

Town of Mooers

Procurement

JUNE 2020



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

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Report Highlights

Town of Mooers

Audit Objective

Determine whether Town officials procured goods and services in accordance with Board policy and applicable statutory requirements.

Key Findings

- Of the nine purchase contracts totaling approximately \$1.3 million that were entered into during the audit period and exceeded the competitive bidding threshold, one purchase contract totaling \$61,766 was not procured in accordance with statutory requirements.
- Of the 15 purchase and public works contracts totaling \$150,939 that did not exceed the competitive bidding threshold, 11 contracts (73 percent) totaling \$105,010 were not procured in accordance with the procurement policy.

Key Recommendations

- Procure purchase contracts exceeding the competitive bidding threshold in compliance with statutory requirements.
- Procure goods and services not subject to the competitive bidding requirements in compliance with the Town’s procurement policy.

Town officials agreed with our recommendations and have initiated, or indicated they planned to initiate, corrective action.

Background

The Town of Mooers (Town) is located in Clinton County (County).

An elected five-member Town Board (Board), which is composed of the Town Supervisor (Supervisor) and four Board members, is responsible for the general oversight of operations and finances.

The Supervisor serves as the chief executive and chief fiscal officer, and is responsible for day-to-day operations.

Quick Facts

Population	3,600
2019 Appropriations	\$2.2 million
Purchase Contracts Exceeding the Bidding Threshold During the Audit Period	9

Audit Period

January 1, 2018 – November 30, 2019

Procurement

How Should a Town Procure Goods and Services?

New York State General Municipal Law (GML) generally requires competitive bidding for purchase contracts exceeding \$20,000 and public works contracts exceeding \$35,000.¹ In lieu of seeking competitive bids, 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.

In addition, GML provides exceptions to competitive bidding requirements for purchases of surplus or second-hand supplies, material or equipment from other governments and emergency purchases that require immediate action.² In determining the necessity for competitive bidding, the aggregate amount to be expended for the same commodity or service within the 12-month period beginning on the date of the purchase must be considered.

GML requires the board to adopt and annually review written policies and procedures for procuring goods and services not required by law to be competitively bid.³ These policies and procedures should describe procurement methods, explain when to use each method and require adequate documentation of actions taken. To be sure the requirements of the policy are up-to-date and officials are familiar with the terms of the policy, it should be reviewed and updated if needed, each year.

The board should monitor and enforce compliance with its procurement policy and applicable statutory requirements. This helps ensure a town obtains goods and services of the required quantity and quality at competitive prices and protects against favoritism, extravagance, fraud and corruption.

The Board-adopted procurement policy requires that officials and employees obtain written quotes for purchase contracts in excess of \$1,000 to \$20,000, verbal quotes for public works contracts of \$10,000 or less and written quotes for public works contracts in excess of \$10,000 to \$35,000.

Officials Generally Complied With GML for Purchases Subject to Competitive Bidding

During the audit period, Town officials entered into nine purchase contracts that exceeded the competitive bidding threshold and totaled approximately \$1.3 million. We reviewed all these contracts to determine whether officials made

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

2 Ibid.

3 GML, Section 104-b

these purchases in accordance with GML.⁴ We found that the officials procured eight of these contracts totaling approximately \$1.2 million in accordance with GML.

Specifically, one contract totaling \$159,232 was procured using a State contract, five contracts totaling \$960,563 were procured using contracts bid by other governments, one contract totaling \$50,820 was for the purchase of surplus equipment from another government and one contract totaling \$36,000 was for an emergency purchase that was declared by the Board.

However, officials did not procure diesel fuel in 2018 totaling \$61,766 in accordance with GML. The Highway Superintendent told us that the Town did not competitively bid or use State contract options for diesel fuel purchases in 2018 because the vendor the Town used stated they would provide diesel fuel at less than State contract price. However, because this vendor was not awarded a State contract, this was not a valid exception to the competitive bidding requirements.

We compared the price per gallon paid by the Town for all diesel fuel purchased in 2018 to the applicable State contract price per gallon to determine whether the purchase price obtained was equal to or less than the State contract price. We found that the Town's purchase price was less than State contract price by \$793.

The County had a contract with a vendor the Town could have used to purchase diesel fuel at a price of \$.025 per gallon less than the State contract price. We compared the price per gallon paid by the Town for all diesel fuel purchased in 2018 to the applicable County contract price per gallon and found that Town officials paid less than the County contract price by \$135.

Town officials should have competitively bid diesel fuel, which would have allowed the vendor, and any other interested vendors, to compete and then awarded the bid to the lowest bidder. This may have enabled officials to find a better price on diesel fuel or to buy from the same vendor in accordance with competitive bidding requirements.

By not purchasing diesel fuel in compliance with GML requirements, officials are not able to assure taxpayers that diesel fuel was procured in their best interest, without favoritism and at the lowest possible cost.

The Procurement Policy Was Not Annually Reviewed and Always Complied With

The Board adopted a procurement policy in 2012, but did not annually review the policy as required by GML and the policy. This diminished the Board's familiarity and ability to enforce compliance with the policy.

