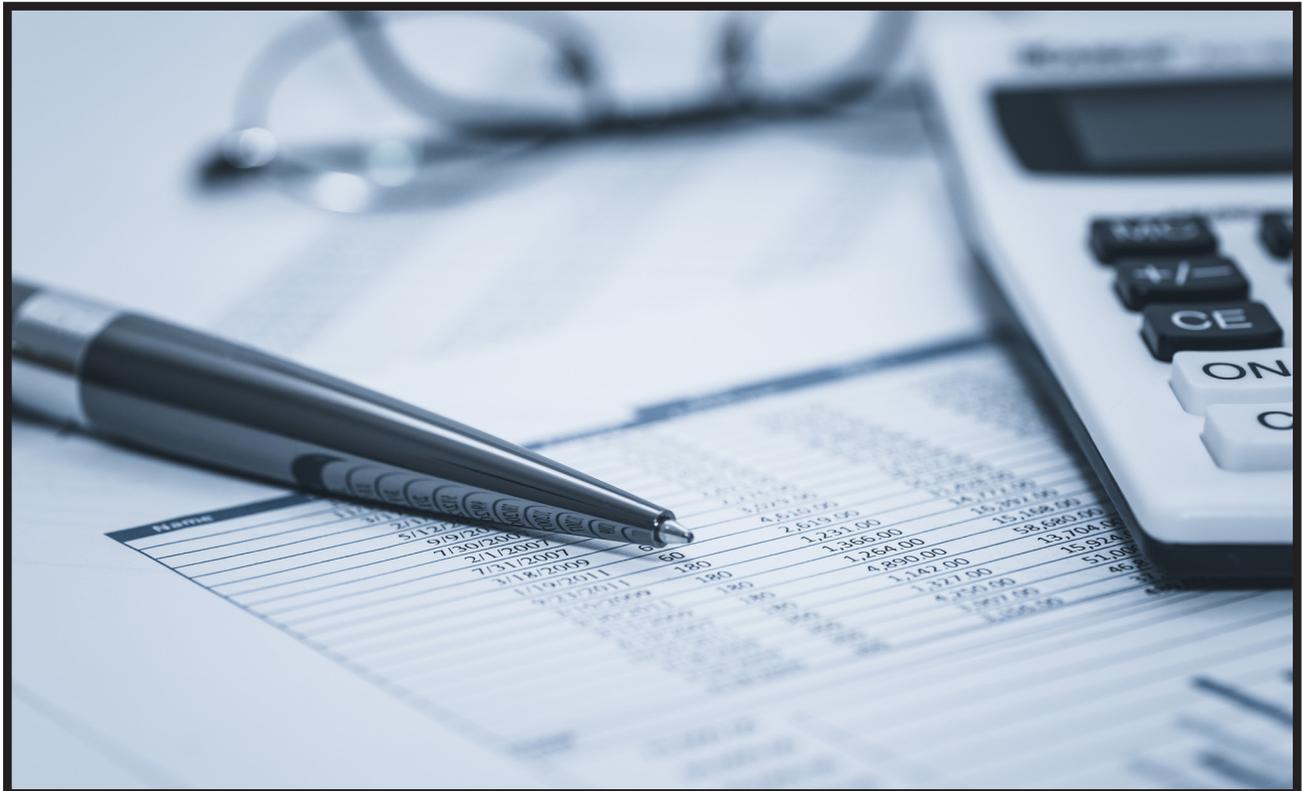




Office of the NEW YORK STATE  
**COMPTROLLER**

# Professional Service Procurement: Considerations for Local Officials



New York State Comptroller  
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# Introduction

Local governments and school districts are subject to a number of laws governing the procurement of goods and services. These laws help to ensure that local officials seek multiple competitive bids to lower costs, award contracts fairly and, ultimately, obtain quality goods and services at the lowest possible cost.<sup>1</sup> Seeking competition also guards against favoritism, extravagance, fraud and corruption, while allowing interested vendors a fair and equal opportunity to compete.

