

Town of Carmel

Procurement

APRIL 2020



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

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Report Highlights

Town of Carmel

Audit Objective

Determine whether Town officials procured goods and services according to the purchasing policy and General Municipal Law (GML).

Key Findings

- The Board-adopted procurement policy does not provide a clear method for procuring professional services.
- The Town procured professional services from 16 providers with payments totaling \$870,909 without competitive methods.
- The Town did not obtain the required number of quotes for 34 purchases totaling \$59,426, a proposal for one purchase totaling \$13,404 or competitively bid three purchases totaling \$911,044.

Key Recommendations

- Revise the procurement policy to provide a clear method for procuring professional services.
- Ensure Town officials and employees obtain the required number of proposals or quotes for purchases or competitively bid purchases when required. Employees and officials should consider purchases in aggregate when determining if competition is needed.

Town officials disagreed with certain aspects of our findings and recommendations, but indicated they have initiated corrective action. Appendix B includes our comments on issues raised in the Town’s response letter.

Background

The Town of Carmel (Town) is located in Putnam County. The Town is governed by an elected Town Board (Board) composed of the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general management and control of the Town’s financial affairs.

The Supervisor serves as the chief executive officer and is responsible, along with other administrative staff, for the Town’s day-to-day management under the Board’s direction. The Town Comptroller is responsible for approving purchase requisitions and auditing claims.

Quick Facts

Population	34,000
2018 Appropriations	\$44 million
2018 Disbursements	\$15 million

Audit Period

January 1, 2018 – December 31, 2018

Procurement

How Should a Town Procure Goods and Services?

GML¹ requires a board to adopt written policies and procedures that provide guidance for obtaining goods and services that are not legally required to be competitively bid. The guidance is required to be reviewed annually, which provides an opportunity to keep it current and to refresh awareness of the terms of the policy. GML states that these goods and services must be procured in a manner that ensures the prudent and economical use of public funds in the best interests of taxpayers, and is not influenced by favoritism, extravagance, fraud or corruption. As a best practice, the town's procurement policy should clearly require officials to use a competitive process prior to award of professional service contracts. The use of a request for proposal (RFP) or quotation process at reasonable intervals would help ensure that a board obtains needed qualified services on the most favorable terms and conditions. Although a policy may set forth circumstances where certain types of procurements would not be in the best interest of the town to solicit alternative proposals or quotations, such circumstances should be clearly defined. In addition, written agreements between the town and professional service providers provide both parties with a clear understanding of the services expected and the compensation for those services. Therefore, it is important for the town to enter into written agreements with professionals that indicate the contract period, services to be provided and basis for compensation.

The Town's procurement policy requires Town officials and employees to obtain at least three verbal quotes for purchase and public works contracts between \$1,000 and \$4,999 and three written quotes for purchase contracts costing between \$5,000 and \$9,999 and public works contracts costing between \$5,000 and \$19,999. It also requires RFPs for purchases between \$10,000 and \$19,999 and public works between \$20,000 and \$34,999. The policy and GML require bids to be obtained for purchase contracts of \$20,000 or more and public works contracts of \$35,000 or more. In determining the necessity for competitive bidding, the aggregate amount to be expended for the same commodity or service within a 12-month period must be considered.²

Officials should not use procurement methods that are not contained within the adopted policy or authorized by GML.

¹ GML, Section 104-b

² In lieu of seeking competition, a town is authorized to make purchases using contracts awarded by the New York State Office of General Services (State contracts) or contracts bid by other governments (i.e., county contracts).

The Procurement Policy Is Unclear for Professional Services

The Board-adopted procurement policy (revised in 2018) did not provide a clear method for procuring professional services. The policy contains conflicting requirements in the chart, for professional services. One column requires professional services to use an RFP process, while another exempts professional services from competition. Further, the policy states that it would not be in the best interest of the Town to solicit alternative proposals or quotations for “very small procurements.” However, the dollar amount of “very small procurements” is not defined.

