

Medina Central School District

Capital Projects

JANUARY 2020



OFFICE OF THE NEW YORK STATE COMPTROLLER
Thomas P. DiNapoli, State Comptroller

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Report Highlights

Medina Central School District

Audit Objective

Determine whether the Board and District officials properly managed the 2016 capital project (Project).

Key Findings

The Board and District officials could have improved their management of the Project. We found:

- District officials did not always obtain competitive pricing or obtain alternative proposals or quotations for Project purchases.
- The Board did not always approve change orders.
- Monthly financial reporting to the Board did not include an itemization of all Project costs.

Key Recommendations

- Solicit competition through bids when required, or request for proposals or quotes to provide assurance the District is receiving the lowest possible price.
- Properly approve change orders.
- Include all itemized Project costs in monthly financial reports to the Board.

District officials disagreed with the findings but agreed with the recommendations and indicated they would take corrective action. Appendix B includes our comments on issues raised in the District's response.

Background

The Medina Central School District (District) serves portions of the Towns of Alabama, Albion, Barre, Hartland, Ridgeway and Shelby in Genesee, Niagara and Orleans counties.

The seven-member Board of Education (Board) is responsible for managing and controlling the District's financial and educational affairs. The Superintendent of Schools (Superintendent) is responsible for the District's day-to-day management which includes oversight of the District's capital projects.

The Director of Finance (Director) reports to the Superintendent and is responsible for the District's financial operations. The District Treasurer (Treasurer), appointed by the Board, performs the District's day-to-day financial duties.

Quick Facts

2019-20 Budgeted Appropriations	\$40 million
Employees	400
2018-19 Enrollment	1,620

Audit Period

February 25, 2016 – June 11, 2019

Capital Projects

In December 2016, the voters approved two propositions for a District-wide capital improvement project (Project) which involved: 1) constructing, renovating and improving various buildings and sites and 2) acquiring 1.6 acres of real property for improvements. According to the propositions, the Project's total estimated cost was not to exceed approximately \$34 million. The District planned to use about \$2.3 million from two capital reserves and fund the remainder with long-term debt. A significant portion¹ of these costs would be eligible for State building aid.

After a request for proposals (RFP) process, the Board hired a construction management firm (Construction Manager) to oversee the Project. The Construction Manager reported directly to the Superintendent and was responsible for overseeing the Project's construction and providing monthly status reports to the Board and District officials. Phase I (athletic field improvements) of construction began in April 2017 and was completed in September 2017 with a total cost of \$2.3 million. Phase II² of construction started in July 2018 and is projected to end in February 2020. From February 2017 through February 2019, payments for both phases totaled almost \$13 million (38 percent of total project costs). As of May 2019, the executed and pending change orders totaled nearly \$1.6 million (12 percent of payments as of February 2019).

How Should the District Oversee and Manage Capital Projects?

Capital improvement projects are generally long-term projects that require large sums of money to acquire, develop and improve various facilities. The board is ultimately responsible for the oversight and management of the school district's capital projects. District officials should monitor progress and implement necessary changes to ensure the project is completed in a cost-effective manner.

In order to accomplish this, the board should have adequate purchasing and procurement policies and ensure procurements are made in compliance with established policies and applicable laws. Unless an exception applies, New York State General Municipal Law (GML)³ generally requires the board to competitively bid purchase contracts exceeding \$20,000 and public works contracts involving expenditures exceeding \$35,000. GML also stipulates that goods and services which are not required by law to be procured pursuant to competitive bidding, such as professional services, must be procured in a manner to ensure the prudent and economical use of public money, in the taxpayers' best interest, to facilitate the acquisition of goods and services of maximum quality at the lowest possible cost under the circumstances, and to guard against favoritism, improvidence, extravagance, fraud and abuse.

1 The District's 2018-19 building aid ratio is 0.871. The formula for building aid is aidable expenditures multiplied by the building aid ratio.

2 Construction and improvements to District facilities

3 New York State General Municipal Law (GML) Section 103

The District should also comply with its procurement policy which stipulates that to procure professional services and avoid the appearance of favoritism or impropriety, the District will use the RFP process as set forth in GML in order to protect the District's interests.

The board should receive accurate budget-to-actual financial reports so it can ensure funds are available for project expenditures and that those expenditures do not exceed authorized amounts. Any change orders should be properly approved and comply with New York State Education Department (SED) requirements.

Finally, to operate in a transparent manner, the board should comply with its policies when making financial decisions.