⁴ Officials did not enter into any public works contracts during the audit period that exceeded the competitive bidding threshold.

We reviewed 13 purchase contracts and two public works contracts totaling \$150,939 that officials entered into during the audit period, which did not exceed the competitive bidding thresholds, to determine whether they were procured in accordance with the procurement policy.

Town officials did not procure 11 of these purchase and public works contracts (73 percent) totaling \$105,010 in accordance with the procurement policy. These contracts were for various purposes including such items as unleaded gasoline in 2018 totaling \$9,160, excavation and materials for a walking path totaling \$12,277, heating fuel in 2018 totaling \$19,863, a tree cutting attachment totaling \$19,900 and renovations to a building used for emergency medical services totaling \$24,681.

Because each purchase contract exceeded \$2,500 and the public works contracts exceeded \$10,000, the procurement policy required officials and employees to obtain written quotes for each contract. However, officials and employees did not obtain written quotes for these contracts or provide us with any documentation showing that they solicited competition for these purchases.

This occurred because the Board did not ensure that officials and employees solicited competition for purchases as required by the procurement policy before the corresponding purchases were made.

Although State and County contracts were available to the Town for the purchase of unleaded gasoline and heating fuel in 2018, officials did not use these contract options. We compared the price paid by the Town for these purchases to the corresponding State and County contract prices to determine whether the Town could have procured these commodities through these contract options for less. We found that the Town's purchase price for both these commodities combined was less than State contract price by approximately \$300. For both commodities combined, the Town's purchase price was approximately \$30 more than the cost using the County contract.

When the Board does not ensure that officials and employees procure goods and services in accordance with the procurement policy, they lack assurance that goods and services are procured in the most economical way, in the best interests of taxpayers and without favoritism.

What Do We Recommend?

The Board should:

1. Ensure purchase contracts exceeding the statutory competitive bidding threshold are executed in accordance with GML.

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2. Annually review, and update if appropriate, the procurement policy, as required.
 3. Ensure officials and employees procure goods and services not subject to the competitive bidding requirements in accordance with the procurement policy.

Appendix A: Response From Town Officials

TOWN OF MOOERS

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May 21, 2020

Gary Gifford
Chief Examiner
NYS Office of the State Comptroller
Division of Local Government and School Accountability
One Broad Street Plaza
Glens Falls, NY 12801

RE: Town of Mooers State Comptroller's Audit of Procurement

Dear Mr. Gifford,

I am writing this letter on behalf of the Town of Mooers. After having our exit interview with [REDACTED] on April 29, 2020 the Town Council and I met on May 12th to discuss our response to your report covering the dates of January 1, 2018 through November 30, 2019. We agreed that we would like this response letter to act as our Corrective Action Plan as well.

First, we would like to say that we are grateful for the wealth of information that was provided to us so that we may better the operations of our Town. We will also be able to maintain a more knowledgeable and accountable administration to the residents of Mooers. We continually strive to serve and serve diligently.

Regarding recommendations 1 – 3, the Board is in full agreement that we should be more attentive regarding the process in which Town funds are used in procurement. As of our meeting, we plan on being much more diligent in our pursuit of using competitive bidding when necessary as responsible stewards of our taxpayer dollars.

In January 2021, we will be revisiting our Procurement Policy. We will review and update it as necessary. We are presently auditing vouchers thoroughly at our Board Meetings, verifying that all purchasing meets the requirements listed in our policy. We check for written quotes and proposals as required. We are rejecting vouchers that do not have the necessary paperwork attached.

Again, we would like to thank the Office of the State Comptroller's Division of Local Government and School Accountability for their patience and guidance through this Audit process. It was very educating and we will be considering all your suggestions for

implementation and correction. Please feel free to let us know of any further action that we could take to remedy our current situation.

Sincerely,

Jeffrey L. Menard
Supervisor

JLM/rmb

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,⁵ our audit procedures included the following:

- We interviewed Town officials and reviewed and evaluated the Town's procurement policy and procedures.
- We reviewed all nine purchase contracts that officials entered into during the audit period, which exceeded the competitive bidding threshold, to determine whether officials procured them in accordance with GML. For any purchases not made in accordance with GML, we compared the price paid by the Town to an applicable State or county contract price to determine whether the Town could have made the purchases for less.
- We used our professional judgment to select 13 purchase contracts and two public works contracts that officials entered into during the audit period, which did not exceed the competitive bidding thresholds, to determine whether they were procured in accordance with the procurement policy. For any purchases not made in accordance with the procurement policy, we attempted to compare the price paid by the Town to an applicable State or county contract price to determine whether the Town could have made the purchases for less. Our sample was selected based on purchase contracts that were in excess of \$2,500 and public works contracts that were in excess of \$10,000.

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.

⁵ We also issued separate audit reports, Town of Mooers – Highway Asset Accountability (2020M-35) and Town of Mooers – Cash Management (2020M-36).

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#lgmg

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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