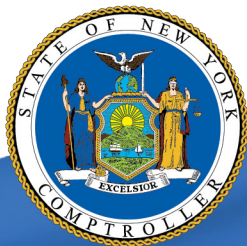


Lockport City School District

Procurement

APRIL 2022



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

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Report Highlights

Lockport City School District

Audit Objective

Determine whether Lockport City School District (District) officials procured goods and services in accordance with the District's procurement policy and applicable statutes.

Key Findings

District officials did not demonstrate that certain goods and services were procured in accordance with the New York State General Municipal Law (GML) or the District's procurement policies.

- District officials could have used a more transparent procurement process for a \$3.3 million security enhancement project. They did not seek competition for a facial/object recognition software license, prior to adopting a standardization resolution. We also found the resolution's language to be inaccurate and misleading.
- Officials could not demonstrate that they complied with competitive requirements when awarding two contracts totaling \$240,000 pursuant to the exception to GML Section 103[16] known as "piggybacking."
- Officials did not seek competition for four professional service contracts totaling \$238,000.
- Officials did not obtain the required number of written quotes for three purchases totaling \$46,000.

Key Recommendations

- Document the analysis when using the "piggybacking" exception to competitive bidding to ensure the District awards the contract in a manner consistent with GML.
- Comply with the District's procurement policy that requires the use of request for proposals to solicit professional services.
- Obtain the required number of written quotes as required by the District's procurement policy.

District officials generally agreed with our recommendations. Appendix B includes our comments on issues raised in the District's response.

Background

The District serves the City of Lockport and the Towns of Lockport, Cambria and Pendleton in Niagara County.

The Board of Education (Board) is composed of nine members and is responsible for the general management and control of the District's financial and educational affairs. The Superintendent of Schools is the chief executive officer and is responsible for the District's day-to-day management under the Board's direction.

The Assistant Superintendent for Finance and Management Services is responsible for financial services and is also the Board-appointed purchasing agent responsible for ensuring all goods and services are procured in the most prudent and economical manner possible and in compliance with established policies and procedures.

Quick Facts

2020-21 Expenditures	\$79.7 million
Approximate Purchases Subject to Competitive Procurement Process	\$38.8 million
Purchases Reviewed	\$8.1 million
Enrollment 2019-20	4,328

Audit Period

July 1, 2018 – September 2, 2021. We extended our audit period back to June 2017 to review the procurement of software that became part of a larger purchase contract in 2018.

Procurement

How Should Officials Procure Goods and Services?

GML Section 103 generally requires school districts to solicit competitive bids for purchase contracts that exceed \$20,000 and contracts for public work that exceed \$35,000. In determining whether the dollar threshold will be exceeded, a school district must consider the aggregate amount reasonably expected to be spent on “all purchases of the same¹ commodities, services or technology to be made within the twelve-month period commencing on the date of the purchase,” whether from a single vendor or multiple vendors.

GML sets forth certain exceptions to competitive bidding. One exception, often referred to as “piggybacking,” allows school districts to procure certain goods and services through the use of other governmental contracts.² In some cases, group purchasing organizations (GPOs) may advertise the use of such governmental contracts to other local governments. This “piggybacking” exception allows school districts to benefit from the competitive process already undertaken by other local governments. However, when procuring goods and services in this manner, officials must review the contract to ensure it was awarded in a manner consistent with the exception set forth in GML Section 103 [16].

In addition, school district officials should perform a cost-benefit analysis before using the exception. This will help ensure that the school district is furthering the underlying purposes of the exception, and that the procurement is consistent with the purposes of competitive bidding. The analysis should be used to demonstrate whether “piggybacking” is cost effective and should consider all pertinent cost factors, including any potential savings on the administrative expense that would be incurred if the school district initiated its own competitive bidding process. Finally, a school district should maintain appropriate documentation to allow for a thorough review of the decision to use the “piggybacking” exception to competitive bidding by school district officials. This documentation may include such items as copies of the contract, analysis of the contract to ensure it meets each of the prerequisites set forth in the exception, and cost savings analysis including consideration of other procurement methods.

