotes for its audit services in 2011. Although there is no law that specifies how often towns are required to solicit competition for independent audit services, it is a good business practice to use a competitive process at periodic intervals, such as a minimum of every five years.¹⁰

We found the services procured were for legitimate and appropriate Town purposes. However, when a competitive process is not used, Town officials and the Board do not have assurance that professional services are being procured in the most economical way and in the best interests of residents.

Quotations Were Not Always Obtained

The Town's procurement policy requires three informal price quotes on all materials, supplies or services which are not purchased through OGS contract, Oneida County contract, sealed bid, Industries for the Blind or NYS Correctional Institutions and are between \$1,000 and \$19,999 in value and for public works projects costing up to \$34,999. Informal price quotes may be obtained by telephone, electronic format or by mail from vendors. The policy states that the Town will request formal price quotes for certain items and services used annually by the Town.

We reviewed 13 purchases from 10 vendors, totaling \$107,544, subject to informal quotations and found that Town officials followed the procurement policy

⁹ Formal quotes from previous years have been renewed annually.

¹⁰ We note that the law requires school districts and certain fire districts to use a competitive request for proposal process when contracting for annual audit services and to limit the audit engagement to no longer than five consecutive years.

for three purchases totaling \$24,616.¹¹ However, 10 purchases totaling \$82,928 did not follow the Town's procurement policy, specifically:

- The Town purchased a lawnmower totaling \$7,733 and snow blower attachment totaling \$6,375 without documenting any quotations.
- The Town obtained two of three required quotes for the installation of an air conditioning unit totaling \$29,737 for a Town building.
- The Town had four emergency purchases for compressor parts and repairs totaling \$14,595 and snowplow repairs totaling \$7,325. However, the Board did not pass a resolution declaring these emergencies and the Finance Department did not maintain a permanent file as required by policy.
- The Town made three purchases which they considered as sole source for street light replacement totaling \$7,847,¹² message board rental¹³ totaling \$5,400 and rubberized pool deck material totaling \$3,916. However, according to the Town's procurement policy, sole source purchases can only be made after review by the Supervisor and Attorney. This review and subsequent decision must be documented by both parties which was lacking for these three purchases.

Although the invoices examined were for appropriate Town purposes, without adherence to policies and procedures, the Town risks acquiring goods and services at higher costs than necessary.

What Do We Recommend?

The Board should:

1. Require Town officials to consider the aggregate amount projected to be expended for the same or similar type of work when determining if competitive bidding is required.
2. Ensure that Town officials follow competitive bidding requirements and the Town's procurement policy for future storm water improvement and remediation projects.
3. Ensure the Town seeks competition for professional services by soliciting proposals or quotations for services at reasonable intervals.

11 Two purchases totaling \$15,013 used OGS contracts and one purchase for \$9,603 was for emergency demolition work.

12 The Highway Superintendent indicated the vendor is the only one with the equipment including signage to shut down the highway and make the repairs.

13 The Highway Superintendent indicated road work was scheduled and message boards were originally planned to be obtained from the State. However, when the State was unable to provide message boards, only one company had the required two boards needed.

-
4. Ensure Town officials follow the procurement policy requirements for obtaining quotes and documenting emergency and sole source purchases.

Town officials should:

5. Ensure that vendor invoices contain the appropriate level of detail so the Town can determine whether it is being billed at the agreed-upon rate and hours.
6. Ensure that employees involved in the procurement process comply with the Town's purchasing policy and prepare POs in advance of any purchase or service. Limit the use of confirming POs to emergency situations.

Appendix A: Response From Town Officials

SUPERVISOR
Paul A. Miscione

DEPUTY SUPERVISOR
Anthony J. Trevisani

TOWN ATTORNEY
Herbert J. Cully

TOWN *of* NEW HARTFORD

ONEIDA COUNTY

48 GENESEE STREET, NEW HARTFORD, NEW YORK 13413-2397
Telephone: 315-733-7500 x2332
Fax: 315-724-8499

COUNCILMEN
James J. Messa, 1st Ward
Philip S. Cittadino, 2nd Ward
David M. Reynolds, 3rd Ward
Richard B. Woodland, 4th Ward

February 9, 2018

Ms. Rebecca Wilcox, Chief Examiner
State Office Building, Room 409
333 E. Washington Street
Syracuse, NY 13202-1428

RE: Response to Procurement Report of Examination 2017M-149 for the Town of New Hartford

Dear Ms. Wilcox,

Please accept the following responses to the key findings included in the Procurement Report of Examination 2017M-149 for the Town of New Hartford:

Finding: Town officials did not consider the aggregate amount to be expended for storm water remediation projects that totaled \$401,510 over a two-year period.

Response: In hindsight the Town does agree with this finding, but the following should also be considered under the circumstances-

- As of January 1, 2018 the Town is under a new administration, which plans to review all internal policies including procurement and ensure that all Town officials, board members and staff adhere to the prescribed policies.
- Newly elected Town Supervisor will develop a new Procurement policy and have all department heads and officials sign off on the process.
- Newly elected Town Supervisor will develop a new electric Procurement policy system on the towns website for all bidding and RFP's under \$20,000.

