



Upper Mohawk Valley Memorial Auditorium Authority Procurement

Report of Examination

Period Covered:

January 1, 2014 — June 30, 2015

2015M-304



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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

March 2016

Dear Authority Officials:

A top priority of the Office of the State Comptroller is to help authority officials manage their resources efficiently and effectively and, by so doing, provide accountability for dollars spent to support authority operations. The Comptroller oversees the fiscal affairs of authorities statewide, as well as authorities' 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 authority operations and Board governance. Audits also can identify strategies to reduce authority costs and to strengthen controls intended to safeguard authority assets.

Following is a report of our audit of the Upper Mohawk Valley Memorial Auditorium Authority, entitled Procurement. This audit was conducted pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution (see also Sections 1949-h and 2803 of the New York State Public Authorities Law).

This audit's results and recommendations are resources for authority officials to use in effectively managing operations and in meeting the expectations of taxpayers. 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 Upper Mohawk Valley Memorial Auditorium Authority (Authority) is located in the City of Utica in Oneida County (County). The Authority was established by Section 1942 of the New York State Public Authorities Law (PAL). The Authority Board (Board) is responsible for, among other things, operating and managing, or contracting for the operation and management, of the 3,835-seat Utica Memorial Auditorium (AUD). The Board is composed of seven members, appointed to five-year terms. Three are appointed by the County Executive and four by the County Legislature. The Board Chair serves as the Authority's chief executive officer (CEO).

Major activities at the AUD include American Hockey League (AHL) and Utica College hockey games. The Authority does not have any employees; it contracts with a management company (Company) to run day-to-day operations of the AUD. The Mohawk Valley Gardens Corporation (MVG) is an umbrella organization which controls most of the AUD's operations through its affiliates which include the Company, the AHL team and the AUD concessionaire. The President of MVG serves as the main liaison between the Authority, MVG and the Company.

Pursuant to a management agreement between the Company and the Authority, the Company pays all AUD operating and related expenses. The agreement requires that the Authority provide \$665,000 annually to the Company from moneys received from the Upper Mohawk Valley Regional Water Finance Authority. The Authority is responsible for all capital improvements. Under the agreement, the Company pays the Authority \$1.00 per attendee at all paid events, which is deposited into a dedicated account that is used by the Authority to help fund capital improvements.¹ Since 2013, the AUD has undergone major renovations and upgrades to its facilities, which were primarily financed by State grants totaling approximately \$5 million and Oneida County funding totaling approximately \$2.5 million. During our audit period, the Authority made payments to vendors (including the Company) totaling more than \$8.5 million.

Objective

The objective of our audit was to assess the Authority's purchasing procedures. Our audit addressed the following related question:

- Did the Board ensure that goods and services were purchased competitively and in compliance with the Authority's procurement policy?

¹ The minimum amount due annually from the Company is \$150,000.

**Scope and
Methodology**

We examined the Authority’s purchasing practices for the period January 1, 2014 through June 30, 2015. We extended our audit back to January 2013 to review minutes and agreements.

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. 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.

**Comments of Authority
Officials and Corrective
Action**

The results of our audit and recommendations have been discussed with Authority officials and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, Authority officials generally agreed with our recommendations and indicated they had already implemented some of our recommendations. Appendix B includes our comments on the issues raised in the Authority’s response letter.

Good management practices dictate that the Board has the responsibility to initiate corrective action. As such, the Board should prepare a plan of action that addresses the recommendations in this report and forward the plan to our office within 90 days.

Procurement

The objectives of a procurement process are to obtain services, materials, supplies and equipment of the desired quality, in the quantity needed, generally at the lowest price, in compliance with applicable laws and Board requirements. The appropriate use of competition helps ensure that procurements are not influenced by favoritism, fraud or corruption, and that public funds are expended in the most efficient manner. To ensure Authority resources are safeguarded, it is imperative that the Board take an active oversight role and establish guidelines for Authority and Company officials to follow when purchasing goods and services. Part of the Board's responsibility includes ensuring accountability and transparency of Authority actions, which requires the Authority to maintain accurate Board minutes, including the adoption of procurement policies and specifying the bidders and amounts considered by the Board. In the absence of specific statutory requirements, clearly defined thresholds and conditions as to when competitive bids, written or verbal quotes or requests for proposals (RFPs) are to be used are important components of an effective procurement policy.

