



Westbury Water District Purchasing

Report of Examination

Period Covered:

January 1, 2014 — March 31, 2015

2015M-261



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

January 2016

Dear Water District Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Board of Commissioner 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 Westbury Water District, entitled Purchasing. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the 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 Westbury Water District (District) is located in the Town of North Hempstead in Nassau County. The District was established in 1911 and provides water to over 20,500 customers in a five square mile area. The District is governed by an elected three-member Board of Commissioners (Board), which is composed of a Chairman, Secretary and Treasurer. The Superintendent is responsible for the general management of the District's operations under the Board's direction.

The District's total revenues for the 2014 fiscal year were approximately \$5 million, generated primarily from water usage charges and real property taxes. The District's 2014 expenditures totaled over \$5.2 million.¹

Objective

The objective of our audit was to evaluate the District's purchasing practices. Our audit addressed the following related question:

- Did the Board ensure that District purchases were accurately approved and that competitive procedures were used when procuring professional services and goods and services below the bidding threshold?

Scope and Methodology

We examined the District's purchasing practices for the period January 1, 2014 through March 31, 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 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 District Officials and Corrective Action

The results of our audit and recommendations have been discussed with District officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Except as specified in Appendix A, District officials generally agreed with our recommendations and indicated they planned to take corrective action. Appendix B includes our comments on issues raised in the District's response.

¹ This includes expenditures from the capital reserve fund of \$691,885.

The Board has the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make this plan available for public review in the Secretary's office.

Purchasing

An effective purchasing process can help the District obtain services, materials, supplies and equipment of the right quality, quantity and price in compliance with Board policy. This process helps the District expend taxpayer dollars efficiently and guards against favoritism, extravagance and fraud. Effective controls generally include the use of a purchase order system, which helps officials control District expenditures by confirming that there are sufficient funds to pay claims and that purchases are properly authorized.

General Municipal Law (GML) requires the Board to adopt written policies and procedures for the procurement of goods and services that are not subject to competitive bidding requirements, such as professional services and items that fall under the bidding thresholds. These policies and procedures should include detailed authorization and approval procedures that indicate when District officials must obtain competition, outline procedures for determining the competitive method that will be used and require adequate documentation of the actions taken with each method of procurement.

District officials do not require the use of purchase orders when purchasing goods and services. Additionally, District officials did not always seek competition for goods and services that fell below the bidding thresholds and when selecting professional service providers. Therefore, the Board does not have adequate assurance that services were procured in the most economical manner and in the best interest of the taxpayers.

Purchase Orders

A purchase order (PO) is a written commitment placed with a vendor to order goods or services. To process a PO, the individual requesting a purchase submits a purchase requisition form to the individual responsible for purchase authorization and approval. The purchase requisition provides pre-approval accountability and a level of assurance that the requested items are needed and have been approved. A financial officer should verify that funds are available for a purchase before a PO is sent to the vendor for goods and services. The PO also provides a cross-reference to the vendor's invoice and is the source document for claims (vendor bills) entered into the accounting system. A properly functioning PO system helps ensure that purchases are authorized and preapproved and that adequate funds are available before a purchase is made, which assists officials in controlling expenditures.

The District's procurement policy does not require the use of POs. Although the District has press-numbered PO forms with a line for the signature of the requestor and approver of purchases, District officials and employees do not routinely use POs. District employees request approval for purchases and the Superintendent authorizes the purchases. However, the request and the approval are not always documented. Additionally, the budget code to be charged is not documented and there is no evidence that the availability of funds is verified.

We reviewed 14 claims² totaling \$57,346 and found that POs were not issued for 12 claims totaling \$18,770. Although the Superintendent's signature was on two POs totaling \$38,576, the names of the employees requesting the purchases were not documented.

Because the District does not always use POs and does not document the availability of funds on the POs when they use them, we reviewed the District's appropriation status reports to determine if funds were available in budget account codes for the 14 claims.³ The District did not exceed budget appropriations for these 14 claims. However, the failure to consistently use written POs reduces the assurance that District purchases are appropriate and necessary or that there are adequate funds available to pay for those purchases. Therefore, management's ability to exercise timely and effective budgetary control may be limited.