The District Did Not Comply With Its Procurement Policy When Procuring Professional Services

From February 2017 through February 2019, the District paid over \$3 million for the Project's professional services. Of that amount, nearly \$2.1 million went toward architectural services and \$886,000 for construction management services. The District did not comply with its procurement policy for these services.

Architectural Services – The District entered into an agreement with an architectural firm (Architect) to pay 8.75 percent of the Project cost on all elements of the Project designed or specified by the Architect and included the contractors' general condition costs, overhead and profit. The Project's estimated construction costs, as of February 15, 2019, totaled \$27 million⁴ resulting in estimated fees totaling nearly \$2.4 million.

District officials indicated that they have been using this Architect for many years and therefore, did not obtain an RFP when procuring this service. Because the Board did not solicit competition, it may have paid more than necessary for architectural services and there is less assurance that these services were acquired without favoritism. As a result, we were unable to calculate a savings based on what another architect would offer. However, for perspective, every half of a percentage point (0.5 percent) decrease in the percentage rate paid to the Architect, would have generated a savings of \$135,000 in fees.

Construction Management Services – The District entered into an agreement with the Construction Manager for nearly \$1.6 million to oversee the Project's construction. While the District issued an RFP and received two proposals,

⁴ This amount is different than the total referendum amount of \$34 million because construction costs do not include architectural, construction management, legal and other non-construction costs.

District officials did not comply with the procurement policy in documenting the reason why they selected this professional service proposal, which was the higher quote.

The proposal from one firm indicated a payment percentage estimate that ranged between 3.6 percent and 4.3 percent of the \$34 million voter-approved referendum amount, which is the total Project cost. This includes non-construction costs such as architectural services, legal services, engineering, furniture, equipment and construction management services. The other firm's proposal included a percentage payment of 3.3 percent on the total estimated construction costs (\$27 million) rather than the referendum amount (\$34 million).

As a result, there is a significant cost difference between the proposals. Based on preliminary construction estimates of \$27 million, the payment cost for the second firm could have been about \$900,000 or nearly \$700,000 less (\$1.6 million less \$900,000) had the Board selected this proposal.

The District ultimately approved the agreement with the first firm (Construction Manager) whose proposal indicated the payment range estimates of 3.6 to 4.3 percent. However, the approved agreement payment percentage is 4.6 percent of the total \$34 million and more than \$100,000 higher than any of the estimated percentages in this firm's proposal.

We spoke with a Board member who was a member of the construction committee when the decision was made. He indicated that the costs between the two proposals were very similar. He also indicated that the Board chose the firm with the higher proposal because it is owned by the Construction Manager's employees and the Board felt that they were less likely to take shortcuts with the Project. However, this rationale was not documented in the Board's meeting minutes.

On June 6, 2017, the Board approved the resolution to enter into an agreement with the Construction Manager, but the resolution did not provide the total cost of the contract awarded, the justification of how this firm was selected or a cost-benefit analysis to demonstrate the prudent use of public funds given the significant cost difference of nearly \$700,000 between the two proposals. While the Board is not required to award the contract to the lowest proposal, the District's policy requires officials to "document their selection process to demonstrate its economical and prudent use of public monies and to ensure fair competition." By not including this information in the resolution, the Board was not transparent to the public when making the decision to select this firm.

By not including this information in the resolution, the Board was not transparent to the public when making the decision to select this construction management firm whose cost was nearly \$700,000 more than the other proposal.

Change Orders Were Not Properly Approved and Officials May Not Have Followed SED Guidelines and Approval and Bidding Requirements

With any construction undertaking, changes or amendments are expected because a number of variables are unknown at the start of a project. A change order is an additional cost or credit that results from an alteration of the project's scope. According to SED guidelines, change orders which exceed the statutory⁵ bidding threshold of \$35,000 must include, on the change order certification, an explanation of why it is in the best interest of the school district and the public to award a change order instead of placing the work out for public bid.

On April 4, 2017, in its meeting minutes, the Board approved a resolution for the "Bid/Contracting Process of the 2017-2019 Capital Project." The minutes indicated that this resolution authorizes the Superintendent to sign all contracts and change orders not exceeding \$35,000 for this Project. As a result, the Board is required to approve all change orders that exceed \$35,000.

