



Town of Lake Luzerne

Procurement

2022M-95 | July 2023

Contents

- Report Highlights 1**

- Procurement 2**
 - How Should Town Officials Procure Goods and Services? 2
 - Officials Did Not Always Seek Competition 3
 - How Should Purchases Involving a Trade Be Conducted? 4
 - The Supervisor Traded Town Equipment Without Authorization. 4
 - How Should Emergency Purchases Be Conducted? 5
 - Emergency Procurements Were Not Conducted Properly. 6
 - How Should Sole Source Purchases Be Conducted? 6
 - Sole Source Purchases Were Not Properly Documented 7
 - What Do We Recommend? 7

- Appendix A – Response From Town Officials 9**

- Appendix B – Audit Methodology and Standards 10**

- Appendix C – Resources and Services 11**

Report Highlights

Town of Lake Luzerne

Audit Objective

Determine whether Town of Lake Luzerne (Town) officials used competitive methods when procuring goods and services.

Key Findings

The Town Board (Board) did not enforce the provisions of the Town's procurement policy (Policy). As a result, Town officials did not seek competition when procuring goods and services totaling \$561,829 or 48 percent of the purchases reviewed. Town officials did not:

- Competitively bid four purchases totaling \$417,674. Had officials sought competitive bids, officials could have saved Town taxpayers at least \$37,000.
- Seek competitive quotes for 27 purchases totaling \$144,155.
- Justify, authorize and/or document one emergency and three sole source purchases totaling \$38,022.
- Authorize a boat purchase.

Because officials did not always comply with competitive bidding statutes and the Town's Policy, the Board cannot ensure officials are procuring goods and services in the most prudent and economical manner. As a result, the Town risks acquiring further goods and services at higher costs than necessary.

Key Recommendation

- Comply with competitive bidding statutes and the Town's Policy.

Town officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

Background

The Town is located in Warren County (County). The Town is governed by the elected five-member Board, which includes the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general oversight of operations and finances.

The Supervisor serves as the chief executive and chief fiscal officer and is responsible for the Town's day-to-day operations. The Town has an elected Highway Superintendent (Superintendent) who is responsible for overseeing highway department operations. The Town's main operating funds are the general, highway and water funds.

Quick Facts

2021 Adopted Appropriations	\$4,048,252
Non-Payroll Disbursements During Audit Period	\$5,729,799
Purchases Reviewed	\$1,253,402

Audit Period

January 1, 2020 – March 1, 2022.

We expanded our scope back to April 2019 to examine a public works project costing \$15,000 and an equipment trade.

This report was held due to a separate investigation involving a former Board member. He was arrested for stealing a total of \$131,485.96 from the South Warren Snowmobile Club, the Hadley-Luzerne Lions Club and the Luzerne Cemetery Association. In the spring of 2023, he pleaded guilty and paid full restitution of \$131,485.96.

Procurement

How Should Town Officials Procure Goods and Services?

In accordance with General Municipal Law (GML), Section 103, towns are generally required to advertise for competitive bids for purchase contracts exceeding \$20,000 and public works contracts exceeding \$35,000. A board is also required to adopt and annually review written policies and procedures for procuring goods and services not subject to competitive bidding requirements; this ensures a prudent and economical use of public funds in the town's best interests. In lieu of soliciting competitive bids, towns may use other publicly awarded government contracts, such as those of a county or the New York State Office of General Services (State contract). To determine whether competitive bidding is necessary, town officials must consider whether the aggregate cost of a good or service within a 12-month period will exceed competitive thresholds. The timeline for the aggregate cost determination should start from the first purchase date of the good or service. Towns can use the prior year's expenditures as a good way to estimate whether purchases of a commodity or service will exceed the bid limit for the current year.

When a procurement is not subject to bidding requirements, a town's procurement policy should provide guidance for when, or types of procurements for which, solicitation of alternate proposals or quotes will not be in the town's best interest. Towns should limit and only use these exceptions, such as emergency and sole source purchases, when properly justified in the public interest. Otherwise, the effectiveness of the procurement policy and its procedures will be diminished. Town officials should develop detailed procedures that require officials to maintain adequate documentation of the procurement methods they followed. Documentation may include memoranda, written quotation forms, telephone logs (for verbal quotes), requests for proposals and copies of federal, State, county contracts or other government contracts utilized by a town when procuring goods or services.

