

ULSTER COUNTY COMPTROLLER'S OFFICE

Elliott Auerbach, Comptroller



November 7, 2017

Purchasing Department's Bid Process Review

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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Dear County Officials:

The report included herein serves as follow-up to the findings contained in our previously issued audit regarding the Ulster County Purchasing Department's Procurement Bid/Request for Proposal ("RFP") Process. This subsequent review sought to evaluate (1) whether the recommendations made as a result of our initial audit have been implemented by the Department and (2) whether attempts have been made at improving the Department's processes for procurement bids and RFPs.

We conclude that the Purchasing Department has addressed most of the findings from the previous audit; however, the Director has acknowledged that a few items are still in the process of being remedied.

The reports issued by the Office of the Ulster County Comptroller ("Office") are an important component in accomplishing the development and promotion of short and long-term strategies to achieve reduced costs and improve service delivery, accountability, and protection for the County's assets. These reports are expected to be a resource, are designed to identify currently emerging fiscally related problems, and typically provide recommendations for their improvement.

The Office 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 New York State laws, rules, and regulations.

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

Background

The Office of the Comptroller released its audit of the Purchasing Department's procurement bid/RFP process in June 2014. That report's objectives were: to assess the adequacy and administration of designed control activities in place to procure goods and services; to determine adherence to applicable laws, internal policies, and procedures; and to identify any factors inhibiting satisfactory performance.

At the onset of the original audit, there was a change in the Purchasing Department's management personnel. As a result, the Department started to address and implement changes to the procurement processes before the completion of that examination. At the same time, the County had implemented a new financial software program, which was expected to address some of the shortcomings that were discussed. We determined at the close of our initial review that some operational, procedural, and performance issues had potential for improvement. For more information regarding the findings and recommendations outlined in our previous report, please find it available at:

<http://ulstercountyny.gov/comptroller/june-2014-procurement-audit-report>

Objectives

The objectives of our follow-up review were:

- To determine if the Purchasing Department has developed and implemented a monitoring system, including a checklist, to ensure that legally required documents as part of the procurement process are obtained and retained (*Finding A*)
- To determine if the Purchasing Department has sought appropriate approval from the County Legislature to update its Procurement Manual in order to award bids on the basis of "best value" and to accept electronic bidding submissions (*Finding A*)
- To determine if the Purchasing Department has implemented a formal procedure (including written explanations) to justify circumstances where commodities are purchased at a price higher than the lowest cost (*Finding A*)
- To determine if the Purchasing Department has attempted to aid the County's offices and agencies in using the correct commodity codes, as well as implemented tracking for budgeting purposes so that items commonly subject to bid can be identified by Purchasing staff and planned for accordingly (*Finding B*)
- To determine if the County's Standard Operating Procedures and policies have incorporated standardized types of purchases and vendors for which non-purchase order procurements are authorized, as well as what departmental approvals, forms, and procedures should be followed in these circumstances (*Finding C*)
- To determine if the Purchasing Department has at least annually updated its Procurement Manual (*Finding D.2*)
- To determine how often bids are obtained for necessary goods and services (e.g. annually, biannually, or otherwise) (*Finding D.3*)

Summary & Status of Recommendations from our Initial Audit

A. Record Keeping

Original Finding: Some of Purchasing's bid folders were missing important documentation that is required by NYS General Municipal Law. Although the occurrences were rare, it is important that mandatory documents be collected and retained. Additionally, the original audit determined that the Purchasing Department awarded some bids to the non-lowest vendors, which may be permitted; however, the Department did not include the required written explanation within the files and the Legislative Resolution authorizing this practice did not exist.

Recommendation: The original report suggested the implementation of both a checklist (to ensure that required documents were contained in the files) and updated procedures (to include a written explanation as to why a bid was awarded to the non-lowest vendor so that sufficient justification exists).