However, there is a well-established exception to these competitive bidding requirements with respect to the procurement of professional services, such as those rendered by attorneys, engineers or accountants.<sup>2</sup> The primary rationale for the exception is that such services are not the type of “public work” that properly may be the subject of competition based solely on compliance with the objective, uniform standards of a bid specification, pursuant to a contract awarded to the lowest responsible bidder. Generally, these services involve specialized skill, training and expertise, and use of professional judgment or discretion. In many cases, cost is only one element that a responsible local official would want to consider when awarding a professional service contract. The financial consequences of the advice given by the professional in question, such as choosing the most appropriate size for a drinking water system or evaluating school transportation needs, can be much larger than the direct cost of hiring the professional.

The New York State General Municipal Law (GML) requires local governments and school districts to adopt written policies and procedures for the procurement of all goods and services that are not subject to competitive bidding requirements, including professional services. The Office of the State Comptroller (OSC) recommends that these policies include some type of competitive method, such as a request for proposals or quotations process, in order to obtain these services on the most favorable terms and conditions.

This report focuses on the procurement of professional services by local governments and school districts outside of New York City. The report discusses some categories of professional services that local governments and school districts often procure, the costs associated with these services, and recent audit findings by OSC about local procurement policies and their implementation. The report also highlights best practices that local governments and school districts can follow that may reduce costs.

**Professional Service Procurement by the Numbers**

- **\$133.6 million** spent by local governments for audit, legal and engineering services in 2016.
- **\$67.3 million** spent on legal services and
- **\$26.1 million** on audit services by school districts in 2017.
- **700+** professional service contracts examined through
- **60** OSC audits released since 2016 found
- **\$34.6 million** in professional service contracts procured without seeking competition.

# Types of Professional Services

Figure 1 contains examples of various professional services typically procured by local governments and school districts in New York State. This table is not a comprehensive list. The services shown are from prior OSC audits that addressed professional service procurements statewide and demonstrate the wide array of services that local governments may need to procure.<sup>3</sup>

As shown in the table, some services are used more frequently by certain types of local government than by others. For example, many types of local governments contract with certified public accountants, while school districts and counties are the most typical users of special educational services providers.

Figure 1		
Common Types of Professional Services Procured by Local Governments and School Districts		
Professional Service	Examples of Tasks Performed	Class of Government
Accountant	Bookkeeping services	Various
Ambulance Services	Emergency medical and transportation services	Town (sometimes City and Village)
Architect	Prepare designs and specifications for infrastructure	Various
Attorney	Review contracts; consult on zoning, property, social, criminal, ethical, public officer and open meeting issues	Various
Certified Public Accountant	Independent audit services, prepare required financial and statutory reports	Various
Computer Programmer	Develop customized computer software	Various
Engineer	Prepare designs, maps, plans, reports and cost estimates; oversee construction	Various
Financial Advisor	Guide and assist with debt issuance, bond documents and credit ratings, and the selection and coordination of financing resources	Various
Fire Protection	Fire fighting and emergency medical services	Town (sometimes City, Fire District or Village)
Insurance Broker	Analyze the needs and purchase of adequate insurance coverage	Various
Management Services	Manage municipally owned infrastructure, such as a stadium, water system, golf course, museum or landfill	Various
Nurse	Provide health services to children (schools), general public (county)	School District, County
Physician	Provide health department services, consult with municipal-owned nursing homes; perform physical examinations	County, School District, Fire District
Special Education Services	Evaluate and provide services for students with special needs	County (pre-kindergarten), School District (all other grade levels)

Source: OSC.

# Cost of Selected Professional Services

The following section uses annual financial data reported by local governments and school districts to examine statewide spending on a few selected types of professional service. All classes of local governments report contractual spending on audit and legal services, and local governments other than schools separately report the same for engineering.<sup>4</sup>

## Local Governments

For the local fiscal years ending (FYE) in 2016, 1,384 cities, counties, towns and villages reported contractual spending on one or more of the three services mentioned above. In total, these services cost those local governments \$133.6 million. (See Figure 2.) Cities and counties spent more than towns and villages on these services, on average.

