

New York State Comptroller  
THOMAS P. DiNAPOLI

# Town of Spencer

## Procurement

May 2026 | 2025M-100

Prepared by the Division of Local Government and School Accountability

# Table of Contents

---

<b>Audit Results</b>	<b>1</b>
<b>Procurement: Findings and Recommendations</b>	<b>3</b>
Finding 1 – Town officials did not always seek competition when procuring goods and services.	3
Recommendations	5
Finding 2 – A Board member had a prohibited conflict of interest.	5
Recommendation	5
<b>Appendix A: Profile, Criteria and Resources</b>	<b>6</b>
Profile	6
Criteria	6
Additional Resources	8
<b>Appendix B: Response From Town Officials</b>	<b>9</b>
<b>Appendix C: Audit Methodology and Standards</b>	<b>11</b>

# Audit Results

---

## Town of Spencer

### Audit Objective

Did the Town of Spencer (Town) Board (Board) and officials seek competition for purchases?

### Audit Period

January 1, 2023 – September 30, 2024

We extended the audit period through April 25, 2025, to analyze a conflict of interest.

### Understanding the Audit Area

A town board and town officials should seek competition for purchases to help ensure the town is receiving the highest quality goods and services at the lowest price possible for taxpayers, while also preventing conflicts of interest and maintaining public trust. Competitive purchasing practices also foster a fair and equitable marketplace for vendors.

The Town Supervisor (Supervisor), Highway Superintendent (Superintendent) and department heads are responsible for making purchases for the Town. During the audit period, the Town paid approximately \$2.1 million for goods and services.

### Audit Summary

The Board and Town officials did not always seek competition for purchases, and one Board member had a prohibited conflict of interest that arose from his paving company providing services to the Town totaling \$12,911 during the audit period. Because officials did not always solicit competition for goods and services or avoid conflicts of interest, they cannot guarantee that they secured the most favorable terms and conditions for the benefit of Town taxpayers.

We determined Town officials did not procure goods and services in accordance with the statutory requirements set forth in New York State General Municipal Law (GML) or with the Town's procurement policy (Policy). The audit identified instances where officials and department heads responsible for purchasing did not:

- Issue requests for proposals (RFPs) or use any other competitive process before procuring professional services from two vendors totaling \$127,359.
- Ensure purchases using the piggybacking exception totaling \$100,000 adhered to the competitive bidding exception set forth in GML.
- Competitively bid, in accordance with GML, for paving services totaling \$88,290.
- Document seeking competitive quotes for 11 purchases totaling \$30,218, as required by the Policy.

The report includes five recommendations that, if implemented, will improve the Town's procurement function. Town officials generally agreed with our findings and indicated they plan to initiate corrective action.

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 GML. Our methodology and standards are included in Appendix C.

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 GML. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Board to make the CAP available for public review in the Town Clerk's office.

# Procurement: Findings and Recommendations

---

One of the best methods for helping to ensure goods and services are acquired in a cost-effective manner is to create as much competition as possible before purchasing the good or service. Whether using formal competitive bids in accordance with GML, RFPs or written and verbal quotes, a well-planned solicitation effort is important to reach as many qualified vendors as possible. In addition to following the competitive bidding requirements set forth in GML Section 103, the town board is required to develop and adopt procurement policies and procedures, pursuant to GML Section 104-b, for procuring goods and services not required by law to be competitively bid. The town board should also establish policies or procedures to help ensure the purchases do not conflict with GML Article 18, which prohibits municipal officers and employees from having an “interest” in contracts with the municipality for which they serve.