Professional Service Providers

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 and/or a high degree of creativity. However, GML does require that local governments adopt policies and procedures governing the procurement of goods and services when competitive bidding is not required. It further provides that the Board require in its policies and procedures that, with certain exceptions, the District secure alternative proposals through a request for proposals (RFPs) process or quotations for such goods and services, including professional services. GML permits local governments to set forth in their policies the circumstances when or the types of procurements for which the local government has determined RFPs will not be in the best interests of the local government. However, we believe using a competitive method, such as an RFP process, would help ensure that the District obtains needed qualified services upon the most favorable terms and conditions, and in the best interest of the taxpayers.

² See Appendix C for sampling methodology.

³ The District does not process transfers between budget codes during the fiscal year.

Furthermore, written contracts or detailed Board resolutions are essential for establishing the professional services to be provided, the time frames for those services, the basis for compensation and other terms and conditions. The use of a fair and open competitive process, written contracts and detailed Board resolutions provides taxpayers with the greatest assurance that services of desired quality are being acquired on the most favorable terms and conditions and that procurements are not influenced by favoritism, extravagance, fraud or corruption.

The District's procurement policy does not require the solicitation of competition before awarding professional service contracts. Rather, the policy states that it may not be in the District's best interest to solicit quotations or proposals for professional services or services requiring special or technical skill, training or expertise. The policy further states that the provider must be chosen based on accountability, reliability, responsibility, skill, education and training, judgment, integrity and moral worth. As a result, the Board did not solicit competition, such as by issuing RFPs, when procuring professional services.

We reviewed the payments to nine professional service providers,⁴ who were paid a total of \$484,029 during our audit period and found the following:

- Eight of the nine contracts, totaling \$472,029, were awarded without the benefit of any competition. These professionals included a company that negotiates cell tower leases (\$210,703), two engineering firms (\$126,027), an accountant (\$44,700), an IT consultant (\$40,841), an attorney (\$25,000), a consultant to manage the financial software (\$9,363) and a company that prepares the District's newsletter (\$15,395).
- The Board did not pass any resolutions or enter into written agreements with three professionals who were paid a total \$65,599. Therefore, there was no basis for compensation, and the scope of services was not defined for these claims.
- The Board did not always approve a rate of compensation for an engineer who was paid a total \$116,597. Although the Board approved, by resolution, a total of \$68,251, the remaining \$48,346 was not approved. The Board also approved, by resolution, the services of another engineer who was paid \$9,430. However, the resolution did not mention any rate of compensation.

⁴ See Appendix C for sampling methodology.

- The District’s accountant was paid in excess of the Board-approved rate of compensation. We reviewed two payments made in 2014 for services provided in 2012 and 2013. The Board approved a resolution for both years authorizing annual compensation of \$20,300. However, the accountant was paid \$21,900 for services provided in 2012 and \$22,800 for services provided in 2013, resulting in a total overpayment of \$4,100.

By not soliciting competition for professional services, District officials do not have adequate assurance that they are obtaining services with the most favorable terms and conditions and without favoritism. The lack of written contracts or detailed Board resolutions describing the services to be provided and the basis for compensation prevents the Board from determining if the fees charged are correct when auditing claims. There is also an increased risk that the District will pay for services that it has not received or for services that do not comply with the agreed-upon conditions and rates.

Competitive Quotes

The Board adopted a procurement policy that outlines the monetary thresholds for purchases that require either verbal or written quotes be obtained and documented. The policy also outlines when alternative proposals or quotes are not required, such as an emergency situation or purchases of surplus and second-hand goods. The District’s policy requires that all information gathered in complying with the procedures of its procurement policy be preserved and filed with the documentation supporting the subsequent purchases.

In many instances, the first step in the competitive process is to analyze the proposed procurements and determine whether the monetary threshold will be exceeded. In determining whether the threshold will be exceeded, the District should consider the aggregate amount reasonably expected to be expended for all purchases of the same commodities, services or technology within the 12-month period commencing on the date of the purchase.

The District’s procurement policy requires verbal and written quotes for purchase contracts between \$1,001 and \$10,000. It also requires written proposals for public works contracts between \$3,001 and \$35,000.⁵ The policy⁶ did not address changes in GML, resulting in a lack of guidance during our audit period for certain purchases that were no longer subject to competitive bidding. The District updated

⁵ Purchase contracts from \$1,001 to \$3,000 require two verbal quotes and between \$3,001 and \$10,000 require three written quotes. Public works contracts between \$3,001 and \$10,000 require two written proposals and between \$10,001 and \$35,000 require three written proposals.

⁶ Adopted February 10, 2010

its procurement policy in July 2015 during our fieldwork to include updated guidance.