**Figure 2**

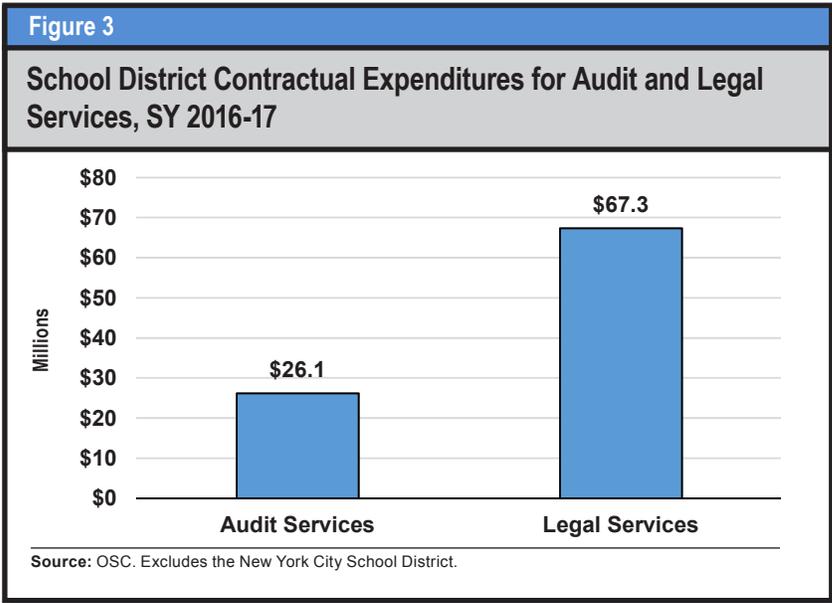
**Local Government Contractual Expenditures for Selected Professional Service Categories, FYE 2016**

	Local Governments Reporting an Expense	Contractual Expenditures
Audit	661	\$12,724,036
Legal	1,321	\$103,353,854
Engineering	554	\$17,506,286
<b>Total</b>		<b>\$133,584,176</b>

Source: OSC. Includes cities, counties, towns and villages. Excludes New York City.

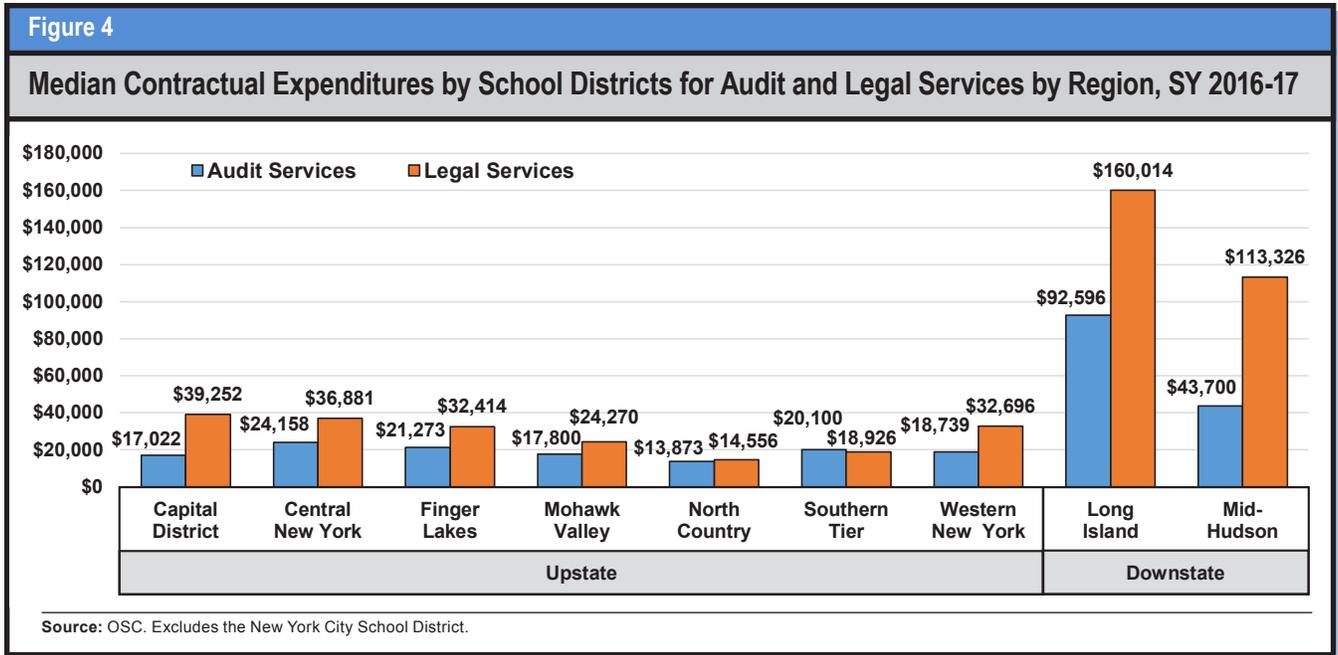
## School Districts

School districts reported \$26.1 million in contractual expenditures on audit services and \$67.3 million in contractual expenditures on legal services in school year (SY) 2016-17. (See Figure 3.) The median district spent \$24,200 on audit services and \$47,140 on legal services.<sup>5</sup> (Schools report their engineering expenditures together with a variety of other expenses related to capital projects, and therefore that category is not included in the charts in this section.)