We reviewed documents for 21 professional service providers who were paid a total of \$2.5 million. We found that services from 16 providers with payments totaling \$870,909 were procured without the use of competitive methods and four of the 16 providers with payments totaling \$25,470 did not have written agreements. These providers provided services including electrical services and project monitoring. In addition, one provider with payments totaling \$1.4 million for water and sewer operations was procured using a Request for Qualifications process (RFQ). However, an RFQ is not an approved method in the procurement policy.

Town officials could not explain why the procurement policy requires professional services to have an RFP and exempts them from competition. They also stated that professional services were not required by law to be competitively sought and used an RFQ to qualify providers before selection. If the Board had clarified the process for obtaining professional service providers and defined “very small procurements,” some of these services may have required competition that could have resulted in cost savings. In addition, without written agreements, Town officials are unable to ensure that the parties have a clear understanding of the services expected and the compensation for those services.

Officials Did Not Always Competitively Procure Goods and Services

We reviewed documents for 93 of the 97 purchases for 30 vendors totaling \$224,687 and nine vendors totaling \$1,585,417 subject to the Town’s procurement policy for bids, quotations and RFPs when making purchases. Town officials did not obtain the required number of quotes or RFPs and did not bid purchases totaling \$1,045,388.

The Town did not obtain the proper number of quotes for 34 vouchers totaling \$59,426; which included purchases for tire services (\$4,251); heating, ventilating and air conditioning maintenance (\$3,825) and hydraulic oil (\$3,693). In addition, the Town did not obtain an RFP for propane purchases totaling \$13,404. For example, although we found the prices paid for hydraulic oil to be reasonable, we did a price comparison of propane and found that in March 2018 the Town paid

\$2.74 per gallon, and could have purchased the propane at \$1.65 per gallon (for a 40 percent savings) on State contract. Town officials indicated that this was an emergency purchase, however, they could not provide documentation to support that this was an emergency purchase. If the Town followed their procurement policy, the propane purchase would have been procured with an RFP or state contract that would have resulted in savings. Furthermore, the Town did not competitively bid purchases for three vendors totaling \$911,044, which included water operations and maintenance (\$496,303) and fuel (\$58,933).

Town officials stated that they do not consider aggregate amounts when determining if competition is needed for purchases; therefore, the purchases were not always competitively sought. Although the goods and services procured were for legitimate and appropriate Town purposes, Town officials and employees do not consistently adhere to the procurement policy or GML when determining if competition is needed. Furthermore, although the Board reviewed the policy in 2018, it did not update it to define “very small procurements”, include provisions for the use of RFQs, or clarify the conflicting guidance for procuring professional services. If these updates were made and followed, Town officials and the Board may have been able to save significantly on some purchases. In addition, they will have greater assurance that goods and services will be procured in the most economical way, in the best interests of residents and without favoritism.

What Do We Recommend?

The Board should:

1. Revise the Town’s procurement policy to provide a clear method for procuring professional services. In addition, they should clearly define the circumstances where certain types and dollar amount of procurements would not be in the best interest of the town to solicit alternative proposals.
2. Procure professional services by soliciting proposals or quotations at reasonable intervals established in the revised policy and enter into a written agreement with each provider.
3. Ensure Town officials and employees adhere to the procurement policy and GML by obtaining the required number of proposals or quotes for purchases or competitively bidding purchases when required. Employees and officials should consider purchases in aggregate for a 12-month period when determining if competition is needed.

