

# West Seneca Fire District #2

## Purchasing and Capital Project Management

AUGUST 2019



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

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# Report Highlights

## West Seneca Fire District #2

### Audit Objective

Determine whether the Board ensured that goods and services were accurately paid and purchased in accordance with the District's procurement policy and statute.

Determine whether the Board properly managed a fire hall capital project.

### Key Findings

- The Treasurer made duplicate payments to 11 vendors totaling more than \$17,000, including approximately \$3,200 that District officials did not find prior to our audit.
- District officials did not competitively bid a public works contract totaling more than \$115,000.
- District officials did not obtain quotes for 16 of 21 purchases totaling approximately \$56,000.
- The construction manager may have improperly charged the District more than \$14,000 for administrative fees and sales tax.

### Key Recommendations

- Solicit bids or quotes as required and ensure that purchases include the appropriate supporting documentation.
- Audit all payments to ensure they are District obligations and based on original invoices.
- Consult legal counsel and, if appropriate, seek reimbursement for the improper charges.

District officials generally agreed with our findings and indicated that they plan to initiate corrective action. Appendix B includes our comment on an issue raised in the District's response.

### Background

The West Seneca Fire District #2 (District) is a district corporation of the State, distinct and separate from the Town of West Seneca in Erie County. The District is governed by an elected five-member Board of Fire Commissioners (Board). The Board is responsible for the District's overall financial management, including the procurement of goods and services.

The Board-appointed Treasurer serves as the District's chief fiscal officer and is responsible for receiving, disbursing and accounting of District funds and preparing monthly and annual financial reports. The District's budget is funded primarily by real property taxes.

#### Quick Facts

District Residents	6,500
2018 Budget	\$1.3 million
Budgeted Expenditures Subject to the Procurement Policy	\$633,500

### Audit Period

January 1, 2016 – August 31, 2018. We extended our audit scope period back to June 2014 for certain issues related to the fire hall capital project.

# Purchasing

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## What Are Effective Purchasing Practices?

New York State General Municipal Law (GML)<sup>1</sup> generally requires a fire district to solicit competitive bids for purchase contracts that aggregate to more than \$20,000 and public works contracts that aggregate to more than \$35,000 within a year. Bids also should be opened and reviewed at a public bid hearing. GML<sup>2</sup> also requires a fire district to adopt written policies and procedures governing the procurement of goods and services not subject to competitive bidding requirements. These policies and procedures help ensure the prudent and economical use of public money and to guard against favoritism or impropriety.

The Board-adopted procurement policy provides requirements for purchase contracts and public works contracts not required to be competitively bid. This includes retaining adequate documentation to support the actions taken.<sup>3</sup> The policy requires purchases subject to competitive bidding requirements will only be awarded after receipt of publicly-solicited formal bids. In lieu of soliciting competitive bids, a fire district may use other publicly awarded government contracts, such as those of a county or the New York State Office of General Services (OGS). For procurements below bidding thresholds, the policy requires two verbal quotes for purchase contracts from \$500 to \$999, three written quotes for purchase contracts from \$1,000 to \$9,999 and three written quotes for public works contracts from \$1,000 to \$19,999. The policy requires purchase contracts over \$10,000 and public works contracts over \$20,000 to be competitively bid. Although the policy has not been updated to reflect current bidding thresholds, officials should continue to follow their policy. The policy also requires that officials seek written proposals from at least two professionals for professional service contracts.

New York State Town Law (Town Law)<sup>4</sup> generally requires that a board of fire commissioners audit all claims prior to approving them for payment. An effective claims auditing process ensures that every claim is subject to a thorough review to determine whether each claim contains adequate supporting documentation, complies with statutory requirements and applicable policies, and represents actual and necessary district expenditures.

## The Board Did Not Audit Claims

The Board does not audit claims prior to approving them for payment. Board members told us that they occasionally review some of the claims but were not

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1 New York State General Municipal Law (GML) Section 103

2 GML Section 104(b)

3 According to the District's procurement policy, if a contract is awarded to a vendor that did not submit the lowest bid or quote, written documentation must be maintained detailing why the selection was in the District's best interest.