While the full Bid/Contracting Process document (Process document) was not included in, or otherwise described in the Board meeting minutes, this document also authorized the Superintendent to poll the Board members for their approval of change orders over \$35,000. It established that those change orders would then be addressed at the next regularly scheduled Board meeting for the Board's formal approval.

From February 2017 through February 2019, the District executed change orders totaling \$1 million in additional costs, of which \$446,000, or 30 percent more than the original contract, was paid to one contractor. There were also credits totaling \$400,000 for reductions in scope. We reviewed 11 of these change orders totaling about \$961,000. The Board did not approve four of them as required. Therefore, the public was not made aware of them. One change order totaling \$182,000 was properly approved by the Board. The remaining six change orders totaling \$189,000 were each substantially close to the \$35,000 statutory bidding limit, which would have required Board approval.

Dust Collector System – On May 8, 2018, the Board awarded the contract for a portion of the Project's mechanical work to a bidder who offered a base bid of \$2.6 million, which included \$117,000 related to a new dust collector system (system)⁶ in the high school's workshop classroom. However, the bidder's alternate bid, which was also submitted with the base bid for this mechanical work, allowed the District to reduce the \$2.6 million cost by \$117,000 if the District elected to forgo the system. After the bids were awarded, the District decided it was not necessary to spend this amount of money on one classroom and

5 Section 103

6 District officials indicate that a dust collector system removes sawdust from the high school's workshop.

eliminated the system from the Project. This action was evidenced by the change order request initiated on July 23, 2018 by the Construction Manager. While the Superintendent signed this change order, he did not include a date with his signature. On January 22, 2019, the Superintendent certified this change order on a report to SED.

While the Director told us the District had decided to forgo the system, there was no evidence of any Board approval, which was required. This resulted in a change order reduction of \$117,000 and a revised contractual amount of \$2.49 million with the bidder that the Board originally awarded the contract to. However, another bidder on the Project offered a base bid of \$2.61 million and an alternate bid of the dust collector reduction of \$186,000 for a total net bid of \$2.43 million for this same mechanical contract portion. Had this decision to eliminate the system been made approximately two months earlier, at the time the bids were awarded, the District may have saved nearly \$64,000 by accepting the other bidder, who would have become the lowest bidder if the alternate bid reductions had been accepted.

Insurance Liability – On May 15, 2018, the Board awarded the Project’s site-work contract to a contractor whose bid totaled approximately \$4.7 million. Ten days later, by email, the bidder contacted the Construction Manager and offered a \$25,000 credit on Project costs in exchange for reducing its excess liability – umbrella policy from \$10 million (as stated in the bidding specifications) to \$7 million. The contractor also offered an additional \$15,000 credit on Project costs to waive the Owner’s and Contractor’s Protective (OCP) liability policy. However, the District’s insurance agent (agent), in a June 6, 2018 email exchange which included the Construction Manager, Director and Superintendent, advised against this indicating there were risks. The agent indicated that the industry standard for a project of this size and scope has been \$10 million for many years. The agent further noted that a \$7 million policy may be adequate. However, the District does not know the loss amount until it happens and those credits may have been a poor decision in the event of a serious liability claim caused by the contractor’s negligence. In addition, the agent stated that an OCP policy is very important liability coverage and does not typically cost \$15,000. Moreover, there are events that could potentially go wrong with the additional insured status that would give the District access to the contractor’s liability coverage. He advised that the OCP policy will pay first in the event of a liability claim and keep claims away from both parties’ policies.

Contrary to the agent’s advice, later that same day in an email to the Director, the Superintendent approved the request for the \$40,000 change to reduce the contractor’s liability requirements. Even though the actual change order was not initiated until September 2018, which would have been more than sufficient time to address at a Board meeting, there was no indication that the Board approved this change order, as required. Furthermore, because the next lowest bidder was

within 0.54 percent of this bid, the adjustment to the original bid specifications may have affected what the other bidders would have bid and which one could have been the lowest bid.

Chiller⁷ – Although the Board’s approval was required, the Superintendent instead approved a change order resulting in a credit of \$192,000 for a contractor to install one chiller instead of two as originally planned. The contractor’s schedule of value showed that two chillers would cost about \$480,000. When asked why the District received a credit of \$48,000 less than half of the cost indicated in the schedule of value, the Construction Manager indicated that the discount of ordering one chiller instead of two is eliminated. He also indicated there are other fixed costs such as delivery and rigging the chiller that only reduce marginally when eliminating the other chiller. Also, he told us that the contractor still receives a profit even if part of the project is removed.

