

# Town of Hempstead

## Procurement

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SEPTEMBER 2022

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

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# Procurement

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## How Should a Town Procure Goods and Services?

NYS General Municipal Law (GML) Section 103 requires that purchase contracts that aggregate to more than \$20,000 and public works contracts that aggregate to more than \$35,000 within a 12-month period be competitively bid and awarded to the lowest responsible bidder. GML Section 104-b requires local governments to adopt written policies and procedures governing the procurement of goods and services not subject to competitive bidding requirements to help ensure the prudent and economical use of public funds in the best interest of the taxpayers to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost. It also helps to guard against favoritism, improvidence, extravagance, fraud and corruption. The policy should outline when town officials should use alternative competitive methods such as RFPs and require RFPs to be completed periodically and an adequate documentation of actions taken.

An effective policy provides that the board retain oversight of the purchasing process to ensure that purchases are conducted in accordance with contractual terms. Written agreements or contracts between the town and professional service providers give both parties a clear understanding of the services expected to be provided and the compensation for those services. If it is necessary to modify a contract, a change order should be presented to the board in a timely manner and should be promptly reviewed by the board to ensure each change order is approved before any additional work is started.

The Town's procurement policy requires Town officials to competitively bid purchases based on thresholds established by GML. The procurement policy also requires an RFP for the procurement of professional services in excess of \$10,000 in annual expenditures. Also, departments or committees are to review professional service providers' qualifications including, but not limited to, experience, skill, training, staffing and reputation in addition to cost. Following the RFP process, the requesting department will recommend that the Board approve the vendor via resolution before a contractual agreement is executed. In addition, the policy requires that any option to renew or extend agreements for professional services to be approved by the Board. Finally, the procurement policy allows the use of contracts awarded by other governmental agencies.

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The procurement policy also requires an RFP for the procurement of professional services in excess of \$10,000 in annual expenditures.

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

Town officials did not always comply with the Town's purchasing policy for using RFPs when procuring professional services, as required. We reviewed the procedures officials used to select 35 professional service providers that were paid more than \$20.3 million during our audit period.

Town officials requested, received and reviewed proposals for 23 professional service providers paid \$16 million during our audit period. One additional vendor, paid \$273,104, was appropriately procured using a state contract. However, Town officials did not seek competition for eleven professional service providers, who received payments totaling \$4 million (Figure 1).

**Figure 1: Professional Services Lacking Competition**

Vendor (Count)	Payment
<b>Legal (6)</b>	\$1,619,345
<b>Information Technology (1)</b>	87,115
<b>Engineering (2)</b>	1,871,240
<b>Accounting (1)</b>	347,101
<b>Insurance (1)</b>	80,885
<b>Total (11)</b>	<b>\$4,005,686</b>

Although Town officials stated that they did not seek competition for certain vendors, as required by their policy because the Town had long standing relationships with these vendors, when Town officials do not seek competition for services, they cannot assure taxpayers that services were obtained in the most prudent and economical manner, without favoritism. Further, they may be unaware of other providers that could offer similar services at a more favorable price.

For example, the Town has been using the same accounting firm, without competition for more than 10 years. The accounting supervisor informed us that this accounting firm has an in-depth understanding of the Town's aged accounting system and Town officials have been hesitant to bring in a new firm. In another instance, the Town has been using the same engineering firm since 1995. The purchasing director informed us that this firm had specialized experience dealing with underground tanks, therefore, the Town continues to contract with them without soliciting competition.

In addition, an IT vendor was paid without competition or a written contract detailing the services to be provided. A resolution that was adopted in 1998, which did not state the amount to be paid, was attached to monthly payments. As of April 2022, RFPs had not been performed for these accounting, engineering, insurance, and IT services, but the current contracts with these vendors were approved by Board resolutions. In addition, the purchasing agent provided proposals received in 2021 from three of the six law firms which are lacking competition, in which the firms each submitted qualifications and agreed to meet an hourly rate set by the Town.

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## **Town Officials Complied With Competitive Bidding Statutes**

Town officials complied with GML Section 103 and the Town's purchasing policy when soliciting competitive bids, as required.