4 Town Law Section 176

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aware that they were required to review each claim prior to approving them for payment. While reviewing the District's claims, we noted that there appeared to be duplicate payments. As a result, we reviewed the majority of the general fund claims to determine whether this was a systemic issue and whether there were any questionable transactions.

We reviewed 621 claims totaling approximately \$988,000 made from January 2016 through May 2018 to determine whether they were accurately paid and represented actual District obligations. While all purchases appeared to be for appropriate District purposes, we identified 11 vendors that were overpaid more than \$17,000 for goods or services that had previously been paid for, sometimes on multiple occasions. This occurred because the Treasurer sometimes made payments based on vendor statements rather than original invoices. In most cases, the vendor identified the overpayments and applied a credit to the District's account or sent a refund check. However, overpayments to two vendors totaling approximately \$3,200 remained unresolved or were not identified by the Treasurer or the Board.

For example, a vendor sent the District a refund check for \$1,699 in December 2017. Six months after the District received the check, we found the uncashed check filed in the prior year's disbursement folder. Because the Treasurer failed to deposit this check in a timely manner, he had to request a new check from the vendor. In another instance, the vendor did not notify the District that it had overpaid on the account, and the Treasurer did not recognize he had paid this vendor more than necessary. The overpayment of \$1,535 was a result of multiple inaccurate payments made over a year ago that were based on vendor statements. The Treasurer contacted the vendor, who confirmed that the District had paid more than necessary and said they would send the District a refund check.

Paying vendors based on statements and failing to audit claims increases the likelihood that errors or irregularities could occur that are not identified, resulting in the District improperly paying or paying more than necessary for goods and services.

### **District Officials Did Not Always Properly Bid Purchases**

We reviewed three contracts related to the capital project<sup>5</sup> totaling approximately \$742,000<sup>6</sup> that were subject to competitive bidding requirements. A contract awarded for \$95,136 was not competitively bid. Three change orders increased the amount paid to the contractor to \$115,852. Instead of publicly advertising as required by GML, District officials hand delivered bid specifications to certain

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5 Construction of a new fire hall, discussed in the Capital Project Management section of this report

6 These three contracts were selected from three payments that were part of our sample, totaling approximately \$198,000.

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local contractors. However, officials were unsure of how many contractors they delivered these bid specifications to. Bids were then reviewed and evaluated by the construction manager<sup>7</sup> rather than being reviewed at a public bid opening.

In addition, the specifications required that the contractors submit one bid that included two seemingly unrelated services, the installation of a fire hydrant and landscaping work. Three contractors submitted a bid for just one of the services (either the fire hydrant installation or landscaping work).<sup>8</sup> The construction manager disqualified these contractors' bids because they did not include both services.

Only two contractors' submitted bids that included both services, and these were the only two bids presented to the Board. Officials told us that they never saw the bids that were submitted for only one of the services.

The District may have paid more than necessary for the services provided. Using the lowest bid submitted for the fire hydrant installation and the lowest bid for landscaping work, we calculated that the District may have saved approximately \$19,000 (20 percent) if the fire hydrant installation was separately bid from the landscaping work. In addition, the District may have saved even more money if both services were publicly advertised for bids.

## **District Officials Did Not Always Obtain Quotes**

We reviewed 21 payments<sup>9</sup> totaling approximately \$78,000 which required written or verbal quotes according to the District's policy. While all purchases appeared to be for appropriate District purposes, officials were unable to provide evidence that quotes were obtained for 16 purchases (76 percent) totaling approximately \$56,000 (72 percent).

For example, there was no evidence of quotes for the purchase of vehicle emergency lights costing \$10,169 or for the purchase of an electric fan costing \$3,975. In addition, we identified a payment where three written quotes were obtained but the Board selected a vendor that did not submit the lowest quote. This contract for the removal of two fuel tanks (\$16,762) was awarded to the same vendor who performed the fire hydrant installation and landscaping work. Although another vendor submitted a quote that was \$1,762 less, officials failed to document the reason why this vendor was not chosen or why the vendor selected was in the District's best interest.

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7 The construction manager was hired by the District to manage and oversee the new fire hall capital project.

