

Madison County

Temporary Courthouse Lease and Renovations

JANUARY 2021



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

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Report Highlights

Madison County

Audit Objective

Determine whether Madison County (County) officials used competitive methods to obtain and renovate temporary courthouse space.

Key Findings

County officials:

- Paid more than \$1.5 million to a limited liability company (LLC) to lease and renovate temporary courthouse space for a 19-month period.
- Did not use a competitive process to lease and renovate the temporary courthouse space.
- Paid the LLC a \$500,000 deposit before any renovation work was completed or services rendered.
- Paid approximately \$131,000 in renovation claims to the LLC without adequate supporting documentation.

Key Recommendations

- Conduct and document a thorough analysis of leasing alternatives before making major financial commitments.
- Ensure purchasing policies are clearly defined and conveyed.
- Ensure claims contain proper supporting documentation and goods and services are received before payment is made.

County officials generally agreed with our recommendations and have initiated or indicated they planned to initiate corrective action. Appendix B includes our comment on an issue raised in the County's response letter.

Background

The County is located in central New York State and encompasses 15 towns, nine villages and a city. The County is governed by the Board of Supervisors (Board), which is composed of 19 members, one of whom serves as the Chair.

The Board appointed a County Administrator who performs the functions of a chief administrative officer, with the Board retaining final authority. There are 10 committees that oversee various departments and each committee is composed of five Board members. The Highway, Buildings and Grounds Committee is responsible for overseeing County facilities.

Quick Facts

Population	73,442
2018 Appropriations	\$127 Million
Employees	379
Temporary Courthouse 19-Month Lease Cost	\$496,432
Net Temporary Courthouse Renovation Costs	\$1.03 million

Audit Period

January 1, 2017 – September 30, 2018

Temporary Courthouse Lease

In September 2016, the Board authorized reconstruction and renovations to the County courthouse to make it more functional and compliant with the Americans with Disabilities Act.¹ To continue Court operations during the reconstruction and renovations, the County leased 26,128 square feet of commercial office space, located in the former Oneida Limited administration building in the City of Oneida, from an LLC for the period September 2017 through March 2019 to use as a temporary courthouse. The LLC purchased the building in March 2015 for \$425,000.²

The LLC's managing member is the Executive Director of the Madison County Industrial Development Agency (IDA). The Board appoints the members of the IDA Board and contracts with the IDA to promote the advantages of the County and administer and facilitate certain economic development programs and activities.

There does not appear to be a conflict of interest pursuant to article 18 of the New York State General Municipal Law (GML) for an individual, who is an IDA officer and enters into a contract with the County because the IDA and County are separate entities.³ However, the close working relationship between the IDA and County can create an appearance of impropriety. Although not required under State law, the County could help reduce this risk by using an open and competitive procurement process, such as request for proposals (RFP), before entering into such lease agreements.

How Should a County Lease and Renovate Temporary Space?

A board is entrusted with the responsibility of safeguarding county resources. The board should fulfill this responsibility, in part, by fully evaluating available options before committing significant resources to lease real property. Counties should establish a transparent process to document and identify possible locations and the associated costs and benefits of each option before entering into a lease agreement.

While GML does not require counties to seek competitive bids when leasing real property, it is a good business practice to solicit as much competition as possible so officials can better identify and evaluate potential options and select the one that best meets the county's needs. Because price would generally not be the sole criterion for selecting property, using an RFP process would be an effective way to identify and evaluate potential leasing options.

1 Americans with Disabilities Act of 1990, Public Law 101-336

2 Public records indicate the sale date of the property as March 16, 2015

3 Article 18 of New York State General Municipal Law (GML) is the principal State statute governing conflicts of interest on the part of municipal officers and employees.

When leasing real property that includes making improvements and/or renovations, which are paid with county funds, such improvements and/or renovation work may qualify as public works contracts subject to the competitive bidding requirements of GML. Seeking competition can help guard against favoritism and fraud by allowing interested lessors and vendors a fair and equal opportunity to compete.

If the lease provides for the county to pay the landlord to make the required improvements, it is important to have procedures in place to ensure the claims submitted by the landlord contain adequate supporting documentation (e.g., itemized bills) to enable county officials to determine whether the amounts claimed represent actual and necessary expenditures that are within the agreed upon scope of work.