The Board minutes did not include the adoption of the two procurement policies² that were in effect during our audit period or the names of the bidders and the amounts of the bids that were considered by the Board prior to awarding contracts. Although Authority officials generally followed competitive bidding requirements, they purchased a dehumidifier costing \$447,000 without soliciting bids. While the Board declared this purchase to be an emergency, the policy said that the Company would solicit at least two telephone quotes, if practical; however, the Authority received just one quote. In addition, although Authority officials met the minimum advertising requirements for a \$789,948 building electrical contract for which they received only one bid, had they made more of an effort, they may have increased the number of bids received and achieved better contract terms. Further, the two procurement policies that were in effect during our audit period did not provide adequate guidance for purchases when competitive bidding was not required. For example, the policies did not clearly identify who was responsible for purchases from \$2,500 up to the bidding limits, or the number and type of quotes – verbal or written – that should be obtained.³ In addition, Authority

² The policy in place with the prior management company was dated March 2, 2011 and was in force until the advent of the new policy with the Company, which was dated July 14, 2014.

³ The procurement policies authorize the Company to make purchases up to \$2,500 on behalf of the Authority. For purposes of this audit, we have assumed the legal propriety of the Authority authorizing the Company to enter into binding purchasing contracts on behalf of the Authority.

officials did not obtain the required price quotes for eight purchases below competitive bidding thresholds totaling \$140,737 or use an RFP process as prescribed in the policies to obtain services from two professionals totaling \$253,742. As a result, the Authority may have incurred higher costs than necessary or not obtained the most favorable terms for goods and services purchased.

Board Minutes

New York State Public Officers Law requires that minutes be taken of the Board's meetings. The minutes, at a minimum, must record or summarize all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon, including votes on delegations of authority and directives to staff. The Board should ensure accountability and transparency of Authority actions by making certain that a complete and accurate record of the proceedings of each meeting are kept. The minutes are a long-term record of the Board's actions and key decisions. As a matter of good business practice, minutes should also include a brief objective account of the debate on issues and alternatives considered for important decisions. This can help demonstrate that the Board is exercising its authority in good faith and with the proper degree of diligence, care and skill. The Board should approve only those minutes that accurately capture all relevant discussions, motions, proposals and resolutions.

We believe that Board minutes are inadequate and incomplete because they did not include sufficient detail to determine the Board's actions. For example:

- The Authority had two procurement policies dated March 2, 2011 and July 14, 2014, respectively. We reviewed the minutes for several months around July 2014 and found no evidence of Board approval of the July 14, 2014 policy. Officials could not provide us with minutes from 2011.
- When the Board awards contracts that are competitively bid, the minutes do not list all of the bidders and the amounts of their individual bids. Authority officials told us that bids are opened at the time listed in the bid announcement and read aloud and recorded by the administrator of the project (general contractor or engineering firm). However, the bid amounts and the names of the respective vendors are not entered into the Board's minutes when the Board reviews the bids and awards the contracts. For example, the minutes showing the bid award for the building façade project general contractor (\$2,427,000) indicate the low bidder, but did not mention either of the other two bidders and amounts. The minutes showing the bid award for the construction of a parking lot (\$438,290) identify the vendor who was awarded

the bid as a result of being the low bidder, but do not identify the other six competing bidders and the amounts of their bids. Additionally, the minutes did not specify the total amount of the awarded bid including base and alternatives for the bid selected.

Authority officials told us that various Company employees prepare Board minutes and acknowledge they have not done a good job ensuring that Board minutes capture all necessary information and Board actions. As a result of the incomplete Board minutes, residents and other interested parties may not have adequate information about Board activities and decisions.