The contractor installed the piping for two chillers even though only one was installed because the District foresees purchasing a second chiller in the future as part of another capital project. The Construction Manager indicated that one chiller can handle the District’s current needs. However, when the District decides to provide air conditioning for the rest of the facilities (e.g., cafeterias) the second chiller will be necessary. The Construction Manager also told us it is generally recommended that there are two chillers in case one fails.

The Construction Manager indicated that the credit was fair. However, he was unable to provide us with a financial analysis to support this assertion. If the District orders the second chiller in the future, it will be paying fixed costs, such as delivery and rigging, and profit a second time. In addition, the District may not receive a discount off a single chiller like it might have, had the District purchased both chillers at the same time. Finally, the change order’s significant cost may have altered the comparison to other contractors who submitted a bid on this portion of the project.

Field Drainage – The District paid two contractors a total of \$423,000 for two change orders, one of which totaling \$240,000 was not approved by the Board in its meeting minutes. While the District provided us evidence that the Superintendent contacted Board members individually to obtain their approval regarding one of these change orders, which totaled \$240,000 to address drainage issues with the athletic field, the Board did not adopt a resolution approving it at the following Board meeting as required. As a result, the Board did not abide by its own Process document. Consequently this change order was not properly approved or made in a transparent manner.

⁷ A chiller is a piece of equipment used to assist with the District’s air conditioning system.

Additionally, even though these change orders totaled nearly \$423,000, the District did not obtain competitive bids or quotes for either alteration to the original Project to ensure the prudent and economical use of public money. Further, neither change order certification to SED included the required information. We note that one change order was discussed with SED in an email, but was not properly addressed on the certification form. Therefore, one change order may have been approved by SED without knowing it was not competitively bid. Furthermore, SED guidelines state that change orders that exceed competitive bidding thresholds may be approved for code compliance but disapproved for building aid.

The Superintendent told us that they did not obtain public bids because it would delay the Project and they wanted to make sure that the athletic field improvements were completed in time for the fall sports program. However, there was no documentation or analysis to support this statement in the Board's meeting minutes.

Just Below Bidding Limit – Additionally, while not appearing to be subject to Board approval, there were four more change orders totaling \$134,000 that were just below the \$35,000 bidding limit, ranging from within \$200 to \$4,300 below the \$35,000 limit. Also, there were two additional change orders for the same exact amount of \$27,043. One was for a chilled water pump and the other was for a hot water pump and both quotes were by the same contractor with the same change order initiation date. Because the total of both of these pumps was over \$54,000 and the installation and purchase of these pumps may be related, there is a risk that the District did not comply with competitive bidding requirements and the Board's approval process for change orders over \$35,000.

Purchasing and Procurement Policies Were Not Adequate

The District's purchasing policy indicates that the District is responsible for ensuring that the "acquisition of goods and services of the maximum quality are at the lowest possible cost" to ensure the "prudent and economical use of public moneys." The purchasing policy also indicates that procedures will be designed to "guard against favoritism, improvidence, extravagance, fraud and corruption." Also, the District's procurement policy indicates that additional procedures will be developed to prescribe a process for determining whether a procurement is subject to competitive bidding and if not, the documentation for that determination and provisions for the use of alternative proposals or quotations. However, in either case, the additional procedures were not developed and as a result, the District's purchasing and procurement (adopted in 2012, revised in 2017) policies (policies) were not adequate. The policies do not specify the dollar thresholds when written and/or verbal quotes are required when the purchases are not required to be competitively bid.

The District paid two contractors \$423,000 for two change orders without seeking any competitive bids or quotes for either alteration to the original project to ensure the prudent and economical use of public money.

From February 2017 through February 2019, there were 13 change orders that individually totaled between \$20,000 and \$35,000 and in aggregate totaled about \$363,000. The District did not obtain quotes on any of these change orders to provide assurance that the District was receiving the lowest possible cost. For example, the District paid a contractor \$34,822, or just under the statutory bidding threshold, for materials and labor to replace a pool heater at the middle school. The contractor provided the District with the quote on November 19, 2018, but the District did not initiate the change order for more than two months after, which would be sufficient time to obtain quotes from other contractors. Consequently, District officials could not demonstrate that they received the lowest cost because they did not solicit quotes from other contractors. Furthermore, had they made the replacement as a general repair instead of part of the capital project they may have saved \$3,000 in architectural fees.