Officials Did Not Seek Competition When Obtaining a Lease for and Renovating the Temporary Courthouse

The Board approved entering into a lease and renovating the temporary courthouse with the LLC without using a competitive process to secure leasing options or conduct the renovation work. Although not required by law, using some type of competitive process before awarding the lease may have helped show that the lease was in the best interest of taxpayers and helped to identify whether other lower-cost options were available to meet the County's needs.

County officials told us that a competitive process was not used when seeking a temporary space for the courthouse because it was not required by law. Although the County's purchasing policy, which was amended in 2017, requires that leases or rentals exceeding \$20,000 are subject to a formal bidding process and Board approval, officials told us this provision applied only to leases of personal property such as equipment and was not intended to apply to real property leases.

The County Administrator told us that the former Oneida Limited property was selected for the temporary courthouse because it was determined to be the most suitable site. Officials acknowledged that they were familiar with the property based on their knowledge and familiarity with the local area.

In addition, officials told us that they used the County real property department to search for other potential properties and consideration was given to two alternative properties, one of which included a former vacant school building. However, officials determined that neither alternative property would serve the needs of a courthouse.

Officials did not provide us with any documentation or meeting minutes showing that these properties were discussed or considered and told us that neither of these locations were visited or toured.

Based on our review of Highway, Buildings and Grounds committee meeting minutes, we found that County officials became aware of the need for a temporary courthouse location as early as December 2014. The minutes showed that the committee discussed a proposal to reconstruct and renovate the main courthouse, which included a discussion of the need to relocate employees who worked at the courthouse, during the renovations for 18 to 24 months.

In February 2015, before the LLC purchased the former Oneida Limited building for \$425,000, County officials discussed touring the building and in June 2015 discussed leasing the space to temporarily house Court operations. Officials subsequently estimated it would cost approximately \$800,000 to upgrade the facility to meet the needs of a temporary courthouse.

In April 2017, the Board passed a resolution to approve a 19-month lease agreement with the LLC. The agreement provided for the County to lease the space, from September 2017 through March 2019, for \$26,128 per month and pay an estimated \$800,000 to the LLC for agreed-upon building improvements and renovations.

The Board subsequently approved certain modifications to the lease agreement, which increased the renovation cost estimates by \$295,583.⁴ These changes brought the total cost of renovations to approximately \$1.1 million, and the combined cost for the lease and renovations exceeded \$1.5 million over the 19-month period.

Figure 1: Total Lease and Renovation Costs

Initial Renovation Estimate	\$800,000
Lease Amendments for Additional Work^a	\$295,583
Total Renovation Costs	\$1,095,583
Lease Payments	\$496,432
Total Cost	\$1,592,015

a The New York State Office of Court Administration reimbursed the County for \$66,029 of these costs resulting in net renovation costs totaling \$1,029,554.

Work on the main courthouse was completed in June 2019. As a result, the County needed to lease the temporary space for three additional months at a cost of \$82,303.⁵ This brought the total cost of the temporary courthouse lease to nearly \$1.7 million.

4 We understand that the modifications were made to address issues relating to certain building and fire codes and certain requests made by the New York State Office of Court Administration.

5 According to the modified lease agreement, lease payments are to increase by five percent annually (\$1,306 per month), paid on a month-to-month basis after the initial 19-month lease term.

Officials told us that they decided to pay the LLC to complete the improvement and renovation work because they believed this option would be more efficient and less expensive than if the County sought competitive bids and contracted for the work on its own. In addition, officials told us that the LLC used a procurement process and solicited competition in securing contractors for the work to be performed. However, we question whether contracting with the LLC to perform the required renovations was appropriate in this instance.

When a lease of real property includes making improvements and/or renovations to the property, which is paid with municipal funds, we have generally concluded that such improvements and/or renovation work qualifies as a contract for public work. Unless an exception applies, public works contracts in excess of \$35,000 are to be awarded to the lowest responsible bidder after advertising for sealed bids.⁶

By having the LLC seek competition, as opposed to the County publicly advertising for the renovation work in accordance with the law, we question whether the renovations were completed at the lowest possible price. Public advertising by the County may have produced bids from contractors willing to do the same work for less than the costs provided by the LLC.