8 While we cannot attest that the bids fulfilled the specifications, the reason listed for rejecting them was that the contractors only provided bids for one of the services.

9 All payments were from the operational account. See methodology section for further information.

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## **District Officials Did Not Always Request Proposals for Professional Services**

The District paid an engineering and consulting firm nearly \$600,000 to function as the construction manager during the construction of a new fire hall. District officials did not request proposals from other engineering firms as required by the procurement policy. Rather, they hired a firm that is owned by the same individual that owns the architectural firm they retained to design the new facility. District officials said that they hired this particular construction manager because they thought it would make sense to have one person run the entire project. By not seeking other proposals for this service, officials were unable to demonstrate that they paid a fair and competitive price and were fiscally responsible to District taxpayers.

Not properly bidding, hand-delivering the specifications and requiring that contractors bid on two dissimilar services gives the impression of favoritism and that the process was intended to increase the likelihood that a particular contractor would be selected. This appears to be an ongoing concern with the District, as similar findings of favoritism in the selection of vendors were identified in our previous audit report, dated September 2010.<sup>10</sup>

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

The Board should:

1. Annually review the procurement policy to ensure its provisions are up-to-date and reflect the District's current requirements.
2. Thoroughly audit claims and ensure sufficient evidence is included to establish compliance with the procurement policy and relevant statutes.

The Board and District officials should:

3. Seek reimbursement, as appropriate, from vendors for overpayments.
4. Solicit and document bids and the appropriate number of quotes in accordance with GML and the procurement policy.
5. Request proposals from at least two professionals for professional service contracts as required by the procurement policy.

The Treasurer should:

6. Ensure that payments are based on original invoices and have not been previously paid.

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<sup>10</sup> *Internal Controls Over Financial Records and Reports and Procurement, 2010M-29, September 2010*

# Capital Project Management

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In March 2016, voters authorized the issuance of up to \$8 million<sup>11</sup> in serial bonds for the construction of a new fire station and disaster recovery center (fire hall). Construction on the project began in 2016 and the fire hall was officially opened in December 2017. Debt service related to the new facility contributed to an approximate 97 percent increase in the 2018 tax levy from the prior year.<sup>12</sup>

## How Should the Board Manage a Capital Project?

A board is responsible for overseeing the fire district's fiscal activities and safeguarding its resources. To effectively monitor a capital project, a board should ensure the project is properly planned, funding is authorized, costs are kept within the approved budget, and that all procurements are made in compliance with established policies and laws. Fire districts are authorized to establish capital reserves which provide a mechanism for legally saving money to finance all or part of future infrastructure or equipment. Reserve funds can also provide a degree of financial stability by reducing reliance on indebtedness to finance capital projects.

## The Board Could Have Better Managed the Fire Hall Capital Project

According to the contract, the Board hired a construction manager to manage and supervise the capital project, report to the Board and protect the District's interests. While the construction manager has expertise in the construction field and can provide advice and direction, the Board is ultimately responsible for decision making and oversight of the project.

From June 2014 through October 2016, the Board was regularly updated on the project's progress by the construction manager, who provided us with meeting minutes from that period. There is also evidence that the Board monitored overall project costs. For example, the Board removed plans for an onsite fueling station to ensure that overall costs stayed within the budget. However, after October 2016, there were no minutes provided. Therefore, it is unclear whether the construction manager continued to regularly update the Board during 2017, when much of the construction was underway.

In addition, all contracts (\$6.5 million) and change orders (net decrease of \$85,000) with subcontractors were signed by the construction manager and not by a Board representative.<sup>13</sup> The construction manager's minutes do not include specific reference to change orders, and there is no evidence of the Board's approval of change orders. It is unclear whether the Board was properly apprised

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<sup>11</sup> Total cost of construction, as of the end of field work, was approximately \$8.1 million.

<sup>12</sup> The 2017 property tax levy was \$487,095 and the 2018 property tax levy was \$960,256.

<sup>13</sup> The Board chairman only signed the contracts (\$1,141,540) and change orders (\$330,966) with the architect and construction manager.