The Town’s Policy required officials who were authorized to make purchases to determine whether the purchase is subject to the competitive bidding requirements set forth in GML Section 103. Additionally, purchases of supplies or equipment exceeding \$10,000 and public work contracts exceeding \$20,000 require the Town to seek formal bids pursuant to GML Section 103.<sup>1</sup>

The Policy also included requirements that officials and employees must obtain written or verbal quotes for estimate purchases as follows:

- For purchases greater than \$3,000, but less than or equal to \$10,000, officials and department heads are required to obtain a written RFP and written/fax quotes from three vendors.
- For purchases of less than or equal to \$3,000, but greater than \$1,000, officials and department heads are required to obtain an oral price request for the goods and services from at least two vendors.

More details on the criteria used in this report, as well as resources we make available to local officials that can help them improve operations, are included in Appendix A.

## **Finding 1 – Town officials did not always seek competition when procuring goods and services.**

We reviewed purchases of goods and services totaling approximately \$400,200 from January 1, 2023 through September 30, 2024, and determined that Town officials did not always solicit competition in accordance with statutory requirements set forth in GML and the Policy.

Purchases Subject to Bidding Requirements – We reviewed three purchases totaling \$207,446 to determine whether the Board solicited competition in accordance with the competitive bidding requirements set forth in GML Section 103. The Board did not solicit competitive bids for two of the three purchases totaling \$188,290. The purchases included the following:

- One purchase of a used pavement roller totaling \$100,000. The Board purchased the equipment through another state’s contract using a Group Purchasing Organization (GPO). The Superintendent told us they used the piggyback exception to the competitive bidding requirements. However, this proposed procurement was not reviewed by the Town’s legal counsel and the Board did not document that the contract for the used pavement roller met the required prerequisites for using the exception set forth in GML Section 103(16).
- One purchase for paving services totaling \$88,290. The Superintendent told us that he obtained two verbal quotes prior to selecting the vendor to perform the paving services and the vendor selected

---

<sup>1</sup> GML Section 103 requires competitive bids for purchase contracts exceeding \$20,000 and contracts for public work exceeding \$35,000. However, the Board may choose to be more restrictive and set lower thresholds.

offered a price less than the other competitor. However, the cost of the paving services exceeded the statutory dollar threshold set forth in GML Section 103, and there was no indication that there was an exception to the competitive bidding requirements that applied here. Therefore, despite obtaining verbal quotes, officials were required to advertise the purchase, receive sealed bids and award the contract to the lowest responsible bidder in accordance with GML.

Professional Services and Insurance Coverage – While the procurement of professional services is a well-established exception to statutory competitive bidding requirements, GML Section 104-b requires that towns adopt policies and procedures governing the procurement of goods and services, such as professional services, when competitive bidding is not required. The Policy did not require using competitive methods when obtaining professional services. However, to promote transparency and competition, the Board should award contracts for professional services after performing some form of competitive process, such as issuing RFPs or obtaining written or verbal quotes.

Because the Policy did not require officials to solicit competition for professional services or insurance coverage, the Board did not seek some form of competition, such as issue RFPs or obtain written or verbal quotes, before procuring engineering services totaling \$77,982 or insurance coverage totaling \$49,376. The Supervisor told us that Town officials did not seek competition for the engineering services contract because the vendor is a multifaceted provider and, in his experience, provided the best service and value for the Town’s needs. The Supervisor also told us that several years ago, the Board compared insurance rates from different vendors, and the current vendor met the Town’s needs better than other options.

Although the Supervisor indicated that Town officials were satisfied with the Town’s current professional service providers, using RFPs to obtain proposals or obtaining quotes increases the awareness of other professional service providers who could offer similar services at a more favorable rate, could result in existing professional service providers providing more favorable terms and helps assure taxpayers that procurements are made in their best interest.

Purchases Subject to the Policy – We reviewed 18 purchases totaling \$65,376 to determine whether the Board properly sought competition in accordance with the Policy for purchases not subject to competitive bidding requirements pursuant to GML Section 103. The Policy requires Town officials to preserve and file documentation supporting that Town officials complied with the Policy. However, Town officials did not have any documentation indicating that they sought competition for 11 of the 18 purchases totaling \$30,218 (46 percent). These purchases included services such as road repair, crane operations, mowing and replacement of a truck exhaust system (Figure 1).