Competitive Bidding

PAL provides that all construction contracts be awarded in conformance with applicable provisions of New York State Finance Law. With respect to contracts for the erection, construction, reconstruction or alteration of buildings, when the entire cost of the work will exceed \$500,000 (for Oneida County), separate specifications must be prepared for: (1) plumbing and gas fitting; (2) steam heating, hot water heating, ventilating and air conditioning apparatus; and (3) electric wiring and standard illuminating fixtures. Specifications must be prepared to permit separate and independent bidding on each of the three subdivisions of work. In addition, one or more contracts for the remaining general construction work would also be let. PAL provides that the Authority may not award any construction contract except to the lowest bidder who is qualified to perform the work required and who is responsible and reliable.

In addition to those statutory bidding requirements, the Authority's procurement policies required, with certain exceptions, competitive bidding "pursuant to Section 103 of the General Municipal Law" for purchase contracts which can be reasonably expected to exceed \$20,000 during a fiscal year and for contracts for public work which can be reasonably expected to exceed \$35,000. Among the exceptions to bidding requirements in the Authority's policies are purchases using contracts let by the New York State Office of General Services (OGS) or "any Oneida County agent" and emergency procurements.⁴

We examined all six procurements during our audit period where the dollar amount paid exceeded the bidding thresholds set forth in the Authority's policies and the State Finance Law. Authority officials made all six procurements, totaling \$4,198,413, by seeking competitive

⁴ The policies describe an "emergency situation" as one "where purchases/ services are needed to remedy a situation that creates a threat to the Authority, public health, welfare or service or any of our functions. The existence of such a situation creates immediate and serious need that cannot be met through Authority monthly meetings."

bids or using an allowed exception in its procurement policies. The Authority publicly advertised for sealed bids and awarded contracts to the lowest bidders for a building façade improvement general contract (\$2,427,500), building façade electrical contract (\$789,948), parking lot construction (\$438,290) and asbestos removal (\$66,800). The Authority purchased cameras (\$28,875) from a State contract vendor (a contract let by OGS), so it was not required to solicit competitive bids. Authority officials purchased a dehumidifier unit (\$447,000) for the building in December 2014 without soliciting bids. The Board declared this purchase to be an emergency because it did not anticipate the need for ice into the Spring of 2015.⁵ While the policy provides an exception from bidding requirements for emergency purchases, it requires that the Company solicit at least two telephone quotes from responsible suppliers or service providers, if practical. The CEO told us the Authority received just one quote for the emergency purchase of the dehumidifier.

When reviewing the competitive bids, we found that the Authority initially received four bids for the building electrical contract in April 2014. When bids were received and opened for all phases of the project – electrical and general contracting – all bids for the project in its entirety were over budget, so the Authority rejected all bids, made changes to the scope of the project and advertised for new bids in July 2014.⁶ This revised project was advertised in a local paper for three consecutive days. The Authority received only one bid and the Board awarded the contract to the sole bidder for \$789,948.⁷ We contacted the three original bidders who did not submit second bids and two of them indicated they were not aware that the Authority had modified the project and put it out for bid again. The third vendor said he was aware that the project was modified, but he decided not to spend the time and cost to prepare a second bid.

While the Authority met the minimum requirements for advertising the project, had the Authority made more of an effort to attract as many bidders as possible, such as by more broadly advertising for bids and directly notifying all known prospective bidders, it may have increased the number of bids received and improved the chances of achieving better contract terms.

⁵ The CEO informed us that there would be a weather phenomenon in the building because of the difference in the outside temperature and the ice on the floor of the building – protective glass would fog over, rain droplets would fall from the top of the building and the ice area would fog over – making it impossible for the hockey games to continue.

⁶ PAL authorizes the Authority to reject any or all bids if it believes that the public interest will be promoted thereby.

⁷ The sole bidder who received the contract also submitted the low bid the first time the Authority advertised for sealed bids.

We also note that the president of the company that received the contract is the brother-in-law of the President of MVG, who was listed as the Authority's contact person in the public advertisement for bids.⁸ It is unclear the authority under which the President of MVG, as opposed to an Authority or Company official, was designated as the Authority's contact person for this bidding process. Moreover, although the MVG President told us the Board was aware of his relationship with the electrical contractor and that neither he nor his wife has an interest in the company that was awarded the contract, we found no indication of any formal disclosure by the President of MVG.