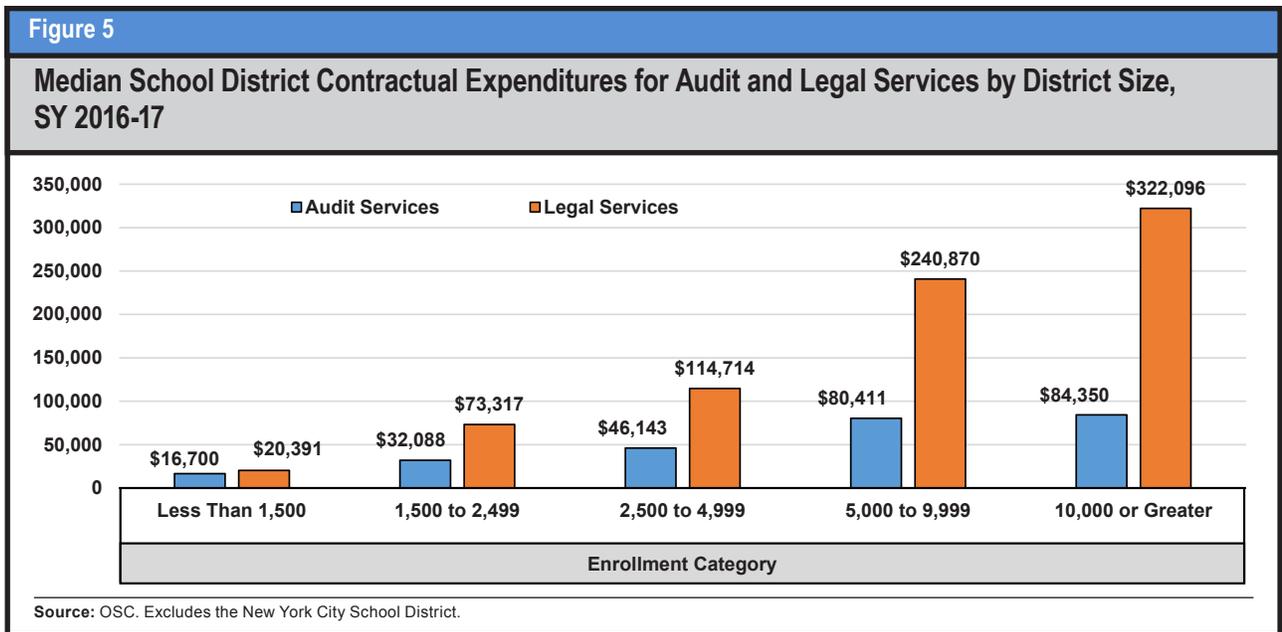


The cost of auditing and legal services varied by region, costing significantly more downstate, especially on Long Island, where the median contractual expense for auditors was nearly \$93,000 and the median cost for legal services was over \$160,000.

It is not possible to tell from the data how much of the regional differential is due to higher costs and how much is due to other factors. (See Figure 4.)



The cost of audit and legal services also varied according to the size of the school district, with larger schools generally spending more on both services compared to smaller ones. (See Figure 5.) Downstate school districts are, on average, larger than upstate school districts.



# Requirements for Local Governments

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As mentioned previously, the procurement of professional services is a well-established exception to competitive bidding requirements.<sup>6</sup> However, local officials still have important responsibilities when procuring professional services.

