

Town of Seneca Falls

Procurement

SEPTEMBER 2019



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

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Report Highlights

Town of Seneca Falls

Audit Objective

Determine if goods and services were procured in accordance with the Town's procurement policy and applicable statutes.

Key Findings

Town officials may not have:

- Appropriately procured nine single or aggregate purchases over the competitive bidding thresholds (totaling \$1.13 million).

Town officials did not:

- Seek competition for eight professional service contracts totaling \$384,400.

Key Recommendations

Town officials should:

- Consider revising the procurement policy and procedures to specify documentation requirements, and ensure officials and employees follow competitive bidding statutes and policy requirements.
- Develop procedures for procuring professional services to award contracts above a reasonable limit only after soliciting some form of competition, and provide guidance as to how such competition should be solicited, including written requests for proposals, written quotes or verbal quotes.

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

Background

The Town of Seneca Falls (Town) is located in Seneca County. The Town is governed by an elected Town Board (Board), which is composed of the Town Supervisor (Supervisor) and four Board members.

The Board is responsible for the general management and control of the Town's finances and operations. The Supervisor serves as the chief executive and chief fiscal officer, and is responsible for the Town's day-to-day operations.

Quick Facts

Population	9,000
2018 Budgeted Appropriations	\$11.8 million
Total 2016 and 2017 Disbursements	\$20.2 million

Audit Period

January 1, 2016 – March 30, 2018

We extended our audit scope back to January 1, 2015 to review documents related to a water storage tank improvement and maintenance program

Procurement

How Should a Town Procure Goods and Services?

Under New York State (NYS) General Municipal Law (GML)¹ local governments, including towns, are generally required to advertise for competitive bids when procurements exceed certain dollar thresholds.²

GML³ further requires local governments, including towns, to adopt their own written procurement policies and procedures for procuring goods and services not required by law to be competitively bid. Such procurement policies are to provide that alternative proposals or quotes for goods and services shall be secured by the use of written requests for proposals (RFPs), written quotes, verbal quotes or any other method of procurement which furthers the purposes of GML.⁴ In addition, the procurement policy and procedures should require adequate documentation of actions taken with each method of procurement and require justification and documentation of any contract awarded to other than the lowest responsible dollar offerer.

A town's procurement policy may set forth circumstances when, or types of procurements for which, in the town's sole discretion, the solicitation of alternative proposals or quotations will not be in the town's best interest. While GML permits local governments to set forth in their policies the circumstances when or the types of procurements for which the local government has determined RFPs will not be in the best interests of the local government, we believe using a competitive method, such as an RFP process, would help ensure that the board obtains needed qualified services upon the most favorable terms and conditions, and in the taxpayers' best interest.

Additionally, although an exception to the competitive bidding requirements, seeking competition for professional services helps ensure the prudent use of taxpayer money. GML states that goods and services that are not required by law to be bid must be procured in a manner to assure the prudent and economical use of public moneys in the taxpayers' best interests. It further provides that the board require in its policies and procedures that, with certain exceptions, the town secure alternative proposals through an RFP process or quotations for professional services. One exception is for circumstances when, or types of procurement for which, the board has determined alternative proposals or quotations will not be in the town's best interest.

1 General Municipal Law (GML) Section 103

2 GML generally requires towns to solicit competitive bids for purchase contracts involving expenditures in excess of \$20,000 and contracts for public work in excess of \$35,000. In determining whether the threshold will be exceeded, the town must consider the aggregate amount reasonably expected to be expended for all purchases of the same or similar commodities to be made within the 12-month period commencing on the date of purchase, whether from a single vendor or multiple vendors.

3 GML Section 104-b

4 Refer to our publication *Seeking Competition in Procurement* available at <https://www.osc.state.ny.us/localgov/pubs/lmgmg/seekingcompetition.pdf>

An RFP is generally a document that provides detailed information concerning the type of service to be provided including minimum requirements and, where applicable, the evaluation criteria that will govern the contract award. Evaluation criteria can include factors in addition to price (e.g. experience, work plans and methodology to achieve desired results and estimated completion times). Furthermore, a written agreement is essential for establishing the professional services to be provided, the timeframes for those services, the basis for compensation and other terms and conditions.