... “[P]iggybacking,” allows school districts to procure certain goods and services through the use of other governmental contracts.

¹ For this purpose, commodities, services or technology that are similar or essentially interchangeable should be considered “the same.”

² GML authorizes, as an exception to competitive bidding, political subdivisions to purchase apparatus, materials, equipment and supplies, and to contract for services related to the installation, maintenance or repair of those items, through the use of contracts let by the United States or any agency thereof, any state or any other political subdivision or district therein. For the exception to apply, certain prerequisites must be met, including: (1) the contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein; (2) the contract must have been made available for use by the other governmental entity and (3) the contract must have been let to the lowest responsible bidder or on the basis of best value in a manner consistent with GML Section 103 (see, GML Section 103 [16]).

With respect to drafting bid specifications for the solicitation of competitive bids, school district officials generally have broad discretion to fix reasonable standards and requirements that competitive bidders are obliged to observe. To help ensure that all bidders are competing on a common and equal basis, school district officials are generally restricted from including specific brand names when drafting bid specifications.

However, brand name products may be specified to the exclusion of others if a school district has adopted a proper standardization resolution. Pursuant to GML Section 103(5), upon the adoption of a resolution by at least three-fifths vote, stating that, for reasons of efficiency or economy, there is a need for standardization, the school district may award the purchase contract for a particular type or kind of equipment, material, supplies or services. The resolution must contain a full explanation of the reasons for its adoption. Upon the adoption, the school district may provide in its specifications for a particular make or brand to the exclusion of all other competitors. Nonetheless, a resolution standardizing a particular brand or service solely because of the subjective preference of school district officials, or because in the opinion of school district officials a particular make is more economical, better built or more durable than other makes, is not sufficient. Rather, the standardization resolution should recite why, by objective facts, efficiency or economy will be served.³

GML Section 104 also requires a board to adopt written policies and procedures governing the procurement of goods and services, such as professional services, that are not subject to the competitive bid requirements of GML.⁴ Such policies and procedures help ensure the prudent and economical use of public money, as well as help guard against favoritism, improvidence, extravagance, fraud and abuse. Written procurement policies and procedures also provide guidance to employees involved in the procurement process and help ensure that competition is sought in a reasonable and cost-effective manner.

These policies and procedures should indicate when officials must seek competition and outline procedures for determining the competitive method that will be used by the school district. For example, competitive methods could include issuing a request for proposals (RFP) or obtaining written or verbal quotes. The procurement policy, however, may set forth circumstances when, or types of procurements, in the sole discretion of the school district, that solicitation of alternative proposals or quotes will not be in the best interest of the school district. The purchasing agent should monitor and enforce compliance with the school district's procurement policies and procedures, such as ensuring officials

Written
procurement
policies and
procedures
also provide
guidance to
employees. ...

3 GML Section 103(5)

4 GML Section 104(b)

have obtained responses to an RFP or the appropriate number of quotes prior to approving a purchase, as well as maintaining adequate documentation to support and verify the action taken.

Officials Could Not Demonstrate That the Competitive Bidding Requirements Were Always Followed in a Fair or Transparent Manner

We reviewed 17 contracts, totaling approximately \$7.7 million, that were subject to the competitive bidding requirements of GML Section 103. We found that officials could not demonstrate that competition was sought in a fair or transparent manner prior to awarding a \$3.3 million public works contract and could not demonstrate that they complied with the competitive bidding requirements of GML with respect to the award of two contracts totaling \$240,000.

Security Enhancement Project – In March 2018, the District competitively bid and awarded a \$3.3 million contract for the purchase and installation of various school security enhancements.⁵ This security enhancement project (Project) included, among other items, updates to the District's mass notification systems, protective glass film for doors and windows and a video surveillance system that included the use of facial/object recognition software.

Prior to competitively bidding for the Project, the District conducted a series of actions with respect to researching and subsequently selecting the District's video surveillance system and facial/object recognition software. For example, the District hired a technology consultant (Consultant) to help research and advise the District regarding the use of facial/object recognition software for a video surveillance system. On behalf of the District, the Consultant issued a request for information (RFI) seeking information on facial/object recognition software to operate in conjunction with an existing or new video surveillance system. According to the RFI, responses were due back to the Consultant on June 20, 2016, four days after the RFI had been issued to vendors.

