

# Town of Corning

## Procurement

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DECEMBER 2020

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

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# Report Highlights

## Town of Corning

### Audit Objective

Determine whether the Town of Corning (Town) officials used a competitive process to procure goods and services.

### Key Findings

Town officials did not always seek competition, as required, when purchasing goods or obtaining professional services.

- Of the purchases totaling \$455,792 from 35 vendors and 10 professional service providers we examined, Town officials purchased goods and services totaling \$299,046 from 21 vendors and nine providers without using competitive methods. Officials also did not enter into a contract with any of the 10 providers.
- A one year mowing contract was awarded for \$26,000 to a company owned by a Board member's sons even though the company was not the lowest bidder. The Board also extended the contract for another five years without seeking competition. Although the Board was required to document its rationale for awarding the contract to a higher bidder, they did not do so.

### Key Recommendations

- Obtain the required number of quotes or proposals for purchases, when required, and preserve this documentation.
- Revise the procurement policy to provide a detailed method for procuring professional services.

Town officials agreed with the recommendations except the lack of documentation for not accepting the lowest bidder for the mowing contract. Appendix B includes our comment on the issue raised in the Town's response letter.

### Background

The Town is located in Steuben County. The Town is governed by an elected Town Board (Board), which is composed of the Town Supervisor (Supervisor) and four Board members.

The Board is responsible for the general management and control of the Town's finances and operations. The Supervisor serves as the chief executive and fiscal officer, and is responsible for the Town's day-to-day operations.

#### Quick Facts

2020 Appropriations	\$3.11 million
2019 Vendor Payments	\$2.69 million
2018 Vendor Payments	\$2.85 million
Population	6,426

### Audit Period

January 1, 2018 – March 17, 2020

We extended our scope for the review of mowing contracts back to 2016.

# Procurement

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General Municipal Law (GML) limits the ability of municipal officers and employees to enter into contracts in which both their personal financial interests and their public powers and duties conflict.<sup>1</sup> GML also requires the Town to have its own ethics policy. The Town's ethics policy states that whenever a matter comes before a municipal officer as an individual or member of the board that could result in a direct or indirect financial or material benefit to them, a relative,<sup>2</sup> or any private organization in which they have an interest, the municipal officer or employee is required to disclose in writing the nature of the interest and the disclosure must be included in the minutes of the board meeting.

## How Should Goods and Services Be Procured?

GML requires governing boards to adopt written policies and procedures for procuring goods and services not required by law to be competitively bid. GML states that goods and services that are not required by law to be competitively bid must be procured in a manner to assure the prudent and economical use of public money in the taxpayers' best interests and is not influenced by favoritism, extravagance, fraud or corruption.<sup>3</sup>

Although not required by law, the town should award professional service contracts only after soliciting competition. Using written requests for proposals (RFPs) or obtaining written or verbal quotes is an effective way to ensure the town receives the desired goods or services at the best price. Issuing RFPs for professional services helps ensure the town obtains the needed services upon the most favorable terms and conditions and avoids the appearance of partiality when awarding such contracts. Finally, a written agreement should be entered into for professional services between the municipality and the service provider to clearly define: the mutually agreed-upon contract period, the services to be provided, and the basis of compensation for those services.

A town's procurement policy may set forth circumstances when, or types of procurements for which, in the town's sole discretion, the solicitation of alternative proposals or quotations will not be in the town's best interest. The procurement policy and procedures should require adequate documentation of actions taken with each method of procurement and require justification and documentation of any contract awarded to other than the lowest responsible dollar offeror.

The Board adopted a procurement policy for the purchase of goods and services not subject to competitive bidding requirements. The policy requires all purchases and public works contracts in excess of \$300 to have at least two quotes and be

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GML states that goods and services must be procured in a manner that ensures the prudent and economical use of public funds in the best interests of taxpayers.

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1 GML Sections 800-812

2 The ethics policy defines a "relative" as a spouse, parent, step-parent, sibling, step-sibling, sibling's spouse, child, step-child, uncle, aunt, nephew, niece, first cousin or household member of a municipal officer.

3 GML Section 104-b(1)3 and Sections 800-812

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approved by the Board. In addition, it requires that the vendor with the lowest responsible proposal or quote to be awarded the purchase or public works contract, unless the purchaser prepares for the Board a written justification of why it is in the best interest of the Town to not do so.

A good faith effort must be made to obtain the required number of proposals or quotes. If the purchaser is unable to obtain the required number of proposals or quotes, they must provide the Board with a written document detailing the purchaser's efforts to obtain the proposals. Further, the procurement policy requires the preservation of the effort made to secure the required quotes and filing that documentation with the awarded contract.

