



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 29, 2015

Major General Patrick Murphy
Division of Military and Naval Affairs
330 Old Niskayuna Road
MNBF Room 412
Latham, NY 12110

Re: 2013-0003 Arrochar Meats Inc.

Dear Major General Murphy:

Our office is performing an examination¹ of payments the Division of Military and Naval Affairs (DMNA) made in response to Superstorm Sandy (Sandy). The objectives of our examination are to determine whether DMNA conducted appropriate procurements, paid appropriate prices, and received the quality and quantity of goods and services it procured during the Sandy response. At this time, we are reporting the results on DMNA's compliance with certain procurement laws, rules, and regulations when purchasing fuel and food from one vendor - Arrochar Meats, Inc.

A. Results of Examination

We found DMNA did not follow, or did not have the documentation to support that it followed, State procurement requirements when purchasing fuel from Arrochar Meats. Specifically, we found DMNA staff: (i) did not purchase this fuel from existing State contract fuel vendors or justify why the State contracts did not meet its form, function or utility, (ii) lacked documentation to support how it selected Arrochar Meats to provide fuel, and (iii) was unable to support how it determined the price paid to Arrochar Meats for the fuel was reasonable. In addition, all the managers and staff at DMNA we interviewed denied knowledge about who directed the purchase of fuel from Arrochar Meats.

For all the fuel purchased, we found that DMNA paid an average of \$1.12 to \$1.28 more per gallon of fuel than necessary for 18,960 gallons of fuel. This resulted in DMNA paying \$19,594 more than necessary for fuel over the course of ten days.

We found DMNA paid Arrochar Meats \$42,385 for 8,493 gallons of fuel it cannot account for. Also, due to the limitations in DMNA's records, there is insufficient evidence to support whether Arrochar Meats supplied the remaining 10,467 gallons of fuel.

¹We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

We also found evidence that the owner of Arrochar Meats may have deliberately created the impression in the minds of those he did business with that that he was acting as a representative of New York State by establishing two accounts in the NY National Guard's name. As of the date on this report, the owner of Arrochar Meats still has one account with an unpaid balance of \$5,528. This has a negative impact on DMNA's reputation and could limit its ability to purchase fuel during future disasters.

We found all purchases from Arrochar Meats for food in our sample were priced appropriately. We shared a draft report with DMNA officials and considered their comments (Attachment A) in preparing this final report. The comments of the State Comptroller on DMNA's response is included in Attachment B. In their response, DMNA officials stated the NYS Office of General Services has incorporated emergency delivery provisions in the state fuel contract that will better assist in procurements during an emergency response. DMNA officials also stated that at the time of the fuel procurements they had no reason to believe Arrochar Meats would be an irresponsible vendor, as characterized by this report.

B. Background and Methodology

During emergencies, the National Guard provides relief services under the day-to-day direction and oversight of DMNA. Arrochar Meats is a food catering business located in Staten Island, New York, that regularly provides food to the New York Army National Guard (National Guard). We reviewed seven vouchers totaling \$94,610 related to fuel and 16 vouchers totaling \$78,062 related to food DMNA purchased from Arrochar Meats during the period October 29, 2012 through November 13, 2012 to support its response to Sandy.

To conduct our examination, we examined pertinent documentation and spoke with DMNA and National Guard representatives, vendors, and industry experts to determine whether DMNA complied with procurement requirements, including: (i) Article 11, Section 163 of the State Finance Law; (ii) the New York State Procurement Guidelines (Procurement Guidelines); (iii) Section 16.16 of the Codes, Rules, and Regulations of the State of New York (Regulations); and (iv) Budget Bulletin B-1203.

C. Details of Findings

Economic Development Law Article 4-C, Section 144 establishes the Office of the State Comptroller's authority to grant exemptions from advertising in the Procurement Opportunities Newsletter. DMNA received an exemption for fuel purchases due to the emergency caused by Sandy. Nonetheless, DMNA was responsible for complying with State procurement requirements, including substantiating vendor selection and price reasonableness of the fuel. Budget Bulletin B-1203 states that agencies should maintain thorough records for all costs related

to the Sandy response and recovery efforts. Section 16.16 of the Regulations states that delivery receipts, inspection reports and other equally satisfactory evidences of the receipt of goods in support of purchase vouchers shall be kept on file pending field audit by the Comptroller.

