

Town of Cicero

Procurement

MARCH 2020



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

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Report Highlights

Audit Objective

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

Key Findings

Town officials:

- Complied with competitive bidding requirements for 15 of 18 tested purchase and public works contracts totaling \$10.6 million. However, they did not competitively bid contracts for paving services and brush collection totaling \$471,700.
- Did not seek competition for 10 professional services totaling \$1.1 million.
- Did not obtain quotes as required by the procurement policy for eight purchases totaling about \$115,000.

Key Recommendations

- Establish procedures to ensure that officials and employees follow competitive bidding statutes and procurement policy requirements.
- Review and update the purchasing policy and procedures to ensure they include detailed guidance for procuring professional services at reasonable intervals.

Town officials agreed with our findings and recommendations and indicated that they plan to take corrective action.

Background

The Town of Cicero (Town) is located in Onondaga County (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 finances and operations. The Supervisor serves as the chief executive and chief fiscal officer, and is responsible for day-to-day operations.

Quick Facts

Population	31,600
2019 Appropriations	\$14.3 million
Disbursements During the Audit Period ^a	\$19.2 million

^a Excluding payments for items not generally subject to competitive bidding

Audit Period

January 1, 2018 – May 31, 2019. We extended our audit period back to January 1, 2016 to review the bidding documents related to the highway garage capital project.

Procurement

How Should a Town Procure Goods and Services?

New York State General Municipal Law (GML) generally requires towns to advertise for competitive bids for purchase contracts exceeding \$20,000 and public works contracts exceeding \$35,000.¹ In lieu of soliciting competitive bids, towns may use other publicly awarded government contracts, such as those of a county or the New York State Office of General Services (State contract). In determining whether the \$35,000 bidding threshold will be exceeded for public work contracts, town officials must consider the aggregate amount reasonably expected to be expended for all purchases of the same service to be made within a twelve-month period beginning on the date of purchase.

GML requires governing boards to adopt written policies and procedures for procuring goods and services not required by law to be competitively bid, such as professional services.² 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 money in the taxpayers' best interests.

Using written requests for proposals (RFPs) or obtaining written or verbal quotes is an effective way to ensure the town receives the desired goods or services at the best price.³ Issuing RFPs for professional services helps ensure the town obtains the needed services upon the most favorable terms and conditions and avoids the appearance of partiality when awarding such contracts.

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. 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 offeror.

The Board adopted a procurement policy for the purchase of goods and services not subject to competitive bidding requirements that requires Town officials to obtain three written quotes for purchase contracts greater than \$5,000 but less than \$20,000 and public works contracts greater than \$5,000 but less than \$35,000. The policy also requires officials to make a good faith effort to obtain the required number of quotes. If the purchaser is unable to obtain the required number of quotes after making a good faith effort, the purchaser should document the number of attempts made.

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

2 GML Section 104(b)

3 Refer to our publication <https://www.osc.state.ny.us/localgov/pubs/lgmg/seekingcompetition.pdf>.

The Town used the services of the County’s Division of Purchasing (Division) to assist in preparing and writing bid specifications and RFPs. Division staff open the sealed bids and RFPs, which are then reviewed by Town officials before contracts are awarded.

Officials Generally Complied With Competitive Requirements

During our audit period, the Town used County services to procure contracts for its brush and trash removal. We reviewed 18 purchase and public work contracts totaling \$11.1 million that exceeded the competitive bidding thresholds to determine whether they were procured in accordance with the competitive bidding requirements. We found that Town officials complied with statutes for purchases of goods or services totaling \$10.6 million. However, three public work contracts totaling about \$471,700 for brush collection and recycling and road paving were not competitively bid as required.