According to District officials, the RFI was sent to multiple vendors, who discussed the RFI with the Consultant and initially indicated they could provide the video analytic solution described in the RFI to the District, but they would need to develop the software and/or the cost for the facial/object recognition software was not within the District's budget. We requested supporting documentation, but the Consultant and District officials were unable to provide us with documentation.

⁵ Funding for the District's school security enhancement project derived from funds appropriated to the District by the Smart School Bond Act (SSBA). The SSBA, which was approved by New York State voters during the 2014-15 enacted State budget, authorized the issuance of two billion dollars in general obligation bonds to finance improved educational technology and infrastructure to improve learning opportunities for students throughout New York State. Amongst the items that could receive SSBA funding were capital projects to install high-tech security features in school buildings, including but not limited to video surveillance, emergency notification systems and physical access controls. The District was allocated \$4,274.931 in SSBA funds.

Approximately one year later, the District, on June 23, 2017, entered into a one-year facial/object recognition software licensing agreement (license agreement) to be used in conjunction with cameras at the District's high school.⁶ Although not legally required to do so, no competition was sought by the District prior to awarding the license agreement.

On February 7, 2018, the Board adopted a standardization resolution with respect to the District's facial/object recognition software. According to the resolution, standardizing the facial recognition software would achieve efficiencies for the District by using the District's existing video surveillance system. With the adoption of the standardization resolution, the bid specifications for the Project included the requirement that bidders use the facial/object recognition software previously selected at the high school which was only available to purchase from a single distributor/company.

However, we found that the language of the Board-adopted standardization resolution was inaccurate and misleading. For instance, the standardization resolution stated that the District had previously conducted an RFP process to select the vendor awarded the software license agreement. However, upon reviewing the language of the RFP, we determined that the RFP referred to in the resolution had only sought proposals for the hardware (i.e., monitoring servers and database server) that would be used with the facial/object recognition software. When we brought this issue to the attention of District officials, we were told they were under the impression the RFP had been issued for both the software and hardware affiliated with the video surveillance system. Further, according to documents provided by the District, responses to the RFP were due the day after the RFP was issued (i.e., August 25, 2017). The District received one proposal, which was from the vendor who had previously been awarded the license agreement on June 23, 2017.

Given the circumstances above, as a best practice, seeking competition for the initial facial/object recognition software may have provided for a more transparent procurement process. For instance, while GML does not require competitive bidding when awarding a license agreement, we have generally recommended using some form of competition (whether that be an RFP or some less formal method) prior to awarding the license agreement to help assure the license is under terms and conditions that are fair and reasonable.⁷ Furthermore, we have stated that a municipality may standardize on a particular make of software if the municipality can objectively demonstrate that efficiency and economy will

⁶ According to documents provided by the District, the District authorized the one-year software license and servers, which was outside of the SSBA project scope, in order to expedite implementation of the facial recognition technology while awaiting SED approval for use of the District's allocated SSBA funds.

⁷ See, e.g., Opn No. 88-60.

be served.⁸ Here, the District’s standardization resolution indicates that the intent of standardizing the facial/object recognition software was to achieve efficiencies and economies through the District’s existing systems. However, no documentation was provided to us by the District or the Consultant to support the notion that no other facial/object recognition software was available on the market that could meet the District’s needs and budget. Therefore, while we recognize the importance of standardizing the District’s facial/object recognition software for the Project, seeking competition for the initial software license agreement, prior to using the standardization resolution, may have provided for a more transparent procurement process.

