

ULSTER COUNTY COMPTROLLER'S OFFICE

Elliott Auerbach, Comptroller



June 3, 2014

Ulster County Purchasing Department Audit of Procurement Bid/RFP Process

The mission of the Ulster County Comptroller's Office is to serve as an independent agency of the people, to protect the public interest by monitoring County government and to assess and report on the degree to which its operation is economical, efficient and its financial condition sound.

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June 3, 2014

Dear County Officials:

Transmitted herewith is our audit on the Purchasing Department's procurement bid/RFP process. Our report and analysis concentrated on confirming the Purchasing Department's conformance with General Municipal Laws 103 and 104 as well as the Ulster County procurement procedures as set forth in the County's *Procurement Manual*.

We conclude that the Purchasing Department's administrative adherence to procedures with respect to the procurement process is satisfactory. However, there are several issues identified for management's consideration to improve processes and performance.

The reports issued by this Office are an important component in accomplishing the development and promotion of short and long-term strategies to achieve reduced costs, improved service delivery, and to account for and protect the County's assets. These reports are expected to be a resource and are designed to identify fiscally related problems and provide recommendations for improvement.

The Office of the Ulster County Comptroller conducted this audit and produced this Report in accordance with the Comptroller's authority as set forth in Article IX, Section 57, first paragraph, and Sections 57(A) and (G) of the Ulster County Charter, as well as applicable State laws, rules and regulations and generally accepted government auditing standards.

If we can be of assistance to you, or if you have any questions concerning this Report, please feel free to contact us.

Respectfully submitted,

Ulster County Comptroller

I. Introduction & Background

Under the Charter, the Ulster County Purchasing Department (“Purchasing”) is charged with the authorization of all purchases and sales on behalf of the County, as well as establishing and enforcing suitable standards for all commodities acquired.

The mission of Purchasing is to “secure the best quality product or service for the best price in accordance with NYS laws and regulations established for government purchasing.” To achieve this mission the Purchasing Division was funded with an operating budget of \$718,877 for 2012 and an adopted budget of \$472,107 for 2013¹, as well as a staff of eight employees.

In accomplishing its charge, Purchasing must work closely with all County agencies to ensure they meet their needs while acquiring quality products and services as economically as possible.

The County’s procurement practices are subject to NYS GML 103 and NYS GML 104 (“Procurement Law”). These laws, rules and regulations were established to provide fair and equitable treatment for all persons involved in providing goods and services to a government agency. They also were intended to maximize the purchase value of public funds, establish purchasing authority within the County, and provide safeguards for maintaining a procurement system of equality and integrity.

All County agencies are to adhere to provisions detailed in Procurement Law. Agency compliance with these New York State Laws supports the Director of Purchasing’s exercise of “ultimate discretion regarding all procurements.” Along with following Procurement Law, Purchasing has developed a *Procurement Manual* which provides information to effectively utilize Purchasing’s “services” and assist County agencies in complying with State Laws and County procedures.

Pursuant to Procurement Law, sealed, competitive bidding is required for the purchase of commodities or group commodities (goods/equipment) with an anticipated value of more than \$20,000, and for public works/services with an anticipated value of more than \$35,000, with some exceptions.

From 2010 through 2012, Purchasing processed on average 93 bids and 19 RFPs annually.

As Chief Auditor of Ulster County, this Office’s top priority is to ensure taxpayer dollars are being used effectively and efficiently to meet the needs of Ulster County residents and businesses. We accomplish our mission by conducting audits and other analyses of County-wide operations in accordance with the Ulster County Charter. We conducted this

¹ In 2012, the Purchasing Department’s budget included a “Postage Expense” line item of \$200,000. In 2013, the “Postage Expense” was moved from the Purchasing Department’s appropriation lines from the Purchasing Division to the Central Services Division, where it more appropriately belongs. This accounts for the substantially lower budget line.

performance audit in accordance with generally accepted government auditing standards (GAGAS). 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