Figure 1: Purchase Compliance with Competitive Bidding

Purchases That Did Not Comply		
Goods or Services		Expenditure
Curbside Brush Collection and Disposal		\$295,000
Road Paving (Two Purchases)		\$176,725
	Total	\$471,725
Purchases That Complied		
Goods or Services	Method Used	Expenditure
Highway Garage Construction ^a	Competitive Bidding	\$6,300,293
Trash Hauling	N/A - Emergency Purchase ^b	\$1,993,832
Road Salt	County Contract	\$741,590
Road Asphalt	State Contracts	\$680,213
Trash Hauling	Competitive Bidding	\$536,165
Highway Equipment	State Contract & County Contract	\$122,321
Highway Rotary Lift	State Contract	\$93,511
Curbside Brush Collection and Disposal	Competitive Bidding	\$70,000
Wide Area Mower	State Contract	\$65,351
	Total	\$10,603,276

^a Seven different contracts were competitively bid on the highway garage project.

^b The Town was notified that its current trash hauler had discontinued business immediately without adequate notice creating an emergency health, safety and welfare issue for residents. As a result, the Town awarded the contract on an emergency basis to the next responsible bidder.

Road Paving – The Town paid \$176,725 for road paving during our audit period.⁴ Although the County awarded a road paving contract in 2018 and extended to 2019,⁵ the Highway Superintendent and highway foreman opted not to use the awarded vendor. The Highway Superintendent told us they obtained quotes in 2018 and went with the lowest quote. However, during our field work, he was unable to provide us with the quotes obtained. In 2019, the highway foreman obtained two quotes for the services and selected a vendor that was not awarded the County contract.

While the Town officials paid less than the County contract price, they did not competitively bid this public works contract as required by law. Therefore, other interested vendors were not given a fair and equal opportunity to compete for the contract.

Brush, Yard Waste and Recycling Contract – In 2017, pursuant to a shared service arrangement, the County issued an RFP on behalf of the Town for brush, yard waste collection and recycling. Responses were due by December, but only one vendor responded. Consequently, the Board reissued the RFP.

Town officials received proposals from two vendors. The vendor who held the Town's previous contract submitted a proposal of \$885,000 for a two-year contract, while another vendor submitted a proposal of \$882,420 for a two-year contract (this vendor submitted the sole response to the first RFP). The Board awarded the contract to the vendor who held the previous contract.

The vendor who was not awarded the contract initiated a proceeding against the Town in accordance with New York State Civil Practice Law and Rules, Article 78 (CPLR).⁶ The vendor argued that the Town was required to use a competitive bidding process to award the contract to the lowest responsible bidder after public advertisement. The Town argued that it was exempt from competitive bidding requirements because the contract was considered a professional service.

In January 2019, the New York State Supreme Court (Court) concluded that nothing in the contract was suggestive of professional or specialized services and ruled that the Town acted contrary to GML when it used an RFP process rather than competitive bidding. The Court annulled the brush contract, which required the Town solicit competitive bids before awarding the next contract.

4 The Town paid \$154,925 in 2018 and \$21,800 from January 1 through May 31, 2019. The Town's 2019 aggregate purchases of paving services exceeded the \$35,000 bidding threshold after our audit period ended.

5 The County used a competitive bidding process to award the paving contract in 2018. Six vendors submitted bids and the County awarded the contract to the lowest bidder.

6 New York State Civil Practice Law and Rules, Article 78, Section 7804 establishes a procedure to challenge the determinations of public bodies or officers. Proceedings are brought in New York State Supreme Court to review and challenge the legality of actions and decisions by public officials.

With the assistance of the County, Town officials solicited competitive bids for a new brush contract in early 2019. The Town received bids from the same two vendors that had submitted proposals the prior year. In February 2019, the Board awarded the brush contract to the vendor who held the prior contract, even though that vendor submitted a bid that was \$105,000 more than the other vendor for the base two years of the contract and \$205,000 more for that period and two annual renewal periods.

The Board determined that the low bidder was non-responsive because the vendor did not provide all the required information in the bid response as required by the bid specifications. The low bidder commenced another CPLR, Article 78 proceeding against the Town and sought to have the contract annulled.