**Figure 1: Purchases Without Written Quotes**

Purchase	Cost
Road Repairs	\$5,659
Exhaust System	5,471
Tires	4,111
Crane Service	3,997
Truck Parts	2,250
Landscaping/Mowing	2,025
Trash Pump	1,781
Computer	1,345
Truck Parts	1,224
Code Book	1,195
Lubricants	1,160
<b>Total</b>	<b>\$30,218</b>

The Superintendent and Supervisor told us that they selected vendors based on cost or availability; however, this selection process was not formally documented or retained as required by the Policy. Without ensuring that competition is sought in accordance with the Policy, the Board and Town officials have less assurance that goods and services are acquired at the best price and that purchases are made in the most prudent and economical manner in the best interests of taxpayers.

## Recommendations

The Board should:

1. Ensure that officials comply with statutory requirements and the Policy when procuring goods and services.
2. Review procurements involving the piggybacking exception set forth in GML Section 103(16) to determine whether the prerequisites for use of the exception are satisfied.
3. Update the Policy to provide guidance to officials and department heads for soliciting some form of competition for professional services and insurance coverage, such as using an RFP process or obtaining written or verbal quotes.

Town officials should:

4. Adhere to the Policy and retain supporting documentation of the actions taken when procuring goods and services.

## Finding 2 – A Board member had a prohibited conflict of interest.

One Board member was a co-owner of a paving company, organized as a corporation from which the Town purchased paving services. During the audit period, the Board approved the payment of one claim to the Board member's company totaling \$12,911.

The invoice submitted by the company for paving services was an agreement for services purchased by the Town and, therefore, a "contract" for purposes of GML Article 18. As a shareholder in the company, the Board member had a deemed interest in the contract because he owns or controls stock in the corporation. Additionally, as a Board member at the time the invoice was submitted to the Town, he also had one or more powers or duties set forth in GML Section 801. Therefore, because no statutory exceptions appear to have applied here, the Board member had a prohibited interest in the contract.

The Board member told us that before he became a Board member, his company did business with the Town and he was unaware that a conflict of interest may exist until after the payment occurred. However, the Board member told us that he agreed that if he were to remain on the Board, he would no longer be able to do business with the Town.

When officials, in their private capacities, conduct business with the municipality for which they serve, the public may question the appropriateness of these transactions.

## Recommendation

5. The Board should ensure that Town officials are familiar with and follow the requirements of GML Article 18.

# Appendix A: Profile, Criteria and Resources

---

## Profile

The Town is located in Tioga County and provides services including street maintenance and general government support. The Town is governed by an elected five-member Board, which includes the elected Supervisor and four elected Board members. The Board is responsible for the general management and control of the Town's financial operations. The Supervisor serves as the Town's chief financial officer and is responsible for the Town's day-to-day financial activities.

## Criteria

In accordance with 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. To determine whether competitive bidding is necessary, town officials must consider whether the aggregate amount to be spent on the same or similar goods or services, within a 12-month period, will exceed the statutory dollar thresholds set forth in GML, whether from a single vendor or multiple vendors. The timeline for the aggregate cost determination should start from the first purchase date of the good or service. To help ensure towns are properly aggregating, town officials can use the prior year's expenditures as a method to estimate whether purchases of a commodity or service will exceed the bid limit for the current year.