To determine whether Town officials bid for purchases and contracts when required, we reviewed 12 contracts with 11 vendors providing goods and services to various departments throughout the Town. These vendors, who were paid a total of \$22.8 million during our audit period, were competitively bid or appropriately procured from county contracts.

## **Town Officials Did Not Ensure Contract Terms Were Adhered to and Change Orders Were Approved**

We reviewed twenty payments totaling \$4.8 million to the same 11 vendors we referenced in the previous section to determine whether they were paid in accordance with contractual terms or approved bid specifications. We identified the following issues:

- Written approval of subcontractors – A specification requirement of engineering department bids reviewed was that vendors receive the written approval of the department's Commissioner prior to awarding work to a subcontractor. Five out of six bids conducted by the engineering department, with contracts totaling \$9.3 million, had expenditures where a subcontractor was used. On November 18, 2021, we requested the written approvals for these five vendors, but the Deputy Engineering Commissioner could not support the required preapprovals that were granted. He informed us that he does not send out letters approving subcontractors. Instead, he will only send out letters disallowing a subcontractor. Without pre-approving subcontractors, the engineering department did not ensure this bid specification was met and did not ensure that the work was performed by authorized individuals.
- Approval of change orders – During our review, we identified two capital projects in which total costs exceeded the \$5 million authorized by Town Board resolution by \$278,033. Commissioners approved change orders for the additional work on these capital projects but did not seek authorization by the Board before the additional work was started. This occurred because the Board did not establish adequate procedures. Instead, it was the practice to go to the Board when the Comptroller needed approval to make the payment. In each case, a Town Board resolution was adopted at the conclusion of the project so that the Town Comptroller's office could pay the final claim on the project. As a result, work was authorized without giving the Board the opportunity to be involved in the decision to approve the additional work.

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- Claims not in accordance with bid terms –The Town awarded a bid for the purchase of automotive tires to a vendor who submitted a price list when the vendor competitively bid for the contract. The bid stated that prices must remain in effect for one year. We reviewed three claims totaling \$157,163 and compared the prices paid by the Town to the price lists retained in the bid documents. The Town spent as much as \$12,382 in excess of bid amounts. This occurred because the requisitioning department requested pricing from the vendor at the time of purchase, and the Comptroller did not ensure there were adequate procedures in place to verify pricing was in accordance with the bid contract. By not relying on original bid specifications, Town officials spent more than prices bid by the vendor.

While officials complied with the Town’s policy and GML in seeking competition for purchases and contracts requiring competitive bidding, officials did not have adequate procedures in place to ensure all bid specifications were met, all change orders were approved by the Board, and all payments were in accordance with the bid specifications. As a result, the Board and officials did not ensure that all work was properly authorized and that prices were in accordance with the bid specifications.

### **What Do We Recommend?**

The Board should:

1. Enter into written agreements with all individuals and firms that provide professional services to the Town.
2. Require procedures to ensure Town officials present the Board with change orders to capital project bids so that it can approve them prior to the work being performed.

The Comptroller should ensure there are adequate procedures to:

3. Ensure Town officials use an RFP process to seek competition when procuring professional services.
4. Ensure prices paid for professional services and purchases are in accordance with written agreements and prices bid by the vendor.

The Commissioner of Engineering should:

5. Ensure that written approval to use a subcontractor is obtained prior to allowing the vendor to award work to a subcontractor.

# Appendix A: Response From Town Officials

COUNCIL MEMBERS  
DOROTHY L. GOOSBY  
DEPUTY TOWN SUPERVISOR

THOMAS E. MUSCARELLA  
ANTHONY P. D'ESPOSITO  
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DENNIS DUNNE, SR.  
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## TOWN OF HEMPSTEAD Office of the Comptroller PURCHASING DIVISION

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DONALD X. CLAVIN, J  
SUPERVISOR

August 24, 2022

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Attn: Mr. Ira McCracken, Chief Examiner  
NYS Office Building, Room 3A10  
250 Veterans Memorial Highway  
Hauppauge, NY 11788-5533

RE: Town of Hempstead – Procurement-Report of Examination 2022M-63

Dear Mr. McCracken,

Please find enclosed the response from the Town of Hempstead to the above referenced examination.