Appendix A: Response From Town Officials³

KENNETH SCHMITT
Town Supervisor

SUZANNE MC DONOUGH
Town Councilwoman
Deputy Supervisor

MICHAEL A. BARILE
Town Councilman
FRANK D. LOMBARDI
Town Councilman
ROBERT F. SCHANIL, JR.
Town Councilman

TOWN OF CARMEL
TOWN HALL



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Mahopac, New York 10541
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www.carmelny.org

ANN SPOFFORD
Town Clerk

KATHLEEN KRAUS
Receiver of Taxes

MICHAEL SIMONE
Superintendent of Highways
Tel. (845) 628-7474

February 19, 2020

Lisa Reynolds
Newburgh Regional Office
33 Airport Center Drive
Suite 103
New Windsor, NY 12553

RE: Town of Carmel — Procurement Report of Examination (2019M-179)

Dear Ms. Reynolds,

Attached is the Town of Carmel's response to the preliminary "Draft" findings in the above-mentioned Report of Examination prepared by the Office of the State Comptroller.

Should you have any questions or concerns please don't hesitate to contact myself or Mary Ann Maxwell at (845) 628-1500.

Sincerely,

Suzanne McDonough
Deputy Town Supervisor

cc: Town Board
Town Legal Counsel
Town Comptroller

³ The Town's response letter refers to page numbers that appeared in the draft report. The page numbers have changed during the formatting of this final report.

Town of Carmel, New York
Town Responses to NYS Comptroller's Office Procurement Report of Examination (2019M-179)

Dated: January 15, 2020

Period: January 1, 2018 – December 31, 2018

Page Reference Report Statement

Town Response

Key Findings

Page 3; para. 4

"...a proposal for one purchase totaling \$13,404...."

This vendor was hired on an emergency basis for propane deliveries to our sewer plants during a Nor easter in March 2018. The situation required immediate attention and could not wait competitive bidding.

See Note 1 Page 9

Page 3; para. 2

"...or competitively bid three purchases totaling \$911,044."

Two (2) of these vendors were and currently are hired on an emergency basis. The Town will discuss options to obtain compliance with GML and the Town's procurement policy.

See Note 2 Page 9

Procurement

How Should a Town Procure Goods and Services?

Page 4; para. 1

"Although a policy may set forth circumstances where certain types of procurements would not be in the best interest of the town to solicit alternative proposals or quotations, such circumstance should be clearly defined."

The Town agrees with this statement and will clearly define such circumstances if necessary. This will be clarified in the revised procurement policy.

The Procurement Policy is Unclear for Professional Services

Page 5; para. 1

"One column requires professional services to use an RFP process, while another exempts professional services from competition."

The exempt column in the chart is exempt "per GML". The Town does recommend using an RFP process when it is in the best interest of the Town to do so. This section of the policy will be clarified.

"Further, the policy states that it would not be in the best interest of the Town to solicit alternative proposals or quotation for "very small procurements."

This section of the policy will be clarified or removed.

Town's Responses to NYS Comptroller's Office Procurement Report of Examination (2019M-179)

Page Reference Report Statement

Town Response

Officials Did Not Always Competitively Procure Goods and Services

Page 5; para. 5

"The Town did not obtain the proper number of quotes for 34 vouchers totaling \$59,426..."

This will be addressed with staff and procedures will be put into place to make sure the proper number of quotes are obtained.

Page 6; para. 1

"Town officials indicated it was an emergency purchase, however, they could not provide documentation to support that this was an emergency purchase."

The report indicates that the Town purchased an aggregate of \$13,404.00 worth of propane in 2018. The portion of propane that was purchased on an emergency basis equates to \$6,088.00. The Town maintains that these purchases were indeed made on an emergency basis and as such were procured in accordance with both State Law and the Town's adopted procurement policy. In support of this position various emails were sent from the Town Engineer and the Town Supervisor declaring the event as a **State of Emergency**.

These emails and other documentation provided clearly demonstrate that emergency action was required on the part of the Town of Carmel and that the Town reacted accordingly. The Emergency situation dictated the immediate procurement of propane for stand by power. Based upon this documentation, we request that this language from your report be removed.

Page 5; para. 5

"In addition, the Town did not obtain an RFP for propane purchases totaling \$13,404."