The GML requires local governments and school districts to adopt written policies and procedures governing the purchase of goods and services when competitive bidding is not required (such as for professional services).<sup>7</sup> In general, the GML requires that the procurement policy provide that alternative proposals or quotations be obtained by use of verbal or written quotations, written requests for proposals (RFPs), or any other method that furthers the purpose of the law. The procurement policy, however, may set forth circumstances when or types of procurement for which, at the sole discretion of the governing body, the solicitation of alternative proposals or quotations will not be in the best interest of the local government or school district. These exceptions should be limited and set forth only when properly justified in the public interest.<sup>8</sup>

- **Verbal or written quotations:** The formality of this process may depend upon the anticipated cost of a service. For example, a local government could require two verbal quotes for professional service contracts under a certain cost threshold, and three written quotes for services over that amount.
- **Request for proposals:** Local governments and school districts often employ the RFP process in seeking bids for professional services, where cost is not necessarily the only deciding factor in selecting the appropriate provider. An RFP generally provides detailed information concerning the type of service to be provided, including minimum requirements and, where applicable, the evaluation criteria that will govern the contract award. These criteria can include any number of required or preferred qualities, including special knowledge or expertise, staff availability and estimated completion times.<sup>9</sup>

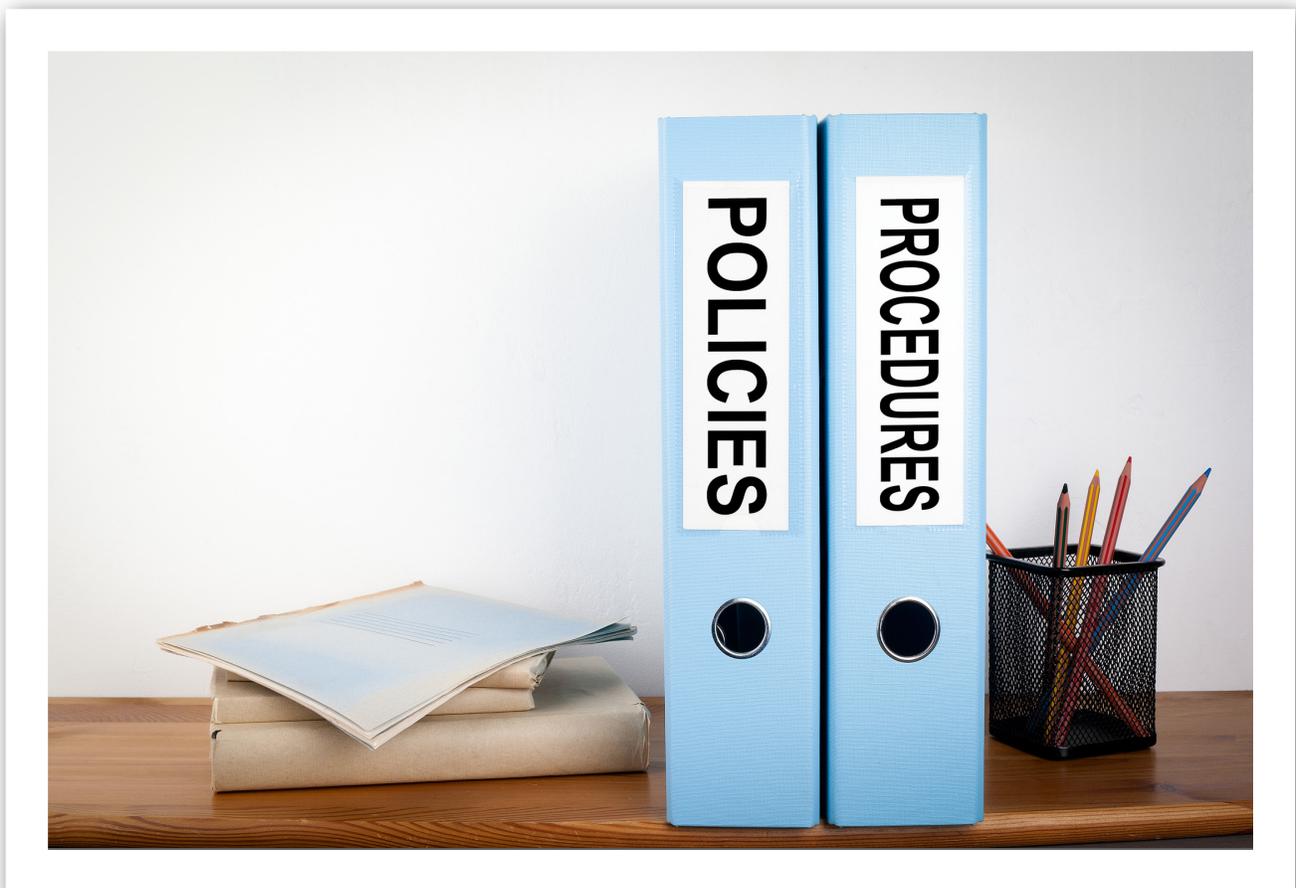
The design, issuance and evaluation of responses to an RFP can be a time-consuming process. If a local government uses an RFP process to choose a professional service provider for an ongoing or regular business need, such as to conduct an annual external audit or to provide legal services, a key question may be how frequently to repeat the RFP process. Generally, there is no set rule regarding the frequency of RFPs, except for the procurement of external audit services for fire and school districts (which must be done at least every five years).<sup>10</sup> However, local government or school district procurement policies and procedures should set periodic solicitations at reasonable intervals.