II. Objectives

The purpose of this audit was to assess the adequacy and performance of designed control activities in place to procure goods and services, determine adherence to applicable laws and internal policies and procedures, and identify factors inhibiting satisfactory performance and recommend corrective action. The specific objectives in accomplishing these purposes were:

1. To certify that the mail log (the legal source document for vendors submitting bids) is maintained, complete, and current.
2. To ensure that each bid and request for proposal (“RFP”) file kept by the Purchasing Department contains the required legal documentation along with the required Ulster County documentation.
3. To determine if the successful vendor was the lowest bidder, and if not, that sufficient supporting documentation was in the file to support the award to the successful bidder.
4. To determine that all vendors submitting bids were valid business entities and not fictitious.
5. To ensure RFPs were issued and bids were obtained where required by law or procedure.

A thorough review of these stated objectives allows our Office to conclude, with reasonable assurance that Purchasing satisfactorily adheres to both County procedures and NYS laws.

III. Observations and Recommendations

Based on our review we determined that, although Purchasing strives to provide a responsive, efficient, and cost effective procurement operation which safeguards the County’s resources, there were several operational issues that hindered their ability to carry out such objectives. Potential for improvement was identified with respect to record keeping concerning written justifications for “best value”² awards, promotion of economies of scale, and purchase order creation and management. Out of our sample of reviewed bids 25% had minor deficiencies.

² “Best Value” is defined by NYS Office of the State Comptroller as a basis for awarding contracts to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers.

A) Record keeping

Finding – Purchasing’s records overall were complete and contained most of the essential documentation, however some issues were identified:

- 1 file was missing the legal newspaper affidavits, which is proof that the item seeking procurement was advertised as required by Procurement Law
- 4 files were missing the MacBride Disclosure statements as required by law³
- 1 file did not contain the “received” stamp which verifies the date and time the bid was received
- 25% of bids reviewed awarded the bid to vendors not offering the lowest price. This is permitted (a practice referred to as making award to “best value” vendors) However, Procurement Law requires an explanation for such an award and a resolution is required by the Legislative body.

When bids are awarded to a vendor who was not the lowest bidder written documentation and justification for choosing that vendor should be in the file at the time of the award.

Recommendation – Purchasing should make certain that the bids which award items to the best value vendors have the proper documentation including the explanation required by Procurement Law within their files. This will allow for justification and documentation on those items that are being purchased at a higher price. Furthermore, a checklist should be developed to accompany each file to ensure the required documents are contained therein. Additionally, we recommend that if it is the intent of the Purchasing Department to continue to award bids to the “responsive” and “responsible” offerors that they seek to get approval from the Legislature through resolution as Procurement Law requires. In the discretion of the Legislature, this authority can be specific to certain expenditures, or be a general grant of authority to Purchasing. **See Appendix B Note 1**

Details – In reference to the finding concerning the bid items that were awarded at best value, GML 104-b specifically requires that the “justification and documentation” of any award to other than the lowest bidder be submitted stating the reasons as to why it was in the best interest of the County. Upon review of each bid folder within our sample, 25% of the folders (5 bids) contained items that had equal goods offered in which the County chose to purchase at the higher price. Multiplying the estimated quantities to be purchased by the County as indicated in these bids by both the lower bid price and the higher bid price accepted by the County results in a difference of \$39,700. Lists of these items were supplied to Purchasing, for which they provided explanations, citing “excessive costs in placing and processing orders and payment of invoices” as the reason. As noted above, there can be valid justifications for accepting higher bids, however, they are not meant to

³ Chapter 807 of the Laws of 1992 prohibits a State department from contracting for the supply of goods and services with contractors that do not agree to either have no business operation in Northern Ireland, or take lawful steps in good faith to conduct operations in accordance with the MacBride Fair Employment Principles.

be articulated only upon later inquiry, but rather are meant to be a documented part of the bid file to support the exercise of discretion by the Purchasing Director at the time of the acceptance of the bid.