Group Purchasing Organizations – District officials did not verify that each prerequisite was met prior to awarding contracts pursuant to the “piggybacking” exception. As noted above, the “piggybacking” exception to competitive bidding allows school districts to procure certain goods and services through the use of other governmental contracts. In order for the exception to apply, the District must determine that the following prerequisites are met:

- (1) the District must verify that the contract was awarded by another governmental entity;
- (2) that the contract was made available for use by the other governmental entity; and
- (3) the contract was originally awarded to the lowest responsible bidder or on the basis of best value in a manner consistent with GML.⁹

The District entered into a purchase contract for furniture, totaling \$118,000, and a contract for public work, totaling \$122,000, for materials and installation of an athletic track without competitive bidding. Instead, each contract was awarded by the District to a vendor who was listed as an eligible contractor on certain GPO websites. Although District officials expressed that each contract qualified under the “piggybacking” exception, officials did not verify that each of the prerequisites was met prior to awarding each contract. As a result, District officials did not ensure that each contract was properly bid and awarded in a manner consistent with the exception set forth in GML. District officials also could not demonstrate that they had performed any type of analysis to determine whether procuring the goods and services through a GPO was cost effective. The purchasing agent was not aware additional steps should have been taken and was under the impression that the District could procure goods and services using GPO contracts with no additional review.

⁸ See, Opn No. 88-35.

⁹ GML Section 103(16)

When officials do not procure goods and services in a way that fosters competition and do not provide transparency in the procurement process, there is an increased risk that the procurement could be influenced by favoritism, fraud or corruption, and that taxpayer dollars are not expended in the most efficient manner.

Professional Services Were Not Always Procured in a Competitive Manner

Professional services, which is a well-established exception to competitive bidding, generally involve specialized skill, training and expertise, use of professional judgment and/or a high degree of creativity. For example, professional services include legal, architectural and accounting services.

According to the District's procurement policy, the District is required to use an RFP process to protect the District's interests and to avoid any impropriety. While the policy acknowledges that the lowest bidder need not be selected, the District should adequately document its selection process to demonstrate its economic and practical use of public money and to ensure fair competition. The District's "purchasing regulations" also includes a requirement that the District obtain written proposals for professional services. However, the regulations do acknowledge that proposals will not be required if the professional service, due to its confidential nature, does not lend itself to procurement through solicitations.

We reviewed the procurement of six professional service contracts, totaling \$353,520. We found that District officials did not seek competitive proposals, as required by the District's procurement policy and regulations, for four (67 percent) of the professional service contracts we reviewed, totaling approximately \$238,000.

The purchasing agent told us that these service providers had been providing services to the District for so long (between six and 14 years) that they could not locate the original RFP or confirm if one was ever done. For example, one service provider, with a contract totaling \$16,000, had been providing the District with academic support services (developing academic improvement plans) for more than 14 years. The purchasing agent told us that because the service provider had knowledge of the District and was familiar with the operations, officials continued using the same provider without seeking competition or issuing an RFP.

The purchasing agent also told us that instead of issuing RFPs for existing professional service contracts, informal reviews would be conducted to compare contract rate increases of professional service providers to the Consumer Price Index¹⁰ to help ensure the services were still being offered to the District at a reasonable rate.

Although District officials indicated they are comfortable and satisfied in their long-standing relationships with these providers, soliciting these services through RFPs, as required by the District's procurement policy, can help provide assurance that quality services are obtained under the most favorable terms and conditions possible and without favoritism. Further, using RFPs can increase District officials' awareness of other service providers who could offer similar services at a more favorable cost.

Written Quotes Were Not Always Obtained in Accordance With the District's Procurement Policy

The Board adopted a written policy for the procurement of goods and services not subject to competitive bidding requirements. The District's policy addresses, among other things, when the District is responsible for obtaining written quotes, RFPs or formal bids. In addition to the District's written policies for the procurement of goods and services, the District also maintains a document entitled "purchasing regulations." Similar to the procurement policy, the "purchasing regulations" address when the District is responsible for obtaining written quotes, RFPs or formal bids.

In some cases, we found that the policy was inconsistent with the "purchasing regulations." For example, according to the District's "purchasing regulations," all purchase contracts greater than \$1,750, but less than \$20,000, require the District to obtain three written or fax quotes. A similar provision is set forth for all contracts for public works greater than \$10,000 but less than \$35,000. The District's policy, however, states that written quotes are required for purchase contracts in excess of \$1,500, but less than \$20,000. Moreover, the policy indicates that public works contracts require written quotes when the contract is in excess of \$5,000, but less than \$35,000.