Finding: Town officials did not seek competition for three professional service contracts totaling \$332,262.

Response: The Town does agree with this above observation and its related recommendation, but does not agree that the observation should be considered an “audit finding” due to the following:

- General Municipal Law’s competitive bidding requirements do not apply to the procurement of professional services that involve a specialized skill, training and expertise, which includes legal, accounting/auditing, insurance and IT consulting. All items noted in the “audit finding” above are for these precluded professional services- legal, IT consulting and appraisal services.
- The Town does recognize the importance of bidding these services periodically to ensure it is receiving the best rates and professionalism for the residents of the Town. To this point, the Town has gone to the RFP process for its annual 2017 financial statement audit and has periodically received RFP quotes from various insurance providers for its comprehensive and liability insurance and has done the same for its various health insurances.
- As of January 1, 2018 the Town is under a new administration, which plans to review all internal policies including procurement and ensure that all Town officials, board members and staff adhere to the prescribed policies.
- Newly elected Town Supervisor will develop a new electric Procurement policy system on the towns website for all bidding and RFP’s under \$20,000. This will make competition pricing easier to achieve.

See Note 1 Page 12

Finding: Town officials did not comply with the procurement policy requirements for obtaining quotes and documenting emergency and sole source determinations for ten purchases totaling \$82,928.

Response: The Town does agree with this finding but would like to clarify the breakdown of the \$82,928 total with the following:

- Purchases that were made without the three informal quotes amounted to \$14,108 and were only noted under two occasions.

SUPERVISOR
Paul A. Miscione

DEPUTY SUPERVISOR
Anthony J. Trevisani

TOWN ATTORNEY
Herbert J. Cully

TOWN *of* NEW HARTFORD

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Telephone: 315-733-7500 x2332
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- On one installation job, amounting to \$29,737, two of the three required quotes were obtained and documented, therefore only missing one required quote.
- A total of \$21,920 involving four purchases related exclusively to emergency purchase situations, where the Town inadvertently did not properly follow-up with a formal board resolution and documentation.
- Newly elected Town Supervisor will develop a new electric Procurement policy system on the towns website for all bidding and RFP's under \$20,000. This will make competition pricing easier to achieve.
- As of January 1, 2018 the Town is under a new administration, which plans to review all internal policies including procurement and ensure that all Town officials, board members and staff adhere to the prescribed policies.
- Newly elected Town Supervisor will develop a new Procurement policy and have all department heads and officials sign off on the process.
- A total of \$17,163 involving three purchases related exclusively to sole source purchase situations where the Town inadvertently did not properly follow its procurement policy with regard to "sole source" purchases- specifically in the review and documentation process.

Sincerely,

Paul Miscione, Town Supervisor

Appendix B: OSC Comment on the Town's Response

Note 1

Our report acknowledges the exceptions to General Municipal Law competitive bidding requirements for procurement of professional services. However, as a best practice, the Town's procurement policy should describe the methods and procedures for promoting competition in the procurement of professional services.

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 Town officials and employees involved in the procurement process.
- We reviewed the Town's purchasing policy and procedures and evaluated their adequacy.
- We judgmentally selected nine vendors whose payments exceeded the bidding thresholds. We reviewed bid documents for evidence that purchases were competitively bid and the lowest responsible bidder was selected, in compliance with GML and the purchasing policy. If the Town did not solicit competitive bids, we determined whether the purchases were made using an OGS or county contract and whether the amounts charged agreed with the contract.
- We judgmentally selected seven vendors based on those that appeared to be for professional services and were for large dollar amounts. We requested and reviewed documentation to determine whether formal quotes were obtained or some other form of competition was sought.
- We judgmentally selected 12 payments for 13 purchases from 10 vendors whose payments were subject to quotations based on vendor names and dollar amounts, with no known biases. We reviewed claim packets and other supporting documents to determine whether officials complied with the purchasing policy.

We conducted this performance audit in accordance with GAGAS (generally accepted government auditing standards). 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.

A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and provided to our office within 90 days, pursuant to Section 35 of 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 the CAP available for public review in the Town Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

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

www.osc.state.ny.us/localgov/costsavings/index.htm

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

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

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

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm

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

www.osc.state.ny.us/localgov/planbudget/index.htm

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

www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.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/localgov/finreporting/index.htm

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

www.osc.state.ny.us/localgov/researchpubs/index.htm

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

www.osc.state.ny.us/localgov/academy/index.htm

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.state.ny.us

www.osc.state.ny.us/localgov/index.htm

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

SYRACUSE REGIONAL OFFICE – Rebecca Wilcox, Chief Examiner

State Office Building, Room 409, 333 E. Washington Street, Syracuse, New York 13202-1428

Tel: (315) 428-4192 • Fax: (315) 426-2119 • Email: Muni-Syracuse@osc.state.ny.us

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