We found DMNA did not consistently follow, or did not have the documentation to support it followed, State procurement requirements related to vendor selection, price reasonableness, and receiving for its purchase of fuel from Arrochar Meats during the period October 31, 2012 through November 9, 2012.

Vendor Selection

We found DMNA did not maintain sufficient evidence to support its selection of Arrochar Meats to provide fuel during Sandy, including records to support why DNMA did not purchase the fuel from existing centralized contract vendors. DMNA officials initially stated it was “puzzling” that Arrochar Meats was selected to provide fuel and suggested National Guard field staff may have selected Arrochar Meats due to their familiarity with the vendor as a food service provider for the National Guard. Later, DMNA officials suggested that National Guard field staff must have selected Arrochar Meats to provide fuel because Arrochar Meats had recently been awarded a federal contract for fuel. However, we identified only three federal purchase orders for \$5,489 each issued to Arrochar Meats for fuel in the wake of Sandy.

We also found one purchase requisition issued early in the Sandy aftermath that had originally directed the purchase of fuel to the vendor People’s Oil. However, People’s Oil was crossed out and the vendor Burke Heat was hand-written in its place. Subsequently, Burke Heat was crossed out and the vendor Arrochar was hand-written in its place. Additionally, as discussed below, the price for fuel associated with People’s and Burke was also crossed out and Arrochar’s significantly higher price per gallon was hand-written in its place.

According to a National Guard staff who maintained Sandy-related fuel purchase requisitions, crossing out vendor names and writing in a different vendor’s name was contrary to his normal practice. When a vendor is changed, an amended purchase requisition should have been created and approved to reflect that change. However, evidence that he approved this amended purchase requisition did not exist in his records for this particular purchase.

In addition, despite the change in vendors on the purchase requisition, we determined Burke Heat still provided the fuel for this requisition, but the payment went to Arrochar Meats. In fact, we found that for all of DMNA’s fuel purchases from Arrochar Meats, Arrochar Meats’ role was strictly that of a middleman. Either Burke Heat or People’s Oil provided all the fuel DMNA ordered from Arrochar Meats.

We interviewed pertinent National Guard field staff and DMNA staff identified on DMNA purchase requisitions for fuel purchases from Arrochar Meats. All the staff denied any involvement in selecting the vendor for DMNA on the State's behalf and denied knowledge about who selected Arrochar Meats for the fuel purchases. In addition, the owner of Arrochar Meats stated that he had no idea why DMNA contacted him to purchase fuel. He also claimed that he was contacted by the Federal Contracting Officer or someone on his behalf. However, the Federal Contracting Officer is a federal employee. Therefore, he would not be ordering fuel for New York State.

We question how National Guard field staff or DMNA staff would have gained knowledge that Arrochar Meats was a provider of fuel. According to its invoices, Arrochar Meats provides food and catering services. Additionally, Arrochar Meats' web site does not indicate that it provides fuel. When our auditors visited Arrochar Meats, they did not see evidence to support the business was set up to provide fuel. Further, we discovered Arrochar Meats did not have accounts with fuel providers until the dates of the first DMNA purchase requisitions.

Despite many interviews with various DMNA officials and National Guard staff, as well as the owner of Arrochar Meats, we were ultimately unable to determine who selected Arrochar Meats to provide fuel.

Price Reasonableness

DMNA purchased 18,960 gallons of fuel from Arrochar Meats. We reviewed the supporting documentation and found that to fulfill this order, Arrochar Meats purchased 13,960 gallons of fuel from Burke Heat at an average of \$3.71 per gallon, and 5,000 gallons of fuel from People's Oil at an average of \$3.87 per gallon. Arrochar Meats then resold the fuel to DMNA for \$4.99 per gallon and had People's Oil or Burke Heat deliver the fuel directly to DMNA's facilities. As stated above, an original purchase requisition identified People's Oil and Burke Heat and the lower prices that was crossed-out and then identified Arrochar and the inflated amount substituted by hand.