Change Order Work Was Completed Prior to Obtaining SED Approval

SED advises school districts that while the SED Commissioner of Education must approve change orders, it is a best practice that a school district consult with SED prior to seeking approval for large change orders. Depending on the circumstances, certain change orders not approved by SED may consequently not be eligible for building aid. We reviewed 15 change orders, totaling about \$785,000, and identified 10 totaling about \$484,000, where the work was already completed (or substantially complete) prior to receiving approval from SED. On average, work for change orders was completed 35 days prior to receiving SED approval. For example, a contractor submitted two claims totaling nearly \$50,000 for change orders that were completed by October 25, 2017. The Architect and Construction Manager later certified that the work had been completed. However, the District did not file the change order in a timely manner and SED did not receive the request for approval until December 8, 2017, or 44 days after the work was completed.

The District Did Not Properly Monitor Budget-to-Actual Capital Project Expenditures

The Board and District officials did not properly monitor budget-to-actual expenditures to ensure the Project costs remained within budget. The Treasurer prepared a report to track construction payments with budgeted amounts. However, the report did not properly track nearly \$600,000 in incidental costs as of February 28, 2019. For example, playground equipment totaling more than \$200,000 was not included in this budget-to-actual report. The Treasurer indicated that she stopped tracking incidental costs and relied on the Construction Manager for this information instead. We reviewed the Construction Manager's monthly reports to the Board and found that while they included a total amount of these costs in their budget summary, they did not include itemized incidental costs.

If the District does not effectively monitor the Project's incidental costs, there is a risk that the Project could incur cost overruns and not comply with legal and SED requirements. The District's Phase 1 Project final cost report submitted to SED indicated that costs exceeded approved financing by nearly \$400,000 or about 20 percent of the \$1.87 million that was authorized.

What Do We Recommend?

The Board should:

1. Review and revise its purchasing and procurement policies to address dollar thresholds for when written and/or verbal quotes are required and when they are not, provisions for obtaining alternative proposals or quotations and then comply with these policies when change orders are necessary.
2. Approve change orders over \$35,000 in accordance with its Process document.

The Board and District officials should:

3. Solicit competition by obtaining RFPs for professional services, in compliance with its procurement policy.
4. Carefully evaluate change orders close to the competitive bidding limits to ensure they are not artificially split to avoid bidding.
5. Competitively bid change orders exceeding the statutory bidding limit.
6. Ensure change order certifications sent to SED contain all required information.
7. Consider following SED's best practice guidance and contact SED to discuss significant change orders prior to approving them.
8. Ensure the Treasurer provides accurate and complete budget-to-actual capital project status reports, including itemized incidental costs and then properly monitor the Project's financial progress.

Appendix A: Response From District Officials



MEDINA CENTRAL SCHOOL DISTRICT

BOARD OF EDUCATION

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Mark B. Kruzynski

Superintendent of Schools

November 18, 2019

Office of the State Comptroller
Division of Local Government & School Accountability
PSU - CAP Submission
110 State Street, 12th Floor
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To Whom it May Concern:

The Medina Central School District is in receipt of the audit report prepared by the Office of the State Comptroller on Capital Projects.

We strongly disagree with many of the conclusions drawn in this report. The Medina Central School District takes their role as stewards of the taxpayer dollar very seriously, and strives to continually monitor our capital project spending so that our students will have the best possible facilities. We also strongly object to the sensationalized text boxes throughout the report, which serve no purpose other to inflame the opinion of those reading it.

See
Note 1
Page 15

To respond to the various claims throughout the report:

- 1) *The District has not recently completed an RFP for Architectural Services.* We agree with this statement. While the district did complete an RFP in 2015 for the Building Condition Survey, there was not a complete architectural RFP completed. This will be addressed after the closeout of this current project.
- 2) *The District did not award the Construction Management Contract to the least expensive vendor.* We disagree that our only criteria for selecting a construction manager is cost. When we solicited RFPs for a construction manager, two firms responded. The RFP was for a one-phase capital project, with costs to be determined by the scope of work. The Buildings and Grounds Committee of the Board of Education interviewed both firms. The Superintendent of Schools called many of the schools where each company had completed their construction work. Ultimately, the Superintendent and the Board of Education felt that the Construction Manager who was hired would do the best work for the District.

