



Town of Kent Procurement and Information Technology

Report of Examination

Period Covered:

January 1, 2016 — January 25, 2017

2017M-85



Thomas P. DiNapoli

Table of Contents

	Page
AUTHORITY LETTER	1
EXECUTIVE SUMMARY	2
INTRODUCTION	4
Background	4
Objective	4
Scope and Methodology	4
Comments of Town Officials and Corrective Action	5
PROCUREMENT	6
Professional Services	6
Request for Quotes	7
Competitive Bidding	8
Recommendations	9
INFORMATION TECHNOLOGY	10
Disaster Recovery Plan	10
Software Installation and Internet Use	10
Recommendations	12
APPENDIX A Response From Town Officials	13
APPENDIX B OSC Comments on the Town's Response	20
APPENDIX C Audit Methodology and Standards	22
APPENDIX D How to Obtain Additional Copies of the Report	23
APPENDIX E Local Regional Office Listing	24

State of New York Office of the State Comptroller

Division of Local Government and School Accountability

August 2017

Dear Town Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and Town Board governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Town of Kent, entitled Procurement and Information Technology. This audit was conducted 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.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Town of Kent (Town) is located in Putnam County. The Town is governed by an elected Town Board (Board) which comprises the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general management and control of the Town's financial affairs. The Supervisor, who serves as the chief financial officer, is responsible, along with other administrative staff, for the Town's day-to-day management under the Board's direction. The Town budgets for 2016 and 2017 were each \$18.2 million.

The Board is responsible for approving the bids prior to making all purchases exceeding the bidding thresholds. To oversee the different facets of the Town's information technology (IT) systems, the Board contracted with an IT consultant.

Scope and Objective

The objective of our audit was to evaluate controls over procurement and IT for the period January 1, 2016 through January 25, 2017. Our audit addressed the following related questions:

- Did Town officials procure goods and services in accordance with the Town's procurement policy and applicable statutes?
- Did Town officials ensure that the Town's IT system was adequately secured and protected against unauthorized use, access and loss?

Audit Results

Town officials did not use competitive bidding, issue requests for proposals or obtain quotes, as required, for purchases totaling approximately \$268,000. These purchases included three professional service providers, who the Town paid a total of \$137,162, without first issuing requests for proposals; purchases from six vendors totaling \$65,982 without seeking the required written or verbal quotes; and \$64,850 for welding services without using competitive bids. When purchases are made without a competitive process, there is the risk that goods and services were not purchased at the best prices and were not obtained prudently. Town officials also did not have a current contract with the IT consultant. As a result, neither party had detailed guidelines on the services to be provided and the associated costs.

Although Town officials contracted with a consultant for IT services, they did not develop a disaster recovery plan, or establish controls to prevent employees from installing games or visiting social

networking websites. We tested seven of the Town's 27 computers and found that multiple game programs had been downloaded onto them. These games can potentially possess spyware and may cause a denial of service through an application crash. In addition, we identified questionable Internet use by Town employees including visiting websites for online banking and investment, shopping, travel, sports, social networking and entertainment. Employees also performed other Internet research and browsing of a personal nature using the Town's computers. One computer had numerous instances of inappropriate website access, including personals (dating), solicitation of various sexual acts and pornography. As a result, the computer system and data are at risk of loss and damage. Employees' inappropriate use of Town computers also results in lost productivity.

Comments of Local Officials

The results of our audit and recommendations have been discussed with Town officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials disagreed with some of our findings. Appendix B includes our comments on issues raised in the Town's response.

Introduction

Background

The Town of Kent (Town), located in Putnam County, covers about 35 square miles and has a population of about 14,000. The Town provides various services to its residents, including parks and recreation, maintenance and improvement of Town roads, snow removal and general government support. These services are financed mainly by real property taxes, departmental income and State aid.

The Town is governed by an elected Town Board (Board) which comprises the Town Supervisor (Supervisor) and four Board members. The Board is responsible for the general management and control of the Town's financial affairs. The Supervisor, who serves as the chief financial officer, is responsible, along with other administrative staff, for the Town's day-to-day management under the Board's direction. The Town budgets for 2016 and 2017 were each \$18.2 million.