In addition to the questionable nature of these insertions and the process for selecting Arrochar, we determined DMNA paid an unreasonable price for fuel from Arrochar Meats. The \$4.99 per gallon fuel price Arrochar Meats charged was an average of \$1.12 to \$1.28 per gallon higher than the prices People's Oil and Burke Heat charged. This resulted in average profit margins of 29 to 35 percent for Arrochar Meats. Moreover, the \$4.99 per gallon fuel price from Arrochar Meats was up to \$1.68 more per gallon than the price being offered on State centralized contracts at the time.

When we asked the owner of Arrochar Meats how much he paid for the fuel he provided DMNA, he told us \$4.89 per gallon. He further stated that charging more than \$5.00 per gallon would be too much and that charging \$5.99 per gallon (or \$1.10 more than he claimed he paid for the fuel)

“would be unethical.” However, as noted previously, the owner of Arrochar Meats actually marked-up the fuel he purchased from Burke Heat and People’s Oil an average of \$1.12 per gallon and \$1.28 per gallon, respectively.

Arrochar Meats earned \$19,594 in the ten days from October 31, 2012 through November 9, 2012 acting solely as middleman. Given that Arrochar Meats charged DMNA the excessive rate for fuel in the wake of the catastrophic damage from Sandy, the \$4.99 per gallon rate could be characterized as price gouging had the general public been charged that price.

Receiving

DMNA could not provide sufficient evidence to support it received all the fuel it purchased from Arrochar Meats. On November 14, 2013, we requested DMNA provide fuel receipt logs to support all fuel received during the period October 31, 2012 through November 10, 2012. DMNA officials initially stated they had not received any fuel logs from the field.

Five months after our request, a National Guard official provided fuel logs from her records. The fuel logs included the number of gallons of fuel DMNA issued and received each day from October 29, 2012 through November 16, 2012, but the receiver was not required to indicate on the fuel logs the name of the vendor that delivered the fuel. Therefore, unless the receiver happened to record the vendor’s name, these fuel logs do not provide DMNA with assurance that Arrochar Meats’ suppliers delivered the fuel.

DMNA ordered 18,960 gallons of fuel from Arrochar Meats during the period October 31, 2012 through November 9, 2012. Records from Arrochar Meats’ suppliers suggest 18,960 gallons of fuel were delivered to DMNA locations over the course of eight days. We compared these records to the DMNA fuel logs, and found the fuel logs did not include evidence to support DMNA received a total of 8,493 gallons of fuel over the course of those eight days. DMNA paid Arrochar Meats nearly \$42,385 for those 8,493 gallons. Also, while the fuel logs showed DMNA received the remaining 10,467 gallons, there is insufficient evidence in the logs to support Arrochar Meats’ suppliers delivered all of those gallons.

It is especially important when receiving fuel from multiple vendors that DMNA have an adequately detailed system to account for quantities received from each vendor. This will facilitate the accounting for, and payment of, only the fuel DMNA actually received.

Arrochar Meats Owner’s Actions Tarnishes DMNA’s Reputation

The owner of Arrochar Meats may have deliberately created a false impression in the minds of those he did business with in order to appear as a government employee. For example, when

establishing an account for fuel with Burke Heat, he set up the account in the name “NY National Guard.” As of the date of this report – more than two years after Sandy – Arrochar Meats has a \$5,528 unpaid bill with Burke Heat still in the name of the “NY National Guard” for fuel it purchased for DMNA after Sandy, even though DMNA paid Arrochar Meats for that fuel.

Burke Heat communication logs for collecting overdue accounts support that on multiple dates, the Arrochar Meats owner continued to indicate his affiliation with the government. The owner referenced his inability to return a phone call due to a “government shut down” and characterized the personal credit card he used to pay the account as a “government card.” The owner of Arrochar Meats denied portraying himself or acting as a state official.

DMNA attested that Arrochar Meats’ owner is not currently, and to the best of the agency’s knowledge, was never a member of the New York Army or National Guard. In addition, when we spoke with Arrochar Meats’ owner, he stated he had never served in the Reserves.