- **Exceptions:** A local government or school district may determine that seeking competition would not be in its best interest under certain circumstances. One example might be an emergency, when time is such a crucial factor that even quotations or proposals cannot be sought. The policies and procedures should specifically define these exceptions and ensure that they are properly justified in the public interest.

The GML requires governing boards to review their procurement policies annually.<sup>11</sup> Solicitation of comments from officers involved in the procurement process should also be requested during this review time. This usually occurs at the annual reorganization meeting of the local government or school district.<sup>12</sup>

Procurement policies must also identify the individual(s) responsible for procuring services exempt from competitive bidding requirements, along with their titles. The governing board is required to update this information biennially.<sup>13</sup>

Finally, procurement policies and procedures must provide for adequate documentation of actions taken.<sup>14</sup> Documentation can vary depending on the method used and can include memoranda, written quotation forms, telephone logs (for verbal quotes), RFPs and copies of federal, State, county or other government contracts for which “piggybacking” is permitted.<sup>15</sup> This documentation must include any justification for awarding a contract to a professional service provider other than the one with the lowest dollar offer.<sup>16</sup>



# Best Practices

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Although the GML does not require competitive bids for procurement of professional services, OSC recommends that local governments and school districts include specific guidelines in their procurement policies and procedures to help ensure competition. OSC offers a local government management guide that includes a sample policy to help guide local governments and school districts in developing or updating their procurement policies and procedures.<sup>17</sup> However, local officials should carefully consider what procedures are appropriate for their operations and design policies and procedures specifically to benefit the locality and its taxpayers.

## Other best practices include:

- *Put agreements with service providers in writing.* It is a prudent business practice to have a written contract for professional services, to provide both parties with a clear understanding of the services to be provided and the compensation for those services.
- *Monitor services and payments.* Local officials should monitor contracts to help ensure payments do not exceed the maximum agreed-upon compensation. Overpayments may result in waste or expensive efforts to recover the funds. Monitoring the amount paid can help prevent overpayments from occurring.
- *Compare paying by the hour to flat rate payments.* Local governments and school districts should investigate which approach would provide the desired level of service for the best price. In both cases, local officials should monitor performance of the tasks to help ensure that they are getting the services for which they are paying.
- *Add standards for procurement activities to the code of ethics.* Local governments and school districts, generally, are required to have codes of ethics that set forth standards of conduct reasonably expected of their officers and employees. It is important that local officials maintain high ethical standards of conduct to avoid situations where there is even the appearance of impropriety.<sup>18</sup> Including standards for procurement activities in the code gives public officials a clear understanding of what business practices are permissible.

# Audit Findings

OSC often audits local governments and school districts with respect to their procurement of professional services. Such audits typically address the procurement policy, both to assess whether it follows the requirements laid out in the GML and whether it contains any requirements for local officials to seek competition for professional service contracts. They also examine recent professional service contracts awarded in order to assess if local officials followed their policies and procedures, and if they sought competition in doing so.

This report reviewed 60 recent audits of professional service procurement.<sup>19</sup> Fifty-one of the local governments and school districts audited (85 percent) had procurement policies that addressed the purchase of goods and services that are exempt from competitive bidding requirements. However, only 17 policies generally required local officials to seek some sort of competition when acquiring professional services.