The Town's Policy requires officials to obtain at least three written quotes, or proposals, for purchases of materials, goods, equipment and services that are more than \$1,500 and are not purchased on State, County or Town contracts or bids. The Town's Policy exempts from solicitation of written proposals or quotes for the following reasons: professional services; emergencies; and sole source. The Town's Policy (Figure 1) is more stringent than required by GML in that all contracts for purchases of materials, goods, equipment and services involving expenditures of \$10,000 or more are required to be purchased using a competitive bid process. Public works contracts of more than \$35,000 are required to be purchased using a competitive bid process, which is the same as GML. The Town's Policy requires the preservation of all information gathered in complying with the Policy be filed with the documentation (claim for payment packet) supporting the subsequent purchase or public works contract.

In lieu of soliciting competitive bids, towns may use other publicly awarded government contracts. ...

Figure 1: Policy Criteria

Purchase Type	Dollar Range	Number and Type of Quotes
Purchase and Public Works Contracts	\$1,500 ^a – \$10,000	3 Written Quotes and Prior Board Approval
Purchase Contracts Only	Greater than \$10,000	Competitive Bidding
Public Works Contracts Only	\$10,000 – \$35,000	Not Clearly Specified ^b
Public Works Contracts Only	Greater than \$35,000	Competitive Bidding
a) Increased from \$500 to \$1,500 by Board resolution 21 of 2021		
b) Town officials interpret the Policy to require three written quotes and prior Board approval for public works contracts between \$10,000 and \$35,000.		

Officials Did Not Always Seek Competition

The Board failed to enforce the provisions of the Town’s Policy. Also, they did not develop detailed procedures to supplement the Policy to capture and preserve specific details about the competitive process used to procure goods and services. We reviewed 51 purchases totaling \$1,165,219, made during our audit period, to determine whether Town officials solicited competitive bids or obtained written quotes.

Competitive Bids – We reviewed 14 purchases totaling \$1,005,149 that were subject to the GML competitive bidding requirements. Town officials made:

- 10 purchases totaling \$587,475 through a competitive bid process including purchases made from Saratoga and Warren Counties’ contracts. These purchases included road construction materials, rock salt and waste removal.
- Four purchases totaling \$417,674 (42 percent) without seeking competitive bids. These purchases included two medium-duty plow trucks, a pickup truck, a salt brine maker and fire hydrants. We compared the purchase price for the three trucks to State contract prices. While officials spent \$148,978 for these trucks, had officials sought competitive bids and purchased these trucks through the NYS Vehicle Marketplace, officials could have saved Town taxpayers \$37,000.

Quotes – We reviewed 37 purchases totaling \$160,070 that were subject to the written quote requirement of the Town’s Policy. Town officials made:

- 10 purchases totaling \$15,914 in accordance with the Town’s Policy. Officials used a competitive method to procure the goods and services, including purchases using State and local government contracts. However, we found the Town did not always maintain copies of the State and local government contracts used to procure goods and services. While we contacted the County and verified that the vendor payments were consistent with the five County contracts used to procure goods and services including culverts,

...[O]fficials could have saved Town taxpayers \$37,000.

recycled rubble and pipe, officials should have ensured these actions were taken and that the procurements were adequately documented.

- 27 purchases totaling \$144,155 (90 percent) without seeking competition. Officials were required to obtain at least three written quotes, but officials could not support if they obtained these quotes. Town officials told us that they had attempted to obtain the required number of quotes but did not always adequately document their attempts to obtain quotes and could not provide an explanation for not doing so. These purchases included repair parts, tires, equipment rental, 3,000-gallon tanks, facial recognition time clocks, purchase and installation of milfoil harvesting equipment, milfoil harvesting and tree service.

We observed no discussion in the Board's minutes or annotations on the claims for payment questioning the compliance of a purchase with bidding requirements and/or the Town's Policy as to the whereabouts of bids, quotes or other information gathered.

Because officials did not always follow the bidding requirements and the Town's Policy by soliciting competition when procuring goods and services, the Board cannot ensure officials are procuring goods and services in the most prudent and economical manner and that procurements are free from favoritism. As a result, the Town risks acquiring further goods and services at higher costs than necessary.

How Should Purchases Involving a Trade Be Conducted?

Disposal of assets may be subject to statutory requirements. However, governing boards should ensure there are adopted policies and procedures designed to ensure maximum financial benefit is obtained for the municipality when these assets are used as a trade-in during the procurement process. The governing board should determine the value of any asset used as a trade-in through physical inspection, appraisal or other appropriate means. Once the asset's value is determined, the governing board should authorize the disposal of the asset for use as a trade-in for the acquisition of a new asset and ensure this value is properly accounted for in the purchase price of the newly acquired asset.