B) Opportunities in promoting economies of scale

Finding - Four out of 15 vendors sampled were identified as supplying goods over the course of fiscal year that in the aggregate, should have gone out to bid to ensure the County is getting the best price, with respect to the following categories:

- Tires, amounting to \$72,420
- Electrical items, amounting to \$56,190

All purchases should be linked to a commodity code in order for the County to estimate the total dollar value of items that should have gone to bid.

Recommendation - It is recommended that the use of proper commodity codes⁴ be emphasized to staff with procurement responsibilities. It is further recommended that County agencies comply with Purchasing in its request and suggestions of sufficient planning in procurements for the year so that goods may be purchased on a County-wide basis. The administration is encouraged to actively engage the agencies in ensuring such compliance.

Detail - Purchasing has acknowledged that these commonly used items should in fact go out for bid. They state that they have “encouraged departments” to provide an estimated order for the upcoming year so that they may go out for bid. The financial management system in place for this audit period had its limitations and many of the employees with purchasing duties do not always use the most accurate commodity codes. Without the correct commodity codes it does not allow for Purchasing to have the necessary information available to identify items that should be bid.

Confirming Purchase Orders should not be used as it bypasses the procurement processes established by the County and puts the County at risk of purchasing items at higher amounts.

C) Purchase Order Management

Finding - During the audit period, the County was regularly in the practice of processing “Confirming Purchase Orders.” Confirming Purchase Orders are the approval of purchases made by a county employee without having an approved purchase order request prior to the purchase. While post-purchase approvals may be appropriate in certain circumstances, the practice of Confirming Purchase Orders obligates the County to payment without having been subject to the system of controls applied by local and state laws.

⁴ Commodity codes are standard classification codes for products and services used to detail what is being purchased within the government and assists in procurement for the agencies. Careful application of such codes would allow for automated calculation of aggregate spending on a purchase item.

Recommendation – We recommend that the administration and Legislature consider the adoption of changes to the Standard Operation Procedures and County policy, respectively, which standardizes the types of purchases and vendors for which non-purchase order purchases are authorized, and/or associated departmental approval forms and procedures for such purchases. **See Appendix B Note 2**

Detail - NYS Finance Law, articles 9 and 10, does not deem confirming purchase orders to be an acceptable method and considers them a violation. Furthermore, the *Procurement Manual* states that the only person that may commit the County for a purchase is the County Director of Purchasing and further states that no purchase may be made without a purchase order signed by the Director or designee. Accepting confirming purchase orders puts the County at risk. It avoids all levels of approval that are established to ensure the County makes sound and necessary purchases, while committing the County to pay the amount incurred.

D) Other Operational issues

Finding D.1 – Currently there is no resolution passed by the Legislative body authorizing the acceptance of bids electronically.

Recommendation – It is recommended that in order to be in full compliance with Procurement Laws, the Legislative body develop a resolution giving Purchasing authorization to accept electronically formatted bids and offers on behalf of the County.

Detail - Procurement Law allows bid and offers to be submitted in an electronic format on the condition that, the “governing board” has authorized, by resolution, the ability to do so. Upon inquiry made to Legislative staff, it appears no such resolution has been adopted.

Finding D.2– Purchasing has not updated their procurement manual since April 2012.

Recommendation – The Office of the State Comptroller recommends that the procurement manual be updated on an annual basis. Updating the manual on an annual basis allows for the department to ensure that practices and procedures yield required results.

Detail – As stated in the *Procurement Manual*, it is “reviewed and updated annually.” Our Office asked for the current version while conducting fieldwork and was provided with the April 2012 version. Since the latest version of the manual the accounts payable unit of the

D.1 Accepting bids requires a resolution passed by the Legislature

D.2 Procurement manual should be updated on an annual basis per NYS Comptroller recommendations and as per Ulster County’s Procurement Manual

D.3 Contracts should not be extended year after year

County has been significantly reorganized and a new financial software system has been put in place, the manual should reflect the current process.