Goods and Services Were Not Procured in Accordance With GML Requirements and Town Policy

According to the Town's procurement policy, purchasing authority is provided to the Board and certain Town officers and department heads. We were told that department heads within the Town act as "purchasing agents" for their respective departments and may authorize purchases without prior Board approval within the thresholds established by the adopted policy. The policy provides that the purchaser obtain RFPs and verbal or written quotes for certain purchases. The policy also generally provides that sufficient detail or support for purchases shall be maintained. However, the Town did not adopt supplemental purchasing procedures that would help address the specific documentation requirements. Because of this, purchasers were left to their own determinations in maintaining this information, which was inconsistent among departments.

We reviewed 57 purchases subject to competitive bidding requirements (totaling \$5.63 million), and found three purchases (totaling \$126,477) that were not competitively bid. Further, an additional three purchases reviewed (totaling \$708,093) were related to water storage tank improvements and maintenance on two different towers within the Town. We were told that the Town procured these as a professional service because the procurement required a "specialized skill set." However, Town officials were unable to provide us with any documentation or analysis indicating how they arrived at the determination that the procurements qualified as a professional service exception.⁵

In addition, we were informed that a vendor made a presentation at the November 2015 Board meeting at which the vendor stated they could provide the Town with an RFP for a water storage tank improvement and maintenance program. Town officials stated the Town's engineering firm (Firm) was then tasked with seeking proposals for a water storage tank improvement and maintenance program. The vendor submitted a proposal for these services, dated December 17, 2015, which included an RFP. Subsequently, on December 24, 2015 the Town advertised a legal notice seeking RFPs for these services with a response

⁵ A discussion relating to the procurement of professional services is addressed later in the report.

date of January 15, 2016. This allowed only approximately 14 business days to prepare a comprehensive proposal for services which ultimately resulted in a multiyear, multimillion dollar contract. Neither Town officials nor the Firm were able to provide us with any proposals received between the dates of the legal notice and response due date. Town officials approved contracts with the vendor for both tanks totaling \$3.9 million, which was divided into eight annual payments and included annual maintenance fees.⁶ The Town's awarding of these contracts to the vendor following this timeline of events raises questions as to whether the RFP process was a fair and open process conducted in the best interest of the taxpayers.

We also reviewed payments to 35 vendors whose payments, if aggregated, would have exceeded the competitive bidding dollar thresholds set forth in GML in either 2016 or 2017. The Town made payments to three vendors (totaling \$295,939) without soliciting bids. The payments made to each vendor were for goods purchased or services performed which, we believe, were similar in nature, and if aggregated would have exceeded the dollar thresholds set forth in GML for seeking bids. Therefore, we question whether Town officials should have considered the aggregate amount of the purchases from each vendor in determining whether bidding was required. Specifically, vendors were paid the following:

- \$32,189 in 2016 for street lighting, based on a five-year replacement plan which the Town anticipates will cost approximately \$85,000 over the plan term. The Town did not have any form of documentation that competition was sought by any method for this purchase.
- \$224,942 in 2017 for asphalt. The Highway Superintendent informed us that competition was not sought for this purchase because there was only one vendor who could supply the specific type of asphalt that the Town needed. However, information supporting that this purchase was made from a "sole source" was not included with other purchase documentation.
- \$38,808 in 2017 for various public work related projects in the water and sewer departments which we believe were similar in nature, including water main repairs and ground maintenance/excavation, all procured from the same vendor during this year.

Seeking competition in accordance with statutes and Town policy helps facilitate the acquisition of goods and services of maximum quality at the lowest possible cost and guards against favoritism, improvidence, extravagance, fraud and abuse.

⁶ The Town is obligated to pay for the initial repair work completed. However, the maintenance fees during this period and in any year after this are optional and at the Board's discretion (per contract).

The Town Did Not Always Solicit Competition for Professional Services

The Town's procurement policy does not require the solicitation of competition, such as written proposals or quotations, for the procurement of professional services. In addition, written procedures for seeking competition when procuring professional services have not been developed, including what documentation should be maintained to support decisions. As a result, the Board often did not solicit competition, such as by seeking RFPs, when procuring professional services. Therefore, the Board has less assurance that the Town obtained the most favorable terms and conditions in the best interest of its taxpayers.