The Supervisor Traded Town Equipment Without Authorization

Prior to our audit period, the Town purchased an 18-foot pontoon boat (18-foot boat) in March 2018 for \$1,500 and spent \$12,285 in modifications to transform it into a Eurasian Milfoil (milfoil) harvesting boat. According to the Supervisor, the objective of the purchase and modifications was to allow the milfoil harvesting vendor (vendor) to use the Town-owned boat and reduce the overall cost of

harvesting milfoil in the Town. In prior years the vendor used their own boat at an additional cost to the Town.

In April 2019, the vendor provided the Supervisor with a written proposal to exchange the Town's 18-foot boat for a larger 24-foot boat that the vendor said was better suited for milfoil harvesting. According to the Supervisor, he traded the Town's 18-foot boat for the 24-foot boat during the summer of 2019. However, he could not provide an invoice or written agreement detailing when the trade occurred, the trade-in value of the Town's 18-foot boat or the price/value for the 24-foot boat. Furthermore, there was no indication in the Board's meeting minutes that the Board authorized the Supervisor to trade-in the Town's 18-foot boat for the 24-foot boat.

The Supervisor said that no cash was exchanged for the 24-foot boat. However, in December 2020, the Town paid the vendor \$5,000 to complete modifications on the 24-foot boat. While a \$5,000 purchase would require three written quotes under the Town's Policy, there was no indication that other quotes were obtained. Additionally, there was no indication that the Board approved these modifications prior to payment. The Board subsequently approved the payment several months later in March 2021. The Town's Policy does not address trade-ins or disposals of assets when used as part of a trade-in. Although the Town provided the invoice supporting the modifications to the 24-foot boat, there was no invoice available to support the no-cash boat trade between the vendor and the Town.

The lack of Board authorization and adequate written policy and detailed procedures over disposing of or trading in assets increases the risk that the Town is not maximizing the value of equipment that is no longer needed. The Supervisor exchanging a Town asset for another asset without Board approval or supporting documentation prevented the Board from being able to assess whether the value of the assets exchanged were of equal value and the transaction was in the Town's best interest.

How Should Emergency Purchases Be Conducted?

An emergency purchase is an urgent need affecting the health and safety of citizens which requires immediate action, where the occurrence or condition is "unforeseen." A true emergency does not exclude the need for securing competitive pricing, it only excludes the formal bidding process. When town board passes a resolution that a public emergency exists, the public interest dictates that purchases are made at the lowest possible cost, seeking competition by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

The Town's Policy states that in the case of expenditures which must be made before the next Board meeting, such expenditure may be authorized by any single

member of the Board whose authorization must be noted in writing on the voucher but said emergency expenditure will be presented to the Board at its next regular meeting for review.

Emergency Procurements Were Not Conducted Properly

We reviewed five emergency procurements totaling \$60,161 made during our audit period. Four of the five procurements were associated with a well pump failure in April 2021. The pump that failed was one of two pumps supplying water to 2,500 customers. The Board decided to replace both pumps as both pumps were placed into service at the same time. The Board declared an emergency and the Supervisor signed an Emergency Executive Order and authorized payment for all expenses directly associated with the emergency replacement of the pumps. These costs totaled \$45,161 and included the two pumps, crane service and electrical services. The Supervisor told us that he identified vendors who could perform the work and supply the replacement pumps; however, he explained that his focus was on correcting the problem and not on seeking competition or documenting what actions he took to solicit vendors. Therefore, the Supervisor could not provide any documentation that competition was sought by informal solicitation of quotes or otherwise, to the extent practical under the circumstances.

The remaining emergency purchase totaling \$15,000 was for a roof repair occurring in April 2019. The Supervisor told us that he was made aware of a necessary roof repair on a Town building, and he assessed the situation as an emergency based on the roof's reported impact on Town employees. The Supervisor said he attempted to obtain quotes but was only able to contact one vendor who was both able and available to make the roof repair. No record of vendors called or written quotes were available for review. The Board did not declare an emergency and the Supervisor did not contact a Board member and no Board authorization was noted in writing on the voucher, nor did the voucher indicate that the purchase was an emergency. The Supervisor, by entering into a public works contract under a presumed emergency without notifying a member of the Board, did not provide the Board an opportunity to assess both the situation and the contract proposal. The Town's Policy is vague with regard to emergency purchases initiated by the Supervisor who is a member of the Board.

Town officials did not always properly justify that an emergency existed and/or did not seek competition. As a result, the Town risked acquiring goods and services at higher costs than necessary.

How Should Sole Source Purchases Be Conducted?

