



City of Rome

Solar Power Purchase Agreements

Report of Examination

Period Covered:

January 1, 2013 – June 30, 2015

2015M-290



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

May 2016

Dear City 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 City Council 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 City of Rome, entitled Solar Power Purchase Agreements. 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 New York State 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 City of Rome (City) is located in Oneida County and has a population of approximately 35,000 residents. The City is governed by an elected Mayor¹ and Common Council (Council), which is composed of seven Council members and a Council President. The Mayor is responsible for the general management and control of City operations and the Council is the City's legislative body. The Mayor is the City's chief executive officer and appoints the City Treasurer (Treasurer), who is responsible for the City's fiscal affairs.

The Mayor is the president of the City's Board of Estimate and Contract (Board) that is responsible for awarding certain City contracts. The Board is composed of the Mayor, Treasurer, Corporation Counsel, Commissioner of Public Works and Council President. The Purchasing Department develops specifications, bid solicitations, proposals and quotations and interacts with vendors. The City's Department of Community and Economic Development (department) promotes job creation, new investment and economic growth and administers federal- and State-funded projects that support the development of urban neighborhoods, economic opportunity and cultural and historic resources. The department is managed by a Director.²

The City has entered into two power purchase agreements (power agreements) and lease agreements with a solar company that provides photovoltaic-powered (solar-powered) electric generating systems (solar systems).³ According to each power agreement, the solar company will develop, design, construct, own, operate and maintain two solar systems and will retain all tax credit benefits and incentives attributed to the systems. In exchange, the City will purchase the electric energy produced from the solar systems at established rates, with annual increases, based on the actual volume of power produced. The City will pay an established kilowatt-hour rate that

¹ The current Mayor began her term on January 1, 2016.

² During our audit period, the department had two Directors. The first Director (former Director) was employed by the City through September 2013. The second Director (Director) was hired in November 2013 and resigned as of December 11, 2015.

³ One agreement is for 20 years and the other spans 25 years. Each power and lease agreement refers to the City entering into an agreement with a limited liability company (LLC). However, certain approvals by the Council and Board indicate that the agreements are with the solar company. Each LLC also appears to have some type of affiliation with the solar company, possible as a subsidiary of the company. For the purposes of this report, we have assumed that each power and lease agreement is an enforceable contract between the City and the solar company. The legal propriety of the agreements, including their respective lengths, is not within the scope of this audit.

is multiplied by the number of kilowatt-hours of energy generated, which is measured by a metering device.

According to the Director, the energy produced by the systems will not be used to power the City. Instead, the energy will be returned back to the power grid, and the City will receive a credit on its electric utility bill for the power generated by the solar systems. The City anticipates that the credit per kilowatt-hour received from the utility company will be greater than the cost per kilowatt-hour paid to the solar company, resulting in savings.

The power agreements also state that, with City approval, the solar company has the option to extend each agreement for an additional five years. Upon completion of the power agreements, the solar company is responsible for removing the solar systems and returning the premises to their original condition.

The solar systems will be constructed on two parcels: a 15-acre parcel subleased by the City on Tannery Road, which is the site of a closed landfill, and a 43-acre parcel owned by the City on Lamphear Road. The solar company will pay the City a total of \$341,250 to lease the two parcels over the term of the agreements.⁴

As of April 6, 2016 the solar company had begun construction of the solar systems, but they are not operational.

Objective

The objective of our audit was to evaluate the City's process for entering into solar power purchase agreements. Our audit addressed the following related question:

- Did the City adequately engage in a competitive process prior to entering into solar power purchase agreements to help ensure the agreements are in the best interests of the City?

Scope and Methodology

We examined the City's process for entering into solar power purchase agreements for the period January 1, 2013 through June 30, 2015.

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.

⁴ The solar company will pay \$5,250 annually to lease the Tannery Road site for 25 years and \$10,500 annually to lease the Lamphear Road for 20 years.

**Comments of
Local Officials and
Corrective Action**

The results of our audit and recommendations have been discussed with City officials, and their comments, which appear in Appendix A, have been considered in preparing this report. City officials agreed with our recommendations and indicated they plan to take corrective action.

The Council 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 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 Council to make this plan available for public review in the City Clerk's office.