See
Note 2
Page 15

Once the project began to take shape, it became apparent that the project would need to begin sooner than anticipated, and to be done in 2 phases. The first phase of construction would be to replace the artificial turf field, and the second phase of construction would be for building upgrades. The first phase of construct would be able to begin one year sooner than the second phase. This additional

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phase required additional oversight and staffing requirements from our construction manager, which increased the costs of the project. The audit report implies that there was a lack of transparency from the board of education on the selection. We agree that all of these details were not in the official board minutes, but the reasons for this selection, and the increase in cost were both well discussed at board meetings.

See
Note 3
Page 15

We contend that the auditors are drawing conclusions because the reasons for selection of one firm over another is not reflected in official board of education minutes. Our Board of Education has adopted Robert's Rules of Order for governance. Robert's Rules states that "in the meetings of ordinary societies and of boards of managers and trustees, there is no object in reporting the debates; the duty of the secretary, in such cases, is mainly to record what is 'done' by the assembly, and not what is said by the members." Source: Robert, H. M. (1979). *Robert's Rules of Order: Revised*. New York: Morrow Quill Paperbacks.

See
Note 4
Page 15

3) *Change Orders Were Not Properly Approved and Officials May Not Have Followed SED Guidelines and Approval and Bidding Requirements.*

The board received monthly reports from our construction manager. Additionally, our construction manager met routinely with the Buildings and Grounds Committee to review Capital Project processes. The report notes that one significant change order went to an original contractor. As explained several times to the auditors, when the replacement of our artificial turf field began, the contractors discovered that the prior field was not completed to previous specifications. To resolve drainage issues, digging and removal of a significant amount of rock under the field was required. The contractor on site submitted a quote to the construction manager to alleviate this problem. Our construction management firm, based on their years of experience, vetted that their quote to complete the work was acceptable and well within the normal price range they were seeing for all of the different construction projects. Additionally, to bid the project out would require shutting down the construction site for three weeks (at least), and that would jeopardize the completion of the field prior to the Fall 2017 sports season. Therefore, a judgement call was made, with full board support, as provided to the auditors in terms of email approvals. Additionally, this decision was communicated regularly through monthly reports at board meetings, albeit not stated in the minutes, as your report points out.

See
Note 5
Page 15

The audit report points out that there were six change orders under the \$35,000 statutory limit. That is true. They were all below \$35,000, which is the statutory limit for board approval. The district followed the law. The report also notes that the Superintendent signed the change order, but erroneously omitted the date. We object to this even being in the report as it appears to be ridiculously critical.

See
Note 6
Page 15

Your audit correctly notes that the district rejected an alternate bid for a dust collection system, saving the district \$117,000. This was done because at the time of alternate bid awards, the DEC mandated that a new water filtration system be installed to purify run-off from a new parking lot. Had we known about the DEC requiring this change before bid day, our strategy in accepting and rejecting alternates may have changed. However, the district made the best decisions possible with the information on hand, at the time of bid awards.

See
Note 7
Page 16

When the district took a credit for excess liability insurance, it was done with the advice of our construction management firm. While the District's insurance agent asked that the bidding specifications have a \$10,000,000 insurance policy, our construction manager informed us that industry standard liabilities for projects of our scope was \$5,000,000. Therefore, when the contractor offered to hold a \$7,000,000 liability policy and would issue a \$40,000 credit to the job, the District made a value judgement to accept this change. Additionally, it is important to note that there was not one man-day lost to injury on this project.

See
Note 8
Page 16

The audit report then continues to criticize the district for taking a \$192,000 credit for reducing the number of chillers at the high school from two to one chiller. One chiller is sufficient (and preferred) for the air conditioning needs of the High School. However, the report states that if the district chooses to provide air conditioning for areas not covered by the chiller in the future, there will be additional costs needed. Furthermore, the report criticizes the district for not having a backup chiller in place at the high school. The report only partially quotes the construction manager, who did say that it is generally recommended that there are two chillers in case one fails. However, the report omits the construction manager's very next sentence which states that "it depends on the facility's intended use." If we were constructing a hospital, there would be a backup chiller. However, this is a school that can survive without a second cooling tower. It is important to note that the other two schools in the district also only have one chiller.

See
Note 9
Page 16

The audit report again returns to the field drainage issue from the first phase of the project. As previously stated, our Construction Manager did a thorough analysis of the time and materials submission from the contractor, and the district made the decision to go ahead with the work. As explained before, the time and materials analysis showed that the work would be done at a reasonable rate. Additionally, it is important to note that if the district had put a halt to the project to let another contractor come on site to fix the draining work, the first contractor would have to come back outside of their planned time frame of work completion, which would have also added to the cost.

