



# Town of Byron

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## Procurement

2024M-11 | May 2024

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# Report Highlights

## Town of Byron

### Audit Objective

Determine whether the Town of Byron (Town) officials complied with New York State General Municipal Law (GML) and Town policy when procuring goods and services.

### Key Findings

The Town Board (Board) and Town officials did not always comply with GML Section 103 and the Town's procurement policy. Had Town officials complied, they may have saved money by using a State fuel contract and may have paid less for other goods and services. The Board and Town officials:

- Procured fuel totaling \$59,795 without obtaining competitive bids as required by GML Section 103 and the Town's procurement policy. Furthermore, the Town paid approximately \$4,000 more than the State contract price for the more than 16,700 gallons purchased during our audit period.
- Did not obtain quotes or request proposals in accordance with the Town's procurement policy for 10 purchases totaling \$68,103.
- Did not use request for proposals (RFPs) or another competitive process to procure services from seven professional service providers totaling \$630,336.

### Key Recommendations

- Ensure goods and services are procured in compliance with competitive bidding statutes.
- Ensure quotes are obtained for purchases not subject to competitive bidding, as required by the Town's procurement policy.

Town officials agreed with our recommendations and indicated they were initiating corrective action.

### Audit Period

January 1, 2022 – October 23, 2023

### Background

The Town is located in Genesee County (County) and is governed by an elected five-member Board including the Town Supervisor (Supervisor). The Board is responsible for the general oversight of the Town's operations and finances. The Board also is responsible for adopting written procurement policies and procedures that describe its procurement goals and govern the acquisition of goods and services not required by law to be competitively bid.

The Supervisor serves as the Town's chief financial officer and is responsible for the Town's day-to-day financial activities, including maintaining accounting records and providing monthly financial reports to the Board.

Separately elected officials such as the Supervisor, Town Clerk and Highway Superintendent (Superintendent) independently procure goods and services for their respective offices, but must comply with the Board-adopted procurement policy requirements and GML Section 103.

#### Quick Facts

January 1, 2022 – August 11, 2023

Approximate Total Purchases	\$3.1 million
Purchases Reviewed	\$1.5 million

# Procurement

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## **How Should Town Officials Comply With General Municipal Law and the Town's Procurement Policy?**

Town officials must comply with New York State General Municipal Law (GML) Section 103 that generally requires towns to solicit competitive bids for purchase contracts that exceed \$20,000 and contracts for public work that exceed \$35,000. In determining whether the dollar threshold will be exceeded, a town must consider the aggregate amount reasonably expected to be spent on all purchases of the same commodities or services to be made within the 12-month period commencing on the date of the purchase, whether from a single vendor or multiple vendors.

In lieu of seeking competitive bids, a town is authorized to procure goods and services using certain county contracts and State contracts available through the New York State Office of General Services (OGS). These exceptions to competitive bidding requirements allow towns to benefit from the competitive process already undertaken by counties and the State. However, when procuring goods and services through other county or State contracts, officials are responsible for ensuring that the prices paid are in accordance with those contracts.

A town board (board) also must comply with GML Section 104-b, which requires the board to adopt written policies and procedures governing the procurement of goods and services that are not subject to statutory bid requirements, such as professional services. GML states that goods and services that are not required by law to be competitively bid must be procured in a manner to help ensure the prudent and economical use of public money in the best interests of the taxpayers.

Professional services involve specialized skill, training and expertise; use of professional judgment or discretion; and/or a high degree of creativity and can involve significant dollar expenditures. The procurement policy or procedures generally indicate that a proposal or quotation process be used for the procurement of goods and services, such as professional services. Implementing such policies and procedures helps ensure the prudent and economical use of public money and guard against favoritism, extravagance, waste, fraud and abuse. When conducting its audit of claims, the board should monitor and enforce compliance with GML and the established procurement policy and procedures.

The Town's procurement policy requires officials to obtain verbal and/or written quotes and issue requests for proposals (RFPs) when acquiring goods and services not subject to competitive bidding requirements. Specifically, the Town's procurement policy requires that:

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- Purchase contracts over \$10,000 and public works contracts over \$20,000 must be formally bid.<sup>1</sup>
  - Purchase contracts less than \$10,000 but greater than \$3,000 require issuing a written RFP or obtaining written quotes from three vendors.
  - Purchase contracts that are less than \$3,000, but greater than \$1,000 require an “oral request for the goods and oral/fax quotes from two vendors.”
  - Contracts for public work less than \$20,000, but greater than \$10,000 require issuing a written RFP and obtaining fax/proposals from three contractors.
  - Contracts for public work less than \$10,000 but greater than \$3,000 require issuing a written RFP and obtaining fax/proposals from two contractors.
  - Unless directed by the Board, no RFPs or competitive processes are required for procuring professional services.