Finding D.3- Extensions have been made on bids and contracts without renegotiation. Language contained in bids and contracts with awarded vendors allows for the County to extend the contract for an additional year.

Recommendation – In order to ensure the County is getting the best quality goods and services at the best economical values it is recommended that the County issue bids each year, or at least on a two year mandatory basis, instead of rolling contracts over from year to year.

Detail – Currently, several service bids are extended from year to year to the same vendor. This practice does not allow the County to obtain the best prices which is driven by competition. This finding developed out of testing for one of the objectives and was not part of the original audit and therefore was not fully tested to provide more material.

IV. Scope, Methodology, and Criteria

The scope of the audit included reviewing the processes used in: initiating and approving purchases, soliciting bids and prices, and processing purchase orders. The controls in place regarding the County’s financial management system (“H.T.E.”) were assessed as well.

To conduct this audit a list of all bids and RFPs by the County for the audit period of January 1, 2012 through June 30, 2013 were obtained from Purchasing. The population consisted of 126 commodity purchase bids and 21 RFPs. To define the sample for the audit a computerized random selection was prepared based on the same percentages as Purchasing’s breakdown between these two categories.

Additionally, vendor payment information was requested from the Department of Finance and analyzed to identify which vendors had been paid over the minimum bidding requirements to compare with Purchasing’s files. Vendor’s whom received payments over \$20,000 (commodity threshold) and \$35,000 (public works threshold) for the year were then reviewed to verify if the goods or service should have been bid.

The methodology included detail testing of the aforementioned samples to determine compliance with policies, procedures, and law. We obtained an understanding of the internal control structure by reviewing procurement procedures and conducting interviews with Purchasing staff. Testing included:

- Reviewing a sample of bids and RFPs, 20 out of 147, to ensure bid solicitations followed policy and procedure and selection of best value bid or proposal was properly documented;
- Reviewing a sample of sole source justification, in the event that items were not bid, for proper documentation and approvals; and

- Testing to determine that goods and services were requisitioned and approved in accordance with policy

Criteria identify the required or desired state or expectation with respect to an operation. Criteria for this review consisted of the following:

- NYS General Municipal Law 103 and 104
- Ulster County's *Procurement Manual* (released by the Purchasing Department)
- New York State Finance Law, articles 9 and 10
- Ulster County Purchasing Department *Supplier Handbook*

Conclusion

Based on our review, we determined that Purchasing generally provides a responsive, efficient, and cost effective procurement operation. However, in order to fully carry out its objective, significant agency cooperation is pertinent. We have made several recommendations that would assist Purchasing in accomplishing their goals.

This report, in draft, was provided to the County Purchasing Department and the corresponding Deputy County Executive overseeing that Department for review and response and their comments have been considered in the preparation of the final draft. These comments have been included in **Appendix A** and are addressed within the report and/or **Appendix B**.

Purchasing management, supervisors, and staff were very helpful throughout the course of this audit. We appreciate their courtesy and cooperation on this assignment.

COUNTY OF ULSTER

PURCHASING DEPARTMENT

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MICHAEL P. HEIN
County ExecutiveMARC RIDER
Director of PurchasingEDWARD M. JORDAN, CPPB
Deputy Director of Purchasing

May 15, 2014

Mr. Elliott Auerbach
Comptroller
Ulster County
PO Box 1800
Kingston, NY 12402

Dear Mr. Auerbach,

Please find below the Purchasing Department's response to your draft "Ulster County Purchasing Department Audit of Procurement Bid/RFP Process," dated May 2, 2014. Thank you for the opportunity to provide these comments for inclusion in Appendix A. I was not the Director of Purchasing during the period for which the audit covered, and prior to your draft report, I had already begun to implement some of the suggested changes, while others will require legislative action before change can be administered. As you know, the County began using its new financial system on April 1, 2014. This system was specifically chosen to address these issues and other planned improvements. In response to your report, I offer the following.