Solar Power Purchase Agreements

One of the goals of seeking competition is to foster honest competition to enable local governments to obtain quality commodities and services at the lowest possible cost or under the best possible terms. Seeking competition also helps guard against favoritism, extravagance and fraud, while allowing interested vendors a fair and equal opportunity to compete. Unless an exception applies, General Municipal Law (GML) requires that purchase contracts in excess of \$20,000 be awarded to the lowest responsible bidder, or on the basis of best value⁵ (i.e., competitive offer), and that contracts for public work in excess of \$35,000 be competitively bid.

GML does not require competitive bidding for the procurement of professional services that involve specialized skill, training and expertise; use of professional judgment or discretion; or a high degree of creativity. However, GML does require that municipalities adopt policies and procedures governing the purchase of goods and services when competitive bidding is not required. Using a request for proposals (RFP) process is an effective way to help ensure that the City receives needed services on the most favorable terms or for the best value.

The City did not use a competitive process prior to entering into solar power purchase agreements or ensure the agreements were in the best interests of the City. The Board approved two power agreements with a solar vendor without soliciting any form of competition from other solar vendors. As a result, the City may have missed an opportunity to realize greater savings, totaling between \$1.25 and \$7.21 million.

Soliciting Competition – Although the City’s procurement policy indicates that professional services are an exception to GML’s bidding requirements, it states that using an RFP process “can provide a mechanism for fostering increased competition of professional services and can ensure that these contracts are awarded in the best interests of the taxpayers.” The policy also states that requests for professional services must be published in the City’s official newspaper and that all contracts must be approved by the Board.

⁵ The city must first authorize the use of best value by adopting a local law. For this purpose, “best value” is defined, in part, as a basis for awarding contracts “to the offeror that optimizes quality, cost and efficiency, among responsive and responsible offerors.” In assessing best value, nonprice factors may be considered when awarding the purchase contract. However, when possible, the basis for a best value award must reflect objective and quantifiable analysis.

The City did not use an RFP process or seek any competition or alternative pricing from other solar companies prior to entering into power and lease agreements for the two solar systems. Based on discussions with one solar company, the Council authorized⁶ the Mayor to enter into an option agreement with the solar company for the potential lease/sublease of a portion of the Tannery Road landfill site and a power agreement. The former Director told us that prior to requesting Board approval for the agreement, the City's former Corporation Counsel told him that the arrangement was a professional service, which would be an exception to GML's competitive bidding requirements.⁷

Although City officials indicated they routinely solicit proposals from vendors for professional services, the City did not seek competition when obtaining the services of this company. City officials told us that soliciting proposals would have been too time consuming in this instance because, had they taken the time to use an RFP process, the solar company would have missed a deadline for obtaining funding for the construction of the solar array. The company told the City that program applications⁸ were due in August 2013, which was approximately one month after the Council gave the Mayor approval to enter into an agreement with the solar company.

The City also did not solicit any competition prior to entering into the second power agreement with the same company. In August 2014, the solar company approached City officials regarding their interest in installing a second solar system. The solar company had previously reached an agreement with another business to install solar arrays, but the project fell through. This left the solar company with approved funding for the project but no customer.

On September 25, 2014, the Board authorized the Mayor to enter into a second power agreement with the solar company for the installation of a solar system on Lamphear Road. However, the Mayor had

⁶ The Council gave authorization to enter into the option agreement on July 24, 2013. On May 15, 2014, the Board authorized the Mayor to enter into a 25-year power agreement with the solar company for the Tannery Road solar project.

⁷ Whether this transaction falls within the professional services exception to bidding is not within the scope of this audit. However, assuming it does fall within the exception, the City would still be required to follow its own procurement policies and procedures. Further, even though the City's policies do not require a competitive process for professional services, we believe, as noted, using a competitive method, such as an RFP process, generally helps ensure that the City obtains needed qualified services upon the most favorable terms and conditions, and in the best interest of the City.

⁸ New York State Energy Research and Development Authority (NYSERDA) New York Sun Competitive Photovoltaic (PV) Program

already signed the second agreement on August 29, 2014, nearly a month before it was approved by the Board.

By not soliciting competition for these solar systems, City officials may not have obtained the most favorable rates for the services provided by the solar company.

Competitive Rates – The Council President told us that the Board and Council did not question the competitiveness of the rates to be paid to the solar company for either project. He said that the discussions of the proposed solar projects primarily centered on the amount of money the City expected to save.