### **Officials Did Not Always Comply with GML’s Competitive Bidding Requirements**

We reviewed eight purchase contracts totaling \$755,603 that were subject to competitive bidding requirements. Town officials properly used State and/or county contracts for six purchase contracts totaling \$651,993. However, they did not competitively bid fuel purchases totaling \$59,795 and may not have properly procured one contract for public work totaling \$43,815.

Fuel Purchases – The Town purchased over 12,700 gallons of diesel fuel and 4,000 gallons of unleaded fuel for a combined total cost of \$59,795 without advertising or obtaining competitive bids as required by GML Section 103 and the Town’s procurement policy. OGS has a fuel contract with two vendors in the area and the Town could have paid lower prices had it used the OGS contract. For example, on March 27, 2023, the Town purchased 357 gallons of unleaded gasoline and 1,573 gallons of diesel fuel for a total of \$6,354. However, had the Town used an OGS vendor contract, it would have paid a total of \$5,678 or \$676 less. We compared the price per gallon paid by the Town for all fuel purchases made during the period January 2022 through June 2023 and determined that, had the Town used an OGS contract vendor for fuel purchases, it could have paid \$55,839 and realized a cost savings of \$3,956.

The Supervisor told us he believed the vendor the Town used was under the State contract, and the Superintendent told us the vendor was part of the County contract. However, the vendor’s representative told us the company did not have a contract with the State or any counties. Because neither the Supervisor nor

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The Town purchased over 12,700 gallons of diesel fuel and 4,000 gallons of unleaded fuel for a combined total cost of \$59,795 without advertising or obtaining competitive bids. ...

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<sup>1</sup> The policy was more restrictive than GML; however, the Board and Supervisor were not aware of GML thresholds which require competitive bids.

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Superintendent verified whether there was a valid contract in place prior to buying fuel from the vendor, the Town paid almost \$4,000 more than necessary for fuel. To obtain the contract pricing offered through OGS, Town officials would need to submit the Town’s necessary fuel requirements for the upcoming contract period to OGS, prior to the awarding of such contracts, or reach an agreement with the OGS contract vendor.

Contract for Public Work – The Town reimbursed the Byron Fire Department (Department) \$43,815 for removal and reconstruction of a new pavilion at a park the Town leased from the Department. The lease agreement, dated January 31, 2023, stated that the Town, “shall remove and reconstruct the entire pavilion on the leased premises at the Town’s expense.” However, Town officials did not advertise for competitive bids or use a competitive process prior to awarding the contract to reconstruct the pavilion. Instead, the Department hired a vendor to construct the pavilion without first advertising or seeking formal bids for the project.

The Supervisor told us that the Town was not required to follow GML Section 103 for this project because the park is owned by the Department, and he believed that the Department had advertised for bids. However, the Town did not verify that the Department obtained competitive bids. After our discussion, the Supervisor contacted the Department, who provided him with two written quotes the Department had obtained. The Supervisor told us he consulted with the Town Attorney, who also drafted the lease, and was advised that it was proper to reimburse the Department for the expenditure.

Nonetheless, when a renovation is performed by a municipality on leased property, it may trigger the requirement for the municipality to comply with the competitive bidding requirements set forth in GML Section 103. Given that the Town, pursuant to the lease agreement, was responsible for reconstructing the entire pavilion, we question whether the Town should have sought competitive bids for the project prior to reimbursing the Department. Seeking competition for the project may have provided for a more transparent procurement process, which could help ensure the work was done in an economical and efficient manner, and a vendor was selected without favoritism.

## **Officials Did Not Always Comply With the Town’s Procurement Policy**

We reviewed 14 purchases,<sup>2</sup> totaling \$103,541, which were not subject to the competitive bidding statute, but were subject to the Town’s procurement policy. The Superintendent and Supervisor did not obtain quotes and/or use

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<sup>2</sup> Includes both purchase contracts and public works contracts.