A) Record keeping

SEE NOTE 1

While the audit found that most of the records were complete, your office made the following finding, "25% of bids reviewed awarded the bid to vendors not offering the lowest price. This is permitted (a practice referred to as making award to "best value" vendors) However, Procurement Law requires an explanation for such an award." Respectfully, I must advise you that your interpretation of "best value," as it relates to the County's procurements is erroneous.

While New York General Municipal Law 103 allows a municipality to award bids based on "best value," the County Legislature is required to pass a Local Law before this is authorized. The Ulster County Legislature has not passed a Local Law allowing the Purchasing Department to award based on "best value," and the department has not awarded any bids on this basis.

As for your statement regarding your "finding" that 25 percent of the bids that you reviewed (5 out of 20) were not awarded to the lowest bidder, the report does not take into consideration that when the lowest bidder is not considered "responsive" or "responsible" it will not be awarded the bid. One example of this is where the bid specifies a brand name or equivalent and a bidder proposes an alternative that is not equal to the brand name. Other examples are when a bidder proposes a quantity that is not in the bid specifications, or when a bidder is not "responsible" because it lacks the required experience. It is true that New York General Municipal Law 104-b requires adequate justification when the award goes to someone besides lowest bidder, and to the extent

that the Purchasing Department's files may have lacked the proper documentation, I will give this recommendation adequate attention and going forward this will not be an issue.

B) Opportunities in promoting economies of scale

The report states, "Four out of 15 vendors sampled were identified as supplying goods over the course of fiscal year that in the aggregate, should have gone out to bid to ensure the County is getting the best price." As your review of the Purchasing Department's records obviously revealed, the financial system in use at the time of the audit did not have the functionality that the Purchasing Department needed to ensure that competitive bidding was always used when appropriate. The County's new financial system does have the proper reporting functionality, which will allow greater analysis of the goods and services the County is procuring. One of the benefits to the new financial system is the ability to link commodity codes to the correct items.

SEE NOTE 2

C) Purchase Order Management

The audit states, "During the audit period, the County was regularly in the practice of processing "Confirming Purchase Orders." Confirming Purchase Orders are the approval of purchases made by a county employee without having an approved purchase order request prior to the purchase. While post-purchase approvals may be appropriate in certain circumstances, the practice of Confirming Purchase Orders obligates the County to payment without having been subject to the system of controls applied by local and state laws." Confirming purchase orders are no longer allowed in the new financial system.

D) Other Operational issues

The recommendations listed here are either being considered or were already in the process of being addressed when the draft audit was delivered.

If you have any further questions or need further clarification to this response, please feel free to contact me at 340-3805

Very truly yours,



Marc Rider
Director of Purchasing

APPENDIX B

COMPTROLLER'S COMMENTS ON THE PURCHASING DEPARTMENT'S RESPONSE

Note 1

As we addressed in footnote 2 of the Report, General Municipal Law 103 labels "best value" and refers readers to State Finance Law section 163 for definition, where the term is defined to mean "the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis." For purposes of best value, a responsive offeror is an offeror meeting the minimum specifications of the bid. In assessing if an offeror is responsible, local government can consider non-price factors, which include but are not limited to "required experience". The award of a bid to a vendor other than the vendor presenting the lowest bid requires documented support, which may include findings as to "responsiveness" as Mr. Rider acknowledges. By acknowledging that bids are sometimes awarded to vendors other than the lowest bidder, the concept of "best value" is implicated and proper documentation and approval should be obtained.

Note 2

We are aware of the administration's hopes that the newly implemented financial software, New World, will reduce the number of processed "confirming purchase orders". However, such flexibility can be justified, but should be pursuant to clear legislative policy directives. Notwithstanding Mr. Rider's comment, it is our understanding that the New World Financial system does allow for post-purchase processing of orders and that through the use of procurement cards, the system may be entirely bypassed.

Note 3

We acknowledge and appreciate the representation of Mr. Rider as to addressing certain recommendations in A and in D.1, D.2, D.3. We will follow up in due course of business as to the status of corrective actions on these and our other recommendations.