The actions of Arrochar Meats’ owner reflects poorly on the image of the DMNA and the State of New York, and has left Burke Heat with the impression that the State is unable to pay its bills timely. Images like this may hinder the State’s ability to procure fuel and other goods and services at reasonable prices from responsible vendors during future disasters.

In the exigent circumstances that follow a disaster, DMNA officials must remain diligent to minimize the chance that individuals may seek to take advantage of the State. DMNA officials must ensure they have a system to (i) ensure compliance with State procurement requirements with full transparency and accountability, and (ii) pay reasonable prices for purchases.

Food

DMNA purchased food from Arrochar Meats during the period October 29, 2012 through November 13, 2013 on 56 vouchers totaling \$120,354. Of these, we selected a sample of 16 vouchers totaling \$78,062. We found all 16 vouchers in our sample were priced appropriately. We did not conduct further tests on the food purchases.

Recommendations

- 1) *Conduct procurements in accordance with all applicable laws, rules, and regulations.*
- 2) *Establish controls for emergency procurements for items such as fuel to ensure DMNA:*
 - a. *Has a sound basis to select vendors with which to procure.*

- b. Pays a reasonable price.*
 - c. Records all items received.*
 - d. Pays only for the items received.*
- 3) Evaluate other records to support whether Arrochar Meats' suppliers actually provided all the fuel for which DMNA paid. Recover any amount for fuel that was not received.*
- 4) Develop a list of approved vendors from which to purchase items such as fuel during times of disaster.*
- 5) Ensure Burke Heat is aware that the outstanding balance associated with the "NY National Guard" account (i.e., Arrochar Meats) is not an obligation of the State of New York.*
- 6) Refer our findings related to the excessive prices Arrochar charged to the New York State Office of the Attorney General for its review.*

We would appreciate your response to this draft report by August 28, 2015, indicating any actions planned to address the recommendations in this report. We thank the management and staff of the Division of Military and Naval Affairs for the ongoing courtesies and cooperation extended to our auditors.

Sincerely,

Bernard J. McHugh
Director of State Expenditures

Enc: Attachment A
Attachment B

cc: Robert Martin, Audit Liaison
Theresa Bonneau, Director of Internal Audit



ANDREW M. CUOMO
Governor
Commander-in-Chief

PATRICK A. MURPHY
Major General
The Adjutant General

JUL 7 2015

Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, New York 12236

Dear Mr. McHugh:

Thank you for your Draft Report 2013-0003, Arrochar Meats, Inc., dated June 11, 2015 relating to the Superstorm Sandy emergency response by the Division of Military and Naval Affairs. The agency has reviewed your report and would like to offer the following comments:

- 1) *Conduct procurements in accordance with all applicable laws, rules, and regulations.*

As stated during the audit interviews and in previous audit responses, the Division followed procurement rules and guidelines where feasible. However, during the emergency response to Superstorm Sandy, the Division was not able at all times to conduct transactions in accordance with procurement rules at all times. While we recognize the procurement rules are always applicable, an emergency response in certain instances should not be viewed as business as usual. There are circumstances during the course of an operation where the Division requires flexibility to meet critical needs of the mission which was certainly the case during Superstorm Sandy. Specifically, the purchase of fuel was used for various military vehicles to provide mobility for the National Guard operation for relief in affected areas that were not easily accessible. Additionally, the mobility provided by these military vehicles allowed the Division to assist other public health and safety partners in providing aid to those impacted by the storm. Considering the severity of the damage and destruction, and the high level of need of those affected, the ability to rapidly purchase fuel from available vendors was a necessity. In the future, the Division will continue to use vendors on the state contract for fuel if they meet the requirements of the emergency response. Currently, the NYS Office of General Services has incorporated emergency delivery provisions in the state contract relating to diesel fuel, ultra-low sulfur fuel, and bio-diesel fuel that will better assist the Division in procurements during an emergency response.