The City anticipates saving more than \$8.6 million from the power agreements, which is contingent upon the systems achieving an estimated annual solar production of 3,450,000 kilowatt-hours⁹ and the electric credit estimates remaining consistent (Figure 1). For the first year of production, the City estimated a credit on its power bill of \$0.127 per kilowatt-hour,¹⁰ while paying the solar company \$0.095 per kilowatt-hour.¹¹ However, should the credit received from the utility company ever drop below the rate paid to the solar company, the City will no longer achieve the estimated savings.

Figure 1: Projected Solar Savings			
	Tannery Road	Lamphear Road	Totals
Total Credits	\$15,024,217	\$11,240,625	\$26,264,842
Payment to Vendor	\$10,481,190	\$7,172,833	\$17,654,023
Projected Savings	\$4,543,028	\$4,067,792	\$8,610,820

We compared the rates and terms of the two agreements with solar power agreements of five government entities¹² that have initiated solar projects similar to the City's to determine whether they were consistent. The City's negotiated rates for its solar projects are among the highest, after factoring in annual increases.

⁹ This amount of electricity is enough to power approximately 316 homes for one year (Source: U.S. Energy Information Administration, 2014 data). Production is expected to decrease annually by 0.5 percent due to system degradation.

¹⁰ City officials estimated the expected credit to be received from its utility provider by taking an average of delivery and supply rates and increasing them by 3 percent annually.

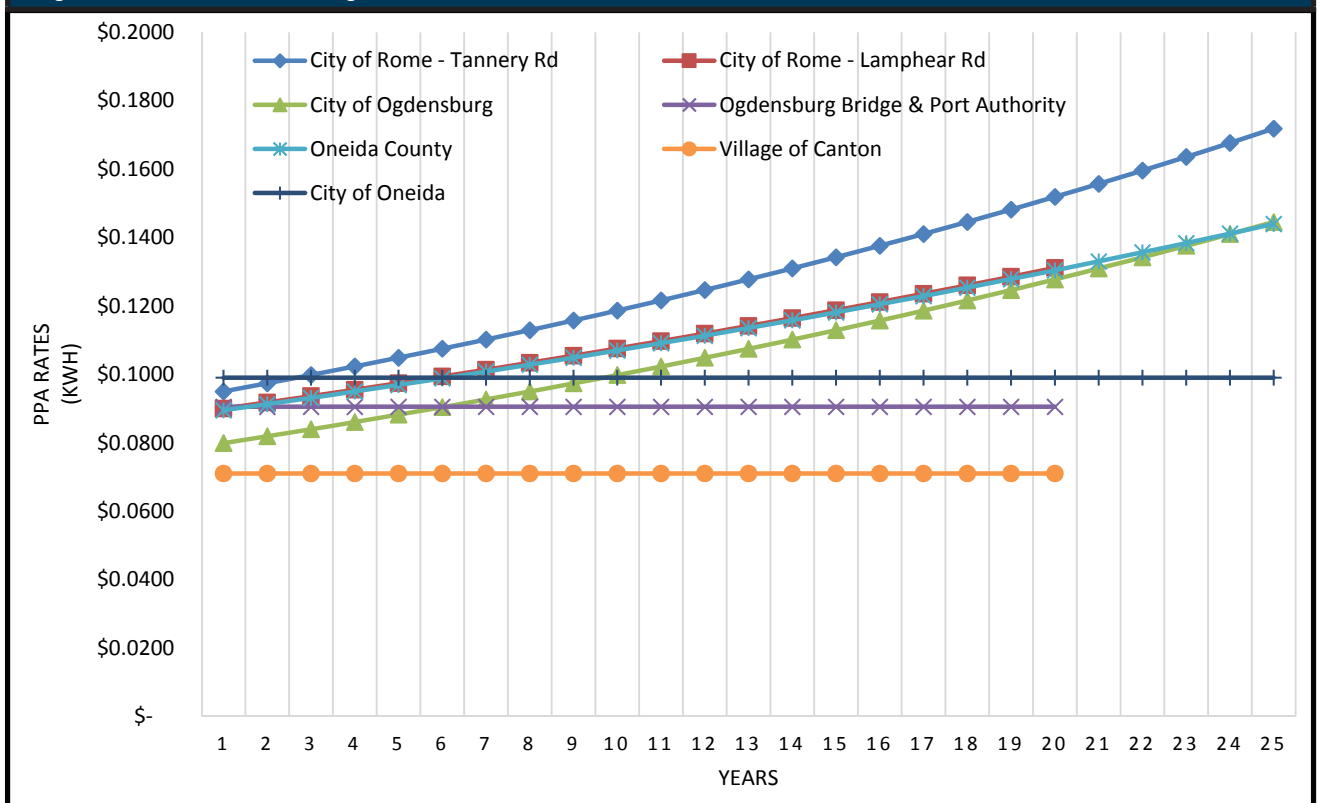
¹¹ The Tannery Road agreement requires the City to pay \$0.095 per kilowatt-hour, and the Lamphear Road agreement requires \$0.09 per kilowatt-hour.