In November 2019, the Court determined that the low bidder's variances from the bid specifications were material irregularities, which required the Board's rejection of the bid. The Court ruled that the Town's decision to reject the bid was lawful and denied and dismissed the vendor's petition.

Officials Did Not Always Solicit Competition for Professional Services

The procurement policy did not require soliciting competition (e.g., issuing RFPs or obtaining quotes) when procuring professional services. In addition, written procedures for seeking competition when procuring professional services were not developed, including specifying the documentation that should be maintained to support Board decisions. As a result, the Board and officials often did not solicit competition by issuing RFPs or obtaining quotes, when procuring professional services.

For our audit period, Town officials obtained professional services from 11 service providers who were paid a total of approximately \$1.7 million. Town officials sought competition when selecting a provider of engineering and architectural services for construction of the Town highway garage (paid a total of \$622,182 during the audit period). However, officials did not seek competition for services from 10 providers who were paid a total of \$1.1 million.

Figure 2: Professional Services Obtained Without Seeking Competition

Professional Service Type	Number of Providers	Total Paid
Engineering	2	\$377,724
Insurance	1	\$282,582
Legal	3	\$277,706
Architect	1	\$54,808
Safety Consulting	1	\$40,500
Human Resources Consulting	1	\$38,560
Web Design	1	\$12,500
Total	10	\$1,084,380

We found that the professional services obtained were for legitimate and appropriate purposes. While officials provided explanations for why they selected some of these service providers (e.g., providers past experience with the Town, specialized service, etc.), written documentation of the explanations and the rationale for selection was not maintained.

When a competitive process is not used, officials cannot be sure they are obtaining professional services in the most economical way, in the best interests of taxpayers and without the appearance of favoritism.

Quotes Were Not Always Obtained and Retained

We reviewed 16 purchases totaling \$200,394 that were below the competitive bidding thresholds to determine whether Town officials obtained three written quotes, as required by the procurement policy or used other methods of competition (e.g., State or County contracts). Officials did not follow the procurement policy requirements for eight purchases totaling \$115,357 (58 percent of dollars). Officials were unable to provide us with evidence showing that quotes were obtained for six of these purchases totaling \$93,013. In addition, for two purchases totaling \$22,344, the purchaser did not obtain the required three quotes, nor document the effort made (Figure 3).

Figure 3: Purchases Made Without the Required Number of Quotes

Goods or Services	Expenditure
Janitorial Service ^a	\$44,039
Catch Basins	\$16,114
Street Sweeper Rental	\$15,800
Road Milling	\$13,500
Fabrication and Truck Repair	\$8,860
Carpeting	\$8,844
Sidewalk Snow Clearing Equipment Rental	\$8,200
Total	\$115,357
<small>a Town officials paid two vendors a total of \$44,039 for janitorial services during the audit period without obtaining the required three quotes.</small>	

For the road milling work, officials provided us with one quote obtained each year (2018 and 2019). The quote obtained in 2018 was from the provider who was awarded the contract. Similarly, officials told us they obtained one quote for the fabrication and truck repair work, but did not retain documentation for the quote obtained.

In addition, both the Supervisor and Town Clerk told us that the Town has been using the same two providers for janitorial services for many years. However, officials have not solicited quotes to compare prices with other potential service providers. We searched online for providers in the area who provide similar services and found several who could be solicited for quotes.

Although the Board appointed a Director of Purchasing and the Town used a purchase order system, each Town department was responsible for obtaining the required quotes and retaining them on file. When requesting purchases, department staff were not required to attach the quotes obtained to the purchase requisitions or provide other documentation to show that the purchases complied with the procurement policy. As a result, officials had no process in place to help ensure that the departments were obtaining the required number of quotes.

When officials do not adhere to the procurement policy and procedures for obtaining competitive quotes, the Town risks acquiring goods and services at higher costs than necessary.

What Do We Recommend?