On behalf of the Town, I want to thank you for the opportunity to work with your office and staff members during this examination. Their consideration and professionalism during the examination were greatly appreciated.

Should you have any questions, I can be reached at 516-489-5000, ext. 6561

Very truly yours,

Dominick A. Longobardi  
Deputy Town Comptroller/Director of Purchasing

DAL

cc: John A. Mastromarino, CPA – Town Comptroller  
Hon. Jack Libert, Esq. – Chief of Staff



RESPONSE:

**1) Town Officials Did Not Always Solicit Competition for Professional Services**

According to the Local Government Management Guide – Seeking Competition in Procurement (January 2016, pg. 17) published by the Office of NYS Comptroller, Thomas P. DiNapoli:

*“One of the most prominent exceptions to competitive bidding is professional services. Professional services generally include services rendered by attorneys, engineers, and certain other services requiring specialized or technical skills, expertise or knowledge, the exercise of professional judgment or a high degree of creativity. In addition, insurance coverage (e.g., health, fire, liability, and workers’ compensation) is also not subject to competitive bidding requirements.”*

See  
Note 1  
Page 10

The examination states that *“Town Officials did not always comply with the Town’s purchasing policy for using RFPs when procuring professional services, as required.”*

The State however did recognize that it is not required to issue an Request for Proposals (RFPs) for such services. The State also recognized the Town’s efforts to ensure fairness and transparency in the Town’s issuance, for the years 2019 forward, of Requests for Qualifications (RFQs) that established lists of legal and engineering firms that can provide a multitude of services to the Town.

See  
Note 2  
Page 10

In addition, it was explained to the examiners, and the examiners did note, that there may be extenuating circumstances for not using the RFP process and retaining specific firms. For example. The engineering firm used from 1995 has specific and complete knowledge of ongoing work regarding a long-term program for the monitoring and clean-up of underground storage tanks required by another NY State Department, namely the NYS Department of Environmental Conservation.

**CORRECTIVE ACTION:** The Town will continue to use the RFP, RFQ and other bidding processes for professional services wherever available and appropriate based upon sound business practices and decisions.

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## 2) Town Officials Did Not Ensure Contract Terms Were Adhered to and Change Orders Were Approved

### Written Approval of Subcontractors

The State noted that there were five instances where the Town did not provide written approval for the use of specific subcontractors. The Town stated that it provides written declinations of subcontractors when the Town does not want that subcontractor used due to reasons such as the contractor has a history of prior issues with the Town, or the contractor is listed on the NY State “No Work” listing due to the contractor’s failure to abide by NY State laws and rules. In many instances the Town is very familiar with the contractor and subcontractors as they have performed other work for the Town under competitive bidding processes.

**CORRECTIVE ACTION:** The Town will work to approve sub-contractors prior to the initiation of work beginning on projects and change orders in instances where it is stated in policies, bid documents and specifications that sub-contractors and change orders will be approved prior to work beginning. This will include ensuring that mechanisms are in place for a systematic approval process.

### Approval of Change Orders

The State noted that in two instances the Town did not seek approval prior to allowing for the change order. As with any construction project, whether it be in one’s home or one’s community, issues can occur at any time through the process. The projects that NY State refers to here are typical road maintenance projects that are continually ongoing throughout the Town year after year.

*In one specific instance, PW31-17 is a Parks Department contact. As for “Pathway To The Park”, all pricing was determined to be fair and reasonable by our Parks & Engineering Departments, as well as, the Town’s engineering firm of record before proceeding with the work. The State’s statement “This occurred because the Board did not establish adequate procedures.” is not accurate as the Town process allows for decisions to be made at the Department level. If the Town were to delay construction until it receives Town Board approval every time an unforeseen event arose, The Town would greatly increase the length of contracts, inspection fees, other costs and further inconvenience affected residents. In this instance, the change orders involved the following:*

*1.) a sanitary main that wasn’t shown on the plans and conflicted with the location of the project’s dead-men piling system.*

*2.) Cost for handling additional fill to berm areas north of the path beyond the original scope of the plans.*

There is a plethora of reasons why change orders may arise. For example, in construction work, unforeseen conditions such as concrete panels under asphalt, contaminated soils, utility

See Note 3 Page 10
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conflicts, and a host of others can occur. In many cases, it is difficult, costly and/or unfeasible to suspend contractor operations and progress. The Town Board relies on the expert analysis by the professionals both in and out of various departments to properly vet change order requests and determine the path of work projects throughout the Town.

