



Town of Middlebury

Purchasing

Report of Examination

Period Covered:

January 1, 2012 — June 19, 2013

2013M-212



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	2
INTRODUCTION	3
Background	3
Objective	3
Scope and Methodology	3
Comments of Local Officials and Corrective Action	3
PURCHASING	5
Recommendations	6
APPENDIX A Response From Local Officials	7
APPENDIX B Audit Methodology and Standards	11
APPENDIX C How to Obtain Additional Copies of the Report	12
APPENDIX D Local Regional Office Listing	13

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

October 2013

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Middlebury, entitled Purchasing. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*

Introduction

Background

The Town of Middlebury (Town) is located in Wyoming County and serves a population of approximately 1,440 residents. The Town is governed by a five-member elected Town Board (Board) composed of a Town Supervisor and four council members. The Board is responsible for the general management and control of the Town's financial affairs. The Town provides various services to its residents, including street maintenance, snow plowing, and general government support. For the 2012 fiscal year, budgeted appropriations totaled \$221,909 for the general fund and \$747,232 for the highway fund, which were funded primarily by property taxes and State aid.

The Highway Department is supervised by an elected Highway Superintendent and has three full-time employees. The Highway Department has six trucks, a loader, a grader, two tractors, and an excavator.

Objective

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

- Did Town officials ensure that purchases were made in accordance with the purchasing policy?

Scope and Methodology

We examined the internal controls over purchasing for the period January 1, 2012, through June 19, 2013.

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 is included in Appendix B of this report.

Comments of Local Officials and Corrective Action

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

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

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

Purchasing

The Board and Highway Superintendent are responsible for ensuring that the Town purchases the desired quality and quantity of goods and services at the lowest cost. To accomplish this, the Board should adopt a procurement policy and review that policy on an annual basis to ensure it reflects the Board's current expectations for procurement activity. Town officials should also evaluate State and county contracts when available.

The Board adopted a procurement policy that requires Town officials to obtain two oral quotes for purchases aggregating between \$1,000 and \$2,999, to obtain three written quotes for aggregate purchases between \$3,000 and \$9,999, and to use competitive bidding for aggregate purchases over \$10,000. However, the Board did not ensure that the Highway Superintendent complied with the procurement policy when making purchases. Quotes that were obtained were not attached to the claims or otherwise retained, and competitive bids were not solicited as required. Furthermore, the procurement policy does not address the need to obtain oral and written quotations when entering into public works contracts, and it is unclear when the Board last reviewed the procurement policy, as required by statute on an annual basis, to ensure it properly reflected the Board's current expectations for procurement activity.

We tested purchases made in 2012 from five vendors¹ totaling \$100,943 for compliance with the Town's procurement policy and noted the following:

- The Town purchased \$10,362 of unleaded gasoline and \$33,068 of diesel fuel from a local vendor. These commodities were not competitively bid as required by the policy. We compared the price that the Town paid with the State contract price and noted that the Town could have saved approximately \$1,167 in 2012 had the fuel been purchased from the State contract vendor.
- The Town purchased a tractor in April 2012 for \$38,200 without publicly soliciting bids as required. The Highway Superintendent obtained eight quotes from vendors and presented them to the Board. The Board decided to purchase

¹ The five vendors we randomly selected had aggregate purchases greater than \$1,000 in 2012. The Town was required to publicly solicit competitive bids or obtain multiple quotes for these purchases.

the tractor from the vendor who submitted the lowest price without publicly soliciting bids.

- The Highway Superintendent purchased \$7,960 in culvert pipe in 2012 and correctly obtained three quotes as required before purchasing the pipe from the vendor with the lowest quote.
- Tires of various sizes were purchased from a local vendor six times during 2012, totaling \$9,140. The Highway Superintendent only obtained quotes from vendors for one of the six purchases, costing \$424, which was from the vendor who quoted the lowest price.
- In 2012, the Highway Superintendent purchased air, oil, and hydraulic filters totaling \$2,213 but did not obtain any quotes as was required. We compared the costs of the filters purchased to the costs from other vendors in the area and noted that the Town paid reasonable prices for these items.

The primary purpose for obtaining bids and quotes is to encourage competition in the procurement of supplies, equipment, and services that will be paid for with public funds. The appropriate use of competition provides taxpayers with the greatest assurance that goods and services are procured in the most prudent and economical manner, that goods and services of desired quality are being acquired at the lowest possible price, and that procurement is not influenced by favoritism, improvidence, extravagance, fraud, or corruption.