See
Note 10
Page 16

The audit report then proceeds to again list several change orders that are below the SED mandated bidding limit. Again, the District objects to perfectly legal change orders being cited in this audit as reasons for alleged poor oversight. There were two additional change orders that were the same price. One was a change order on a heating system, and the other was a change order for a cooling system in a different location. In both cases, the engineering firm that designed the plans made a drafting error calling for a wrong sized pump, and they discovered the error at the same time. The district maintains that because these were two separate systems, they each required a separate change order.

See
Note 11
Page 16

4) *Purchasing and Procurement Policies Were Not Adequate.* The audit suggests that instead of spending \$34,822 to replace a pool heater in the capital project, the district should have made the replacement as a general repair outside of the capital project, to save \$3,000 in architecture fees. While the district would have saved that money in fees, the district would also have lost out on any building aid (87.8% before enhancement) on this project.

5) *Change Order Work Was Completed Prior to Obtaining SED Approval.* Again, the comptroller's office is demonstrating their ignorance of industry wide standard practice for capital construction projects.

See
Note 12
Page 16

When a change order is completed on a Time and Materials basis, the change order can not be completed until the final dollar amount is known. We cannot obtain a complete change order on something where the final cost is unknown. However, we can obtain approval from Facilities Planning to begin the work.

- 6) *The District Did Not Properly Monitor Budget-to-Actual Capital Project Expenditures.* This is simply not true. We have provided several copies of the budget-to-actual expenditures on incidental spending to the auditors

See Note 13 Page 16

In terms of recommendations and an action plan, the district generally agrees with the recommendations.

- 1) We will review our policies for purchasing and procurement to be in accordance with OSC guidelines.
- 2) All change orders over \$35,000 (including credits) will receive formal board authorization.
- 3) We will have an RFP completed for professional services.
- 4) We will continue to evaluate change orders close to the statutory limit to continue to ensure nothing is artificially split.
- 5) We will continue to competitively bid change orders as required by law.
- 6) We will continue to make sure that all change order certifications have all required information, including making sure the superintendent dates every signature
- 7) We will continue to follow SED's best practice.
- 8) We will continue the process we have in place whereas the Treasurer provides accurate and complete budget reports.

The Board of Education and Administration remain steadfast in their commitment to providing quality facilities for our students in a cost effective and timely manner. While we wholeheartedly disagree with many of the conclusions of the comptroller, as well as the negative word choices used in their report, we appreciate the recommendations made by the State Comptroller's office. In closing, we would like to remind the comptroller of quote from the District's municipal financial advisor from a company that advises municipalities throughout New York State on their construction project management: "If all Districts ran their capital projects as cleanly as Medina did theirs, our job would be easy."

Sincerely,

Mark Kruzynski
Superintendent

Arlene Pawlaczyk
Board of Education President

Appendix B: OSC Comments on the District's Response

Note 1

We use text boxes to help with report readability and highlight areas that had a significant financial impact on the District.

Note 2

The criteria used for our audit was the District's procurement policy which requires officials to "adequately document its selection process to demonstrate its economical and prudent use of public monies and to ensure fair competition" when procuring a professional service. The March 29, 2016 minutes indicate what construction manager was awarded the contract, but it did not state the Board's rationale for why it selected the contractor with the higher proposal.

Because this was not in the Board minutes, we asked District officials if they had any other documentation such as committee meeting minutes or notes of interviews to determine how the contractor was selected. Since they were unable to produce anything, they referred us to a Board member who was on the construction committee. He explained the selection process and confirmed that there was no documentation to demonstrate that process.

Note 3

During our audit, discussions with the Board member, Superintendent and Director show that they were unaware of the significant financial differences between the two proposals. In fact, the Superintendent indicated that he thought the District chose the lowest proposal.

Note 4

Our audit objective was to determine whether the Board and District officials properly managed the Project. One aspect of that was to assess whether they complied with the District's procurement policy.

Note 5

If a change order is over \$35,000, SED requires detailed information on the change order with an explanation as to why it is in the best interest of the District and the public to award the change order without soliciting bids. Since the District did not provide any explanation or detail as required, the concern is that the cost may be disallowed by SED and may not be eligible for building aid.

Note 6

Although the District obtained approval from the Board, the Board and District officials did not follow their Process document which requires them to approve the action taken at the next Board meeting. As such, the Board action was not made in a transparent manner.