Assuming the propriety of vesting the President of MVG with the role as the Authority's contact person for bidders, we believe the Board should consider requiring the President of MVG and any other MVG or Company officials to disclose to the Board potential conflicts of interest they may have with bidders or prospective bidders, including situations that may constitute appearances of impropriety because of close family relationships. Such disclosure would assist the Board in evaluating the situation when it is contemplating entering into a transaction or arrangement that might benefit a private interest related to MVG or the Company, and to determine whether it is appropriate to proceed. By requiring such disclosure, Authority officials can help ensure that Authority activities carried out by third parties are conducted in a transparent manner and in the best interest of the public. The Authority has included a disclosure requirement in the management services agreement with the Company, under which the Company certifies that it will make a complete disclosure to the Authority of any and all facts which "may create a possible conflict of interest, direct or indirect, that the Company believes any officer or employee of the Company now has or will have in the future." The disclosure, however, is made only at the time of the execution of the agreement. We believe a continuing disclosure requirement for both MVG and the Company as well would be beneficial in the public interest.

Items Under Bidding Thresholds

When goods and services are not required to be competitively bid, it is good business practice to solicit competition, such as by written or verbal quotes from a number of potential vendors, to help ensure the Authority does not incur higher costs than necessary for goods and services and that procurements are not influenced by favoritism, extravagance or fraud. A procurement policy should establish guidelines for procuring goods and services through written or verbal quotes at determined threshold limits.

⁸ The Authority also paid this vendor an additional \$34,477 during our audit period to install security cameras. See the section entitled "Items Under Bidding Thresholds" for more information.

The Authority's procurement policies authorize the Company to make purchases on behalf of the Authority up to \$1,000 without obtaining prior proposals or quotations. The policies also authorize the Company to make purchases on behalf of the Authority between \$1,000 and \$2,500 provided the Company receives at least three documented quotes and selects the lowest dollar offeror. However, the policies do not clearly identify who is responsible for purchases from \$2,500 up to the bidding limits or the number and type of quotes – verbal or written – that should be obtained. The CEO told us that the Board was responsible for making purchases between \$2,500 and the bidding limits. In practice, the Company makes purchases up to the bidding limits on behalf of the Authority without prior Board approval.⁹

We reviewed 10 purchases totaling \$187,000 that required quotations according to the policy and found that Authority and Company officials did not obtain the required quotes for eight purchases totaling \$140,737. In addition, the Board approved the use of a State contract for the purchase of 33 cameras at approximately \$19,000, but the Authority actually purchased 34 cameras at \$28,875. There is no evidence in the minutes that the Board approved the additional cost of \$9,875. Authority officials did not make sure that quotes were obtained for the following purchases:

- Installation of a wireless Internet network (\$34,960).
- Installation of security cameras (\$34,477). Authority officials told us they used the same electrical contractor who worked on the building façade electrical project because he was already working at the facility when they needed the cameras installed.
- Materials and labor to a plumbing vendor (\$18,500) for work in various sections of the AUD.
- The purchase of lumber to build a bar (\$13,000). Authority officials told us the Authority saved money by using the selected vendor because the vendor accepted two season tickets in lieu of charging for the labor and mechanical construction of the bar. However, Authority officials did not maintain any documentation to show this as the reason they selected the vendor.

⁹ The CEO approves payments to vendors. He signs the claimant's certification on the voucher indicating the items or services were rendered to or for the Authority and he also signs the check for payment, but at that time, the purchase has already been made. With the exception of the period of August 2014 through September 2014, when the Authority used purchase requisition/quote forms, he generally does not approve the initial purchases.

- The purchases of rubberized flooring (\$15,000). Authority officials told us no quotes were obtained for this purchase because they wanted the flooring to match the AUD’s existing flooring. This implies the Authority was attempting to, in effect, “standardize” the purchases.¹⁰ However, we found no indication that the need to standardize is an exception to obtaining quotations or that the Board passed a resolution to standardize on a particular type of flooring. Additionally, standardization would not necessarily eliminate the benefit of obtaining quotations because multiple vendors may be able to supply the product.
- The re-keying of all the building locks to a master key system (\$11,600).
- The removal of tree stumps from the new parking lot (\$7,000).
- The purchase of signage for the AUD (\$6,200). Authority officials told us three quotes were obtained prior to making this purchase; however, they could not provide documentation showing quotes were received.