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and approved of all proposed changes to contract agreements. Therefore, there is a risk that the construction manager agreed to contract changes without the Board's knowledge or approval.

The Board did not use a capital reserve that was specifically established for the construction of a new fire hall. In December 2012, voters approved establishing a capital reserve and the Board approved funding the reserve with \$310,000. According to the resolution establishing this reserve, the purpose of the reserve was for "the design and construction of a new fire hall." The Board did not use the money in the capital reserve towards its intended purpose, as it was not used for the design or construction of the fire hall. Officials provided various explanations<sup>14</sup> for why they chose not to use the reserve. However, the Treasurer told us the District may use the reserve towards the construction of a training tower. The use of this reserve would have reduced the amount of borrowing required from \$7.65 million to \$7.34 million, which may have reduced property taxes.

### **The District May Have Paid Inappropriate Fees and Sales Tax**

In general, the District paid contractors and vendors directly for capital project expenditures. However, the construction manager paid invoices for certain expenditures on behalf of the District. The construction manager billed the District for these invoices and included a 10 percent fee, totaling \$13,165. The construction manager retained this additional fee, purportedly for handling the invoices. The construction manager told us he paid these invoices because the District did not have open accounts with these vendors. However, the District regularly contracts with one of the vendors for technology services.

We reviewed the contract agreement between the District and the construction manager and did not identify any provisions for a handling fee. Furthermore, the contract states that the construction manager will charge no more than 8 percent of the total construction costs to act as construction manager. As the construction manager charged the full 8 percent to the District, we question whether such fees exceeded the amount the construction manager was entitled to receive under the construction management contract. In addition, we question why the District did not pay these invoices directly.

Moreover, by allowing the construction manager to pay these invoices, the Board relinquished its ability to audit the claims prior to authorizing payment. As a result, the construction manager paid sales tax totaling \$1,080 and billed it to the District. The construction manager also charged the District 10 percent on the sales tax. In total, we identified more than \$14,000<sup>15</sup> of potentially inappropriate fees and sales

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<sup>14</sup> A Board member told us that they were saving the reserve for utilities or for the purchase of equipment. The Treasurer told us they were saving the money for possible costs above the approved \$8 million budget.

<sup>15</sup> Administrative fees totaling \$13,165 and sales tax totaling \$1,080

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tax that the construction manager billed the District for. As of the end of field work, District officials indicated that the District's attorney would contact the construction manager regarding this issue.

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

The Board should:

7. Take an active role in managing capital projects, including adequately monitoring those individuals responsible for day-to-day oversight of the projects.
8. Ensure that change orders are properly reviewed and approved in a timely manner.
9. Consult legal counsel regarding the use of the unexpended capital reserve balance.
10. In consultation with legal counsel, review whether the District should seek reimbursement from the construction manager for the potentially inappropriate handling fees and sales tax.
11. Ensure that all District claims, including capital project claims, are properly audited and disbursed.

# Appendix A: Response From District Officials



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August 19, 2019

West Seneca Fire District #2  
Purchasing and Capital Project Management  
2018M-241

In response to the NYS Controllers audit of district financial records 2016-2018 the Board of Fire Commissioners West Seneca Fire District 2 offer the following remarks to key findings of the report and corrective action plan below:

Key Finding 1 – Invoices for payments were received simultaneously causing duplicate payments to be made. All duplicate payments have previously been reconciled. The district agrees that auditing of payments will ensure that no duplication occurs.

Key Finding 2 – The bid for landscape work and hydrant installation were bid separately following bid specifications and awarded to the same contractor as lowest bidder. The district disagrees with findings that the bids were received as one bid for both services, as stated the bids were received separately.

Key Finding 3 – The district acknowledges that it must receive written quotes for professional services and purchases according to the districts procurement policies and limits. Verbal quotes can only be received for under the amounts specified in the policy.

Key Finding 4 – The district agrees and will proceed to adjust and reclaim sales tax that was improperly charged by the construct manager. Legal consult has been retained in this matter.

Further West Seneca Fire District 2 in receipt of the NYS Controllers Office audit of district financial records 2016-2018 acknowledges report of financial records during this audit period. The district has reviewed the findings and offers the following corrective action plan to ensure compliance with its findings.