In addition, County officials should monitor project progress to ensure work is completed in accordance with specifications and within the agreed-upon time frames, and that interim claims for payments are supported by the corresponding stage of completion. Officials told us that weekly site visits were made to ensure the temporary space met the County's needs and was on schedule. However, we found that the County paid claims for renovations before the work was completed, and did not require sufficient documentation from the LLC to justify all payments.

According to the lease agreement, as modified, the County agreed to pay an initial deposit of \$500,000 to the LLC in June 2017 for tenant improvements. The deposit, which represented almost half the total cost of renovations, was paid to the LLC before any renovation work was completed or services rendered.

Officials told us this was done so money would be available to the LLC to begin renovations and to pay the LLC's architect and general contractor. However, paying for such services before the work was complete could put the County at risk should the LLC be unable to meet its obligations.

The lease agreement included a provision for the LLC to pay liquidating damages of \$1,000 per day after September 1 until occupancy was granted. However, given the significant amount of the initial deposit, this provision may not have adequately protected the County's interests in the event the LLC did not meet its

6 GML, Section 103

obligations. Also, the County did not lessen this risk by requiring the LLC to post a bond or other security to guarantee performance and to protect taxpayer interests.

We reviewed all four claims paid to the LLC totaling almost \$1.1 million for renovation work to determine whether they were properly supported. We found that the County paid approximately \$131,000 (12 percent) to the LLC without adequate supporting documentation. While County officials were able to obtain and provide us with supporting documentation for all but \$785 of these costs, this documentation was not included with the claims when they were approved for payment.

When the County pays claims that lack sufficient supporting documentation, there is an increased risk that it could pay for services that were not received or pay higher costs than necessary.

What Do We Recommend?

The Board and County officials should:

1. Conduct and document a thorough analysis of leasing alternatives before committing County resources to help ensure the taxpayer's best interests are met.
2. Consider engaging in a competitive process before entering into future lease agreements.
3. Review the County's purchasing policy and amend the policy to ensure the Board's intent regarding leasing of real property is clearly conveyed.
4. As a general matter, follow the competitive bidding requirements of GML when County funds are used to renovate real property in which the County has a leasehold interest.
5. Discontinue the practice of paying for services in advance or consider requiring a bond or other security from the landlord or contractor to protect the County.
6. Ensure claims include proper supporting documentation before making payment.

Appendix A: Response From County Officials



MADISON COUNTY BOARD OF SUPERVISORS

John M. Becker, Chairman
Mark Scimone, County Administrator
Cindy Urtz, Clerk

138 N. Court St., PO Box 635
Wampsville, NY 13163
Phone: 315/366-2201
Fax: 315/366-2502

December 23, 2020

Rebecca Wilcox
Chief Examiner
State Office Building, Room 409
333 E. Washington Street
Syracuse, New York 13202-1428

Re: Response to our Report of Examination (2019M-142) regarding Madison County Temporary Courthouse lease and renovations

Dear Ms. Wilcox,

This responds to your above referenced Report of Examination.

Allow me to initially note our appreciation for your good efforts. We are implementing your recommendations and our Corrective Action Plan will be separately provided.

Brief Background Summary:

We note that your examinations also covered renovation of our County's historically significant 1906 Courthouse at Wampsville New York. The temporary leased space discussed in this response was required to allow continuous Court operations during the construction phase of the much larger Historic Courthouse renovation. We are pleased that your examination did not indicate noncompliance regarding the extensive procurement activities related to the design and construction of the Courthouse Renovation.

See
Note 1
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This response relates to the County's procurement of temporary leased space which had to be "*built to suit*" for temporary operations of the Madison County Court's System. Our Courts System operates under the aegis of the New York State Criminal Courts System. As such, the temporary facilities had to be designed and constructed in accord with the rigorous safety, circulation and security requirements of the New York State Office of Court Administration ("OCA"). OCA appears to have provided timely technical design assistance and services in this regard.

The lease presented a unique situation in that temporary facilities meeting stringent safety and security requirements had to be obtained on a short-term lease basis.

Normally, *built to suit* expenses are amortized over a lease of 10 years or longer. This temporary lease lasted less than two years. Most of the required leased space renovations were specific to court operations and would be of limited value to a landlord when endeavoring to procure tenants after the County's lease ended.