Because Authority officials did not always ensure that quotes were obtained, the Authority may have incurred higher costs than necessary for goods and services purchased.

Professional Services

Courts have held that GML competitive bidding requirements do not apply to 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, the use of a competitive process, such as an RFP process, can help ensure the Authority receives desired services under the most favorable terms and conditions and that procurements are the most prudent and beneficial use of public moneys. An RFP typically describes, among other things, the scope and nature of the services to be provided, the terms and conditions pursuant to which the services will be provided and the evaluation criteria that will govern the contract award.

¹⁰ For procurements above the dollar threshold set forth in the policies, the policies provide for competitive bidding “pursuant to Section 103 of the General Municipal Law.” General Municipal Law (GML), Section 103(5) authorizes the adoption of resolutions stating that, for reasons of efficiency or economy, there is need for standardization for a particular make or kind of equipment, material, supplies or services in excess of the dollar threshold. The resolution must contain a full explanation of the reasons for its adoption. After the adoption of a proper standardization resolution, bid specifications may provide for a particular make or brand to the exclusion of others. The policies make no mention of standardization in connection with procurements below the bidding threshold.

Proposals are usually solicited by public advertisement or use of a comprehensive list of prospective vendors.

The Authority's procurement policies require an RFP to award contracts for professional services. However, the policies do not outline the specific documentation requirements to be used, including documentation for the decisions made.

We selected the two professional service providers who received the highest payments during our audit period totaling \$253,742¹¹ and found that Authority officials did not use an RFP as prescribed in the policies or otherwise solicit competition to select either of these service providers (both were engineering firms). Authority officials selected one engineering firm because they had previously worked with that firm's assigned engineer when the engineer worked for a previous employer and they liked the work he did. Authority officials selected the other engineering firm because the firm had done extensive work with the County and the County was providing project financing which was for the construction of a parking lot.¹²

Because Authority officials did not solicit competition, there was no process to ensure services were obtained for the most favorable terms and conditions, and there is less assurance that the procurements were the most prudent and beneficial use of public moneys.

Recommendations

The Board should:

1. Ensure that complete and accurate minutes are kept for all Board proceedings.
2. Accept and approve only those minutes that have accurately captured all motions, resolutions and proposals for the meeting being documented. If there are any items acted on that are not documented or correctly documented, the Board should direct that the minutes be amended accordingly before accepting and approving them.
3. Monitor procurement activity to ensure that goods and services are procured in accordance with statutory and policy requirements.
4. Consider revising the procurement policy to ensure it:

¹¹ One engineering firm was paid \$196,510 and the other engineering firm was paid \$57,232.

¹² Oneida County provided \$500,000 for the parking lot.

- Clearly indicates that the Board is responsible for authorizing purchases between \$2,500 and the bidding limits.
 - Establishes dollar thresholds and detailed procedures for obtaining written and verbal quotes and proposals and awarding contracts pursuant to the quotation or proposal process, including requiring adequate documentation for the decisions made.
 - Provides for standardization of goods in appropriate circumstances when quotations are required, if the Board intends to permit standardization.
5. Consider including a continuing disclosure requirement for both MVG and Company officials in order to avoid potential conflicts of interest or the appearance of impropriety.

APPENDIX A

RESPONSE FROM AUTHORITY OFFICIALS

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



Utica Memorial Auditorium

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February 22, 2016

VIA EMAIL and REGULAR MAIL
Office of the State Comptroller
Division of Local Government and
School Accountability
110 State Street, 15th Floor
Albany, NY 12240

In re: Upper Mohawk Valley Memorial Auditorium Authority
Procurement

Dear Sirs:

This letter is the written response to the Office of the State Comptroller's draft audit report dated January 5, 2016. We appreciate that your office found no compliance issues and no violations of any of the complex State rules or regulations applicable to the Upper Mohawk Valley Memorial Auditorium Authority ("Authority") purchasing function. The Authority has provided an action plan, and has already incorporated some of the recommendations of the audit to improve the Authority's transparency and record keeping. We also wish to respond to certain aspects of the draft audit report and understand that this response will be attached as an exhibit to the final audit report.

