



Hamlin Morton Walker Fire District

Pumper Truck Procurement

2023M-27 | May 2023

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Report Highlights

Hamlin Morton Walker Fire District

Audit Objective

Determine whether the Hamlin Morton Walker Fire District (District) Board of Commissioners (Board) procured a pumper truck in accordance with statutory requirements and good business practices.

Key Findings

The Board did not procure a \$748,676 pumper truck in accordance with statutory requirements and good business practices. As a result, officials have less assurance that the purchase was made in the most prudent and economical manner.

District officials could not support that the District sought competition, or, in the alternative, properly used a valid exception to the competitive bidding requirements set forth in New York State (NYS) General Municipal Law (GML).

Key Recommendations

- Comply with competitive bidding statutes and the District's procurement policy.

District officials agreed with our findings and indicated they will initiate corrective action.

Background

The District provides fire protection services within the Towns of Clarkson and Hamlin in Monroe County and the Town of Kendall in Orleans County.

An elected five-member Board is responsible for the District's overall financial management and safeguarding its resources. The Board appointed an Administrator who is responsible for assisting the Board with the District's day-to-day operations.

The Board appointed a Treasurer, who serves as the District's chief fiscal officer and is responsible for the custody, receipt, disbursement and accounting for District funds. The Deputy Treasurer assists with these responsibilities. The Treasurer for 2021 and 2022 is the Deputy Treasurer for 2023 with the 2022 Deputy Treasurer becoming the Treasurer for 2023.

Quick Facts

2023 Appropriations	\$888,100
Pumper Truck Purchase Amount	\$748,676

Audit Period

January 1, 2021 – February 17, 2023

Pumper Truck Procurement

How Should the Fire District Board Procure a Pumper Truck?

When procuring a pumper truck, a fire district board of commissioners (board) should ensure it is procured in accordance with statutory requirements and good business practices. Fire district officials are generally required by NYS GML Section 103 to solicit competitive bids for purchase contracts above \$20,000. When using competitive bidding, contracts are awarded to the lowest responsible bidder. However, GML sets forth certain exceptions to the competitive bidding requirements. One exception, often referred to as piggybacking, allows fire districts to procure certain goods through the use of other governmental contracts. For the exception to apply, certain prerequisites must be met, including:

- The contract must have been let by the United States or any agency thereof, any state or any other political subdivision or district therein,
- The contract must have been made available for use by the other governmental entity, and
- The contract must have been let to the lowest responsible bidder or on the basis of best value as defined in Section 163 of the NYS Finance Law.¹

In some cases, group purchasing organizations (GPOs) may advertise the use of such governmental contracts to other local governments. This piggybacking exception allows fire districts to benefit from the competitive process already undertaken by other local governments. However, when procuring goods and services in this manner, fire district officials are responsible for reviewing each proposed procurement to determine, on advice of the fire district's legal counsel as appropriate, whether the procurement falls within the exception. Fire district officials should maintain appropriate documentation to demonstrate that they met the prerequisites to support this exception.

In addition to the requirements set forth in GML Section 103(16), a board is required by NYS GML Section 104-b to adopt written policies and procedures for procuring goods and services not subject to competitive bidding requirements. The procurement policy may set forth circumstances or types of procurement for which solicitation of alternative proposals will not be in the fire district's best interest and should describe procedures for maintaining documentation to support and verify actions taken. The District's Board-adopted procurement policy requires that the decision that a purchase is not subject to competitive bidding to be documented in writing by the individual making the purchase and include a memo or other appropriate written documentation.

¹ The NYS Office of the State Comptroller (OSC) has published a bulletin to assist officials with addressing the prerequisites to use the exception set forth in GML Section 103(16) (<https://www.osc.state.ny.us/localgov/pubs/piggybackinglaw.pdf>).