District officials did not always obtain the number of written quotes required by the District's procurement policy and the purchasing agent did not ensure officials complied with the policy. We reviewed purchases from seven vendors totaling \$97,000 that were below the competitive bidding thresholds, to determine whether officials obtained quotes as required by the District's policy. We found that District

...[U]sing RFPs can increase District officials' awareness of other service providers who could offer similar services at a more favorable cost. ...

District officials did not always obtain the number of written quotes required by the District's procurement policy. ...

¹⁰ The Consumer Price Index (CPI) is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. <https://www.bls.gov/cpi/>

officials did not obtain the required number of quotes for three or 43 percent of purchases reviewed, totaling \$45,628. These purchases included painting services (\$25,190), floor mats (\$10,438) and refinishing of a gym floor (\$10,000). According to the District's policy, officials should have obtained three written quotes for all three of these purchases, but officials could not demonstrate that they obtained quotes or sought comparative pricing. District officials told us that they had attempted to obtain the required number of quotes but were unable to obtain quotes from three vendors due to low competition or lack of interest from vendors; however, officials did not always adequately document their attempts to obtain quotes using the appropriate forms required by the District's policy.

Because District officials did not always follow the procurement policy and solicit competition when procuring goods and professional services, there is an increased risk that goods and services may not have been obtained for the best value to ensure the most prudent and economical manner in the best interest of taxpayers.

What Do We Recommend?

The Board should:

1. Require the purchasing agent to enforce compliance with the Board-adopted procurement policy and GML bidding requirements.
2. Revise the procurement policy to require that officials perform and document a cost-benefit analysis prior to "piggybacking" or using GPO contracts and to review each contract to ensure the contract was properly bid and awarded in a manner consistent with GML.
3. Ensure purchasing regulations are consistent with the Board-adopted procurement policy thresholds for procuring goods and services below GML competitive bidding thresholds.

District officials should:

4. Document the analysis used to help ensure the contract is awarded in compliance with GML when "piggybacking" off other government contracts.
5. As a best practice, seek some form of competition prior to awarding license agreements to increase transparency and help assure the terms and conditions of the agreement are fair and reasonable.

-
6. Procure professional services in a competitive manner and issue an RFP for professional services as required by the procurement policy and the regulations.
 7. Obtain and document the required number of quotes as required by the procurement policy for all goods and services purchases below the bidding threshold and document and retain attempts to obtain quotes using the appropriate forms.

Appendix A: Response From District Officials

The District's response includes a reference to a page number in our draft report that has changed in the processing of the final report.

Lockport City School District

Board of Education
130 Beattie Avenue, Lockport, New York 14094-5099

March 24, 2022

Melissa A. Myers, Chief Examiner
Office of the State Comptroller
Buffalo Regional Office
295 Main Street, Suite 1032
Buffalo, NY 14203-2510
Muni-Buffalo@osc.ny.gov

RE: Lockport City School District's Audit Response Letter and Corrective Action Plan to Report of Examination 2021M-198

Dear Ms. Myers:

The following constitutes the Lockport City School District's response to the Report of Examination ("Report") issued by your office which is entitled "*Procurement*," which covers the District's fiscal operations during the period July 1, 2018 through September 2, 2021, which was extended back to November 2017 to review a procurement that was related to a larger purchase contract in 2018.

The District would first like to express its appreciation for the professional and courteous manner in which your staff conducted its audit responsibilities.

The District's Board of Education and Administration is committed to ensuring that the District's financial operations are conducted with the highest level of integrity and that the interests of the District's taxpayers are properly protected. The District is pleased that, following your staff's extensive review of aspects of the District's fiscal operations, there was not a single identified instance of financial irregularity. The District also appreciates your input and recommendations regarding "piggybacking" procurement, and procurement of professional services and other goods and services not legally subject to competitive bidding requirements. The District will undertake the actions set forth in its corrective action plan to further strengthen the District's fiscal operations with regard to these matters.

