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COMPTROLLER



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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

August 4, 2015

Mr. Gary Turck  
Chairman  
Development Authority of the North Country  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601

Re: Oversight of Procurements and Loan  
Programs  
Report 2015-S-3

Dear Mr. Turck:

Pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we audited the oversight of procurements and loan programs at the Development Authority of the North Country (DANC) for the period April 1, 2012 through March 31, 2015. The objective of the audit was to determine whether DANC officials provide adequate oversight of procurements and loan programs in accordance with the Public Authorities Law.

**Background**

DANC is a self-supporting public benefit corporation overseen by a 13-member Board of Directors. DANC was created in 1985 under Article 8, Title 29 of the Public Authorities Law (Law) to provide infrastructure services and economic development in Jefferson, Lewis, and St. Lawrence counties. DANC operates a solid waste management facility, a fiber-optic network, and a water/sewer facility. DANC's operations provide services to customers at Fort Drum and in surrounding counties. DANC has partnered with an energy company to create a gas-to-energy plant that converts methane, a by-product of waste, into electricity. In addition, DANC administers several State-funded loan programs that promote job creation and affordable housing.

DANC spent \$21.6 million and \$15.2 million for all procurements during fiscal years 2012-13 and 2013-14, respectively. During our audit period, DANC also received payments on a total of 70 loans it had awarded for various purposes, including affordable housing, business

development, and tourism enhancements. The outstanding balance on these loans was almost \$35 million as of December 31, 2014.

### **Results of Audit**

Generally, we found that DANC officials have provided appropriate oversight for procurements and the loan programs, having established policies and procedures and maintained sufficient monitoring systems. However, we did identify some areas where DANC could improve its operations, specifically in terms of procurement reporting and determining reasonable cost.

#### ***Procurement Reporting***

The State's Authorities Budget Office (ABO) and the Office of the State Comptroller (OSC) developed a comprehensive online reporting system, known as the Public Authorities Reporting Information System (PARIS). PARIS allows public authorities to enter information currently required to be provided under Public Authorities Law, including a Procurement Report. Public authorities are required to report on all procurement transactions active during the reporting period that have an actual or estimated value of \$5,000 or more. Authorities are not required to report individual purchases of less than \$5,000 or multiple purchases through a single vendor if the cumulative value of those purchases is less than \$5,000 in the reporting year.

DANC prepared and submitted its procurement report to PARIS based on its incorrect interpretation of its enabling legislation and not on PAL 2879 or the guidelines as issued by the ABO in the PARIS Handbook. As a result, since it began reporting for the fiscal year ending March 31, 2008, DANC has only reported personal service contracts of \$5,000 or more and has omitted reporting for all other types of contracts and procurements. In total, we found DANC underreported its procurements by about \$34 million over the two fiscal years ended March 31, 2014, as follows:

<b>Fiscal Year</b>	<b>Amount Reported</b>	<b>Actual Procurements</b>	<b>Underreported Difference</b>
2012-13	\$938,262	\$21,280,846	\$20,342,584
2013-14	1,116,615	14,865,076	13,748,461
<b>Total</b>	<b>\$2,054,877</b>	<b>\$36,145,922</b>	<b>\$34,091,045</b>

This underreporting not only limits public disclosure and accountability, but also impedes the oversight efforts of both the ABO and OSC. DANC should report all required procurements so that the public and oversight agencies have complete and accurate data available. DANC management agreed that they should have been reporting more than the personal services contracts, and stated they will do so in the future.

#### ***Reasonable Cost Determinations***

According to DANC's procurement guidelines, single source procurements are defined as procurements in which, even though two or more firms can supply the required commodities

or services, the Executive Director or designee may, upon written findings setting forth the material and substantial reasons therefore, award the contract to one vendor over the other. For each such procurement, the guidelines state that the procurement record shall document the circumstances leading to the selection of the vendor, including the alternatives considered, the rationale for selecting the specific vendor, and the basis upon which it was determined that the cost was reasonable. To help ensure these requirements are met, DANC has developed a checklist for these single source and other non-competitive procurements.

We examined 15 single source procurements totaling approximately \$2.6 million and found that 11 did not have documentation of the basis upon which the cost was determined to be reasonable. These contracts ranged in value from \$4,519 to \$1,853,311 and were for services including engineering, consulting, legal, and information technology. DANC officials told us that they had informally determined the costs were reasonable, but did not retain any documentation of that determination. Further, they explained that they thought such documentation was unnecessary because these procurements were all related to professional services, which do not require competitive bidding and for which price alone is not the determining factor for awarding the contract. While we agree that price is not the sole determining factor in such cases, it is still a factor that must be considered, and DANC officials must demonstrate that the cost of the services they acquire is commensurate with the services provided. Without this cost reasonableness analysis, DANC not only deviates from its own policies and procedures, but officials also cannot verify that the amounts charged are appropriate.

### **Recommendations**

1. Establish procedures to ensure complete and accurate annual procurement reporting.
2. To promote greater accountability and transparency, and to ensure that accurate information is available to the public and decision makers, to the extent possible, correct prior year Procurement Reports included in PARIS reporting.
3. Establish and enforce procedures to analyze the reasonableness of cost associated with all applicable procurements, and retain documentation supporting these efforts as an integral part of the procurement record.