**CORRECTIVE ACTION:** The Town will use efforts to minimize change orders where feasible. In addition, the Town will work to improve procedures used to properly review and critique change order requests prior to giving approval to perform the work the change order requires.

#### Claims Not in Accordance with Bid Terms

The State noted that the *“Town spent as much as \$12,382.00 in excess of bid amounts.”* with one vendor.

Annual requirements contracts for goods and services issued by the Town, in most cases, require prices to remain in effect for the first year of the contract in question. Furthermore, most contract provisions allow for price increases in subsequent renewal years. In addition, the Town has and will continue to, during the COVID period and subsequent supply chain issues and economic recession, entertain price increases requested by the vendor provided the vendor can substantiate their price increases from their suppliers, etc. This enables the Town to receive goods and services to ensure Town operations and the health and safety of its residents and businesses. In addition it provides income to the Town’s business community during a time when many businesses are closing due to economic conditions.

**CORRECTIVE ACTION:** The Town will adhere to the terms and conditions of all its contracts provided economic and social conditions allow for it. As with COVID and the recent economic downturn, the Town has and will adapt to issues that arise to ensure that goods and services necessary for the health and welfare of the residents and businesses are met and provided for. The Town will also continue to work closely with its vendors and suppliers to provide the best possible pricing for such goods and services as well as ensure the health and welfare of its business community where allowable by policy and law.

## Appendix B: OSC Comments on the Town's Response

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### Note 1

Our *Local Government Management Guide – Seeking Competition in Procurement* further states that “Seeking competition for professional services and insurance coverage may be an opportunity to generate cost savings for your locality.”<sup>1</sup>

### Note 2

Although not required by Law, an RFP is required by Town policy when procuring services costing more than \$10,000 in annual expenditures and is a best practice to help ensure the Town obtains services of the best quality at the lowest possible cost.

### Note 3

The procedure of the Board approving change orders only after work is completed and payment is due is not adequate. Final approval of a construction project rests with the governing board. As such, change orders should be presented to the Board for approval in a timely manner and should be reviewed by the Board as promptly as possible to ensure each change order is approved before any additional work is started.

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<sup>1</sup> <https://www.osc.state.ny.us/files/local-government/publications/pdf/seekingcompetition.pdf>

## 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 to gain an understanding of the Town's procurement and purchasing processes.
- We reviewed and evaluated the adequacy of the Town's procurement policy.
- We reviewed General Municipal Laws 103 and 104b as they related to the scope of this audit.
- To determine whether Town officials sought competition when procuring professional services, we selected and reviewed 35 professional service providers from a list of 74 providers paid in excess of \$10,000 by the Town. We reviewed documentation to determine if competition was sought for awarding contracts to these providers. For those services where the Town did not seek competition, we asked Town officials and employees for an explanation.
- We selected the highest three payments, or the total number if less than three, made to each professional service provider in our sample during our audit period to determine if professional service providers were paid in accordance with their contracts with the Town. This resulted in a total of 103 payments to the 35 professional service providers totaling \$5.5 million.
- We selected and reviewed 11 vendors that were subject to competitive bidding who were paid a total of \$22.8 million during the audit period. We reviewed bid documentation retained by the Town to determine if the vendors were procured according to GML.
- We reviewed payments to vendors selected in our bidding sample to determine if the payments were made in accordance with the bid proposals approved by the board.

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.

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.

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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 Town Clerk's office.

## Appendix D: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf](http://www.osc.state.ny.us/files/local-government/pdf/regional-directory.pdf)

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

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

### **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](http://www.osc.state.ny.us/local-government/publications)

### **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/files/local-government/publications/pdf/cyber-security-guide.pdf](http://www.osc.state.ny.us/files/local-government/publications/pdf/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](http://www.osc.state.ny.us/local-government/publications)

### **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)

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