The District does wish to provide the following perspectives regarding the portion of the Report that discusses the District's security enhancement project. The Report expresses the Comptroller's view that the District *could* have used a more transparent process with regard to

See Note 1 Page 17

"Pride in Our Past; Faith in Our Future"

We believe: All people can learn. Schools create conditions for success: academically, socially, emotionally, physically, and aesthetically. Teaching and learning are the shared responsibilities of home, school, and community. Our mission is to assure comprehensive learning for all so that each person will be a lifelong learner.

the District’s \$3.3 million security enhancement project. The Comptroller apparently bases that observation on the fact that the District did not use a competitive process for the previous procurement of an agreement entered into during June 2017 for a one-year \$95,750 license for servers and software for the implementation of an enhanced security facial and object recognition system in the District’s High School. The Comptroller also notes that there was a reference to a previous RFP process in the “standardization” resolution adopted by the District’s Board of Education in February 2018 for the security enhancement project that was technically inaccurate.

In response to this finding, the District notes that, as recognized by the Comptroller (*Report, p.6*), there was no legal requirement for the District to conduct a competitive process in order to validly enter into the June 2017 license agreement at issue. The standardization resolution subsequently adopted in February 2018 referenced that a “request for proposal process” was used to select the enhanced facial and object security system in the District’s High School. The Comptroller is correct that the request for proposal was for the hardware components only, and not the software components. However, this inadvertent broad reference to the previous request for proposal was used in the resolution as background only, and was not a legally necessary or required component of the standardization resolution. The District was fully justified in using a standardization approach to the procurement of its enhanced security system, given that the system was already operating in the High School, that District officials were already familiar with and satisfied by its operation, and that further implementing the integrated enhanced security system District-wide was the most efficient and economical approach forward in order to protect the safety of District students, staff and visitors. Indeed, the Comptroller “recognize[d] the importance of standardizing the District’s facial/object recognition software for the project ...” (*Report, p.7*).

See
Note 2
Page 17

It is also important to note that, even if the District engaged in additional competitive approaches, or provided more exacting detail in the standardization resolution regarding the RFP, there was no evidence during the time period at issue that there was any other enhanced security system commercially available to the District which combined facial and object recognition with forensic capabilities. In reaching this conclusion, the District relied on its independent consultant, who engaged in repeated formal and informal efforts for a period of over two years to identify any other product on the market that could meet the District’s needs and budget. Although the Comptroller references a lack of complete documentation of these efforts (which is not legally required in any event), the District is confident that its procurement of the enhanced security system was in the District’s best interests, and was obtained under fair and reasonable terms.

See
Note 3
Page 17

Finally, the District believes that the purchase of the enhanced security system was actually subject to *more* transparency, over a longer period of time, than virtually any other previous District procurement. This exceptional level of transparency includes the following:

See
Note 2 and 3
Page 17

- December 2014 – Lockport City School District Board of Education Facilities Committee publicly selects “high tech security” as the Smart School Bond Act (“SSBA”) category to pursue, and selects a consultant to conduct a SSBA study of potential project scope.

- June 2015 - The Board's Facilities Committee, on June 10, 2015, publicly authorizes a request for a beta test of an enhanced security system to be conducted during July 2015.
- April 2016 – The District's independent consultant conducts a request for information ("RFI") process on behalf of District to identify whether there are any other commercially-available systems that could be evaluated as alternatives to the enhanced security system that was ultimately purchased by the District, to ensure the District is getting maximum value with regard to this technology. The independent consultant informs the District following the RFI that there are not any other available systems combining facial and object recognition as well as forensic capabilities.
- June 2016 – Following a report from the independent consultant at a public meeting, and in light of the District's commitment to enhance school security, the Facilities Committee publicly authorizes implementation of the enhanced security system as part of the District's SSBA application.
- August 2016 – Public hearing conducted on District's SSBA application, including with respect to the enhanced security system.
- September 2016 – District submits its SSBA application to State Education Department ("SED").
- June 2017 – After the District's SSBA application had been pending for nine months, the Audit Committee of the Board of Education publicly authorizes the purchase of a one-year license for software and servers, in order to expedite implementation of enhanced security while awaiting SED approval.
- June 2017 - Purchase order publicly approved in the amount of \$95,750 for a one-year license for software and servers for implementation of enhanced security system at District High School.
- November 2017 – The District's SSBA project is approved by SED, including approval of the enhanced security system. The District's SSBA capital project, which includes implementation of the enhanced security system, is also separately approved by SED Facilities Planning
- February 2018 – Based on the recommendation from the District's independent consultant, the Board of Education publicly adopts a "standardization" resolution for the implementation of the enhanced security system District-wide.
- February/March 2018 – District conducts a public bidding process for its SSBA project, which includes the enhanced security system component.
- March 2018 – District concludes public competitive bidding process for the SSBA contract. Upon the public recommendation of the District's consultant and its SSBA