Department heads are responsible for making purchases below the bidding thresholds for their departments. The Board is responsible for approving the bids prior to making the purchase for all purchases exceeding the bidding thresholds. To oversee the different facets of the Town's information technology (IT) system, the Board contracted with an IT consultant.

Objective

The objective of our audit was to evaluate controls over procurement and IT. Our audit addressed the following related questions:

- Did Town officials procure goods and services in accordance with the Town's procurement policy and applicable statutes?
- Did Town officials ensure that the Town's IT system was adequately secured and protected against unauthorized use, access and loss?

Scope and Methodology

We examined the Town's procurement process and IT controls for the period January 1, 2016 through January 25, 2017. Our audit also examined the adequacy of certain IT controls. Because of the sensitivity of some of this information, we did not discuss the results in this report, but instead communicated them confidentially to Town officials.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report. 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.

**Comments of Town Officials
and Corrective Action**

The results of our audit and recommendations have been discussed with Town officials, and their comments, which appear in Appendix A, have been considered in preparing this report. Town officials disagreed with some of our findings. Appendix B includes our comments on issues raised in the Town's response.

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 forwarded 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 this plan available for public review in the Clerk's office.

Procurement

General Municipal Law (GML) requires the Board to advertise for bids on contracts for public works involving expenditures of more than \$35,000 and on purchase contracts involving expenditures of more than \$20,000. GML further requires that local governments adopt internal policies and procedures for the procurement of goods and services when competitive bidding is not required. The Board must establish, implement and monitor such procurement policies to help ensure that the Town obtains goods and services of the required quantity and quality at competitive prices and to protect against favoritism, extravagance, fraud and corruption. In addition, it is important that the Board enter into written agreements with professional service providers that provide both parties with a clearly defined and mutually agreed-upon basis for compensation.

The Town did not seek competition to procure goods and services totaling approximately \$268,000 and did not have a current contract with the IT consultant. When purchases are made without a competitive purchasing process, there is the risk that goods and services were not purchased at the best prices and were not obtained prudently. Further, without adequate written contracts, neither party has a clear means of determining the basis for compensation.

Professional Services

GML does not require the Town to use competitive bidding when procuring professional services that involve specialized skill, training and expertise; the use of professional judgment or discretion; and/or a high degree of creativity. However, GML requires the Town to adopt policies and procedures that govern the procurement of goods and services when competitive bidding is not required. Using a request for proposal (RFP) or quote process is an effective way to ensure that the Town receives the most favorable terms and conditions when procuring professional services and to provide residents with the greatest assurance that services are procured in the most prudent and economical manner without favoritism. In addition, written contracts between the Town and professional service providers provide both parties with a clearly defined and mutually agreed-upon basis for compensation and help to protect the Town in the event that contractors default on their obligations or make excessive claims.

The Board did not always solicit proposals for professional services. The Town paid 34 professional service providers a total of \$370,187 during our audit period. We examined payments totaling \$260,692 made to five of these providers and found that the Board did not

solicit proposals for three providers, who received a total of \$137,162. Payments to these service providers included:

- The IT consultant, who was paid a total of \$63,577 in 2016. The Town never solicited competition for this service.
- An engineering firm used by the Planning Board that was paid a total of \$36,885. The Town Supervisor told us she had included the service in the RFP packages when she was seeking competition for other services. However, the Planning Board told her that it did not need to obtain an RFP and selected its own engineer.
- An audit firm that was paid a total of \$36,700. The Town last issued an RFP for this service in 2001 and the Board has reappointed the firm each year during the annual reorganization meeting.

In addition, the Town does not have a current written contract with its IT consultant. The last contract covered July 1, 2012 through July 30, 2014, and the Town has not renewed the contract or entered into a new contract since the prior contract's expiration. The Supervisor told us that she is in the process of obtaining a contract from the consultant.

When Town officials do not seek competition when procuring professional services, they cannot assure residents that they are procuring the most economically beneficial and qualified service providers and that these procurements were not influenced by favoritism. In addition, without adequate written contracts, neither party has a clear means of determining the basis for compensation.