Furthermore, GML sets forth certain exceptions to the competitive bidding requirements. One exception, often referred to as piggybacking, allows towns to procure certain goods through the use of other governmental contracts. For this exception to apply, certain prerequisites must be met, including:

- The contract must have been awarded by the United States or any agency, any State or any other political subdivision or district,
- The contract must have been made available for use by the other governmental entity, and
- The contract must have been awarded to the lowest responsible bidder or selected based on best value as defined in New York State Finance Law Section 163.<sup>2</sup>

Use of the piggybacking exception allows towns to benefit from the competitive process already undertaken by another governmental entity. In some instances, group purchasing organizations (GPOs) advertise the use of such governmental contracts to other governmental entities. However, when procuring goods or services through the use of a GPO, town officials are still responsible for reviewing the proposed procurement to determine, on advice of the town's legal counsel as appropriate, whether the procurement satisfies the prerequisites for use of the piggybacking exception. Therefore, town officials should maintain appropriate documentation to demonstrate that they met the prerequisites to support the use of the exception.

Furthermore, prior to awarding a good or service through the use of a GPO contract, town officials should evaluate whether the selected good or service is the most practical and economical choice, and in the best interest of the town. Performing such an evaluation, which should include whether the selection of the good or service through the use of a GPO contract will result in cost savings to the town, helps ensure that the town is furthering the underlying purpose of the piggybacking exception (i.e., benefiting from the competitive process

---

<sup>2</sup> The New York State 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>).

already undertaken by another governmental entity), and helps ensure that the procurement is consistent with the purposes generally set forth in GML Section 103.<sup>3</sup>

Pursuant to GML Section 104-b, purchases of goods or services below the statutory dollar threshold, or subject to an exception to the competitive bidding requirements set forth in GML Section 103, however must still be procured in a manner that helps ensure the prudent and economical use of town money, and helps protect against favoritism, extravagance, and fraud. To further these goals, the Town is required to adopt written policies and procedures governing the procurement of goods and services that are not required to be made pursuant to the competitive bidding requirements, including professional services. The board is generally required in its policies and procedures to secure alternative proposals through an RFP process or quotations for such goods and services, including professional services. However, GML permits the town to establish circumstances when, or types of procurement for which the board has determined alternative proposals or quotations will not be in the best interest of the town.

While GML permits towns to set forth in their policies the circumstances when or the types of procurements for which the town has determined RFPs will not be in the best interests of the local government, using RFPs to obtain proposals or obtain written or verbal quotes are good business practices and effective ways to help ensure that the town obtains needed qualified services upon the most favorable terms and conditions, and in the best interest of the taxpayers. An RFP provides detailed information on the type of service needed and the evaluation criteria used to award the contract. Evaluation criteria can include experience, work plans and the methodology used to achieve desired results and estimated completion times. Obtaining professional services competitively helps town officials procure needed services at, and with, the most advantageous terms and conditions. It also helps officials avoid any potential appearance of partiality when awarding these contracts.

The Town's Policy required officials who were authorized to make purchases to analyze potential purchases to determine whether they must use a competitive bidding process to procure the goods and services. The analysis required by officials applied to any purchase contract that exceeded \$10,000, or was expected to exceed \$10,000 in the aggregate, for the same commodity or service within the fiscal year. The analysis also applied to public works contracts exceeding \$20,000.

The Policy also indicates that a certain number of proposals or quotes need to be obtained prior to the purchase, depending on the dollar threshold as follows:

- Purchases greater than \$3,000, but less than or equal to \$10,000, require a written RFP and written/fax quotes from three vendors.<sup>4</sup>
- Purchases less than or equal to \$3,000, but greater than \$1,000, require an oral price request for the goods and services from at least two vendors.

A town board should also ensure contracts do not conflict with GML Article 18 , which prohibits municipal officers and employees from having an "interest" in contracts with the municipality for which they serve when they also have the power or duty, either individually or as a town board member to negotiate, prepare, authorize or approve the contract; to authorize or approve payment under the contract; to audit bills or claims under the contract; or to appoint an officer or employee with any of those powers or duties. For this purpose, a "contract" includes any claim, account, demand against or agreement with a municipality, express or implied. Municipal officers and employees have an interest in a contract when they receive a direct or indirect pecuniary (monetary) or material benefit as a result of a contract. Municipal officers and employees are also deemed to have an interest in the contracts of, among others, a corporation of which they are an officer, director or employee, or directly or indirectly own or control any stock.