¹² The City of Oneida, City of Ogdensburg, Oneida County, Village of Canton and Ogdensburg Port Authority. Refer to Appendix B for further information on our sample selection.

Officials from the five government entities told us they sought some form of competition from other solar companies prior to awarding their power agreements. Two told us they solicited proposals from vendors, while two others issued a request of the vendors' qualifications and experience (RFQ). The remaining government entity contracted with a solar vendor that was selected through a public bidding process.

Three of the government entities entered into power agreements with fixed rates of 7.1 cents, 9.05 cents and 9.9 cents per kilowatt-hour over the life of their agreements without annual increases. The City's rate for its first negotiated power agreement (Tannery Road) includes a 2.5 percent annual increase. It begins with a rate of 9.5 cents per kilowatt-hour and increases to 17.18 cents, the highest of all the government entities reviewed. Meanwhile, the City's second solar project (Lamphear Road) starts at 9 cents per kilowatt-hour and reaches 13.11 cents due to the 2 percent annual increase, which makes it the highest rate of the three 20-year agreements we reviewed (Figure 2).

Figure 2: Power Purchase Agreement Rates



Had the City sought competition and solicited additional pricing from other vendors, it may have been able to achieve greater savings. For example, had the City obtained rates that more closely resembled those obtained by the five other government entities, it could have achieved between \$1.25 and \$7.21 million in additional savings due to lower costs paid to the solar company (Figure 3).

Figure 3: Comparison of Power Agreement Terms

City of Rome's Projected Savings				
City Locations	Rate per kWh ^a (Beginning - Ending Rates)	Annual Increase	Length of Agreement (Years)	Projected Savings
Tannery Road Site	\$0.0950-\$0.1718	2.5%	25	\$4,543,028
Lamphear Road Site	\$0.0900-\$0.1311	2%	20	\$4,067,792
Total Projected Savings				\$8,610,820
Estimated Additional Savings				
Government Entity	Rate per kWh (Beginning - Ending Rates)	Annual Increase	Length of Agreement (Years)	Estimated Additional Savings
Village of Canton	\$0.0710	None	20	\$7,210,860
Ogdensburg Port Authority	\$0.0905	None	20	\$4,342,667
City of Oneida ^b	\$0.0990	None	25	\$3,092,430
City of Ogdensburg	\$0.0799-\$0.1445	2.5%	25	\$2,149,430
Oneida County	\$0.0895-\$0.1439	2%	25	\$1,250,000
Average Additional Savings				\$3,609,077
^a Kilowatt-hour ^b Oneida City officials were unable to provide us with the city's power agreement rates. Instead, we obtained the city's power agreement rate per kWh and annual increase information from the minutes of the city's January 6, 2015 common council meeting.				

City officials attributed the higher rate and increase of the Tannery Road project to potential higher construction costs, because the solar company will have to pour concrete ballasts to install the solar panels on the closed landfill. However, the solar company did not provide the City with a detailed breakdown of costs associated with the project. Therefore, City officials cannot be assured that this is the reason for the inflated rate and increase. Had the City solicited some form of competition for the project, the selected vendor may have proposed a lower rate or increase.

Because the City did not solicit competition for its solar projects, it has missed the opportunity to potentially save an additional \$1.25 to \$7.21 million (average of \$3.6 million) on its power agreements. In addition, the City and its taxpayers do not have any assurance that the solar projects were procured in a prudent and economical manner, and the City has a greater risk that the procurement could be perceived as being influenced by favoritism, fraud or corruption.

Recommendations

The Board and City officials should:

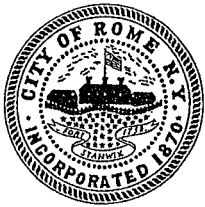
1. Engage in a competitive process prior to entering into future power agreements.