It would be inappropriate for a county to undertake direct construction of such renovations on private property. This would have created difficult issues regarding responsibility for the resulting facilities as well as diminishing the property owner's control over their own property. Thus, it was felt that *build to suit* was the best available practical method.

Time constraints also created unanticipated circumstances. Significant resources of the OCA were required with respect to the design of the Historic Courthouse ("HC") Renovation. This process neared completion just prior to the HC Renovation going out to bid and proceeding to construction immediately thereafter. Thus, design review of the temporary leased space facilities was occurring at a time of elevated overall activity.

This was further complicated when the second floor of the leased site became available. This alternate space offered benefits that warranted suspending design development for the first floor and undertaking design and renovation of the second floor.

Lease of Temporary Space:

Your report recognizes that the County is not legally required to undertake competitive bidding or RFP with respect to procurement of leased space due to the varied circumstances and market constraints attendant to such activity. Nonetheless, we recognize that use of such transparent competitive processes is desirable if available and have subsequently implemented same.

We submit that such market constraints existed in this situation. The required space for this Project presented unique challenges which are outlined in the above *Brief Background Summary*. Moreover, the leased space had to be near the existing Courthouse as all existing activity would be temporarily relocated to the leased space.

There were only three potential spaces that met the specific use and proximity requirements for this undertaking. This is readily verifiable by anyone familiar with commercial property in the Wampsville area.

Moreover, rental rates for commercial property are readily discernible. We believe that the rent paid on a square foot basis was consistent with market rates.

We also note that we have since followed your recommendations by employing a Request for Proposal process to identify leased space for our Board of Elections operations. This public process resulted in our leasing the same facilities at comparable rates.

Cost for Construction of Temporary Space Renovations:

Addressing procurement of the leased space renovations is more complex. Ultimately, the Landlord agreed to employ a Construction Manager at Risk (CMr) Guaranteed Maximum Price (GMAX) procurement method to allow competitive procurement of the actual construction services and materials. The fee paid to the Construction Manager was separately calculated and was in accord with market rates. The additional cost paid for construction services and materials was based upon open book cost estimates which amounts were replaced by actual low bid amounts

submitted by each subcontractor for each of the trades that comprised all of the actual construction work. The actual construction work was competitively bid by the landlord and CM for each trade. The ultimate amount paid by the County to the landlord for the renovation costs was less than the actual amount paid by the landlord for the design and construction of the temporary Courthouse renovations. Moreover, the maximum amount to be paid by the County to the Landlord was fixed at a Guaranteed Maximum Price prior to commencement of construction to shift the risk of unanticipated increased construction cost to the landlord/property owner.

We believe that the circumstances that existed in the Temporary Lease Project warranted use of the CMr method. We sought to implement a procurement process that allowed coordination with OCA's efforts and the inherent countervailing issues related to leased property. Our purpose was to protect the public resources under our stewardship within the constraints of applicable law in sound public policy.

Thank you for allowing us the opportunity to provide this response.

Very truly yours,

John M. Becker, Chairman
Madison County Board of Supervisors

Cc:


Office of the NYS Comptroller
333 E. Washington Street, Ste 409
Syracuse, New York 13202

Appendix B: OSC Comment on the County's Response

Note 1

As stated in our audit objective, this audit focused on the lease and renovation of the temporary courthouse space. We did not audit the County's procurement activities related to the renovation of the County-owned courthouse and therefore did not address these procurements in our audit report.

Appendix C: Audit Methodology and Standards

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 County officials to determine the County's process for entering into leases and whether competition was solicited from other vendors.
- We reviewed the temporary courthouse lease agreement, Board minutes and Highway, Buildings and Grounds Committee minutes, the purchasing policy and other related documents.
- We reviewed all disbursements paid to the LLC to determine how much was paid during the audit period. We also reviewed all four claims paid to the LLC for courthouse renovations to determine whether these payments were adequately supported.
- We toured the temporary courthouse to observe the extent of the renovations.

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. 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.

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 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 County Clerk's office.

Appendix D: Resources and Services

Regional Office Directory

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

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

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

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

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

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

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Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

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www.osc.state.ny.us/local-government

Local Government and School Accountability Help Line: (866) 321-8503

SYRACUSE REGIONAL OFFICE – Rebecca Wilcox, Chief Examiner

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