Recommendations

1. The Board should monitor for compliance with the adopted procurement policy during its audit of claims.
2. The Board should revise the procurement policy to include guidelines for public works contracts.
3. The Board should annually review the procurement policy as required and adopt revisions as needed.
4. The Board and Highway Superintendent should evaluate State contracts, particularly the one for fuel, to determine whether cost savings may be achieved.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

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



51 Sherman Avenue
P.O. Box 193
Wyoming, New York 14591
Supervisor Daniel P. Leuer
Town (585) 495-6300

September 22, 2013

Mr. Robert E. Meller
Office of the State Comptroller
Division of Local Government and School Accountability
Buffalo Regional Office
295 Main Street, Room 1032
Buffalo, NY 14203

Dear Mr. Meller,

This letter is to acknowledge the preliminary audit findings of the State Comptroller's office of the Town of Middlebury internal purchasing controls for the period of January 1, 2012 to June 19, 2013.

The Middlebury Town Board is responsible for approving all Town purchasing within the framework of the Town's adopted Procurement Policy and accepts this responsibility with all due diligence. The utilization of taxpayer funds for the Town's purchases must represent the best value for the Town's residents and meet the needs to operate the various Departments within the Town with a high level of quality and efficiency. The taxpayers and particularly the farming community expect that Town roads will be well maintained and plowed in the winter months. Their very livelihood depends on the dedication of the Highway Department to maintaining the Town's highway infrastructure. The Town of Middlebury has no debt, and has adopted a policy of using reserve funds or dedicated savings for future high cost purchases. Major expenditures are thoroughly researched and discussed at length in the Town's monthly Board meetings. At those meetings all previous month's General and Highway expenditures are reviewed and audited by each member of the Town Board to ensure sound fiscal control of taxpayer dollars.

With respect to the recent OSC Audit findings, we are providing the following response.

Audit Finding #1: The Town purchased \$10,362 of unleaded gasoline and \$33,068 of diesel fuel from a local vendor. These commodities were not competitively bid as required by the policy. We compared the price that the Town paid with the State contract price and noted that the Town could have saved approximately \$1,167 in 2012 had the fuel been purchased from the State contract vendor.

Town Board's Response: Town fuel is purchased through a local supplier and includes the use of the supplier owned fuel tanks and pumping equipment at the Highway Department. In response to the Auditor's finding, the Town obtained a quote for the purchase of a 2000 gallon diesel dike tank and 300 gallon no lead gasoline dike tank, with the associated pump and necessary fittings. The quoted cost of these tanks and fittings was \$13,529.07 plus \$900 for transportation costs. Additionally, \$250.00 would be needed for extra hoses and nozzles. The additional expense for the Town to own these fuel tanks would represent a major expenditure for the Town and in the Board's view would negate any limited savings the Town might realize in fuel expenditures above the State contract price. Under the tank use agreement with the current supplier, all tanks and pump inspection, maintenance, and updated code requirements are borne by the supplier, including registration with the New York State DEC. While municipal owned fuel tanks may be appropriate for larger municipalities or Highway Departments whose fuel use is considerably more than Middlebury's, it does not appear to be a justified expense for the Town at this time. With respect to the Town's procurement policy, future bids for fuel purchases will include a review of the cost to either own or operate Town owned fuel tanks or supplier provided tanks and pumps in the bid award.

Audit Finding #2: The Town purchased a tractor in April 2012 for \$38,200 without publicly soliciting bids as required. The Highway Superintendent obtained eight quotes from vendors and presented them to the Board. The Board decided to purchase the tractor without publicly soliciting bids, from the vendor who submitted the lowest price.

Town Board's Response: The Town Board's decision to purchase a new Massey Ferguson tractor was driven by the need to replace a tractor that had insufficient horsepower and hydraulic flow to meet the current needs of the Highway Department. Further, the previous tractor experienced an abnormally high level of equipment breakdown using the Town's mower for highway shoulder mowing. As stated in the Auditor's report, 8 separate quotes were obtained for a replacement tractor with prices ranging from \$82,336 to \$47,425, less trade in of the existing tractor. In making its purchase decision, the Board drew on the knowledge of several Council-members who have extensive and long-running farming experience in both crop and dairy operations within the Town. The quotes that were obtained came from agricultural equipment dealers in both Wyoming and Genesee counties. The final purchase decision was made because the selected tractor model provided the best balance between horsepower rating, hydraulic flow, shuttle shift, and equally important, greatest visibility to the operator for front mounted equipment. Additionally the dealer selected for the tractor purchase also offered the most trade-in value (\$26,275 vs. a low of \$23,500) for the existing tractor. While the Town Board acknowledges that a formal complete public bid process was not followed, the proximity of the local dealer selected offered significant advantages in transportation time and costs as well as availability for parts and service of the new tractor. However, as required by General Municipal Law, all future purchases which exceed the limits set by Town Procurement Guidelines will be publicly bid.