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a competitive process as required by the Town's procurement policy for 10 purchases, totaling \$68,103. For example:

- The Town procured road paving services and paid a total of \$31,265<sup>3</sup> without obtaining quotes. The Superintendent told us the vendor had a County contract. However, the vendor was not on the County's list of contracted vendors and a vendor representative told us they did not submit a bid for State or county contracts. After further discussion, the Superintendent told us a number of other towns procure from the vendor with the same misunderstanding that the vendor was awarded a county contract. However, it is the Superintendent's responsibility to comply with the Board-adopted procurement policy, procure goods and services in a cost-effective manner, and confirm that vendors were selected using a fair and competitive process.
- The Town purchased a lawn mower for \$12,827 without obtaining competitive bids as required by the Town's procurement policy. The Superintendent told us this was the only vendor who had this brand of mower; however, he did not have any documentation to support the assertion or to demonstrate how this particular brand of mower met the Town's needs more than other available brands. Furthermore, we conducted an Internet search and determined that several vendors were selling the same brand of mower.
- The Town purchased an electric amplifier and wiring at one of the park's pavilions and bathrooms for \$3,350. The Supervisor told us that because he runs his own business, he knows which vendors provide the best value, and he used this vendor because they offered the best price. However, the purchase did not comply with the Town's procurement policy because officials did not issue RFPs or obtain two quotes. The Supervisor's assertion that this was the best price is not in compliance with the Town's procurement policy and does not provide sufficient evidence to support the prudent and economical use of taxpayer money.
- The Town purchased two 55-gallon drums of engine oil for \$1,752, or \$876 per drum. The Superintendent told us that the Town has always used the same vendor. The OGS contract price for the engine oil was \$9.98 per gallon, or approximately \$549 per drum as of March 10, 2022. Had the Town used the State contract, it would have paid a total of \$1,098, for potential savings of \$654.

Although the Board audited claims, it did not check for compliance with the Town's procurement policy during its claims audit process. As a result, the Superintendent and Supervisor were able to procure goods and services without

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<sup>3</sup> Totals represent the combined total of like purchases made during both the 2022 and 2023 fiscal years.

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seeking competition as required by the Town's procurement policy. When officials do not obtain quotes or use bids as required by policy or procure goods and services in a way that fosters competition, officials cannot demonstrate to taxpayers that purchases are being made in the most prudent and economical manner. There is also an increased risk that the Town may overpay for goods and services and that procurement decisions could be influenced by favoritism, fraud or corruption.

Professional Services – We reviewed purchases totaling \$648,196 made to all eight of the Town's professional service providers used during our audit period. Town officials obtained quotes to procure services from one vendor totaling \$17,860 and did not use RFPs or a competitive process to procure services from seven providers totaling \$630,336. For example, services included engineering services and project management (\$389,610), legal services (\$110,477), maintenance of sewer system (\$68,818) and accounting services (\$24,850). The Board entered into annual contracts with these vendors without using a competitive process. The Town has used the vendors for periods ranging from five years to over 40 years. The Supervisor told us that he was not sure why the Town's procurement policy did not require a competitive process prior to awarding professional service contracts. He further told us that Town officials used the same providers because they have developed relationships with the providers, and that officials use the same engineers for the water districts because they have knowledge of the Town's water districts.

Although the procurement policy does not require officials to use RFPs and the Supervisor indicated they were comfortable and satisfied in their long-standing relationships with their professional service providers, intermittently soliciting these services through RFPs can help provide assurance that quality services are obtained under the most favorable terms and conditions possible and without favoritism. Furthermore, using RFPs can increase Town officials' awareness of other service providers who could offer similar services at a more favorable cost.

## **What Do We Recommend?**

The Board should:

1. During the audit of claims, ensure goods and services were procured in compliance with competitive bidding statutes and the Town's procurement policy, and that officials retain supporting documentation when quotes are not obtained.
2. Ensure Town officials verify vendors have State or county contracts prior to making procurement decisions.



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3. Review the procurement policy to ensure the policy and competitive bidding thresholds align with the Board's goals and consider aligning the thresholds with GML Section 103, if appropriate.
  4. Update the procurement policy to require using a competitive process for procuring professional services.

The Superintendent and Supervisor should:

5. Verify purchases have been made through valid State or county contracts and that the vendors provided the correct pricing.
6. Obtain quotes for procurements when required by the Town's procurement policy.
7. Document and retain documentation when required quotes cannot be obtained as required by the Town's procurement policy.