Background.

As we explained during our final audit exit meeting, there are several important circumstances that were not mentioned in the "Background" section of your audit report, which should be a part of that report and should inform all of the discussion and findings.

The primary activity at the Utica Memorial Auditorium ("The AUD") is the home season of the Utica Comets, the American Hockey League League affiliate of the Vancouver Canucks. The announcement and the contract that would bring the AHL team to Utica was made on June 14, 2013. The first game played at The AUD by the Utica Comets was scheduled

for October 23, 2013. Under that contract, there were millions of dollars of upgrades that were necessary to bring the facility into compliance with AHL standards, all of which had to be done in four months.

See
Note 1
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There had not been AHL level professional hockey at The AUD for twenty (20) years, and the facility was in danger of closing its doors. Contracting with the Vancouver Canucks and bringing the AHL affiliate to The AUD has breathed new life not only into The AUD, but also into the City of Utica and the Mohawk Valley area itself. Many national media outlets that have published stories on the renovations at The AUD. There has been significant private investment in the City of Utica around The AUD, and significant economic activity generated by the Comets. It is not too much to say that the years covered by your audit have been the most consequential in The AUD's history. All of the work done to save the facility and to renovate The AUD was done under significant time pressure. With the help of the public and private partnership between New York State, Oneida County, the City of Utica, the Vancouver Canucks, Mohawk Valley Garden Corp., and the Utica Comets, the Authority can look forward to a bright future for The AUD. The Authority is also pleased that, despite the challenges it faced in bringing the AHL affiliate to Utica, that all of the work was done on time, on budget, in compliance with State procurement law, and at the best possible prices.

See
Note 2
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Board Minutes.

The draft audit report suggests that board minutes should include a complete list of bids received on every job. The Authority believes this is unwise. Authority minutes are published on its web site, and contractors have indicated that having their losing bid amounts that are higher than competitors, without an opportunity for explanation, can impact their reputations and is a disincentive to future bidding. Reducing the pool of bidders on public jobs in a smaller market like the Mohawk Valley hurts the public by limiting the number of contractors willing to bid on public work. There is no legal or regulatory requirement that the Authority publicize every bid. If the Authority rejects a low bidder (which has never happened), that low bidder has recourse under the law. That is a further check on the Authority; cluttering up minutes with bid results provides no concomitant benefit to the public. Given the size of our community, it is an unsuitable procedure.

See
Note 3
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Procurement.

The Draft Audit Report examined six procurements totaling \$4,198,413, including significant focus on bids for an electrical contracting job in April 2014. We strongly object to the lengthy discussion in the draft audit report of this bid award. [REDACTED] is a local contractor that has been doing work for the Authority for over twenty (20) years. [REDACTED] work has always been more than satisfactory. Equally as important, [REDACTED] superior knowledge and familiarity with The AUD, which is an older facility with archaic wiring and design, has been a great benefit to the Authority and probably has given [REDACTED] an edge over the years in being the low bidder, although [REDACTED] did not bid on all the Authority jobs during the audit period.

The Authority and its Board Members have absolutely no connection with [REDACTED]. No Board Member has any business, familial or other relationship to the owners of [REDACTED], and no Board Member has any financial or other interest in the company. [REDACTED] has never been selected over another qualified low bidder, and was in fact the low bidder on all of the jobs that it has won. The original April 2014 project that was audited was for exterior lighting to The AUD, the addition of an elevator, and lighting in the office and suites. The Authority received four (4) bids, with [REDACTED] being the low bidder by almost 10%. All of the bids for the façade and suite renovation were rejected, however, due to the bids coming back substantially over budget. The draft audit report then characterizes the July 2014 RFP as a “rebid” of the April 2014 job. This is not accurate. The job bid in July 2014 included elements of the April 2014 job, but also added emergency LED lighting as well as main arena LED lighting, with a shortened deadline for completion. After properly advertising the bid in accordance with New York’s Public Authority Law requirements, and in accordance with the Authority’s consistent practices on all of its prior bid advertisements, the Authority received only one bid – from [REDACTED] – the same low bid contractor from the April RFP. Unlike the earlier bids, the [REDACTED] bid was within budgeted expectations.