---

<sup>3</sup> In general, the purpose of competitive bidding is to guard against favoritism, improvidence, extravagance, fraud and corruption, while fostering honest competition in order that the town obtain the best goods and services at the lowest possible price.

<sup>4</sup> See supra, note 2.

## Additional Resources

OSC *Local Government Management Guides* and other informational resources that are available on our website to help officials understand and perform their responsibilities include:

- *Seeking Competition in Procurement:*  
<https://www.osc.ny.gov/files/local-government/publications/pdf/seeking-competition-in-procurement.pdf>
- *Fiscal Oversight Responsibilities of the Governing Board:*  
<https://www.osc.ny.gov/files/local-government/publications/pdf/fiscal-oversight-responsibilities-of-the-governing-board.pdf>

In addition, local officials can use our website to search for audits, resources, publications and training for officials at: <https://www.osc.ny.gov/local-government>

# Appendix B: Response From Town Officials

---

The content below is a reproduced copy of the original response letter issued by Town officials and is reformatted to meet the Americans with Disabilities Act *Web Content Accessibility Guidelines (WCAG)*,<sup>5</sup> and may have included changes to spelling and grammar. The substance of the content was not changed.

**TOWN OF SPENCER**  
79 East Tioga Street  
Spencer, NY 14883  
[townofsp@htva.net](mailto:townofsp@htva.net) – (607) 589-4887

April 25, 2026  
Mr. Lucas S. Armstrong, Chief of Municipal Audits  
State Office Building, Suite 1702  
44 Hawley Street  
Binghamton, NY 13901-4417

Re: Procurement Audit Response

Dear Mr. Armstrong:

This letter will serve as the Town of Spencer's official response and corrective action plan to the findings of the procurement audit your unit prepared.

## **Audit Response and Corrective Action Plan**

It should be noted that in February of 2026, the town board revised the procurement policy to increase the dollar thresholds for purchases of supplies and equipment and increased the dollar threshold for public works contracts to equal State thresholds at \$20,000 and \$35,000, respectfully.

### Finding No. 1

Ensure that officials comply with statutory requirements and the Policy when procuring goods and services.

#### Response:

The revised procurement policy and statutory requirements have been reviewed and approved by the town board and will be adhered to for future purchases.

### Finding No. 2

Review procurements involving the piggyback exception set forth in GML Section 103(16) to determine whether the prerequisites for use of the exception are satisfied.

#### Response:

The employees will ensure that the use of the piggyback exception in GML Section 103(16) is verified using the town attorney if necessary.

### Finding No. 3

Update the Policy to provide guidance to officials and department heads for soliciting some form of competition for professional services and insurance coverage, such as using an RFP process or obtaining verbal quotes.

---

<sup>5</sup> <https://www.ada.gov/resources/2024-03-08-web-rule/#highlights-of-the-requirements-in-the-rule>

Response:

Section 36-6 of the procurement policy, exceptions, has been updated to require competition for professional services using an RFP or written quotes every three to five years.

Finding No. 4

Adhere to the Policy and retain supporting documentation of the actions taken procuring goods and services.

Response:

The highway superintendent, as well as the town board, will receive the updated procurement policy to ensure the policies are adhered too.

Finding No.5

The board should ensure that the town officials are familiar with and follow the requirements of GML Article 18.

Response:

The town board and highway superintendent will receive copies of GML Article 18 for their review.