Goods and services in excess of competitive bid limits that are not required to be competitively bid, or are acquired through an exception to that requirement, must be procured in a manner to ensure the prudent and economical use of public money in the taxpayers' best interests and guard against favoritism, extravagance, fraud and abuse.

The Board Did Not Demonstrate Compliance With Competitive Bidding Requirements

The Board did not ensure the procurement of the pumper truck was in accordance with competitive bidding requirements. District officials could not support that they sought competition, or used a valid exception to the competitive bidding requirements, for the purchase of a pumper truck, costing \$748,676.

Although District officials purchased the pumper truck through a vendor with a GPO contract, they did not obtain or review GPO documentation, including how the GPO solicited, selected and awarded the contract. Instead, the Board approved the purchase of the pumper truck without officials, or the attorney for the District, evaluating whether the GPO procurement process satisfied each of the prerequisites set forth in GML Section 103(16). Board members told us they considered the pumper truck purchase an exception to competitive bidding because they purchased it through the GPO contract. However, officials could not support that the GPO contract satisfied each of the prerequisites set forth in GML Section 103(16).

Furthermore, officials did not ensure that the vendor provided GPO contract pricing. Although the District's signed purchase agreement listed a GPO discount, District officials could not support they ensured that it complied with the GPO contract. The purchase agreement also stated that the District received a prepay discount by providing a \$500,000 deposit.² The discount for prepayment was listed in addition to the GPO discount price. Therefore, it is not clear whether this was part of the GPO contract.

Certain Board members told us that they purchased through the GPO, in part, because they previously (approximately four years ago) discussed purchasing a truck with a few vendors who stated that they would not bid if the District sought competition by conducting its own bid process. Instead, the vendors preferred that the District purchase through a GPO contract. However, officials could not support these statements and vendor preferences do not absolve District officials from ensuring that the District complies with the competitive bidding requirements as set forth in GML.

District officials could not support that they sought competition, or used a valid exception to the competitive bidding requirements, for the purchase of a pumper truck, costing \$748,676.

² For purposes of this audit, please note we are not rendering a legal opinion as to the appropriateness of the District making a \$500,000 prepayment in exchange for an additional discount on the pumper truck.

Certain Board members also told us that a determining factor for not competitively bidding for the pumper truck, and instead purchasing the truck from a GPO contract, was so the District could purchase from a specific vendor. These Board members stated certain District officials wanted a specific pumper truck because they were familiar with the manufacturer and wanted the pumper truck to be the same as another truck owned by the District. However, familiarity with the manufacturer is not a valid reason for not seeking competition or ensuring that a valid exception to the competitive bidding requirements applied, prior to the purchase of the pumper truck.

We obtained the GPO's solicitation, evaluation and award documentation available from the GPO's website. Had officials done their due diligence in requesting and reviewing GPO documentation prior to making the pumper truck purchase, they should have questioned whether the GPO's process was consistent with the competitive bidding laws set forth in GML. For example, the GPO awarded contracts to nine vendors (after proposal evaluation and ranking) and the solicitation stated that vendors could request and receive pricing changes during the contract period. As a result, we question whether the GPO's process for the purchase met the necessary requirements for the District to use the GPO's contract as an exception to competitive bidding.

Finally, while the District's procurement policy provided for the use of a NYS or county contract, as an exception to competitive bidding, the District's procurement policy was silent with respect to using contracts let by other local or State governments. Certain Board members told us they discussed using these types of contracts. However, they did not have an explanation for why this exception was not incorporated into the District's procurement policy. The Board should provide clear guidelines for the types of purchases allowed and ensure there are written policies and procedures for the process including the documentation requirements for these types of purchases.

When District officials do not seek competition or document the methods used, taxpayers have less assurance that the purchase was made in the most prudent and economical manner, in the District's best interest, without favoritism and in compliance with applicable statutes.

What Do We Recommend?