The Town procured professional services from 13 providers (totaling approximately \$1.76 million) from January 1, 2016 through October 31, 2017. We found competition was sought for services from five providers with total expenditures of \$1.38 million. However, there was no documentation of the Town seeking competition for services from the remaining eight providers, with total expenditures of \$384,400. While Town officials provided explanations as to why they chose some of the service providers (e.g., sole source providers, past experience, specialized service), written documentation of these explanations and the rationale was not maintained. Additionally, there were written agreements for 10 providers, with total expenditures of \$1.64 million, which typically outlined the service terms and compensation schedules. However, officials could not locate or written agreements did not exist, for three providers with total expenditures of \$128,624.

In general, we found that the professional services procured were for legitimate and appropriate Town purposes. However, when a competitive process is not used, the Board has less assurance that professional services are being procured with the most advantageous terms and conditions and in the best interest of taxpayers.

What Do We Recommend?

The Board should:

1. Consider revising the procurement policy or adopting written procedures to specify documentation requirements, including the rationale for decisions made, and ensure officials and employees follow competitive bidding statutes and policy requirements.
2. Consider the aggregate amount projected to be expended for the same or similar type of goods or services when determining if competitive bidding is required.

-
3. Develop procedures for procuring professional services, to award contracts above a reasonable limit only after soliciting some form of competition, and provide guidance as to how competition should be solicited, including written RFPs, written quotes or verbal quotes.
 4. Ensure the Town has written agreements with all professional service providers that detail the types and timeframes of services and the compensation to be paid.

Appendix A: Response From Town Officials



Town of Seneca Falls

130 Ovid St. Seneca Falls NY 13165

August 28, 2019

Edward V. Grant, Jr., Chief Examiner
Rochester Regional Office
16 W. Main Street
Suite 522
Rochester, NY 14614-1608

Dear Mr. Grant,

As Supervisor for the Town of Seneca Falls, I am hereby submitting my formal response to the 2 recent OSC Audit Reports. The reports I am responding to are: 1. Credit Card and Travel Expenditures and 2. The Procurement Report. I am in agreement with the findings of both Audit Reports.

If any further information is needed please feel free to contact me at my office at the Town Municipal Building.

8/28/19

Gregory P. Lazzaro
Town Supervisor, Town of Seneca Falls
(315) 568-0940

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,⁷ our audit procedures included the following:

- We interviewed officials and employees to gain an understanding of the Town's procurement and purchasing processes.
- We reviewed and evaluated the adequacy of the Town's procurement policy and purchasing procedures.
- We reviewed the Board minutes for the period January 2015 through February 2018 as they related to the scope of the audit.
- We judgmentally selected and reviewed all 57 purchases (totaling \$5.63 million) made during the period January 1, 2016 through October 31, 2017 that exceeded the competitive bidding thresholds. We reviewed bid documents for evidence that purchases were competitively bid and the lowest responsible bidder was selected, in compliance with GML and the procurement policy. If the Town did not solicit competitive bids, we determined whether the purchases were made using another acceptable method (OGS or State contract, or piggybacking on another municipal contract) and whether the amounts charged agreed with the contract.
- We judgmentally selected and reviewed payments to 35 vendors (totaling \$6.61 million) with aggregate payments for 2016 or 2017 that were greater than \$19,000. We reviewed documentation to support competition being sought for these purchases, including quotes and bids for aggregate payments made in excess of the competitive bidding thresholds, in compliance with GML and the procurement policy. When appropriate documentation was not maintained to support competition, we discussed these vendors with officials or employees to determine the potential reason.
- We reviewed payments made to 14 professional service vendors in 2016 and 2017 totaling \$3.53 million. We reviewed documentation to determine if the Town was seeking competition in awarding contracts, and used professional judgment to determine if the services procured were appropriate for the Town. For those services where the Town did not seek competition, we asked Town officials and employees for an explanation.
- We determined if the Town had written agreements with the professional service providers to indicate the type and timeframes of services to be provided and the compensation to be paid.

⁷ We also issued two separate audit reports, *Town of Seneca Falls – Credit Card and Travel Expenditures (2018M-144)* and *Town of Seneca Falls – Town Hall Capital Project (2018M-220)*.

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.

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 Town Clerk's office.

Appendix C: Resources and Services

Regional Office Directory

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

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

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#lmgm

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

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/pubs/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/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

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

Contact

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