Of the 60 audits reviewed, 52 examined 720 professional service agreements, totaling \$73.8 million. OSC found that 502 (about 70 percent) of these contracts had been awarded without some type of a competitive process. The total amount awarded non-competitively was \$34.6 million (or 47 percent of the total value of the contracts audited), with an average cost of almost \$69,000 per contract. (See Figure 6.)

Some audits categorized the professional service contracts procured without competition into categories, such as financial/accounting, legal and a broad category of “educational consulting.” Including services that ranged from special education to professional development, the 89 contracts in the educational consulting category added up to \$5.1 million in total.<sup>20</sup> The 56 legal services agreements carried an average cost of more than \$118,000 per contract and totaled \$6.6 million. In comparison, the average cost of the information technology contracts awarded with no competitive process was \$283,000.

Figure 6			
Number and Value of Professional Service Contracts Compiled from Recent OSC Audits			
Contracts Awarded with No Competitive Process			
Categories of Professional Service	Number of Contracts	Total Amount Spent	Average Amount Per Contract
Information Technology	16	\$4,526,482	\$282,905
Insurance	32	\$3,758,843	\$117,464
Medical Services	36	\$1,815,691	\$50,436
Financial/Auditing	43	\$2,428,036	\$56,466
Engineering/Architectural Services	45	\$4,469,157	\$99,315
Legal	56	\$6,627,782	\$118,353
Educational Consulting	89	\$5,060,897	\$56,864
Other/Not Classified	185	\$5,865,122	\$31,703
<b>Total</b>	<b>502</b>	<b>\$34,552,010</b>	<b>\$68,829</b>
<b>Total Contracts Audited</b>	<b>720</b>	<b>\$73,753,523</b>	<b>\$102,435</b>
<b>Percent Awarded Without Seeking Some Form of Competition</b>	<b>70%</b>	<b>47%</b>	

Source: OSC audits released from January 2016 through June 2018.

## Conclusion and Recommendations

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Although competitive bidding is not required under the GML for the procurement of professional services, local officials should strive to procure professional services in the most prudent and economical manner possible. Board members should review their municipality's or school district's procurement policies and procedures to help ensure that they cover purchases of professional services, including specifying what type of competitive process is to be used in each circumstance. When the procurement policy allows for exclusions from seeking competition in certain circumstances (such as in an emergency situation), local officials should still document the reasoning behind such a decision. Any professional service contracts should be in writing in order to provide both parties with a clear understanding of the services expected and the basis for compensation, and local officials should monitor those contracts on a regular basis.

OSC has many resources to help local officials in developing clear policies, including a local government management guide, a sample procurement policy and frequent training sessions. (See the Academy for Local Officials for updated information on training opportunities: <http://www.osc.state.ny.us/localgov/academy/index.htm>.) For one-on-one support with technical questions, local officials can contact one of OSC's seven regional offices or the Local Government and School Accountability help line. In addition, OSC provides legal assistance through its Legal Division. (See the Contacts page at the end of this report for phone numbers and email addresses.)