The Board should:

1. Procure goods and services in accordance with applicable statutes and its procurement policy and retain relevant supporting documentation.
2. Ensure District officials, in consultation with legal counsel, evaluate whether a GPO procurement process is consistent with NYS competitive

bidding requirements prior to making a purchase, as well as maintain appropriate documentation to demonstrate that each of the prerequisites are satisfied to support the decision to use the exception.

3. Amend the procurement policy, as appropriate, to permit purchasing from contracts let by other governments pursuant to GML Section 103(16) as an exception to competitive bidding.

Appendix A: Response From District Officials



HAMLIN MORTON WALKER FIRE DISTRICT

1521 Lake Road, PO Box 39
Hamlin, New York 14464

Unit Name: Hamlin, Morton, Walker Fire District

Audit Report Title: Pumper Truck Procurement

Audit Report Number: 2023M-27

May 9, 2023

This document serves as both the response to the draft report, and as our corrective action plan.

Response to the Audit Report

The Hamlin Morton Walker Fire District has received, reviewed and are in agreement with the audit's findings of the results of the preliminary draft of the Fire District *Pumper Truck Procurement Report of Examination 2023M-27*.

Corrective Action Plan

Audit Recommendations:

- 1). Procure goods and services in accordance with applicable statutes and its procurement policy and retain relevant supporting documentation.
- 2). Ensure District officials, in consultation with legal counsel, evaluate whether a GPO procurement process is consistent with NYS competitive bidding requirements prior to making a purchase, as well as maintain appropriate documentation to demonstrate that each of the prerequisites are satisfied to support the decision to use the exception.
- 3). Amend the procurement policy, as appropriate, to permit purchasing from contracts let by other governments pursuant of GML Section 103(16) as an exception to competitive bidding.

Implementation Plan of Action

- We will update our procurement policy in accordance with applicable statutes and retain relevant supporting documentation.
- We will update our policies so that if we are procuring goods through the use of group purchasing organizations (GPO's) to meet the requirements as outlined in GML Section 104b and GML Section 103(16). Including in the updated policy will be documentation to demonstrate that each of the purchases are satisfied to support the decision to use the exception. The policy will be expanded to not only the use of a NYS or County contract, but also through the use of contracts let by the United State or any state or any other political subdivision as outlined in GML 103(16). In addition, the policy shall also ensure that the Three Prerequisites are met, as also outline in CML-103(16)

Implementation Date:

The above action plan will be completed within 6 months for the date of this letter.

Person Responsible for Implementation:

The Treasurer and Deputy Treasurer will develop/update the policies and procedures listed above and present them to the Board of Fire Commissioner for approval.

May 9, 2023

David Walker, Commissioner

Hamlin, Morton Walker Fire District

Appendix B: 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 Board members and other District officials and reviewed Board meeting minutes and the District's procurement policy to gain an understanding of the District's procurement process and the process for procuring the pumper truck.
- We determined whether the Board approved the purchase and reviewed the purchase agreement for the pumper truck.
- We reviewed available purchasing documentation for the pumper truck to determine whether officials complied with competitive bidding statutes by making the purchase through competitive bids or using an exception and adequately documented the purchase decisions.
- We obtained the GPO's solicitation, evaluation and award documentation available from the GPO's website and reviewed it to evaluate whether District officials, had they obtained and reviewed the GPO's documentation, should have further questioned whether the process was consistent with NYS law.

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.

The Board has the responsibility to initiate corrective action. Pursuant to Section 181-b of New York State Town Law, a written corrective action plan (CAP) that addresses the findings and recommendations in this report must be prepared and forwarded to our office within 90 days. 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. We encourage the Board to make the CAP available for public review.

Appendix C: 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

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Contact

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

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

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

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ROCHESTER REGIONAL OFFICE – Edward V. Grant Jr., Chief of Municipal Audits

The Powers Building • 16 West Main Street – Suite 522 • Rochester, New York 14614-1608

Tel (585) 454-2460 • Fax (585) 454-3545 • Email: Muni-Rochester@osc.ny.gov

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