### **Audit Scope, Objective, and Methodology**

We audited DANC to determine whether it provided adequate oversight of its procurements and loan programs in accordance with the Public Authorities Law. Our audit covers the period from April 1, 2012 through March 31, 2015. DANC spent \$21.6 million and \$15.2 million for all procurements during fiscal years 2012-13 and 2013-14, respectively. DANC also received payments on a total of 70 loans during our audit period. The remaining balance on these loans was almost \$35 million as of December 31, 2014.

We reviewed DANC's policies and procedures governing procurements and loan programs, and interviewed its employees. We reviewed reports submitted to PARIS and consulted with

officials from the ABO. We also reviewed invoices and supporting documentation for invoiced amounts and loan documents. We sampled competitively and non-competitively awarded procurements to determine if they were properly awarded and reasonableness of cost was documented.

We conducted our performance audit in accordance with 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.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

### **Reporting Requirements**

A draft copy of this report was provided to DANC officials for their review and comment. Their comments were considered in preparing this report and are attached in their entirety at the end. Officials acknowledged the report's recommendations and will initiate corrective actions to implement the recommendations.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Board of the Development Authority of the North Country shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Major contributors to this report were Brian Reilly, Todd Seeberger, Brandon Ogden, Jason Dessureault, and Anne Marie Miller.

We wish to thank DANC management and staff for the courtesies and cooperation they extended to our auditors during this review.

Sincerely,

John F. Buyce, CPA, CIA, CFE, CGFM  
Audit Director

cc: James W. Wright, Executive Director

# Authority Comments



Gary Turck  
Chairman of Board

James W. Wright  
Executive Director

## **Development Authority of the North Country**

Dulles State Office Building  
Watertown, New York 13601

July 7, 2015

Mr. John F. Buyce, CPA, CIA, CFE, CGFM  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, New York 12236-0001

Dear Mr. Buyce:

This is in response to the State Comptroller's Report 2015-S-3; Oversight of the Procurement and Loan Programs of the Development Authority of the North Country. The objective of the audit was to determine whether DANC officials provide adequate oversight of procurements and loan programs in accordance with the Public Authorities Law.

The Authority appreciates the general conclusion by the Comptroller staff that "we found that DANC officials have provided appropriate oversight for procurements and loan programs, having established policies and procedures and maintain appropriate monitoring systems."

The Authority also recognizes and appreciates the professional manner in which the Comptroller's Office conducted its review and the professionalism displayed by the assigned personnel. The dialogue and exchanges were positive and constructive between the parties.

The Authority maintains a philosophy that audits are an opportunity for corrective action and improvement. The Authority has a better understanding of the Comptroller's Office and the Authorities Budget Office's expectations as a result of the audit discussions, findings, and recommendations. It is the Authority's intention to implement corrective actions to address the audit recommendations.

The following response is an explanation of the Authority's practices which the Comptroller is recommending be modified:

### **Procurement Reporting**

The Authority commenced its original and subsequent reporting of procurement transactions based upon its interpretation of the requirements of the Authority's enabling legislation which states: "Section 2723 – Annual reports. ...the state comptroller within ninety days after the end of its fiscal year, a complete and detailed report setting forth: (ii) its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes, including a listing of all private consultants engaged by the authority on a contract basis and a statement of the total amount paid to each such private consultant; ..."

Consequently, the Authority annually submitted through the PARIS reporting system, the professional services purchased throughout the fiscal year believing the reporting to be consistent with the enabling statute requirements and PARIS.

The Authority also annually submitted all the required reports under the PARIS requirements, including its annual budget, financial statements, audits, and procurement reports.

At no time in over seven years of reporting has this issue been identified or brought to the Authority's attention, until this audit.

**The Authority will modify its reporting and report consistent with the requirements of the ABO and recommendations of the Comptroller.**

#### **Reasonable Cost Determinations**

The audit acknowledges the Authority has a methodology and practice to document procurement decisions. In each of the instances cited, the purchases were for professional services which, by statute, do not require competitive bidding, because the law recognizes it is not price alone which is the determining factor in the decision-making. Consequently, all of the procurements in question were made based upon other considerations which the Authority had sole source documented.

The Authority disagrees with the conclusion that an informal comparison of pricing is not an assessment of cost reasonableness, especially when it is not the primary criteria for the retention of specialized professional services. Nor were any of the contract costs found to be unreasonable. However, in recognition of the Comptroller's recommendation, the Authority will incorporate formal documentation into its procurement procedures.

**The Authority believes the amounts charged are reasonable and appropriate, regardless of our failure to retain documentation. There has been no demonstration that the amounts are inappropriate.**

#### **Recommendations**

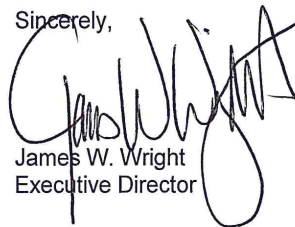
**The Authority acknowledges the recommendations of the Comptroller's audit and will initiate corrective actions to implement the recommendations.**

The recommendations have already been addressed internally and to the extent practicable, given the reporting timeframe, the recent PARIS report reflects extensive procurement transactions. Additionally, the reporting efforts will be enhanced with an Authority planned upgrading of financial services software.

The Authority appreciates the opportunity to clarify its position. It will be working to address the Comptroller's recommendations and implementing the appropriate corrective actions.

Thank you for your assistance and cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Wright', is written over the typed name and title.

James W. Wright  
Executive Director

cc: Gary Turck, Board Chairman  
John B. Johnson, Jr., Board Audit Committee Chairman