# Endnotes

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- <sup>1</sup> This report is intended to provide a general overview of the procurement of professional services by local governments and school districts in New York State. It is not intended as a technical summary of the statutes relating to procurement.
- <sup>2</sup> See OSC, Division of Legal Services Publication, “Competitive Bidding Under General Municipal Law, §103,” March 2010, accessible at: [www.osc.state.ny.us/localgov/legaltopics](http://www.osc.state.ny.us/localgov/legaltopics).
- <sup>3</sup> OSC, Division of Legal Services Publication, “Competitive Bidding Under General Municipal Law, §103: A research paper discussing the legal requirements in connection with competitive bidding for procurements,” March 2010, accessible at: [www.osc.state.ny.us/localgov/legaltopics](http://www.osc.state.ny.us/localgov/legaltopics).
- <sup>4</sup> Local governments and school districts report to OSC slightly differently. For local governments, contractual expenditures include contracts for professional services, but also materials and supplies such as paper, software and subscriptions to publications. School districts report materials and supplies separately. This makes it easier to examine school professional service procurement data at a greater level of granularity. For more information, see OSC, *Required Reporting*, accessible at: [www.osc.state.ny.us/localgov/finreporting](http://www.osc.state.ny.us/localgov/finreporting).
- <sup>5</sup> Excluding the New York City School District and special act school districts.
- <sup>6</sup> Additionally, insurance coverage (e.g., health, fire, liability and workers’ compensation) is not subject to competitive bidding requirements. For more information on insurance procurement, see the OSC audit of *Town of Hartford: Procurement* (2017M-149), accessible at: [www.osc.state.ny.us/localgov/audits/towns/2018/new-hartford.pdf](http://www.osc.state.ny.us/localgov/audits/towns/2018/new-hartford.pdf); and the audit of *Erie 2-Chautauqua-Cattaraugus Board of Cooperative Educational Services: Adult Education Program and Professional Services* (2016M-206), accessible at: [www.osc.state.ny.us/localgov/audits/schools/2016/erie2chautcattbooces.pdf](http://www.osc.state.ny.us/localgov/audits/schools/2016/erie2chautcattbooces.pdf).
- <sup>7</sup> GML Section 104-b. Generally, local governments and school districts are required to advertise for competitive bids when procurements exceed certain dollar thresholds. Purchase contracts involving expenditures in excess of \$20,000 and contracts for public work involving expenditures in excess of \$35,000 are generally subject to competitive bidding under the law.
- <sup>8</sup> GML Section 104-b(2)(b). OSC, *Local Government Management Guide: Seeking Competition in Procurement, Professional Services*, pp. 17-18, accessible at: [www.osc.state.ny.us/localgov/pubs/lgmg/seekingcompetition.pdf](http://www.osc.state.ny.us/localgov/pubs/lgmg/seekingcompetition.pdf).
- <sup>9</sup> OSC, *Local Government Management Guide: Seeking Competition in Procurement, Professional Services*, pp. 17-18; OSC, *Washington County: Procurement* (2017M-224), accessible at: [www.osc.state.ny.us/localgov/audits/counties/2018/washington.pdf](http://www.osc.state.ny.us/localgov/audits/counties/2018/washington.pdf).
- <sup>10</sup> There are some situations where the law requires regular RFPs: both school and fire districts must procure external audit services through a competitive RFP process, for a term no longer than five consecutive years. Education Law, Section 2116-a(3)(b) and New York State Town Law Section 181-b(3). See also, NYCRR, Title 8, Section 170.12(e)(3).
- <sup>11</sup> GML Section 104-b(4).
- <sup>12</sup> GML Sections 104-b(3) and (4).
- <sup>13</sup> GML Section 104-b(2)(f).
- <sup>14</sup> GML Section 104-b(2)(d).
- <sup>15</sup> As an alternative to soliciting competition, local governments and school districts may join, or “piggyback” on, contracts that have been extended to other governmental entities. For more information, see OSC, *Local Government Management Guide: Seeking Competition in Procurement, Piggybacking on Certain Government Contracts*, p. 12 and *Procurement Policies and Procedures*, p. 16.
- <sup>16</sup> The justification must set forth the reasons the award furthers the purpose of the statute. GML Section 104-b(2)(e).
- <sup>17</sup> OSC, *Local Government Management Guide: Seeking Competition in Procurement, Appendix B – Sample Format for Procurement Policy and Procedures*, pp. 28-30.
- <sup>18</sup> GML Section 806. Additional information, including links to model codes of ethics, is available from OSC at, *Local Government Management Guide: Seeking Competition in Procurement, Ethics and Conflicts of Interest*, pp. 22-23.
- <sup>19</sup> The 60 audits summarized in this report were released during the period January 2016 through June 2018.
- <sup>20</sup> OSC audited 689 school districts between 2010 and 2017; many of these audits happened to be on the topic of professional service procurement. There is no reason to assume, however, that school districts as a whole have more of a problem with professional services being awarded without competition than other local governments.

# Contacts



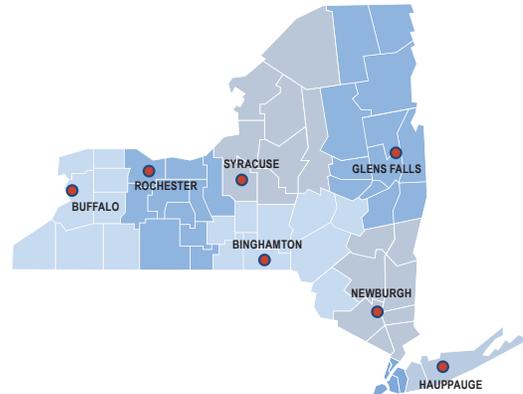
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