The Town acknowledges that propane was indeed available at the State Bid prices at the time of the two storms. This however, does not negate the immediacy and dynamic nature of the Town's response to the storm and the subsequent rapid response by [REDACTED] Propane to meet the Town's needs swiftly. Maintaining a sound Business relationship with [REDACTED] means that the Town is treated as a top priority. We note that the Notice of Contract award from the NYSOGS for Propane provides that the contractor must make delivery within 48 hours of notification. It does provide for a four-hour delivery turn around, but that is only applicable if there is a State declared emergency or several other conditions, none of which provide relief for the Town as they are simply reactive and not proactive. The Town has to make sure it's stand by power is adequately fueled, before any of those conditions occur. Given the dynamic nature of set forth above, we believe that the Town's propane procurement was appropriate. We therefore request that the entire section of the report related to propane procurement, be removed.

See
Note 1
Page 9

See
Note 1
Page 9

The Board should:

What Do We Recommend?

- | | |
|--|--|
| <p>1. <i>Revise the Town's procurement policy for procuring professional services. In addition, they should clearly define the circumstances where certain types and dollar amount of procurements would not be in the best interest of the Town to solicit alternative proposals.</i></p> | <p>This will be addressed in the revised policy.</p> |
| <p>2. <i>Procure professional services by soliciting proposals or quotations at reasonable intervals established in the revised policy and enter into a written agreement with each provider.</i></p> | <p>This will be addressed in the revised policy.</p> |
| <p>3. <i>Ensure Town officials and employees adhere to the procurement policy and GML by obtaining the required number of proposals or quotes for purchases or competitively bidding purchases when required.</i></p> | <p>This will be addressed in the revised policy and procedures will be put into place to ensure the proper number of quotes or proposals are obtained.</p> |

Appendix B: OSC Comments on the Town's Response

Note 1

An emergency should be declared by the Board and documented in the Board minutes. Our review of the minutes did not indicate that this was an emergency purchase. While Town officials provided an email from the engineer after the exit conference regarding this emergency, Town officials waited five days after that email to purchase the propane. Further, they could have obtained propane at a lower price had they used the State contract. Lastly, the Town used this same vendor for two more purchases after the emergency purchase which at this time would have been over the RFP limit.

Note 2

An emergency is an unforeseen occurrence or unexpected event requiring immediate action. The first vendor was paid with 152 vouchers totaling \$496,303, the second vendor had 29 vouchers totaling \$58,933, and the third vendor had 119 vouchers totaling \$355,808. These payments were for water district operations and maintenance, repairs and fuel costs for the water districts, which are costs that are incurred yearly. Therefore, they are not unexpected or considered an emergency.

Appendix C: 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 Town officials and employees and reviewed and evaluated the Town's procurement policy and procedures.
- We reviewed the Board minutes and related documents for the Board's practices and processes in reviewing and approving purchases.
- We used our professional judgment to select a sample of 21 professional service providers who were paid by the Town and reviewed supporting documentation to determine whether Town officials sought competition when procuring their services and whether they had written agreements with each provider.
- We reviewed and summarized payments during the audit period for purchases and public works contracts over \$1,000 to establish purchases subject to competition.
- We used our professional judgment to select a sample of 30 vendors with 97 purchases that did not exceed the GML competitive bidding thresholds and reviewed 93 of the 97 payments to determine whether they were procured in accordance with the Town's procurement policy. We selected purchases that were \$1,000 or more and were made throughout our audit period. We selected our sample based on aggregate dollar amount.
- We used our professional judgment to select a sample of nine vendors for purchase and public works contracts that exceeded the competitive bidding thresholds to determine whether they were procured in accordance with GML. We selected our sample based on aggregate dollar amount.
- We reviewed the supporting documentation, such as invoices, memoranda, telephone logs, bids, RFPs and quotes, for the samples selected to determine whether Town officials solicited competition.
- We used our professional judgment to select hydraulic oil and propane purchases and performed price comparisons to assess the reasonableness of the prices paid by the Town.

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 D: 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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