District officials did not always obtain the sufficient number of quotes required by the District's procurement policy. We reviewed payments totaling \$121,707 made to 43 vendors⁷ and found the following:

- District officials did not obtain quotes for 27 purchase/public works contracts totaling \$65,008. These included \$13,795 for repairs at one of the District's wells, \$2,770 to clean an office and \$4,225 for the purchase of office furniture.
- District officials approved a \$1,984 claim for the emergency purchase of ice melt and washer fluid. However, the claim package and the Board's meeting minutes did not mention an emergency or the circumstances to which the emergency arose. The District's procurement policy excludes emergencies from the competitive quote requirement. While the policy requires a memo from the Superintendent detailing the circumstances leading to the emergency for purchases above the bidding threshold, the same documentation is not required for purchases below the bidding threshold. Although we accepted the District's explanation, the failure to document the reason for not obtaining the required quotes increases the risk that goods and services will not be obtained at the lowest possible price.
- District officials obtained quotes for two purchases totaling \$14,295 but did not file the quote documentation with the claims. Therefore, the Board did not have this information when it was auditing the claims. Upon our request, District officials were able to provide evidence that quotes were obtained. However, there is no assurance that the requirement to seek competition is being adhered to when quotes are not available to support the claim.
- District officials made eight purchases totaling \$15,839 from State, county, and federal contracts but did not retain any copies of the contracts used to make the purchases. After our request, District officials provided us with some of the contracts and, after some research, we found the contracts for the remaining purchases.

⁷ See Appendix C for sampling methodology.

When District officials do not comply with the District’s procurement policy, there is an increased risk that the District may pay more than necessary for goods and services, resulting in unnecessary costs.

Recommendations

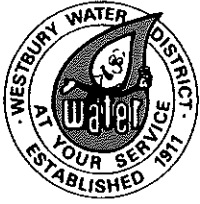
The Board should:

1. Ensure that POs are issued prior to ordering goods and services. The PO should document the requisition (or requestor) of services and the approval of the purchase. The PO should also list the budget account to be charged and document the availability of funds.
2. Consider amending the District’s procurement policy to include the use of competitive methods, such as using an RFP process, when procuring professional services.
3. Ensure that the District enters into written agreements or approve detailed Board resolutions for all individuals and firms that provide professional services to the District. These contracts or resolutions should clearly stipulate the services to be provided and the basis for compensation.
4. Ensure that all District employees who are involved in the procurement process comply with the District’s procurement policy requiring the use of verbal and written quotes. The quotes should be maintained with the documentation supporting the claims, as required by the policy.
5. Consider amending the procurement policy to address the documentation needed to support emergency purchases and purchases from State, county or federal contracts.

APPENDIX A

RESPONSE FROM DISTRICT OFFICIALS

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



Westbury Water District

160 Drexel Avenue Westbury, N.Y. 11590
516-333-0427 FAX 516-333-0923

January 5, 2015

WILLIAM C. OLSON, Chairman
KENNETH O. JONES, Secretary
VINCENT ABBATIELLO, Treasurer

JOHN R. INGRAM, Superintendent

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

Re: Report of Examination, Westbury Water District, 1/1/2014-3/31/2015, 2015M-261;
Water District Response and Corrective Action Plan

Dear Mr. McCracken:

This communication will confirm that the Board is in receipt of your draft report and would like to submit our comments on the report following the exit conference. We would also ask that this Response be considered as our Corrective Action Plan since we have developed a plan to address the findings and recommendations in the audit report. The Board understands that it has an obligation to issue a Response and Corrective Action Plan, and believes that this communication achieves both objectives. The Board views the audit and the report as an opportunity to review and improve upon our practices and procedures and we certainly intend to take this opportunity to improve these practices and procedures. We appreciate the cooperation and assistance that your personnel have provided with regard to the financial aspect of our operations.

In reviewing the report we note that it is referred to as a report on "Purchasing" and that under the heading of Scope and Methodology there is no mention of a review of our internal controls and processes related to such areas as financial condition and oversight, control environment, cash receipts and disbursements, payroll and personal services, capital assets and inventories, and information technology (IT) to name a few of the other areas in which your staff reviewed our policies, procedures and practices. We are concerned that only mentioning "Purchasing" creates the impressions that other aspects of our financial operation were not reviewed.

