

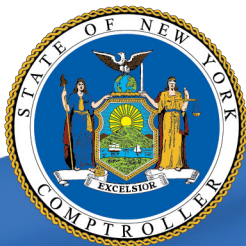
# City of Yonkers

## Procurement of Professional Services

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FEBRUARY 2018

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

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# Report Highlights

## City of Yonkers

### Audit Objective

Determine whether City of Yonkers (City) officials sought competition when procuring professional services.

### Key Finding

- City officials did not seek competition when procuring professional services from 22 providers totaling approximately \$9.2 million.

### Key Recommendation

- The Board of Contracts and Supplies (Board) should revise its procurement policy to require City officials to seek competition when contracting for professional services or to provide justification when seeking competition will not be in the best interest of taxpayers.

City officials generally agreed with our recommendation and have indicated that they planned to initiate corrective action.

### Background

The City is the fourth largest city in New York State and is located in Westchester County.

The City is governed by its charter and State and local laws. An elected seven-member City Council is the City's legislative branch. The Mayor is the chief executive officer and is responsible, along with other administrative staff, for the City's day-to-day administration. The Commissioner of Finance, assisted by the Deputy Commissioner, is the Chief Fiscal Officer and is responsible for the oversight and accountability of financial activities. The Director of Purchasing is responsible for approving all purchases in accordance with City policy and State law limits.

#### Quick Facts

2016-17 Budgeted Appropriations <sup>a</sup>	\$546,094,307
Population	200,800
Employees	2,700

<sup>a</sup> Excluding City public schools

### Audit Period

July 1, 2015 – June 30, 2017

# Procurement of Professional Services

## How Should City Officials Procure Professional Services?

Competitive bidding is not required for the procurement of professional services which involve specialized skill, training and expertise, the use of professional judgment or discretion and/or a high degree of creativity. While the City is not legally required to competitively bid when procuring professional services, using competition, such as using a request for proposal process or obtaining quotes, is an effective way to ensure that the City receives the desired services for the best price. The appropriate use of competition provides taxpayers with the greatest assurance that services are procured in the most prudent and economical manner and without favoritism, extravagance, fraud and abuse. New York State General Municipal Law (GML) requires that the City adopt policies and procedures governing the procurement of goods and services when competitive bidding is not required. The Board is responsible for developing policies and procedures that provide for alternative proposals or quotes for goods and services secured by the use of written requests for proposals, written quotes, verbal quotes or any other method of procurement which furthers the purpose of GML. In addition, City officials should document justification for situations when seeking competition would not be in the best interest of the taxpayers.

## Lack of Adequate Procurement Guidance

The Board has developed a procurement policy that requires City officials to seek competition when contracting for professional services. However, the policy exempts City officials from seeking competition for certain professional services.<sup>1</sup> In addition, City officials are not required to provide justification when seeking competition would not be in the best interest of the taxpayers.

**FIGURE 1: Professional Services Without Competition**

Professional Services	Count	Expenditure
Information Technology Specialist	3	\$3,177,120
Legal	11	\$3,056,762
Auditing	1	\$1,398,762
Engineers and Architects	1	\$552,456
Insurance	2	\$478,109
Media Relations	2	\$248,000
Investigative	1	\$164,760
Planners Consulting	1	\$88,166
Total	22	\$9,164,135

<sup>1</sup> Lawyers, accountants, auditors, financial advisors, information technology advisors, real estate brokers, recruitment agencies for professionals, planners and landscape architects

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We reviewed the procurement of services from 30 professionals totaling approximately \$12.4 million during the 2015-16 and 2016-17 fiscal years. City officials sought competition for services from eight professionals totaling approximately \$3.2 million. However, City officials did not seek competition for services from 22 professionals totaling approximately \$9.2 million (Figure 1). Based on the information reviewed, eight of the 22 professionals had been working for the City five years or more. For example, the City has been using the same vendor for audit services for at least 30 years. The Director of Purchasing told us that City officials did not seek competition for some of these services because they were exempted by the City's policy or because the professionals were recommended by Department heads. However, in instances when the professionals were recommended, there was no documentation to indicate why seeking competition would not be in the best interest of the taxpayers.

As a result, City officials, the Board and residents do not have assurance that professional services are being procured in the City's best interest and in the most prudent and economical manner without favoritism, extravagance, fraud and abuse.

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

1. The Board should consider revising its procurement policy to require City officials to seek competition when contracting for professional services or to provide justification when seeking competition will not be in the best interest of taxpayers.

# Appendix A: Response From City Officials

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**Mayor Mike Spano**

John A. Liszewski  
Commissioner of Finance

**CITY OF YONKERS**

**DEPARTMENT OF FINANCE AND MANAGEMENT SERVICES**

**One Larkin Center**

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Yonkers, NY 10701

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February 15, 2018

Tenneh Blamah  
Chief Examiner of Local Government and School Accountability  
Office of the State Comptroller  
33 Airport Center Drive, Suite 103  
New Windsor, New York 12553

Re: Audit Response and Corrective Action Plan

Dear Ms. Blamah:

I am writing in response to your letter dated January 25, 2018, regarding the preliminary draft findings (the "Report"), which resulted from a recent examination by the Office of the State Comptroller ("OSC"). The Report found that competition was not sought in the procurement of certain professional services. It should be noted that the Report made a single recommendation, to wit, that the City's Board of Contract and Supply revise "the procurement policy to require City officials to seek competition when contracting for professional services or to provide justification when seeking competition will not be in the best interest of taxpayers." The Report notes that, the policy exempts City officials from seeking competition for certain professional services (in accordance with state law), noting that certain professionals have been working for the City five years or more.