Request For Quotes

The Town's procurement policy generally requires that quotes or proposals be obtained for purchases (e.g., supplies and equipment) that are not required by law to be procured through competitive bidding. The Town's policy requires verbal quotes for purchase and public works contracts between \$1,000 and \$2,999. Written quotes or proposals are required for purchase contracts between \$3,000 and \$19,999, and public work contracts from \$3,000 to \$34,999. We identified a total of 238 vendors who were paid over \$1.2 million for purchases between the \$1,000 and the \$35,000 thresholds and that did not appear to be for professional services. We judgmentally selected 10 of these vendors that appeared to be for public works and eight vendors that appeared to be for purchases, as shown below.

Public Works – Town officials did not adhere to the purchasing policy regarding soliciting quotes for public works contracts below the \$35,000 threshold. We tested purchases from 10 vendors totaling \$122,508 and found that purchases from four vendors totaling \$44,294 were made without seeking the required written or verbal quotes. These payments include:

- \$18,374 for vehicle repair, \$17,560 of which was service for a bucket truck performed by the manufacturer. The Manager informed us that the bucket truck may only be serviced and certified for insurance purposes by the manufacturer. However, even if that is the case, it would not preclude the Town from soliciting quotes, in accordance with the policy, from several authorized dealers.
- \$13,039 for fire alarm rental and monitoring.
- \$8,081 for janitorial service for the Lake Carmel Park District.
- \$4,800 for fire suppression system maintenance.

Purchases – Town officials did not adhere to the purchasing policy regarding soliciting quotes or proposals for purchases. We tested payments that were made to eight vendors totaling \$51,251 and found that payments to two vendors totaling \$21,688 were made without seeking required written or verbal quotes. These payments include:

- \$13,856 for concrete block at the highway department. The Service Manager told us that this vendor was the only provider for the specific concrete blocks used but could not provide documentation to support this.
- \$7,832 for equipment rental. The Service Manager informed us that this was the only vendor that had the specific drill for their needs. We determined that this vendor was awarded a County contract. However, the Town did not obtain the County contract pricing from the vendor and, as a result, paid slightly more.

By not obtaining quotes or proposals before making a purchase, Town officials did not adhere to the procurement policy and Town officials cannot be assured that they are getting the best items at the lowest possible prices.

Competitive Bidding

With certain exceptions, GML requires local governments to advertise for sealed bids and make contract awards to the lowest responsible bidder when a purchase contract involves an expenditure of more than

\$20,000 or a contract for public works involves an expenditure that exceeds \$35,000. In determining whether the dollar threshold will be exceeded, the Town must consider the aggregate amount reasonably expected to be spent on all purchases of the same commodities to be made within the 12-month period commencing on the date of the purchase, whether from a single vendor or multiple vendors. The purpose of obtaining bids is to guard against favoritism, improvidence, extravagance, fraud and collusion and to foster competition in the procurement of goods and services which will be paid for with public funds so that local governments obtain those goods and services at the lowest possible price. The appropriate use of competition provides residents with the greatest assurance that goods and services are procured in a manner consistent with these purposes.

Town officials did not adhere to GML or the purchasing policy regarding competitive bidding. We identified 43 vendors that were paid a total of \$3,778,831 and received payments exceeding the \$20,000 bidding threshold. We selected 10 vendors with payments totaling \$938,037 and found that the Town did not use competitive bidding for welding work performed by one vendor for a total of \$64,850.

Awarding contracts without the benefit of a public bid process for goods or services that exceed bidding thresholds violates GML and the Town's own policies. As a result, Town officials cannot be assured that goods and services of suitable quality were obtained at the lowest price.

Recommendations

The Board should:

1. Use an RFP process to select professional services and ensure proper documents are maintained for future needs.
2. Enter into written contracts that clearly stipulate the services to be performed and the compensation for those services for all current and future professional service providers.
3. Ensure that all necessary quotes or proposals are obtained as required by the Town's policy for items that are below the competitive bidding thresholds.
4. Implement the Town's purchase policy and seek competitive bidding when required by GML.