A sole source procurement is one in which only one vendor can provide the commodities or services sought by a town or a situation when two or more

vendors can supply the commodity or services, but the town selects one vendor over the other based on a specific rationale. The Town's Policy states that "Except when directed by the Town Board, no solicitation of written proposals or quotations shall be required for sole source situations." However, the Town's Policy also requires that for every prospective purchase, the information gathered and conclusions reached are to be documented and kept on file or other documentation supporting the purchase activity.

Sole Source Purchases Were Not Properly Documented

We reviewed three purchases totaling \$23,022 made during our audit period that were procured by the Superintendent under a sole source justification. We reviewed these purchases to determine whether supporting documentation was on file to justify that only the selected vendor could provide the product. Specifically:

- A purchase of a snowplow totaling \$16,495, subject to competitive bidding requirements of the Town's Policy, was procured under a sole source justification. However, the Superintendent did not maintain adequate documentation establishing that only the selected vendor could provide the snowplow.
- Two purchases totaling \$6,527 for a valve and a used snowplow blade, subject to the Town's Policy requiring three written competitive quotes, were procured under a sole source justification. However, these two purchases lacked any documentation establishing that only the selected vendor could provide these products.

While the Superintendent told us that the snowplow was unique in design and performance, no documentation was provided supporting his claim of sole source. Sole source procurements circumvent the approval and price verification features of the Town's normal purchasing process. When documentation supporting the justification is not retained, there is a risk that the Town may pay more for goods and services.

What Do We Recommend?

The Board should:

1. Ensure that Town officials comply with the competitive bidding statutes and the Town's Policy when making purchases.
2. Develop supplemental procurement procedures for capturing and preserving specific details of the competitive process used to procure goods and services, including emergency and sole procurements and

trading-in of Town equipment and/or vehicles when purchasing new equipment and/or vehicles.

3. Formally approve trade in and purchase of assets.

The Supervisor should:

4. Receive prior Board approval for purchases and to sell or dispose of Town assets.

Town officials should:

5. Comply with competitive bidding statutes and the Town's Policy.
6. Maintain support documentation to show information gathered and conclusions reached to support purchasing activity.

Appendix A: Response From Town Officials



Town of Lake Luzerne, New York

P.O. Box 370, 539 Lake Avenue 12846

Gene Merlino
Supervisor

E-mail: supervisorlakeluzerne@hotmail.com

Cynthia Sherwood
Town Clerk

E-mail: lakeluzerne@albany.twcbc.com

Website: townoflakeluzerne.com

Town Council

Michael Fazio

Timothy Hanlon

Paul Lewandowski

James Niles

Phone - 518-696-2711

Fax - 518-696-2773

June 28, 2023

NYS Office of the State Comptroller
Gary G. Gifford, Chief Examiner, Glens Falls Regional Office
One Broad Street Plaza
Glens Falls, NY 12801

Dear Mr. Gifford:

The Town of Lake Luzerne is in receipt of the preliminary draft findings for the Procurement audit period of January 1, 2020 – March 1, 2022. The Town of Lake Luzerne does not dispute the findings in the audit report.

The Key recommendations and subsequent corrective actions:

- Comply with competitive bidding statutes and the Town's procurement Policy: The Town of Lake Luzerne will comply with all applicable bidding statutes and the Town's procurement policy which was updated, effective March 13, 2023.

Please let me know if you require more information or have any questions regarding the response provided. Thank you.

Sincerely,

Eugene J. Merlino

Town Supervisor

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 Town officials and employees to gain an understanding of the Town's procurement process.
- We reviewed and evaluated the Town's Policy and procedures to determine whether they were adequate.
- We reviewed Board meeting minutes to identify purchases made using bids or quotes and to determine if the Board approved purchases.
- We reviewed recent vehicle purchases on the NYS Vehicle Marketplace eProcurement Platform to determine if the Town could have experienced cost savings in the vehicle purchases included in our sample.
- We used our professional judgment to evaluate a trade-in of Town owned equipment to purchase a similar piece of equipment.
- We used our professional judgment to select and evaluate five procurements the Town justified as emergency procurements, and three procurements the Town justified as sole source procurements.

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

Appendix 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

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

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

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

GLENS FALLS REGIONAL OFFICE – Gary G. Gifford, Chief of Municipal Audits

One Broad Street Plaza • Glens Falls, New York 12801-4396

Tel (518) 793-0057 • Fax (518) 793-5797 • Email: Muni-GlensFalls@osc.ny.gov

Serving: Albany, Clinton, Columbia, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Rensselaer, Saratoga, Schenectady, Warren, Washington counties

osc.state.ny.us