The Board should:

1. Establish procedures to ensure that officials and employees follow competitive bidding statutes and procurement policy requirements.
2. Review and update the procurement policy and procedures to ensure detailed guidance for procuring professional services at reasonable intervals, such as describing officials' duties and responsibilities, thresholds for using written RFPs, written or verbal quotes and documentation requirements for the selection process are included.

Town officials should:

3. Ensure all necessary quotes or proposals are obtained in accordance with the procurement policy and retain all necessary documentation.

Appendix A: Response From Town Officials

Town Council

Jonathan Karp
Judy Boyke
Mike Becallo
Nancy White

Supervisor- Bill Meyer
Deputy Supervisor- Dick Cushman
Ext.505

Highway Superintendent

Christopher J. Woznica
(315) 699-2745

Town Clerk

Tracy M. Cosilmon
Ext. #501



Receiver of Taxes

Nicole M. Walsh
Ext. # 503
Fax (315) 699-9562

TOWN OF CICERO

COUNTY OF ONONDAGA

8236 Brewerton Road, Cicero, New York 13039 PHONE (315)-752-1180 • FAX (315)-699-0039 • e-mail: bmeyer@ciceronewyork.net

March 2, 2020

Rebecca Wilcox/Central NY Regional Director
NYS Comptroller's Office
333 East Washington Street, 5th Floor
Syracuse, New York 13202

Re: **Purchasing Audit – 2020M-8**

Dear Ms. Wilcox,

I'm in receipt of the Town of Cicero's copy of the preliminary draft findings for the purchasing audit that was completed for the period of January 1, 2018 – May 31, 2019.

The Deputy Town Supervisor, Town Comptroller, Purchasing Officer, and I have met with the examiners and agree with their conclusion of the audit. A corrective action plan will be prepared to address these findings and their recommendations will be set forth. This report will be forwarded to your office within the 90 day allotted period.

Sincerely,

William Meyer
Town Supervisor

cc: Richard Cushman – Deputy Town Supervisor
Jonathan Karp – Councilor
Nancy White – Councilor
Michael Becallo – Councilor
Judy Boyke - Councilor
Shirlie Stuart – Comptroller
JoLee Olszewski – Purchasing Officer

Youth Bureau
Parks and Recreation
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Comptroller
Ext. #506

Assessor
Ext. # 500
Fax (315) 699-2758

Zoning and Planning
Ext. #504
Fax (315) 699-2265

Appendix B: Audit Methodology and Standards

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

- We interviewed officials and employees, reviewed Board minutes and policies to gain an understanding of the procurement and purchasing processes.
- We sorted all cash disbursements for the audit period by vendor name and payment amounts from largest to smallest. We excluded payments for items that would generally not be subject to competition, such as payments to other municipalities, payroll-related expenditures and debt service. We also excluded payments to vendors and individuals that aggregated to less than \$5,000 in 2018 and 2019. From these 3,416 disbursements totaling \$19.2 million, we used our professional judgment to select samples of purchases that either required competitive bidding, quotes or were for professional services.
- We used our professional judgment to select a sample of 18 purchases made during our audit period totaling \$11.1 million requiring competitive bidding. We reviewed bid documents for evidence that officials competitively bid these purchases and selected the lowest responsible bidder, in compliance with GML and the procurement policy. If the purchase lacked bidding documents, we determined whether the purchase was made using another acceptable method (State contract or other municipal contract). When purchases lacked required support, we discussed these instances with officials to determine the reasons.
- We used our professional judgment to select a sample of 16 purchases made during our audit period totaling \$200,000 subject to the Town's bidding thresholds (over \$5,000) requiring quotes. We reviewed supporting documentation including quotes, proposals, invoices and purchase vouchers to determine whether officials followed the policy. When officials did not maintain appropriate documentation we discussed these purchases with them to determine the reasons.
- We used our professional judgment to select 11 payments made to professional service providers during the audit period totaling \$1.7 million. We reviewed documentation to determine whether the Town was seeking competition in awarding contracts, for those services where officials did not seek competition, we inquired for an explanation.

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. 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

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