Audit Finding #3: The Highway Superintendent purchased \$7,960 in culvert pipe in 2012 and correctly obtained three quotes as required before purchasing the pipe from the vendor with the lowest quote.

Town Board's Response: The Middlebury Town Board acknowledges that Town Procurement guidelines were correctly followed by the Highway Superintendent for this purchase.

Audit Finding #4: Tires of various sizes were purchased from a local vendor six times during 2012, totaling \$9,140. The Highway Superintendent only obtained quotes from vendors for one of the six purchases, costing \$424, which was from the vendor who quoted the lowest price.

Town Board's Response: As noted by the Auditor, the Town routinely purchases tires of various sizes for both Town Highway Department trucks and heavy equipment needs. Since the Town does not maintain an inventory of tires, these items are normally purchased individually only when they have exceeded their useful life or if a tire failure occurs. Occasionally, those failures happen during the winter season when equipment uptime is critical for highway snow removal operations, and when time is of the essence. As stated in the Town's Procurement policy, estimated purchases of less than \$10,000 but greater than \$3000 requires a written request for proposal and written/fax quotes from 3 vendors. The Highway Superintendent and Town Board acknowledge that this policy was not always followed and will endeavor to be more diligent in the purchase of these items.

Audit Finding #5: In 2012, the Highway Superintendent purchased air, oil and hydraulic filters totaling \$2,213 but did not obtain any quotes as required. We compared the costs of the filters purchased to the costs from other vendors in the area and noted that the Town paid reasonable prices for these items.

Town Board's Response: The Town Highway Department maintains a minimum supply of air, oil, and hydraulic filters to meet the maintenance requirements of Highway equipment operated under very demanding conditions. While the Town Procurement policy requires an oral request and oral/fax quotes from 2 vendors for aggregate purchases at this level, the Town Board trusts that the Highway Superintendent will utilize his best judgment in obtaining quotes and maintaining an adequate inventory of these filters purchased at a reasonable cost. Additionally, the Town has a very favorable relationship with its current filter supplier, who will accept and credit the Town for returns of obsolete or unused filters without condition. This arrangement has considerable advantages as the Town equipment needs change.

We trust that you will find the Middlebury Town Board's reply to the Audit findings satisfactory. We also acknowledge the need to improve and monitor the Board's oversight of the Town Procurement Policy. To that end, a copy of the policy will be made available to the Board members for use in the monthly audits of the Town's expenditures. Future Highway Department estimates of their annual costs for commodities will also take into account the need to quote and/or bid for those items accordingly. The Procurement policy will also be reviewed annually at our regular January Town organization meeting.

Finally, we would acknowledge the professionalism of principal Examiner [REDACTED] and the courteous and helpful assistance of Auditor [REDACTED] in directing us to the information they were seeking to perform the audit of the Town's records. We recognize that municipal audits are a necessary component of good government and help to ensure the prudent use of taxpayer funds.

Sincerely,

Daniel P. Leuer
Supervisor, Town of Middlebury

APPENDIX B

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to determine whether Town officials were purchasing goods and services in accordance with the adopted procurement guidelines and whether the guidelines were adequate. To accomplish the objective of the audit and obtain valid audit evidence, we interviewed officials, tested selected claims, and examined pertinent documents for the period January 1, 2012, through June 19, 2013. Our procedures included the following steps:

- We reviewed Board minutes and relevant State and county contracts.
- We selected five vendor purchases that aggregated in excess of \$1,000 during 2012, including fuel (\$10,362 unleaded gasoline and \$33,068 diesel fuel), a tractor (\$38,200), culvert pipe (\$7,960), tires (\$9,140), and air, oil, and hydraulic filters (\$2,213).
- We reviewed purchasing records and examined pertinent documents to determine whether purchases complied with General Municipal Law provisions and Board requirements. When necessary, we requested additional documentation to ascertain compliance.
- We reviewed fuel purchases from January 1, 2012, through December 31, 2012, to determine if bidding was necessary and if there would have been cost savings by using a State contract award vendor.
- We reviewed the maintenance records to determine if tire and filter purchases were documented as being installed on Town vehicles and equipment.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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