- The district has established the position of a purchasing agent to be appointed annually to a commissioner who will review all purchase requests and quotes for services and has instituted policy that all receivables, invoices, and payment requests be reviewed by the

See  
Note 1  
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Robert Bengert Jr.  
Chairman

Joseph Beres Jr.  
Deputy Chairman

David Monopolous  
Commissioner

David Wassel  
Commissioner

Brian Doster  
Commissioner

Donald Littler  
Secretary

Dennis Bengert  
Treasurer



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- district treasurer, the purchasing agent, and the chairman prior to being presented to the board for approval at which time copies of all receivables will be reviewed by all board members prior to authorization for payment.
- All receivables will be accompanied by documentation of the payment that is too made and will include documentation of estimates and or bids received and documented reasoning's for accepting said estimate and or bid.
  - The district is in process of reviewing its procurement policy so that it may meet current NYS policy standards.
  - Purchase requests for departmental purchases will not be considered unless accompanied with supporting documentation.
  - The district retains an accountant and has an annual independent auditing firm that will review district financial records. The accountant and auditor will be responsible for auditing district records and offering correction on any discrepancies.
  - A monthly report of all receivables and payments and account activity and balances will be reviewed by the board of fire commissioners.
  - All corrective actions will be instituted over a period of the next 3-months with the exception of review of procurement policy which is expected by the end of 2019.

Respectfully Submitted;

Robert Bengert Jr.  
Chairman  
Board of Fire Commissioners  
West Seneca Fire District 2

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Chairman

Joseph Beres Jr.  
Deputy Chairman

David Monopolopolus  
Commissioner

David Wassel  
Commissioner

Brian Doster  
Commissioner

Donald Littler  
Secretary

Dennis Bengert  
Treasurer

## Appendix B: OSC Comment on the District's Response

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### Note 1

The bidding log sheet provided by District officials specified that two vendors were disqualified because they only bid on one aspect of the contract.

## Appendix C: 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 interviewed District officials to gain an understanding of the purchasing and capital project management practices.
- We reviewed all of the District's policies to identify policies applicable to the audit objectives. We reviewed the procurement policy to assess whether it was adequate and up-to-date.
- We reviewed the District's Board minutes and resolutions for the Board's practices and processes involving reviewing and approving purchases, as well as managing the capital project.
- We reviewed proposals for the selection of the architect and construction manager to assess whether District officials followed the procurement policy.
- We reviewed the contract agreements for the architect and construction manager to assess whether the architect and construction manager were paid according to the terms of the agreements.
- We reviewed the check images for all disbursements made from January 2016 through May 2018 and verified that the checks, as listed on the bank statement, were made to the vendor listed on the voucher.
- We reviewed 621 payments related to District operations (not the capital project) totaling \$987,838 to determine whether payments were based on an original invoice and represented a valid District obligation.
- Using our professional judgment, we selected 28 purchases totaling \$682,404 from 621 payments made from the operational account and 134 payments made from capital project account during our audit period. Three purchases<sup>16</sup> totaling \$198,243 were subject to competitive bidding requirements, 21 purchases totaling \$78,054 were below bidding thresholds and four purchases totaling \$406,107 were professional services. Our selection was based on purchases for larger dollar amounts that were greater than \$1,000. For each of the 28 purchases, we reviewed the supporting documentation, such as invoices, bids and quotes, to assess whether officials complied with the procurement policy and GML.
- Of the 621 payments from the operational account, there were approximately 40 purchases totaling \$110,000 that were subject to the procurement policy. We did not identify any purchases subject to competitive bidding.

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<sup>16</sup> These three contracts totaled approximately \$742,000.

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- Of the 134 payments totaling \$7.6 million from the capital project account, there were seven contracts totaling \$6.3 million that were subject to competitive bidding and two professional service contracts that were paid approximately \$1.2 million.
  - We reviewed bidding log sheets and bid responses related to the capital project to assess whether the lowest bidder was selected.

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.

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.

## Appendix D: 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#lmgm](http://www.osc.state.ny.us/localgov/pubs/listacctg.htm#lmgm)

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

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

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