Status: The Purchasing Department addressed the lack of Legislative authorization through Resolution No. 215 of 2014 (Adopting an Updated Procurement Manual Pursuant to General Municipal Law Section 104-b – Department of Purchasing). The Department also began to add an explanation if the lowest bidder was not awarded the bid, which included the vendor being non-responsive, the vendor being not responsible, or the necessity of additional vetting by a County committee to identify specific needs. However, follow-up field work showed that a checklist may still need to be instituted. Of the 18 files tested, several currently had missing or incomplete documentation, including the following:

- 3 files did not contain the 2 required newspaper affidavits per file
- 2 files had incomplete specification forms – 1 was missing and 1 lacked a signature representing departmental approval
- 3 files had incomplete or deficient bid opening sheets – 2 were missing and 1 showed that only one employee was present at the bid opening
 - *Management commented that it was not common practice for RFP files (as opposed to invitations to bid) to have a bid opening sheet, including a statement that two staff members were present to conduct a bid opening. However, the Department's internal guidelines (as communicated between the Comptroller and Purchasing) do require the inclusion of the bid opening sheets with requests for proposals, as well as the presence of two employees during the bid opening. Accordingly, 6 of the 8 requests for proposals tested included the bid opening sheet.*
 - *In the interest of accurate file maintenance and consistency, the Purchasing Department should either ensure this document is wholly included with all files or fully discontinue the inclusion of the document within the files. Whichever practice is agreed upon should be reflected in the Purchasing Manual.*
- 2 files were missing the bid approval sheet

- 1 file was missing all documentation but the winning vendor’s information
 - *Management was able to locate the missing information.*
 - *A checklist could assist in ensuring that files are maintained in an organized manner so that outside agencies are able to easily locate items during their review.*
- 1 file was missing the MacBride statement
 - *Management was able to locate the missing information.*
 - *A checklist could assist in ensuring that files are maintained in an organized manner so that outside agencies are able to easily locate items during their review.*
- 3 files had conflicting information with the mail log
 - 1 response to a request for proposal appears to have come in one day late (however, the vendor was not ultimately selected)
 - *After sharing this finding with Purchasing Management, the Comptroller’s Office was informed that the Department is more lenient with requests for proposals and will accept late submittals with prior notification.*
 - *If this is the Purchasing Department’s policy, the Purchasing Manual should be updated to include language pertaining to this practice. Otherwise, arbitrary enforcement of selection criteria may arise.*
 - 1 request for proposal was not recorded in the log
 - 1 request for proposal included in the mail log did not appear in the file
 - *Management informed the Comptroller’s Office that this vendor had only sent a letter stating they did not plan to submit a proposal.*
 - *All communication regarding bids and proposals should be included in the files once they are recorded in the mail log so that cross references can easily be made in the event a complaint is filed.*

While some of the findings noted above may not appear to be substantial, these files are the primary legal source for reference in the event someone was to file a complaint regarding how a bid was awarded. Consequently, it is important that these files be adequately maintained, which is why we urge the implementation of a checklist coupled with a managerial review component to ensure all files are complete.

B. Opportunities in promoting economies of scale

Original Finding: During the period originally reviewed, the County’s financial management system (H.T.E.) did not offer the functionality that the Purchasing Department desired to ensure competitive bidding was always used when appropriate. Corresponding fieldwork found that four out of the fifteen vendors sampled were supplying goods over the course of the fiscal year that exceeded the aggregate bid limit required by the County’s Standard Operating Procedures.

Recommendation: It was recommended that the Purchasing Department emphasize the importance of using proper commodity codes by accounts payable staff. The Purchasing Department stated that it had hoped the new financial management software (New World) would have better reporting capabilities to allow for greater analysis of the goods and services procured by the County and claimed that “one of the benefits to the new financial system [was] the ability to link commodity codes to correct items.”

Status: The County’s current financial management system has improved the process by which accounts payable staff log information regarding items that in the aggregate could go to bid through the use of commodity codes. The follow-up field work revealed one vendor received payments that totaled \$22k in 2015 without going to bid, which appears to be in violation of County procedures that require bids for services in excess of \$20k. These services were incurred by the District Attorney’s Office that has been granted more liberal authority to make purchases without the use of the “Purchase Order Module,” which requires application of the aforementioned commodity codes. Payments for expert witnesses and wire-tapping services are some examples of such purchases that are afforded this additional flexibility (i.e. not having to use the Purchase Order Module). However, it should be noted that not all purchases made by the District Attorney’s Office should require this special exception, including the \$22k in aforementioned costs. This lack of uniform policy surrounding the types of expenses and vendors not requiring the use of commodity codes for unique reasons create weaknesses in internal controls. As suggested in our previous audit, there should be categories and/or parameters outlined in the Standard Operating Procedures that regulate the types of purchases or vendors that are due individual authorization. The Purchasing Director was not aware of the scope of which these situations occur and will work toward a solution going forward with assistance from the Comptroller’s Office.