See
Note 4
Page 20

See
Note 5
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The draft audit report characterizes the Authority as meeting the “minimum” requirements for advertising the July 2014 project. However, the report fails to note that the Authority utilized the *same bid advertising* for its previous and successful publicly bid projects that it used for the July 2014 project. The draft audit report does not criticize the Authority for consistently using these bid procedures, which comply with the Public Authorities Law, on other projects. There is no reason to single out the bidding process for the July 2014 [REDACTED] award, which did not deviate in any way from any prior bid process.

As we explained during the audit exit meeting, the timing of the July 2014 project coincides with the heart of most company's public and school construction projects, unlike the timing of the April 2014 job. Because of the time pressure on completing the work before October 21, 2104, the opening game for the Comets season, the Authority had to shorten time frames and retained the services of a local construction manager to ensure that all legal requirements for its bid documents, bonding, advertisements and awards were fulfilled. The construction manager and his firm have no connection whatsoever with MVG, [REDACTED] or the Authority, and was tasked with collecting and analyzing the July 2014 bids. The construction manager also provided recommendations to the Board with respect to bid awards.

Mohawk Valley Garden ("MVG"), the management company hired to handle the day to day operations of The AUD, is tasked with collecting the bids on the Authority's behalf. The Authority Board is a volunteer organization with no full time staff members. By contract, MVG is provided offices at the The AUD, and MVG simply collects and immediately remits, but does not open, all sealed bids. This is done for the convenience of bidders as well as the Authority.

The audit draft report mentions the relationship between the President of MVG and the owner of [REDACTED] as brothers in law, insinuating collusion or some conflict of interest. We object to this unfair insinuation. The President of MVG does not serve in any capacity on the Authority's Board, has no vote, and is not part of the decision making pertaining to the bid process. As we have already established, [REDACTED] has done contract work with The AUD for decades, including many years before the brother-in-law relationship existed. The draft audit report also fails to accurately note that there was full disclosure of the relationship by the President of MVG to the Authority. The Board was well aware of the familial relationship between [REDACTED] and the President of MVG before, during and after the bid was awarded. As we explained in the exit meeting, like any small community, relationships between owners and contractors in the Mohawk Valley are commonplace. In fact, competitors to [REDACTED] were also well aware of the relationship and could have complained if they ever felt that there was any undue influence. But numbers are numbers and the low bidder has received contracts in every instance.

See
Note 6
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The Authority and its Board Members have absolutely no connection to MVG whatsoever. No Board Member is related to or has any ownership interest in MVG. Moreover, the President of MVG and his spouse have no financial stake in [REDACTED]; if there was any financial interest in any

facet of either company, a formal disclosure would have been filed with the Authority. The suggestion in the draft audit that simply because MVG has its own contract with the Authority that it should disclose every uncle or cousin who works at or has an interest in another area business is nonsense. All of the other companies with whom the Authority contracts would have to do the same. This just goes too far, and there is no legal or logical requirement for such a disclosure, as there is no conflict of interest. The Authority is disappointed that, after all the hard work that has been put in by a group of dedicated volunteers to save the facility, such focus has been placed on the relationship between the President of MVG and [REDACTED]. The suggestion in the audit that this is in any way improper is unfair and has the potential to needlessly harm these organizations and individuals.

See
Note 7
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We strongly believe that any reference to the family relationship between [REDACTED] and the President of MVG should be removed. If that is done, then this response, which is to be attached to the final audit, should also be modified to omit such references as well. Accordingly, we request that the Authority be provided with an opportunity to respond to any modified audit report.

Items Under Bidding Thresholds.

The draft audit report indicates that the written policy pertaining to small purchases was not clear and actually goes beyond the requirements of the law by requiring the solicitation of three price quotes for even small purchases. We want to emphasize that when the report states that “required” quotes were not obtained for eight purchases, the “requirement” was from the Authority’s own policies, not New York State’s Public Authorities Law. The Authority policy has already been revised to eliminate this requirement, which was probably excessive out of an abundance of caution over purchasing.

The Authority also objects to the characterization that MVG has authority to make purchases without the Authority’s approval. As we explained at the exit meeting, the President and Treasurer of the Authority are in very close, almost daily contact with MVG and all purchases are discussed prior to being made.