- 2) *Establish controls for emergency procurements for items such as fuel to ensure DMNA:*

- a. *Has a sound basis to select vendors with which to procure.*

* Comment 1

The Division has used Arrochar Meats in the past as a vendor during activations in which no adverse issues were identified that impacted the vendor responsibility standard. Additionally, at the beginning of Super Storm Sandy the Federal Government used Arrochar Meats through its purchasing and contracting office for the New York Army National Guard and had reported no issues. At the time, the Division had no reason to believe that Arrochar Meats would be in any way an irresponsible vendor as characterized by this report.

b. *Pays a reasonable price.*

The Division will continue to be diligent in paying a reasonable price when procuring and contracting during an emergency when possible. However, as this was an emergency, there were some instances due to the large and immediate need where it was difficult to check in every instance at the inception of the procurement for reasonableness of the price for fuel. However, what is not noted in this report is that the Division, through its own standard detective internal control process following Superstorm Sandy, identified pricing and billing irregularities by Arrochar Meats, and reported it to OSC.

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Comment 2

c. *Records all items received.*

The Division will continue to work diligently to the extent possible during an emergency to record all items it receives. However, in this instance, the Division provided receiving records (that were shared with OSC) that the fuel was received by the state at the time of delivery. The Division then distributed the fuel to vehicles such as Humvees, and other Army National Guard tactical vehicles as needed. While some of the fuel logs at the point of distribution may have been incomplete due to the large number of vehicles being fueled, there is no indication that the fuel was used for purposes other than the Superstorm Sandy response.

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Comment 3

d. *Pays only for the items received.*

As in Superstorm Sandy or any other similar circumstance, the Division would not pay for services or items if it did not have a reasonable assurance (such as a receiving report) that they were delivered.

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Comment 3

3) *Evaluate other records to support whether Arrochar Meats suppliers actually provided all the fuel for which DMNA paid. Recover any amount for fuel that was not received.*

DMNA will review any available records associated with Arrochar Meats to ascertain if any payment was made without fuel being provided, and if so, will to the extent possible seek restitution.

4) *Develop a list of approved vendors from which to purchase items such as fuel during times of disaster.*

A roster of eligible vendors is currently being developed based on the NY State Contract List. However, it should be noted that there will be instances that the Division will deviate from those approved vendors based on delivery times and other circumstances that do not meet the requirements for immediate response during an emergency.

*
Comment 1

- 5) *Ensure Burke Heat is aware that the outstanding balance associated with the "NY National Guard" account (i.e., Arrochar Meats) is not an obligation of the State of New York.*

As of the date of this audit response which is over two years after the actual Superstorm Sandy event, Burke Heat has not contacted the Division in regards to this obligation. The Division had no indication or previous knowledge that Burke Heat was not paid by Arrochar Meats for fuel and if so, deplors any such action. A letter will be sent to Burke Heat as recommended by this report.

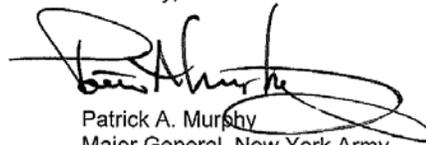
- 6) *Refer our findings related to excessive prices Arrochar charged to the New York State Office of the Attorney General.*

DMNA will send the final copy of this audit report to the New York State Office of the Attorney General for any possible action.

The agency appreciates the comments and recommendations of the State Comptroller and will continue to work toward improving its procurement processes relating to emergency activations

Please extend my thanks to your staff for conducting a thorough review.

Sincerely,



Patrick A. Murphy
Major General, New York Army
National Guard
The Adjutant General

State Comptroller Comments on Auditee Response

1. There are no provisions in the State Finance Law that allow an agency to comply with procurement rules “when feasible.” State procurement requirements afford agencies the flexibility to procure in cases of emergency without conducting formal competitive bids and, with prior approval from the State Comptroller’s Office, without advertising in the New York State Contract Reporter. However, agencies must still guard against favoritism and wasteful pricing and must still document reasons for vendor selection and price reasonableness.
2. Six months after OSC began its examination, DMNA raised concerns about pricing and billing irregularities associated with transactions that were unrelated to this examination.
3. DMNA was unable to provide fuel logs (i.e., receiving reports) to support the receipt of 8,493 gallons of fuel purchased from Arrochar Meats. Also, due to the limitations in DMNA’s fuel logs, there was insufficient evidence to support whether Arrochar Meats supplied an additional 10,467 gallons of fuel.