### **Officials Did Not Always Competitively Procure Goods and Services**

We reviewed purchases from 35 vendors totaling \$341,002 that required competitive procurement per the procurement policy.<sup>4</sup> Officials made purchases from 21 vendors totaling \$185,973 (55 percent) without any competition. The Highway Superintendent stated that his employees call for quotes, write them down and report them to him before they make a purchase. However, this information was not retained. In addition, the Town Justice stated that only one quote was received for the purchase of security equipment for the court room. However, he did not document his attempts to obtain the necessary number of quotes as required. Although proposals for the 2019 mowing contract were solicited, officials did not award the contract to the lowest bidder. Officials awarded the new \$26,000 contract to the same vendor that was awarded the 2018 renewal without seeking competition, even though the 2019 proposal was \$2,000 more than the lowest bidder. The Board also approved extending the 2019 contract for five years according to an addendum submitted with the vendor's proposal, which was not part of the proposal specifications.<sup>5</sup> Although the vendor's business is owned by a Board member's sons, we found no indication that the Board member disclosed this information as required. While the father did not vote to approve his children's contracts, the Board, which solicited the proposal, did not prepare written justification as required for not awarding the contract to the lowest bidder.<sup>6</sup> As a result, the father violated the Town's code of ethics and the remaining Board members did not adhere to the Town's procurement policy. Both actions could give the appearance of favoritism. Further,

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4 See Appendix C, Audit Methodology and Standards, for details.

5 The total contract amount is \$26,000 for 2020 and 2021; \$26,500 for 2022; and \$27,000 for 2023 and 2024.

6 The mowing contract was awarded to a partnership, of which the Board member's adult children operate the business. Under such circumstances, the Board member would not be deemed to have an interest in the contracts of an adult children's business. Moreover, we found no indication that the Board member received a direct or indirect monetary or material benefit as a result of the contract. Therefore, for purposes of GML, the Board member would not have an "interest" in the contracts of their adult children's business.

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the extension of the contract for five years, without seeking additional competition, could suggest circumvention of the Town's procurement policy.

We also found that officials could have annually saved approximately \$10,000 on sand purchases if they drove an additional six miles to a different vendor listed on the same County contract. According to the Highway Superintendent, the other vendor frequently lacked the product and it was not comparable. However, this information was not documented or provided to the Board to justify selecting a vendor other than the lowest responsible bidder.

Although the reviewed purchases were for appropriate Town purposes, without competitively procuring goods and services, Town officials and the Board have limited assurance that these items were procured in the most economical way and in the best interest of taxpayers.

### **Town Officials Did Not Always Solicit Competition for Professional Services**

The Town's procurement policy does not require soliciting competition, such as issuing written requests for proposals (RFPs) or obtaining quotes, or identifying what documentation to maintain to support decisions when procuring professional services. The policy contains one reference to professional services stating that, unless directed by the Board, no solicitation of quotes is required for professional services of less than \$300. As a result, the Board and officials often did not solicit competition by issuing RFPs or obtaining quotes when procuring professional services.

During 2018 and 2019, the Town spent \$227,555 for professional services. Our review of payments to 10 service providers totaling \$114,790 for legal and engineering services and financial advice found that nine service providers with payments totaling \$113,073 were selected without competition. In addition, Town officials could not provide written agreements for any of the 10 service providers.

We found that the professional services procured were for legitimate and appropriate Town purposes. However, when a competitive process is not used, the Board has less assurance that procured professional services are with the most advantageous terms and conditions and in the best interest of taxpayers. In addition, without written agreements, Town officials are unable to ensure that the parties have a clear understanding of the services expected and the compensation for those services.

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## What Do We Recommend?

The Board should:

1. Ensure Town officials and employees adhere to the procurement policy by obtaining the required number of proposals or quotes for purchases and retaining such documentation, as well as any written justification for not selecting the lowest responsible vendor.
2. Ensure Town officials and employees disclose in writing any direct or indirect financial or material benefit to them or a relative as required by the code of ethics.
3. Revise the Town's procurement policy to provide a detailed method for procuring professional services.
4. Procure professional services by soliciting proposals or quotes at reasonable intervals established in the revised policy and enter into a written agreement with each provider.

# Appendix A: Response From Town Officials



Edward V. Grant, Jr., Chief Examiner  
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October 9, 2020

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607-542-7723

**Town Clerk**

Susan A. Edwards  
607-936-6114 Ex 4

**Deputy Town Clerk**

Avonne M. Dickerson  
607-936-6114 Ext 4

**Highway Superintendent**

Dylan DeWert  
607-962-2324

**Town Justices**

Glenford Rose Jr.  
Dale Leonard  
607-936-6114 Ext 1

**Councilmen**

R. Michael Brenning  
Stuart Sammis  
Michael Morrongello  
Jen Mullen

**Assessor**

Katherine Deal  
607-936-6114 Ext3

**Code Enforcement**

Charles Coons  
607-936-6114 Ext 2

**Water Department**

Kenneth Fields  
607-936-6114 Ext 6

Re: **DRAFT** Town of Corning Procurement Report of Examination Period  
Covering January 1, 2018- March 17, 2020  
2020M-93

Dear Mr. Grant,

On behalf of the Town of Corning Town Board, we would like to thank you and your staff for the time spent in conducting our audit.