See
Note 1
Page 15

The following are our specific comments with reference to findings in the draft report that has been presented to us:

PURCHASING

Purchase Orders

The Board has a written purchasing and procurement policy [hereinafter referred to as “PPP”] in effect in order to address the requirements of Section 104-b of the General Municipal Law with regard to purchases not covered by sealed competitive bidding requirements. The Board has amended the policy several times during the audit process to address suggestions made by representatives of your office. We revised the PPP on June 24, 2015 and August 26, 2015 and intend on making further revisions to the PPP at our Organizational meeting this month. The Board only uses a purchase order system for a limited number of purchases and will look at expanding that system. However, the Board will make certain that each purchase involves a request or requisition, an evaluation of that request taking into account the budgetary funds available and an approval of the purchase evidenced by approval by the Superintendent and approval or ratification by the Board at meetings.

Professional Service Providers

The Board will review the PPP in order to insert more specific guidelines for purchases of professional services and services that involve specialized skills and training. The PPP of the Westbury Water District provides that contracts for the purchase of professional services will not be subject to a request for proposal process because the Board of Commissioners has determined that the specialized skills, training and experience that relate to these types of services are not amenable to a competitive bidding process nor is it amenable to a request for proposal process. In the end, when it comes to professional services it is the knowledge and skills of the professional or the professional firm that is at issue and how that knowledge and skill set fits the needs of the Board and the District.

See
Note 2
Page 15

The Board appreciates the suggestion that requiring RFP’s for these services might assist the Board in making certain that it is paying a market rate for the services, but the final determination will always relate more to the specialized skills and training than it will to the price. The Board is confident that it is currently paying market rates for these services.

See
Note 3
Page 15

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

Our Board of Commissioners has the discretion to make this determination and has done so with regard to contracts for professional services. Our Board has followed the law and in our opinion has made the best choice for our district.

See
Note 4
Page 15

We interview professionals and professional firms and make a selection of a professional or professional firm based upon our analysis of its credentials and a review of references. Very

often at association meetings, conferences and conventions we speak with commissioners and other members of other types of government boards concerning the credentials of professionals and recommendations they may provide.

We do not pay excessive professional fees. Totaling the amount paid for these types of contracts is not evidence that the fees were excessive. It is evidence that in that particular year significant professional services efforts were required to properly operate our district.

See
Note 3
Page 15

However, we will attempt to make certain that our rationale for this process is addressed in a revised PPP.

We continue to believe that we are employing best practices in the selection of professionals and persons or firms with specialized skills and training needed by our district.

Moving forward we will make certain that these types of contracts are supported by signed contracts and/or retainer agreements which support the billing rates being paid and we will amend our PPP to make certain that the requirement for written contracts and/or retainer agreements are required. We will also endeavor to make certain that our meeting minutes contain resolution approving and such agreements entered into.

With regard to some of specific findings on professional service provider contracts or expenditures we note as follows:

The firm that negotiated cellular tower leases provided unique services [\$210,703.00] and there were no other entities that we could identify to obtain a second price from. We do not believe that a request for proposals would have generated other firms to perform this work.

See
Note 5
Page 15

The engineering firm [\$116,597.00] provided monthly services and also provided project specific services based upon separate proposals which were approved by resolution at Board meetings. Thus, there were agreements and Board resolutions to support the special projects [\$68,251] that fell outside of the basic retainer fee agreement. The Board also used a second engineering firm for projects [\$9,340.00] identified in the report as an "architect" for such projects as tank inspections and providing training classes for personnel. The use of multiple engineers is consistent with having exposure to the market for engineering services for water districts in the area.

See
Note 6
Page 15

See
Note 7
Page 16

We used an IT consultant [\$40,841.00] based upon its special skills with regard to our systems. Moreover, we believe that the positive review of our information technology practices and procedures show the wisdom of this selection.

See
Note 2
Page 15

We used a consultant to maintain our financial software [\$9,363.00] and due to the proprietary nature of our software we could not use another firm to perform this work.

See
Note 8
Page 16

Competitive Quotes

The Board has reviewed the findings relative to purchases of goods and services which fall below statutory competitive bidding thresholds and are therefore subject to the district's written purchasing and procurement policy adopted in conformance with Section 104-b of the General Municipal Law. The Board will develop a form that will be placed on claim vouchers to document compliance with the requirement for obtaining multiple verbal or written quotes for these purchases. In this way Commissioners and other officers and employees who review documentation will be alerted to the need to obtain multiple quotes in conformance with the policy.