Information Technology

Town officials are responsible for developing internal controls to safeguard computerized data and assets. Computerized data is a valuable resource. Town officials rely on this data for making financial decisions and for reporting to State and federal agencies. If the computers on which this data is stored fail or if the data is lost or altered, the results could range from inconvenient to catastrophic. Even small disruptions in electronic data systems can require extensive effort to evaluate and repair. For this reason, Town officials must establish a disaster recovery plan to provide guidance on preventing the loss of computerized data in the event of a disaster. In addition, controls must be established to ensure that programs installed on Town computers and websites visited are appropriate.

Although Town officials contracted with a consultant for IT services,¹ they did not develop a disaster recovery plan or establish controls to prevent employees from installing games or visiting social networking websites. As a result, the computer system and data are at risk of loss and damage.

Disaster Recovery Plan

An effective system of internal controls includes a disaster recovery plan to help prevent the loss of computerized equipment and data, and provide procedures for recovery in the event of an actual loss. The plan should include the precautions to be taken to minimize the effects of a disaster so that Town officials can either maintain or quickly resume mission-critical functions. The plan may also include a significant focus on disaster prevention.

The Board has not adopted a comprehensive disaster recovery plan. We communicated the same issue to the Board during our previous examination of the Town in 2011.² In the event of a disaster, Town personnel have no guidelines or plan to follow to prevent the loss of equipment and data or procedures for data recovery. The lack of a disaster recovery plan could lead to the loss of important financial data and serious interruptions to Town operations, such as not being able to process checks to pay vendors or employees.

Software Installation and Internet Use

Prohibiting the installation of unauthorized software by system users is a crucial step in preventing potentially harmful software from infecting computers. Unauthorized programs could transfer personal or sensitive information to outside networks, potentially slow down the network, or cause system crashes and loss of data.

¹ See related comment entitled Procurement

² *Town of Kent – Internal Controls Over Selected Financial Activities (2011M-26)*

Although the Town established a policy that prohibited the installation of software on Town computers without prior approval and Internet usage for other than Town-related business, procedures and controls – such as a filter that restricts software access installation and access to websites – were not implemented to ensure compliance with the policy.

We tested seven of the Town's 27 computers and found that multiple game programs had been downloaded onto them. One of these game programs comes preinstalled on some computers and, while not necessarily vulnerable, these games can potentially possess spyware as well as use vital system resources on the computer which may cause a denial of service through an application crash. In addition, one of the computers contains various installations of potentially malicious software. One program in particular is known to contain imbedded malware within the program which can be used by an attacker to obtain administrative privileges, which could be used to install more malicious software such as ransomware.³

In addition, we identified questionable Internet use by Town employees as well as instances of personal, private and sensitive information (PPSI) in the visited webpages. Specifically, we found that Town employees visited online banking and investment, shopping, travel, sports, social networking and entertainment websites, potentially for non-business purposes. Employees also performed other Internet research and browsing of a personal nature using the Town's computers. There were several instances of potentially exposed PPSI, namely personal e-mail addresses contained in the URL of e-mail servers. Furthermore, one of the computers had numerous instances of inappropriate website access, including personals (dating), solicitation of various sexual acts and pornography.

The download and installation of these programs and web activities expose the Town's network to potential damage from malicious software and technological threats that could potentially destroy, manipulate or steal data. Further, nonbusiness use of computers represents lost productivity for the Town.

³ Ransomware is a type of malware that prevents or limits users from accessing their system, either by locking the system's screen or by locking the users' files unless a ransom is paid. More modern ransomware families, collectively categorized as crypto-ransomware, encrypt certain file types on infected systems and force users to pay the ransom through certain online payment methods to get a decrypt key.

Recommendations

The IT consultant should:

5. Ensure any third-party software installed on Town computers is necessary for business operations. All software deemed unnecessary should be removed.
6. Develop procedures and controls such as a filter that restricts software installation and access to websites.

The Board should:

7. Adopt a comprehensive disaster recovery plan that details specific guidelines for the protection of equipment and private essential data against damage, loss or destruction.

APPENDIX A

RESPONSE FROM TOWN OFFICIALS

The Town officials' response to this audit can be found on the following pages.