# Appendix A: Response From Town Officials

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## TOWN OF BYRON

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Candace Hensel, Supervisor

David Leaton, Jr., Highway Superintendent  
Melissa Ierlan, Code/Zoning Enforcement Officer  
Louise Passarell, Assessor  
Edward Shenck, Town Justice  
Kristy Murphy, Town Clerk

Town Board  
Martin Dilcher  
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295 Main Street Suite 1032  
Buffalo, NY 14203

The Town of Byron's Response to the Office of the State Comptroller  
Draft Report of Examination – Procurement Report 2024M-11

#### Key Findings of the Draft Audit Report

- The Town Board and Town Officials did not always comply with General Municipal Law (GML) Section 103.
- The Town Board and Town Officials did not always comply with the Town's procurement policy.

#### Town Board of Byron Response to the Draft Audit Report Key Findings

- The Town Board and Town Officials will work together to educate ourselves about the policies and requirements of GML Section 103 to ensure compliance in the future.
- The Town Board and Town Officials will review the Town's written policies and procedures governing the procurement of goods and services that are not subject to statutory bid requirements. If necessary, the Town's written policies and procedures governing the procurement of goods and services that are not subject to statutory bid requirements will be adjusted to be in compliance with GML Section 104-b.

#### Recommendations from the Draft Audit Report

- The Draft Audit Report included four recommendations for the Board and three recommendations for the Superintendent and Supervisor.
- The Town Board, Superintendent and Supervisor, will collectively review the recommendations from the audit report. Response to those recommendations will be discussed at the Town's Board Meetings.

Sincerely,

Town Supervisor, Candace Hensel

Highway Superintendent, David Leaton, Jr.

## Appendix B: Audit Methodology and Standards

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We conducted this audit 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. We obtained an understanding of internal controls that we deemed significant within the context of the audit objective and assessed those controls. Information related to the scope of our work on internal controls, as well as work performed in our audit procedures to achieve the audit objective and obtain valid audit evidence, included the following:

- We interviewed Town officials and employees to gain an understanding of the Town's procurement process.
- We reviewed the Town's procurement policy to determine whether it was adequate.
- We reviewed Board meeting minutes to identify purchases made using bids or quotes.
- We obtained a list of all cash disbursements for the procurement of goods and services for the period January 1, 2022 through August 11, 2023, and sorted them by vendor name, number of and total payments, from largest to smallest. We excluded payments for items that would generally not be subject to competition, such as payroll-related expenditures, health insurance, utilities, debt service payments, association dues and travel reimbursements.
- Using our professional judgment, we selected 30 vendors who were paid a total of \$1.5 million. We selected our sample based on the total amounts the Town paid the vendors during our audit period and information obtained during audit survey work.
- We reviewed the selected purchases and all available supporting documentation such as purchase orders, claims packets and invoices to determine whether Town officials obtained quotes and/or used a competitive process to procure goods and services, and complied with the Town's procurement policy and statute, where applicable.
- We compared prices paid by the Town to OGS State contracts, when available, to determine whether the Town could have obtained lower prices had officials used these contracts.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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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.

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 provided 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 the CAP available for public review in the Town Clerk's office.

## Appendix C: Resources and Services

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### **Regional Office Directory**

[www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf](http://www.osc.ny.gov/files/local-government/pdf/regional-directory.pdf)

**Cost-Saving Ideas** – Resources, advice and assistance on cost-saving ideas

[www.osc.ny.gov/local-government/publications](http://www.osc.ny.gov/local-government/publications)

**Fiscal Stress Monitoring** – Resources for local government officials experiencing fiscal problems

[www.osc.ny.gov/local-government/fiscal-monitoring](http://www.osc.ny.gov/local-government/fiscal-monitoring)

**Local Government Management Guides** – Series of publications that include technical information and suggested practices for local government management

[www.osc.ny.gov/local-government/publications](http://www.osc.ny.gov/local-government/publications)

**Planning and Budgeting Guides** – Resources for developing multiyear financial, capital, strategic and other plans

[www.osc.ny.gov/local-government/resources/planning-resources](http://www.osc.ny.gov/local-government/resources/planning-resources)

**Protecting Sensitive Data and Other Local Government Assets** – A non-technical cybersecurity guide for local government leaders

[www.osc.ny.gov/files/local-government/publications/pdf/cyber-security-guide.pdf](http://www.osc.ny.gov/files/local-government/publications/pdf/cyber-security-guide.pdf)

**Required Reporting** – Information and resources for reports and forms that are filed with the Office of the State Comptroller

[www.osc.ny.gov/local-government/required-reporting](http://www.osc.ny.gov/local-government/required-reporting)

**Research Reports/Publications** – Reports on major policy issues facing local governments and State policy-makers

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[www.osc.ny.gov/local-government/academy](http://www.osc.ny.gov/local-government/academy)

## Contact

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