Respectfully submitted,

Allen T. Fulkerson  
Supervisor  
Town of Spencer  
Tioga County, New York

# Appendix C: Audit Methodology and Standards

---

We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as the work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We interviewed Town officials and employees and evaluated the Town's procurement and ethics policies to gain an understanding of the Town's procurement process.
- We reviewed bank statements and canceled check images for the audit period and identified 30 purchases totaling \$1.1 million that were greater than \$10,000 and potentially subject to competitive bidding requirements per the Town's Policy. We used our professional judgment to select the three highest purchases totaling \$207,446 to determine whether officials solicited competitive bidding. We also reviewed corresponding procurement documentation and interviewed Town officials to determine whether an acceptable alternative procurement method was used in lieu of competitive bidding.
- We reviewed bank statements and canceled check images for the audit period and identified payments to one professional service provider totaling \$77,982 and one insurance provider totaling \$49,376. We then reviewed these payments with corresponding claim packets and discussions with officials to determine whether Town officials procured professional services in a competitive manner through issuing RFPs or by obtaining quotes.
- We used our professional judgment to select a sample of 18 purchases totaling \$65,376 of 183 purchases totaling approximately \$899,300 that were not subject to competitive bidding requirements to determine whether officials obtained quotes as required by the Town's Policy. We judgmentally selected a variety of products purchased and vendors used based on the purchase price and the official in charge of the purchase throughout the audit period to determine whether officials adhered to the Policy.
- We made inquiries of Town officials to identify their outside employment, interest in any entities and their spouses' interest in entities. We reviewed Town records for payments to these entities to determine whether there were any prohibited conflicts of interest associated with these contracts.

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 relevant population size and the sample selected for examination.

# Questions?

---

## **BINGHAMTON REGIONAL OFFICE**

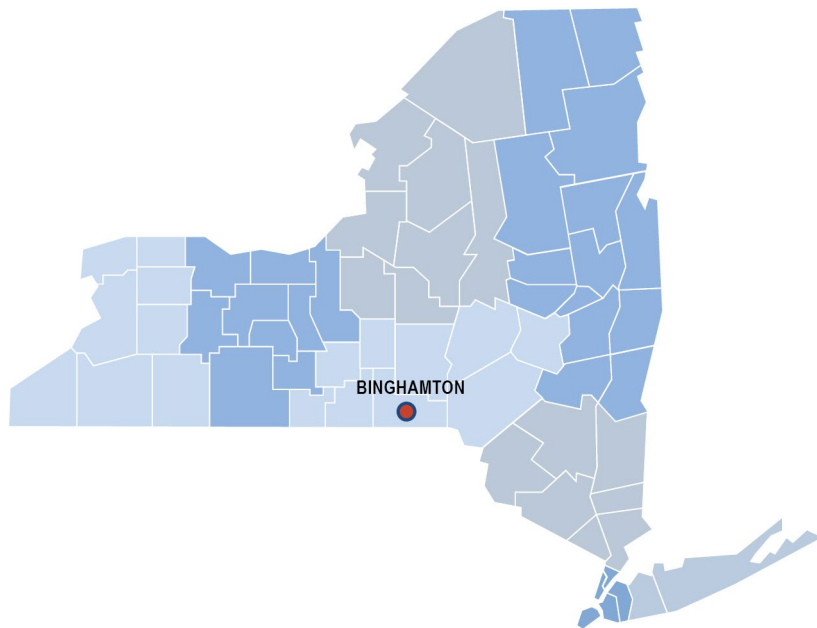
Lucas S. Armstrong, Chief of Municipal Audits

State Office Building, Suite 1702 • 44 Hawley Street • Binghamton, New York 13901-4417

Tel (607) 721-8306 • Fax (607) 721-8313

Email: [Muni-Binghamton@osc.ny.gov](mailto:Muni-Binghamton@osc.ny.gov)

Serving: Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schoharie, Tioga, Tompkins counties





## Contact

Office of the New York State Comptroller  
110 State Street  
Albany, New York 12236

(518) 474-4044

[www.osc.ny.gov](http://www.osc.ny.gov)

Prepared by the Division of Local Government and School Accountability

 FOLLOW US: [osc.ny.gov/subscribe](http://osc.ny.gov/subscribe)