Maureen Fleming
Supervisor



Phone: (845) 225-3943
Fax: (845) 306-5621

25 Sybil's Crossing
Kent Lakes, NY 10512

July 11, 2017

Ms. Tenneh Blamah, Chief Examiner
Division of Local Government and
School Accountability
Newburgh Regional Office
33 Airport Drive, Suite 103
New Windsor, NY 12553

Dear Ms. Blamah:

This letter is in response to the Draft Report of Examination for the period January 1, 2016 – January 25, 2017 which covers Procurement and Information Technology of the Town of Kent. This letter will also serve as the Town's Corrective Action Plan.

Procurement

The current Comptroller's Office Draft Report of Examination for the period January 1, 2016 – January 25, 2017 shows the Town of Kent has made vast improvements in its procurement process since the issuance of the Comptrollers Report of Examination for the period January 1, 2009 – September 16, 2010. In that report, it was noted that "the Town paid 16 professional service providers approximately \$792,000. The Board did not use competition to select 11 of the providers, who received payments totaling \$739,022." Among these professionals were 5 attorneys who were paid \$360,035; two engineering firms paid \$136,171; one IT consultant paid \$117,185; one stormwater consultant paid \$64,112; one human resource consultant paid \$52,122 and one website contractor paid \$9,397.

Since 2014, the Board has regularly solicited Requests for Proposals ("RFP's") for professional services, soliciting twice for attorneys and once for its stormwater consultant, resulting in substantial savings to the Town. The Town no longer contracts with the human resources consultant or the website consultant, and has negotiated a lower rate with our IT consultant.

The current audit "found that the Board did not solicit RFP's for three providers who received a total of \$137,162". This amount is \$601,860 less than the total noted in the Comptroller's 2011 report. Of the \$137,162, \$63,577 was paid to an IT consultant, an engineering firm employed by the Planning Board was paid \$36,885 and an audit firm was paid \$36,700 without competitive bids. These three services are "professional services or services requiring special

See
Note 1
Page 20

or technical skill, training or expertise” and the use of professional judgment or a high degree of creativity excepted from the requirements of §103(1) of the General Municipal Law (see People ex rel. Smith v. Flagg, 17 N.Y. 584; Trane Co. v. County of Broome, 76 A.D.2d 1015; 429 N.Y.S.2d 487; Hurd v. Erie County, 34 A.D.2d 289, 310 N.Y.S.2d 953; see also 1988 Opns St Comp, No. 88-35).

In addition, regarding the IT specialist, the Town continued with the current specialist through a transitional period while dealing with new website and other issues for which his institutional knowledge were an asset. During that time, the Town negotiated a lower hourly rate and budget for the department resulting in savings for the Town.

See
Note 2
Page 20

Further, with regard to the monies paid to the Planning Board engineer, New York State Town Law §272 provides that “[t]he planning board shall have power and authority to employ experts, clerks and a secretary, and to pay for their services and other expenses as may be necessary and proper”. Opinion 74-451 of the Opinions of the State Comptroller states that engineers fall within the category of experts and drew the conclusion that “[a] town planning board may hire its own “experts”, such as an attorney, an engineer or a professional planner, and it may refuse the services of similar experts employed by the town board.”

See
Note 3
Page 20

In addition to the profession services exception applicable to the audit firm used by the Town, the relationship with that firm is one of trust and confidence which the courts have found do not require bidding.

See
Note 4
Page 20

Since 2014, the Town has authorized RFP’s for a myriad of services and has narrowed its view of what falls within the exceptions under the statute. In instances when the Board had not solicited for RFP’s, it had moved forward on the advice of counsel.

The 2011 OSC Report noted that 9 of 16 professional service providers did not have contracts. The current report only notes that the Town did not have a contract with its IT consultant, a major improvement over the previous report. The Town Board will seek to enter into such a contract.

The OSC also found in the 2011 report that vouchers submitted by professional service providers were not properly itemized. As of 2014, specificity in billing is required of all professional service providers.

Requests for Quotes

10 vendors with purchases totaling \$122,508 were selected by the OSC for audit. Of the 10, the OSC found purchases from 4 vendors totaling \$44,294 were made without seeking written or verbal quotes.