project architect, the District publicly awards a contract to an electrical contractor which includes implementation of the enhanced security system. The District's independent consultant explains during the public meeting at which the contract was awarded that the enhanced security system was available through only one source, and that there were no other commercially-available products with the full capabilities of the District's enhanced security system.

The District's Corrective Action Plan

This audit response shall also serve as the District's corrective action plan subject to board approval on April 6, 2022.

The District's corrective action plan is as follows:

OSC Recommendation - Document the analysis when using the "piggybacking" exception to competitive bidding to ensure the District awards the contract in a manner consistent with GML Section 103(16):

Audit Recommendation 2 – The Board should revise the procurement policy to require that officials perform and document a cost-benefit analysis prior to "piggybacking" or using GPO contracts and to review each contract to ensure the contract was properly bid and awarded in a manner consistent with GML.

Audit Recommendation 4 – District officials should document the analysis used to help ensure the contract is awarded in compliance with GML when "piggybacking" off other government contracts.

District Response: The District (Business Office) will provide a written cost-benefit analysis form as required by board policy and document the procedures used to verify a "piggybacking" contract is properly bid and awarded in a manner consistent with GML and that usage of the "piggybacking" contract is fiscally beneficial. The District (Business Office) will maintain documentation for best value, sole source and single source providers and attach to the purchase order for auditing and future reference purposes.

Implementation – Documentation of Cost-Benefit analysis has begun and will be formally adopted after Board of Education Revision of the Procurement Policy and subsequent 2nd Reading anticipated by June 8, 2022

OSC Recommendation - Comply with the District's procurement policy that requires the use of request for proposals to solicit professional services:

Audit Recommendation 6 – District officials should procure professional services in a competitive manner and issue an RFP for professional services as required by the procurement policy and the regulations.

District Response: The District (Business Office) will utilize the RFP process as required by board policy when procuring professional services.

Implementation – A review of all current professional services contracts has begun with the Board of Education Audit Committee and any upcoming professional services contracts with the district older than five years will be analyzed to determine if an RFP is warranted. The Audit Committee will share written criteria suggestions with the Board of Education Policy Committee for review and potential incorporation into District Procurement Regulations by June 8, 2022.

OSC Recommendation - Obtain the required number of written quotes as required by the district's procurement policy:

Audit Recommendation 1 – The Board should require the purchasing agent to enforce compliance with the Board-adopted procurement policy and GML bidding requirements.

Audit Recommendation 3 – The board should ensure purchasing regulations are consistent with the Board-adopted procurement policy thresholds for procuring goods and services below GML competitive bidding thresholds.

Audit Recommendation 7 – District officials should obtain and document the required number of quotes as required by the procurement policy for all goods and services purchases below the bidding threshold and document and retain attempts to obtain quotes using the appropriate forms.

District Response: The District (Business Office) will obtain and document quotes as required by policy. This documentation shall be attached to the purchase order for auditing and future reference purposes. The Board of Education Policy Committee has revised the Procurement Regulation to match the Procurement Policy. Implementation – Already completed on September 8, 2021.

Additional Audit Recommendation – License Agreements

Audit Recommendation 5 – As a best practice, seek some form of competition prior to awarding license agreements to increase transparency and help assure the terms and conditions of the agreement are fair and reasonable.