If aggregate purchases are being made the form will be used to alert personnel to prior purchases or anticipated purchases. The Board will address this process in its PPP.

Emergency purchases will be identified on the form and the auditing personnel will be alerted to the need for a formal emergency resolution to appear in the meeting minutes when the emergency is approved or ratified as to special emergency purchasing steps. The emergency purchase mentioned in the report {\$1,984.00} was to purchase salt to address extreme snow conditions which exceeded the salt supply on hand. The Board will address this process in its PPP.

We were not aware of the additional requirement to retain documentation relative to State, county, and/ or federal contracts, but we will obtain and attach documentation to the claim forms for such goods and services purchased on this basis moving forward. The Board will address this process in its PPP.

Recommendations

The Board has addressed the recommendations made in the report as stated above.

Corrective Action Plan

The Board would respectfully request that this response also be considered its corrective action plan for purposes of statutory compliance.

Very truly yours,

BOARD OF COMMISSIONERS

WILLIAM C. OLSON
CHAIRMAN

cc: Board of Commissioners, Westbury Water District

APPENDIX B

OSC COMMENTS ON THE DISTRICT'S RESPONSE

Note 1

During the planning phase of our audit, we gained an understanding of the internal control environment in the areas indicated in the District's response. However, we did not perform audit procedures in these areas. We focused our audit on the purchasing function and performed audit procedures related to our audit objective.

Note 2

In an RFP process, professional service providers are generally evaluated based upon a number of factors, such as specialized skills, training, experience and cost. As such, the most qualified provider may not be the provider with the lowest cost. Without the use of a competitive process, the District cannot be certain that it is obtaining the desired services on the most favorable terms and conditions.

Note 3

Unless the District evaluates the pricing and qualifications of professionals through a competitive process, the Board has no basis for determining that it is paying a reasonable amount for the services obtained and on the most favorable terms and conditions.

Note 4

Our audit report does not state or imply that the Board failed to comply with the law. GML authorizes governing boards to set forth in their procurement policies circumstances when, and types of procurement for which, the solicitation of proposals will not be in the best interest of the local government. However, we believe it was not in the best interest of District residents to not seek competition when acquiring professional services. The fact that a local practice may be permissible under a statute does not necessarily mean the practice is a good one. It is our view that the solicitation of competitive proposals is an effective way to ensure the District receives the desired services on the most favorable terms and conditions without favoritism, extravagance, fraud or corruption.

Note 5

Unless the District seeks to obtain proposals through a competitive process, the District has no assurance that other firms cannot provide this service. Negotiators of cell tower leases are typically not sole source providers.

Note 6

Board resolutions and agreements supported special projects totaling \$63,251 (not \$68,251), which fell outside of the basic retainer fee. The remaining \$5,000 represents the Board-authorized retainer fee.

Note 7

We amended the report to indicate that \$9,340 was paid to an engineering firm instead of an architect.

Note 8

Typically, financial software and the vendor providing support are not sole source providers. Furthermore, the District's policy did not set forth specific requirements for documentation when there is only one source for goods and services. The documentation must state what the unique benefit of the item or service is, that no other item provides substantially equivalent or similar benefits, that there is no possibility of competition and that, considering the benefits received, the cost of the item or service is reasonable.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

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

- We interviewed key officials and employees involved in the procurement process.
- We reviewed the District's procurement policy to determine the dollar thresholds and number of quotes and documentation required to comply with the policy for purchases requiring competition.
- We reviewed 14 claims totaling \$57,346 to determine if POs were issued, if the requestors and approvers had signed the POs and if the budget codes and availability of funds were documented on the POs. We used a random number generator to select one claim that exceeded \$300 for each month during our audit period.
- The District paid 13 professional service providers \$493,601 during the audit period. We requested proposals for all professional service providers (totaling nine) who were paid more than \$3,000 during the audit period. The nine professional service providers were paid a total of \$484,029.
- We reviewed the District's written agreements with professional service providers and the payments made to them.
- We reviewed the minutes of Board meetings for the reorganization meetings for 2014 and 2015 to determine if the Board passed a resolution authorizing services provided by professionals and their basis for compensation.
- We requested quote documentation for all purchase contracts for vendors who were paid between \$1,001 and \$20,000 and public works contracts for vendors who were paid between \$20,001 and \$35,000. In order to select our sample, we eliminated all payments made to professionals, municipalities, insurance companies, District officials and employees.

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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