\$18,374 of this was for vehicle repairs - \$17,560 of which was for service for a bucket truck by the manufacturer, Altec. The OSC Report notes that “[t]he Manager informed us that the bucket truck may only be serviced and certified for insurance purposes by the manufacturer. However, even if that is the case, it would not preclude the Town from soliciting quotes, in accordance with the policy, from several authorized dealers”. Our Service Manager has stated that Altec was the only provider capable of making the necessary updates and repairs to the truck. He stated that he had solicited quotes in the past, and not only was Altec the least expensive quote, they are also the only servicer that would certify that the repairs were done correctly which was required by OSHA to ensure the safety of the employees utilizing the machine. Altec is the manufacturer of the cables as well as the bucket truck. The bucket truck we currently own is a cable operated system that is antiquated compared to the hydraulic system that is used today

See
Note 5
Page 20

where the cable replacement is not necessary. This makes it mandatory to have the cables replaced by the manufacturer who certifies the repair.

\$13,039 of this total for fire alarm rental and monitoring was paid to CIA, the company that installed and maintains the equipment. The New York State Supreme Court, Appellate Division, Fourth Department in Doyle Alarm Co., Inc. v. Reville, 65 A.D.2d 916 (1978) found that installation and monitoring of a security system is a service involving specialized skill and expertise which excepted it from the bidding process. This reasoning would also apply to the services supplied by Calculated Fire Protection, which provides fire suppression system maintenance for which the Town paid \$4,800 for the period audited.

See
Note 6
Page 21

The janitorial service for the Lake Carmel Community Center has been bid in the past and the current provider has provided excellent service at the lowest cost. The Town will follow the recommendation of the OSC and will request quotes from vendors for these services.

The OSC observed that "Town officials did not adhere to the purchasing policy regarding soliciting quotes for purchases", but goes on to say that this was found in only 2 of 8 vendors tested, totaling \$21,688.

\$13,856 of this was for concrete block used by the Highway Department supplied by M&M Precast Corp. Following is the response of the Highway Superintendent, the elected official responsible for the department:

"The Highway Department has been purchasing the blocks from M&M long before I got here. They fit together like Lego logs & when you switch companies many times they do not fit together. They are structural steel reinforced concrete blocks which means they can be stacked on top of each other without fear of collapsing under their own weight. When we extended our walls in the yard, I had to use the same size. They are the sole vendor of this type."

See
Note 7
Page 21

The remaining \$7,832 was paid to Pine Bush Equipment for a specific rock hammer necessary for a road paving job. The OSC notes that the Town did not obtain the county contract price for this equipment rental. Again, following is the response of the Highway Superintendent, the elected official responsible for the department:

"Putnam County specked out a 312 Caterpillar Rock hammer which weighs 28,170 lbs. They have the ability to transport it themselves. This machine is not big enough to do the job we needed to complete on Hortontown Road. We rented a PC 360 Kamatsu which at 80,547 Lbs is 3 times the size of the county machine. It does the work 3x faster than the county machine which was incapable of doing the job we needed with the amount of ledge rock to be removed. We had to pay for overweight fees & shipping. The county does not have a truck large enough to transport this.

See
Note 8
Page 21

We rented this machine from Pine Bush Equipment which is 3 miles down the road (Ludingtonville Rd) from our yard and 5 miles from the jobsite. This was the most economical way to do this. We hammered out several hundred tons of stone and then re-used it to reinforce the steep embankments on the western side of Hortontown Road. I have used the county hammer on other jobs but it is reaching the end of it useful life." Therefore, this rental was the best value for the Town.

Competitive Bidding

The OSC selected 10 vendors with payments totaling \$938,037 and found only one instance in which the Town did not use competitive bidding. That instance involved welding work. One welder was paid \$64,850. This large scale welding is a specialized type of welding, most often

See
Note 9
Page 21

done on an emergency basis. After discussions with the OSC audit staff, the Town Board will seek bids for this service.

Below are the Board's responses to the Recommendations contained in the Draft Report of Examination's Procurement Section. These responses will also serve as the Town's Corrective Action Plan.

1. The Board should use an RFP process to select professional services and ensure proper documents are maintained for future needs.

In soliciting professional services we applied General Municipal Law §104-b (2) (f). This section states in part that "...Town's procurement policy may contain circumstances when, or types of procurements for which, in the sole discretion of the Town, the solicitation of alternative proposals or quotations will not be in the Town's best interest." The policy goes on to state that in these circumstances the "...Town is not required to solicit quotations or document the basis for not accepting the lowest bid." These circumstances include professional services or services requiring special or technical skill, training, or expertise. This is the policy the Town followed in soliciting the auditing, engineering and IT services, as well as the alarm system services, as discussed extensively above.