District Response: The District will continue to ensure that license agreements are entered into in accordance with legal requirements, on terms and conditions that are fair, reasonable and in the District's best interests. In each instance, the District will evaluate whether and to what extent a competitive process is appropriate, based on the nature and attendant circumstances of the prospective license.

ce again, the District's Board of Education and Administration wish to express their appreciation for the Comptroller's assistance during this audit, which will no doubt benefit

the District and its taxpayers by identifying additional ways to strengthen the District's financial operations. Please let us know if your office has any questions regarding the District's response to the Report of Examination, and the District looks forward to future opportunities to work with the Comptroller's office.

Respectfully,

Karen Young
Board of Education President
Lockport City School District

Michelle T. Bradley
Superintendent of Schools
Lockport City School District

Appendix B: OSC Comments on the District's Response

Note 1

We did not perform an extensive review of all District financial operations. As part of our risk assessment process, we performed a high-level review of key processes and internal controls, but our audit was limited to an assessment of the District's procurement process as described in Appendix C.

Note 2

While the District was under no legal obligation to award the June 2017 facial recognition software license agreement pursuant to a competitive process, had the District used some form of competitive process, prior to awarding the facial recognition software license agreement, it would have helped ensure the license agreement was made under terms and conditions that were fair and reasonable.

Instead, the District sought no competition prior to awarding the facial recognition software license agreement but, nonetheless, adopted a standardization resolution, expressly suggesting that a competitive process (i.e., RFP) was issued by the District for the facial recognition software. As noted in the report, however, the RFP only sought proposals for the hardware (i.e., monitoring servers and database server) that would be used with the facial/object recognition software. Moreover, the responses to the RFP were due the day after the RFP was issued, presumably resulting in only one vendor submitting a proposal to the District. This vendor was the vendor previously awarded the initial facial recognition software license agreement in June 2017.

Under these circumstances, it is our view that the "inadvertent broad reference to the previous request for proposal" used in the standardization resolution misled the public to believe the District sought competition for the facial recognition software license agreement, when in fact, no such competition had been sought. Hence, in our view a more transparent procurement process would have included seeking competition for the initial facial/objective recognition software prior to adopting the standardization resolution.

Note 3

As noted in the report, neither the Consultant nor the District itself could provide documentation to support that the request for information (RFI) seeking information on facial/object recognition software was distributed to vendors, or that no vendor could provide the video analytic solution described in the RFI. As such, "while the District may be confident that its procurement of the enhanced security system was in the District's best interests, and was obtained under fair and reasonable terms", there is no documentation to support the District's claim. Furthermore, neither the Consultant nor District had documentation to support the District's claim that "there was no evidence during the time period at issue that there was any other enhanced security system commercially available to the District which combined facial and object recognition with forensic capabilities."

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 reviewed written policies, procedures and procurement forms and interviewed District officials to gain an understanding of the controls in place over the procurement process.
- We sorted cash disbursements by year and then by vendor name and payment amounts from largest to smallest. We excluded payments for items that would generally not be subject to competition, such as payments to other school districts, payroll-related expenditures, health insurance, utilities, debt service payments, association dues and travel reimbursements. We selected our sample for audit testing from the remaining payments, which totaled \$38.8 million.
- Using our professional judgment, we selected 30 vendors (10 vendors from each year) with contracts totaling approximately \$8.1 million. We selected our sample based on the total amounts the District paid the vendors during our audit period and information obtained during our audit survey. For each year reviewed, we selected 10 different vendors, never including the same vendor in multiple years. We selected the highest purchase order paid to each chosen vendor in the year selected and used this as our sample.
- Our sample included purchases from 17 vendors totaling \$7.7 million that were subject to competitive bidding requirements, six professional service contracts totaling \$353,520 and seven purchases totaling \$97,000 that were below bidding thresholds but within the procurement policy thresholds for obtaining written quotes.
- We reviewed claims associated with the purchases and any available supporting documents to determine whether officials complied with the procurement policy and GML.

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 must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-a (3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The CAP should be posted on the District's website for public review.

Appendix D: Resources and Services

Regional Office Directory

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

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

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/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

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

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

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