As you know, New York State General Municipal Law ("GML") Section 103 exempts procurement of professional services from the requirements of competitive bidding. Moreover, the on-line guidance offered by the OSC in its "Sample Format for Procurement Policy and Procedures" specifically, includes a section entitled: "Items *Excepted* from this Policy and Procedures by the Board" (emphasis added). In compliance with Section 103, the City adopted a policy, which addresses procurements not required by law to be made under the competitive bidding requirements (the "Procurement Policy"). As its central tenet, the City's Procurement Policy requires conduct that "(a) encourages the prudent and economical use of public monies in the best interest of the taxpayers; (b) facilitates the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances; and (c) guards against favoritism, improvidence, extravagance, fraud and corruption." The Procurement Policy exempts the

[YonkersNY.gov](http://YonkersNY.gov)



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procurement of lawyers; accountants; auditors; financial advisors; information technology advisors; real estate brokers; recruitment agencies for professionals; planners and landscape architects as the aforementioned professional require special or technical skill, training or expertise. Prudent use of funds is always a priority for the City, including when contracting for professional services. For example, it should be noted that many of the law firms on retainer with the City charge reduced rates and have not raised hourly rates in six years or more. Moreover, the institutional knowledge held by these professionals can prove invaluable.

Having said that, the City recognizes the value of having appropriate procedures in place and will, as its corrective action plan ("CAP"), require sufficient justification as to any determination that seeking competition would not be in the best interest of taxpayers. Accordingly, we intend to recommend to the Board of Contract and Supply that each department head provide a brief justification memorandum to the Purchasing Director in support of any such contract.

Please do not hesitate to contact me with any questions. Thank you.

Regards,

John Liszewski  
Commissioner of Finance

cc: Mike Spano, Mayor  
Mike Khader, President, City Council  
Michael Sabatino, Councilman 3rd District, Majority Leader  
Mike Breen, Councilman 5<sup>th</sup> District, Minority Leader  
Shanae V. Williams, Councilwoman, 1<sup>st</sup> District  
Corazon Pineda-Isaac, Councilwoman 2<sup>nd</sup> District  
John Rubbo, Councilman 4<sup>th</sup> District  
Anthony J. Merante, Councilman 6<sup>th</sup> District  
James Cavanaugh, Deputy Mayor  
Steven J. Levy, Deputy Mayor  
Michael V. Curti, Corporation Counsel  
Thomas Collich, Director of Purchasing

## Appendix B: Audit Methodology and Standards

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We conducted this audit pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the New York State General Municipal Law. To achieve the audit objective and obtain valid audit evidence, we performed the following audit procedures:

- We reviewed the City's policy and procedures and interviewed City officials to gain an understanding of the procurement process for professional service providers.
- We reviewed cash disbursement data to identify vendors who appeared to be professional service providers that individually received payments totaling at or above \$20,000 in either fiscal year during our audit period. We identified 70 such providers with total expenditures of approximately \$15 million during our audit period.
- We selected 30 of these providers that individually received payments totaling at or above \$75,000 in either fiscal year. We added each provider's total expenditures for both years for the provider totals. We reviewed documentation to determine whether City officials sought competition when awarding contracts for professional services or provided justification when seeking competition would not be in the best interest of the taxpayers.

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.

Pursuant to the Fiscal Agent Act, the Office of the State Comptroller (OSC) maintains City assets in a special debt service fund bank account, invests those funds on behalf of and at the City's direction, and makes payments on the City's behalf for any debt service payments due. We believe that independence concerns are mitigated as City officials oversee the required services performed by OSC under the Fiscal Agent Act and evaluate the results of the services performed. However, GAGAS explicitly states that these services impair an external auditor's independence with respect to an audited entity.<sup>2</sup>

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<sup>2</sup> *Government Auditing Standards*, 2011 Revision, paragraph 3.58



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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 City Council to make the CAP available for public review in the City Clerk's office.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.state.ny.us/localgov/regional\\_directory.pdf](http://www.osc.state.ny.us/localgov/regional_directory.pdf)

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

[www.osc.state.ny.us/localgov/costsavings/index.htm](http://www.osc.state.ny.us/localgov/costsavings/index.htm)

### **Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm](http://www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm)

### **Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg)

### **Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.state.ny.us/localgov/planbudget/index.htm](http://www.osc.state.ny.us/localgov/planbudget/index.htm)

### **Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.pdf](http://www.osc.state.ny.us/localgov/lgli/pdf/cybersecurityguide.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/localgov/finreporting/index.htm](http://www.osc.state.ny.us/localgov/finreporting/index.htm)

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

[www.osc.state.ny.us/localgov/researchpubs/index.htm](http://www.osc.state.ny.us/localgov/researchpubs/index.htm)

### **Training** – Resources for local government officials on in-person and online training opportunities on a wide range of topics

[www.osc.state.ny.us/localgov/academy/index.htm](http://www.osc.state.ny.us/localgov/academy/index.htm)

## Contact

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[www.osc.state.ny.us/localgov/index.htm](http://www.osc.state.ny.us/localgov/index.htm)

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

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