See
Note 1
Page 20

The Town of Kent Planning Department retains the services of the engineering firm which they hire. New York State Town Law §271.2 specifically authorizes town planning boards to employ experts, which includes engineers as discussed in detail in the Procurement section of this response.

See
Note 10
Page 21

2. The Board should enter into written contracts that clearly stipulate the services to be performed and the compensation for those services for all current and future professional services.

The Town agrees that written agreements with professional service providers are necessary to supply a basis for payment. Comparisons of the invoices to the written agreement insures that all requirements are met before the voucher is approved and paid. The Town will continue to require that vendors include a high degree of specificity in vouchers.

The current Town Board has made significant improvements in this area as discussed above. There was only one written contract that expired. The Town is developing a written contract for IT services.

3. The Board should ensure that all necessary quotes are obtained as required by the Town's policy for items that are below the competitive bidding thresholds.

The Town agrees with the recommendation that quotes should be obtained as required by the Town's procurement policy. However, the Town would like to note that in some instances where quotes were not solicited, i.e., service for the bucket truck, fire alarm monitoring, concrete block at the highway and equipment rental, the particular vendor was used because it was a "sole source provider" of the specific product or service as detailed above.

The Town will continue to implement the recommendation going forward on a consistent basis in all instances except as described above.

4. The Board should implement the Town's policy and seek competitive bidding when required.

The Town agrees with the recommendation that the Town should implement its purchasing policy and seek competitive bidding when required. The Town has and continues to use

competitive bidding in appropriate circumstances. The Town would like to note that the only instance the audit report points to was for welding services which are highly specialized and are often solicited in emergency situations.

The Town will include welding services on its bid list in the beginning of next fiscal year.

Information Technology

Disaster Recovery Plan

There are currently controls in place to protect town data against damage, loss or destruction. Data is backed up on a daily, weekly, and monthly basis and retained in accordance with the MU-1. Backup data is then stored offsite in the event of a disaster in the building where the servers are located. Backup data has been tested for restorations capability and was successful on multiple occasions after accidental deletions by users. Currently, IT is working on a written Disaster Recovery Plan. Templates for the plan have been acquired and the Supervisor will work with IT to assist in the completion of the plan.

See
Note 11
Page 21

Software Installation and Internet Use

Below are the Board's responses to the Recommendations contained in the Draft Report of Examination's Information Technology Section. These responses will also serve as the Town's Corrective Action Plan.

The IT consultant should:

5. Ensure any third-party software installed on Town computers is necessary for business operations. All software deemed unnecessary should be removed.

All systems will be audited beginning 7/17/17 using programs called WINAUDIT and HISTORY VIEWER. During this audit, Local Administrator accounts will be renamed, software will be itemized and verified to be necessary for business operations. Any software deemed unnecessary, including pre-installed games, will be deleted or uninstalled at that time. Any remaining software as well as the Operating Systems will be brought up to the current update patch levels if they are not already at those levels.

6. Develop procedures and controls such as a filter that restricts software installation and access to websites.

Web History will be reviewed to determine compliance to current internet use policy. One system, that was found to be in serious violation of the internet use policy, has already been removed from the network (4/7/17) and replaced. The user of that system no longer works for the Town. These audits will continue on a regular unannounced basis until such time as a filtering solution is put in place. IT is currently looking into filtering solutions to recommend to the board for approval and implementation.

The Board should:

7. Adopt a comprehensive disaster recovery plan that details specific guidelines for the protection of equipment and private essential data against damage, loss or destruction.

There are controls in place to protect town data against damage, loss or destruction. Data is backed up on a daily, weekly, and monthly basis and retained in accordance with the MU-1. Backup data is then stored offsite in the event of a disaster in the building where the servers are

See
Note 11
Page 21

located. Backup data has been tested for ability to restore and was successful on multiple occasions after accidental deletions by users. Currently, IT is working on a written Disaster Recovery Plan. Templates for the plan have been acquired and after discussion the Supervisor will work with IT to assist in the completion of the plan. After the plan is finalized, it will be submitted to the Town Board for approval.