Note 7

We included the six change orders just under the \$35,000 limit because there is a risk that they could have been artificially split to avoid bidding requirements.

Note 8

The District entered into an agreement with the Construction Manager during March 2017. The District received bids from contractors for site-work during May 2018 (or more than a year later). To obtain the best price and encourage competition, the District should have made this decision before finalizing the specifications or included alternate insurance coverages in its bid specifications.

Note 9

Our report does not criticize the District for not having a backup chiller. Our concern is that the Construction Manager and District did not have documentation to show how the credit was calculated. Furthermore, the Construction Manager indicated that piping for a second chiller was installed because they foresee the District installing a second chiller in the future. Had both chillers been installed at the same time, the District may have avoided unnecessary additional costs when that second chiller is installed.

Note 10

Please refer to Note 5.

Note 11

Since the change orders are by the same contractor for the same amount for work in the same District building, there was a risk that the change orders may have been split to avoid bidding requirements.

Note 12

District officials could not provide documentation that they had contacted SED before approving any of these change orders. One change order that the District awarded was significantly larger (\$241,154) than the remaining nine. However, because the final dollar amount of a change order may not always be known before the work is completed, District officials should consider following SED's best practice to contact them before awarding.

Note 13

The Construction Manager provides the District with monthly reports that are shared with the Board. We reviewed three of those monthly reports and they did not include budget-to-actual detail for incidental expenses.

Appendix C: Audit Methodology and Standards

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. To achieve the audit objective⁸ and obtain valid audit evidence, our audit procedures included the following:

- We interviewed District officials⁹ and reviewed Board meeting minutes, correspondence, relevant laws, District bylaws, architectural drawings, District policies and SED guidance to gain an understanding of the District's capital project management operations.
- We reviewed the District's purchasing and procurement policies and procedures to assess whether they were adequate and complied with statutory requirements.
- We reviewed check images and bank statements and summarized all capital project fund expenditures from February 2017 through February 2019 and compared it with the District's Project records to assess whether all activity was properly recorded.
- We examined available bid documentation to assess whether the Project was procured in accordance with the District's policies and applicable statutes.
- We examined construction contracts, claims and change orders for adequacy and evidence of proper methods of approvals.
- We reviewed financial information the Treasurer and Construction Manager provided monthly to the Board to assess whether the Board had adequate information to properly monitor Project activity.
- We reviewed Board resolutions, Project propositions and other Project-related documents presented at the public forum to assess whether it was sufficiently detailed for the voters to properly evaluate prior to voting.
- We compared final Phase 1 Project cost reports with the maximum Project amount authorized by voters to assess whether the budgets were maintained.

We conducted this performance audit in accordance with GAGAS (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.

⁸ We also issued separate audit reports, *Medina Central School District – Reserve Funds* (2019-165) and *Medina Central School District – Tax Collection* (2019-151).

⁹ Superintendent, Board member, Director, Treasurer and District Clerk. We also interviewed representatives from the construction management firm.

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 must be prepared and provided to our office within 90 days, pursuant to Section 35 of General Municipal Law, Section 2116-1(3)(c) of New York State Education Law and Section 170.12 of the Regulations of the Commissioner of Education. To the extent practicable, implementation of the CAP must begin by the end of the next fiscal year. 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. The CAP should be posted to the District's website for public review.

Appendix D: Resources and Services

Regional Office Directory

www.osc.state.ny.us/localgov/regional_directory.pdf

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

www.osc.state.ny.us/localgov/costsavings/index.htm

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

www.osc.state.ny.us/localgov/fiscalmonitoring/index.htm

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

www.osc.state.ny.us/localgov/pubs/listacctg.htm#lgmg

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

www.osc.state.ny.us/localgov/planbudget/index.htm

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

www.osc.state.ny.us/localgov/pubs/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.state.ny.us/localgov/finreporting/index.htm

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

www.osc.state.ny.us/localgov/researchpubs/index.htm

Training – Resources for local government officials on in-person and online training opportunities on a wide range of topics

www.osc.state.ny.us/localgov/academy/index.htm

Contact

Office of the New York State Comptroller
Division of Local Government and School Accountability
110 State Street, 12th Floor, Albany, New York 12236

Tel: (518) 474-4037 • Fax: (518) 486-6479 • Email: localgov@osc.ny.gov

www.osc.state.ny.us/localgov/index.htm

Local Government and School Accountability Help Line: (866) 321-8503

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