See
Note 8
Page 21

Professional Services.

The audit report indicated that an RFP was not utilized for the procurement of two engineering services contracts. It should be noted that

the engineering firms were originally selected pursuant to an RFP, and that the audit covered payments that were made as a result of the Authority deciding to continue working with these firms due to the quality of their work and their familiarity with the project. Time pressures were immense, and since there is no State law requirement that professional services be bid, the decision was made to proceed with proven contractors hired under prior RFPs. Similar to the prior section for small purchases, the Authority wishes to emphasize that its own policies went beyond State requirements in requiring an RFP for the award of professional services. This is evidence of the care taken in spending public money on the Aud. Rather than criticizing the Authority for going the extra mile, the audit should offer some support and praise for the Authority's care in utilizing more rigorous procurement policies than the law requires.

Please let us know if you have any questions or need anything further.

Very Truly Yours

Carl Annese
President

APPENDIX B

OSC COMMENTS ON THE AUTHORITY'S RESPONSE

Note 1

Our audit covered the period from January 1, 2014 through June 30, 2015, and we extended our scope back to January 2013 to review minutes and agreements. The purchases we selected for audit were not made during the period from June 14, 2013 through October 23, 2013 referred to in the Authority's response.

Note 2

Our audit shows the Authority did not seek competition for all purchases made. Therefore, the Authority may have incurred higher costs than necessary or not obtained the most favorable terms for goods and services purchased.

Note 3

Full disclosure of the names and amounts of all bids received in the minutes can help ensure that Authority activities carried out by third parties are conducted in a transparent manner and in the best interest of the public. Further, because the minutes are the public record of the actions of the Board, the Board should accept and approve only those minutes that have accurately captured all motions, resolutions and proposals for the meeting being documented.

Note 4

The Authority response, which indicates that the Authority and its Board members have no connection with the electrical contractor is correct. Our report did not state that there was any connection. Our report discusses the familial relationship between the President of MVG and the electrical contractor that won the bid. The report also does not state that the electrical contractor was selected over another qualified low bidder.

Note 5

We have modified our report to remove the term "rebid" and indicate the project was modified and put out for bid again.

Note 6

Our report acknowledges that the MVG President told us the Board was aware of his relationship with the electrical contractor and that neither he nor his wife had an interest in the company that was awarded the contract. However, we found no indication of disclosure in the Board minutes which are the public record of the Board's actions.

Note 7

Because MVG controls most of the AUD's operations through its affiliates, it is not similar to the other companies with whom the Authority contracts for purchases or services. Our suggestion for disclosure for MVG officers/officials was made in the interest of transparency and to avoid the appearance of impropriety.

Note 8

The CEO approves payments to vendors. He signs the claimant's certification on the voucher indicating the items or services were rendered to or for the Authority and he also signs the check for payment, but at that time, the purchase has already been made. With the exception of the period of August 2014 through September 2014, when the Authority used purchase requisition/quote forms, he generally does not approve the initial purchases.

Note 9

In our conversations regarding the selection of the two engineering firms, we were informed the choices were made based on past experience with both firms. At no time during our audit did the Authority provide any proof that they had originally selected these engineering firms pursuant to an RFP.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

- We reviewed minutes back to January 1, 2013 to assess whether the Board used a competitive process to award certain contracts made during the audit period. We also reviewed the minutes as they pertained to the agreements related to the AHL team.
- We reviewed agreements signed by the Authority related to the AHL team.
- We reviewed the Authority's two procurement policies in effect during our audit period.
- We identified seven contracts that exceeded the bid limits and obtained the original bid awards. We reviewed the bid amounts and assessed whether the contracts were awarded to the lowest bidder. Additionally, we reviewed the minutes to assess whether the bids were documented and presented correctly.
- We judgmentally selected 10 purchases over \$5,000 that required quotations. We selected the 10 purchases with no expectations as to the outcome of our review for adherence to the procurement policy.
- We reviewed payments to professional service providers and selected the two firms with the highest payments and inquired to determine whether awards were made pursuant to an RFP process.

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.

APPENDIX D

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