The Town Board disagrees with one of your key findings about the mowing contract. It was explained to the auditor that the reason why the Town went with the higher bidder on the mowing contract was due to the fact that the other bidder was a newly self-employed individual that had a lawn mower and the Town felt it was much riskier than to go with an established company. Under Town Law, you are allowed to go with the high bidder, if you document your rationale, but the auditor were not satisfied with the documentation provided, the Town Board has no authority or control over what is placed or not placed into the record.

A corrective action plan will be forthcoming within the allotted 90 days from receipt of the final report link.

Sincerely,

TOWN OF CORNING BOARD

Kimberly A Feehan, Supervisor

See  
Note 1  
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## Appendix B: OSC Comment on the Town's Response

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### Note 1

Town officials could not provide documented support and the Board minutes did not include their justification to not accept the lowest bidder for the mowing contract, as required by their procurement policy. In addition, the Board's extension of the mowing contract to the sons of a Board member effectively excluded competition for the five succeeding years.

## Appendix C: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, our audit procedures included the following:

- We interviewed officials and employees, reviewed Board minutes and policies to gain an understanding of the procurement and purchasing processes.
- We evaluated if the procurement policy was adequate.
- We sorted vendor payments totaling \$5,539,177 for 2018 (\$2.85 million) and 2019 (\$2.69 million) into seven categories. Two of the categories were used to exclude purchases totaling \$2,813,952, one was for purchases \$300 or less because those were excluded from the procurement policy, and one was excluded based on professional judgment for items that would generally not be subject to competition such as payments to other municipalities, sole source, employee benefits and debt service. We used one category for professional services that totaled \$227,555 and the remaining four categories to accumulate procurement at various levels of dollar increments totaling \$2,725,225.
- We selected a random sample of five vendors each year for 2018 and 2019 (30 vendors) from the three categories \$301 to \$2,999, \$3,000 to \$9,999 and professional services. We selected all of the 30 vendors from the two categories \$10,000 to \$20,000 and over \$20,000 for 2018 and 2019. We also used our professional judgment to select a vendor for both years to test totaling \$8,257 because of a potential conflict of interest. The total amount selected for testing was \$2,359,136 comprised of purchases from 62 vendors.
- We reviewed the 2018 and 2019 vouchers and invoices for the vendors selected for testing to obtain evidence of quotes or bidding documentation and to classify purchases of dissimilar items.
- We asked Town officials to provide evidence or information regarding Board approval of purchases over \$300 and quotes, bids, RFPs or piggyback (add-on) contracts for our review.
- We analyzed electric bills for electricity supply amounts.
- We reviewed the documentation and Board minutes for compliance with the procurement policy and summarized the results.

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

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We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Unless otherwise indicated in this report, samples for testing were selected based on professional judgment, as it was not the intent to project the results onto the entire population. Where applicable, information is presented concerning the value and/or size of the relevant population and the sample selected for examination.

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

## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional\\_directory.pdf](http://www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2018-12/regional_directory.pdf)

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

[www.osc.state.ny.us/local-government/publications?title=&body\\_value=&field\\_topics\\_target\\_id=263196&issued=All](http://www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263196&issued=All)

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

[www.osc.state.ny.us/local-government/fiscal-monitoring](http://www.osc.state.ny.us/local-government/fiscal-monitoring)

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

[www.osc.state.ny.us/local-government/publications?title=&body\\_value=&field\\_topics\\_target\\_id=263206&issued=All](http://www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263206&issued=All)

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

[www.osc.state.ny.us/local-government/resources/planning-resources](http://www.osc.state.ny.us/local-government/resources/planning-resources)

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

[www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf](http://www.osc.state.ny.us/sites/default/files/local-government/documents/pdf/2020-05/cyber-security-guide.pdf)

### **Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.state.ny.us/local-government/required-reporting](http://www.osc.state.ny.us/local-government/required-reporting)

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

[www.osc.state.ny.us/local-government/publications?title=&body\\_value=&field\\_topics\\_target\\_id=263211&issued=All](http://www.osc.state.ny.us/local-government/publications?title=&body_value=&field_topics_target_id=263211&issued=All)

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

[www.osc.state.ny.us/local-government/academy](http://www.osc.state.ny.us/local-government/academy)

## Contact

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