2. Ensure that the established contract approval process is followed properly for all future contracts.

APPENDIX A

RESPONSE FROM CITY OFFICIALS

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



OFFICE OF THE MAYOR

Jacqueline M. Izzo, Mayor

Rome City Hall, 198 N. Washington Street
Rome, New York 13440-5815

Phone: 315-339-7676
Fax: 315-339-7667
mayor@romecitygov.com

May 16, 2016

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
State Office Building, Room 409
333 East Washington Street
Syracuse, NY 13202-1428

Dear Ms. Wilcox:

Please accept this letter as the City of Rome's response to the Report of Examination entitled "Solar Power Purchase Agreements" (hereinafter "the Report").

When the City of Rome (hereinafter "City") entered into two Power Purchase Agreements (hereinafter "the Agreements") with [REDACTED] in 2014 to purchase electricity produced from solar systems, the City officials in office at the time believed that the Agreements were not subject to competitive bidding requirements. And, while the City at that time may have and usually did use other methods of soliciting competitive pricing for contracts not subject to competitive bidding, the former City administration did not think it was possible to do so prior to signing the Agreements. Believing at the time that deadlines for grant funding and other factors made it impractical to do a Request for Proposals (hereinafter "RFP") or utilize another method of soliciting competition, the City entered into the Agreements without engaging in any formal competitive process. Instead, the former City officials relied on information they had gathered on the cost of procuring electricity, trends in the increasing cost of electricity over time and information available about other power purchase agreements. Ultimately, the prior City administration believed that it was fiscally advantageous and in the best interests of the City and its residents to sign the Agreements as the City did not have to expend any money for the project, the projected savings to the City at the time was in excess of \$8,600,000.00 and the City would receive nearly \$350,000 in revenue generated by leasing the land that would serve as the project sites.

With all that being said, the current City of Rome administration is cognizant of the fact that the competitive bidding process, or other means of soliciting competition, helps ensure that public moneys are used in a prudent and economical way. It also promotes transparency and helps avoid the appearance of impropriety in the award of public contracts. The City is committed to following any applicable laws or rules relative to the procurement of goods and services and will continue to do so.

There are many factors that can contribute to the pricing of a Power Purchase Agreement, including construction costs and the type of solar system being utilized. The current City administration cannot, at this point, speculate that had the City engaged in a competitive process

Rebecca Wilcox, Chief Examiner
Office of the State Comptroller
May 16, 2016
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that it could have obtained a better deal or realized the possible additional savings identified in the Report. However, the current City administration does acknowledge that engaging in a competitive process would have helped the City ensure that it received the most favorable terms possible before it entered into any agreement.

In sum, the City accepts the recommendations set forth in the Report and will make every effort to abide by them. We intend to engage in a competitive process prior to entering into any future power purchase agreement. And, the City has already taken measures to ensure that the established contract approval process is followed for all contracts. We believe these measures will help ensure that the City is obtaining maximum quality at the lowest possible cost, and that the taxpayers of Rome are informed and educated about how public money is being spent.

Sincerely,

Jacqueline M. Izzo
Mayor

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed City officials to determine the City's process for entering into the power agreements and whether it solicited competition or comparative pricing from other solar vendors. We also interviewed City officials to determine the City's procedures for the procurement of professional services in general.
- We reviewed various documents, including the power agreements, minutes of the Board and Council meetings and the City's charter, codes and purchasing policy.
- We contacted NYSERDA to obtain a list of active solar projects with reported power production capabilities of 200 kilowatt-hours or greater that have received NYSERDA funding in recent years. In addition, we conducted research and contacted additional government entities that also had initiated solar projects which were similar in nature to the City's solar projects. We gathered information from local officials on their power agreements, such as the size of their solar systems, expected power production, type of meter, length of their agreement, and whether the power produced by their systems would be placed back on the grid or used for municipal purposes. We identified five other government entities (the City of Oneida, City of Ogdensburg, Oneida County, Village of Canton and Ogdensburg Port Authority) that have initiated solar projects similar to the City. We reviewed their power agreements or meeting minutes to determine their contract rates and obtained information on the process they used to select a vendor. These selected government entities are located within the eight counties covered by OSC's Syracuse Regional Office.
- We calculated potential cost savings the City could have achieved had it used some form of competition to obtain rates and increases similar to those obtained by the five other government entities.

We conducted this performance audit in accordance with 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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