Sincerely,

Maureen Fleming

APPENDIX B

OSC COMMENTS ON THE TOWN'S RESPONSE

Note 1

As noted in the report, GML requires local governments to adopt procurement policies and procedures governing procurements that are not subject to bidding, such as professional services. The Town's policy sets forth criteria/guidelines the Board must take into consideration for the decision not to seek any competition for a professional service. We found no documentation indicating that the Board analyzed whether the services for which no competition was sought met the criteria/guidelines set forth in the Board's policy. We believe professional services generally should be awarded pursuant to an RFP, as a best practice. Using an RFP or quotation process is an effective way to ensure that the Town receives the most favorable terms and conditions when procuring professional services and provides residents with the greatest assurance that services are procured in the most prudent and economical manner without favoritism.

Note 2

The Town does not have a current written contract with its IT consultant. The last contract covered July 1, 2012 through July 30, 2014, and the Town has not renewed the contract or entered into a new contract since the prior contract's expiration. Therefore, there was no evidence of a new hourly rate.

Note 3

Our report did not question whether the planning board has the right to employ "experts." The Town's procurement policy applies to "all" goods and services not required by law to be publicly bid. Procurements of professional services by the Planning Board should not be treated differently than those made by the Board.

Note 4

We found no documentation indicating that the Board, at the time of the procurement, analyzed whether the audit services met the criteria/guidelines set forth for the exception. We believe it is a good business practice to periodically solicit competition for audit services.

Note 5

As stated in the report, the Manager informed us that the bucket truck may only be serviced and certified for insurance purposes by the manufacturer. However, this would not preclude the Town from soliciting quotes, in accordance with the policy, from authorized dealers which may be able to make the necessary certification as the manufacturer. In addition, Town officials did not provide evidence that quotes were solicited in the past.

Note 6

Our findings do not relate to bidding requirements, but rather to seeking competition for procurements, such as professional services, which are not subject to bidding. To the extent the Board believes that this procurement fell within the exception in its procurement policy, we found no documentation indicating that the Board analyzed whether the services met the criteria/guidelines set forth for the exception.

We believe professional services generally should be awarded based on a competitive process, as a best practice. Leases (rentals) are one of the exceptions to bidding that is required to be addressed in the Town's procurement policy. Although the Town's policy does not make specific reference to leases or rentals, it generally requires RFPs or quotations for all goods and services. Absent any exception in the policy for leases/rentals, we assumed leases/rentals were to be treated as public works contracts or purchases under the policy. If that is not the case, the Board should amend the policy to address competition for leases/rentals.

Note 7

We were not provided with any documentation supporting the Highway Superintendent's comment that there was no possibility of competition, including that there were no substantially equivalent products, that the product, in fact, was available from only one source or that only one vendor could supply the product.

Note 8

Although the Town's procurement policy does not make specific reference to leases or rentals, it generally requires issuing RFPs or obtaining quotes for all goods and services. Accordingly, in our view, quotes should have been obtained.

Note 9

There was no documentation supporting the work performed by the vendor was for an emergency situation.

Note 10

The Town's Planning Board is not exempt from GML requirements.

Note 11

The purpose of a disaster recovery plan is to provide procedures for recovery in the event of an actual loss. The Town does not have a formal, written plan.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

To achieve our audit objective and obtain valid evidence, we performed the following procedures:

- We interviewed Town officials to gain an understanding of the Town's policies and procedures used to procure goods and services.
- We reviewed the Board's procurement policy and documentation related to requests for proposals to determine whether the Town used competition when obtaining professional services.
- We reviewed documentation related to professional service providers to determine whether the Board entered into written contracts with them.
- We reviewed all bid documents and quotes to determine whether the Board procured goods and services utilizing a competitive method.
- We reviewed the Town's policy and procedure manuals to identify IT-related policies and evaluated those policies to gain an understanding of internal controls over IT.
- We interviewed the IT consultant and personnel to gain an understanding of internal controls over IT.
- We selected and examined seven computers by running audit software and examined specific activities on those computers, such as Internet history.

We conducted this performance audit in accordance with 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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