C. Purchase Order Management

Original Finding: During the original audit period, the County regularly engaged 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 pay for goods that have not otherwise been subject to the system of controls required by local and state laws.

Recommendation: In our original audit report, we recommended that the Administration and Legislature consider the adoption of changes to the Standard Operating Procedures and County policy to standardize the types of purchases and vendors for which non-purchase order purchases are authorized, as well as associated departmental approval forms and procedures for purchases.

Status: At the completion of our initial audit, the Purchasing Department stated that the new financial software would not allow for confirming purchase orders. Although that is technically correct, it does not entirely address the situation. The New World financial software does allow for post-purchase processing of orders, leaving the Purchasing Department completely removed from the purchasing process and remaining unaware of the

volume or types of purchases made by this method. For example, P-Card purchases are entered after the fact (i.e. after the purchase has already been made), which precludes Purchasing from knowing exactly what goods or services are being procured until after the County has incurred a financial obligation. Therefore, our arching concern with this situation is not that it occurs – as such flexibility can be justified in certain purchasing situations, but that it should be pursuant to clear Legislative policy directives and fully include the Purchasing Department’s oversight. The Department has acknowledged this situation and has communicated that they are working on an appropriate solution.

D. Other Operational Issues

Original Finding: The operational issues communicated in the original audit related to: the absence of a Legislative Resolution authorizing the acceptance of electronic bids; the existence of an outdated procurement manual; and the routine extension of contracts year-after-year without going to bid.

Recommendation: Our Office recommended that in order to be in full compliance with state and local laws regarding procurement, the Purchasing Department should seek the approval of the Legislature by resolution to authorize the acceptance of electronic bids and offers while establishing a Departmental procedure of annually updating the Procurement Manual. Additionally, it was recommended that bids be issued on an annual or biannual basis to ensure best economical value is achieved by the County.

Status: Before the finalization of the original audit, the Purchasing Department had already proceeded with crafting a resolution to address the previously noted concerns over the acceptance of electronic bids and periodic updates to the Procurement Manual. Resolution No. 215 of 2014 was adopted, updating the Procurement Manual to ensure that it was agreeable to recent modifications to NYS General Municipal Law. While our initial audit expressed the concern that not going to bid at least biannually might prevent the County from getting the best price available, the Purchasing Department responded with a concern of its own that the opposite risk is also present. Essentially, the Department shared reservations that by going to bid in certain circumstances, vendors may be provided with the opportunity to raise prices while simple extensions of contracts may allow prices to remain flat. Generally, the Purchasing Director will use his professional judgement to determine if it is in the County’s best interest to go to bid for services that may otherwise be extended under contract.

Scope & Methodology

This purpose of this follow-up audit was to assess the extent to which the Purchasing Department had made satisfactory progress in implementing the recommendations in the process of initiating and approving purchases, soliciting bids and prices, and processing purchase orders.

This review involved interviewing Purchasing management and analyzing documents provided by the Department. We selected a sample of 18 bid folders from January 1, 2015, through December 31, 2016, to verify that the required documentation was maintained and available. We tested each folder to ensure they contained the following materials:

- Newspaper affidavits certifying that the legal notice was placed at least five days prior to the bid opening date
- Signed bid specification forms certifying the department head approved the bid specifications
- Bid opening sheets ensuring at least two county employees were present at the opening of the bids submitted and the mail log coincided with the bids received and opening date
- Bid approval sheets that document which vendor the Purchasing Department has recommended
- Letters sent to the winning and non-winning bidders (and that the lowest bidder was awarded unless otherwise noted)
- Signed Non-Collusion and MacBride disclosures were provided

Additionally, we chose a sample of vendors that were paid over \$20K for 2015 and 2016 to ensure that purchases paid for by the County were sought from bids as NYS procurement laws require.

Conclusion

The Purchasing Department has made progress in implementing almost all of the recommendations from the previous audit. Our original recommendation suggesting the use of a checklist remains to address those situations in which the legally required documentation was not maintained on file.

We appreciate the Purchasing Department's timely responses to document and information requests, as well as to our original audit recommendations.