



## **IDA Procurement Review Competitive Selection Practices**

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**Purpose and Authority:**

The Authorities Budget Office (ABO) is authorized by Title 2 of the Public Authorities Law to review and analyze the operations, practices and reports of public authorities and to assess compliance with various provisions of Public Authorities Law and other relevant State statutes. The ABO undertook a review of select industrial development agencies (IDAs) to determine the extent competitive selection practices were used and the impact on the costs of audit and legal service contracts. Our review was conducted from December 2015 to February 2016.

**Background Information:**

Public authorities are required to annually report on their procurement contracts, including the method followed in selecting each vendor. For 2014, not-for-profit corporations that are defined as local authorities reported that 73 percent of procurements were competitively selected; state authorities reported that 65 percent of procurements were competitively selected; local authorities reported that 57 percent of procurements were competitively selected; and IDAs reported that only 32 percent of procurements were competitively selected. This data also indicated that IDAs that did not competitively select contracts generally spend more for those contracts than the IDAs that used a competitive selection process.

**Results:**

Our review found that IDAs that use competitive selection procedures to select professional services such as audit and legal services generally incurred lower costs than those IDAs that did not seek competition. On average, IDAs that competitively selected audit services paid \$101 per active project, while those IDAs that did not seek competition for their audit contracts paid \$183 per active project, 81 percent more than those IDAs that used competitive selection methods.

While professional service contracts are generally not required to be competitively bid, there are other methods of awarding contracts on a competitive basis. Further, it is generally considered good business practice to solicit competition and regularly compare the costs and services of various providers. This practice helps to ensure that authorities are not incurring higher costs than necessary and that procurements are not influenced by favoritism or fraud.

We recommend that IDA boards establish procurement policies and procedures that require the IDA to follow a competitive selection process for awarding professional service contracts.

### Background

Public Authorities Law requires authorities to annually report information on procurement transactions. This information is reported in the Public Authorities Reporting Information System (PARIS). Authorities are to report all procurement transactions made during the fiscal year that have an actual or estimated cumulative value of \$5,000 or more. Authorities are to designate whether these transactions were awarded on a competitive or a non-competitive basis. Competitive processes include competitive bids, selection of the vendor based on best qualified, competitive grant, competitive negotiation, or pre-qualified basis. Non-competitive procurements are those awarded by the authority under a negotiated, emergency, preferred source, sole source, or single source basis.

Section 2824 of Public Authorities Law requires boards of directors to establish written policies and procedures for the procurement of goods and services. However, the content of those policies and procedures may differ depending on the type of authority and procurement transaction. For example, State authorities are governed by Section 2879 of Public Authorities Law, which requires authorities to adopt procurement guidelines that include provisions for the selection of contractors on a competitive basis, while local development corporations have no requirements for competitive selection of contracts. Industrial Development Agency (IDA) procurement practices are governed by Sections 103 and 104b of General Municipal Law. Section 103 requires all purchase contracts in excess of \$20,000, with some exceptions, be awarded through competitive bid. Competitively bid contracts generally require that specific procedures be followed, such as publicly advertising, public bid openings, and a requirement that the lowest bid will be awarded the contract. In addition, Section 104(b) of General Municipal Law requires that goods and services that are not required to be procured by competitive bidding must be obtained in a manner that assures the prudent and economical use of funds while acquiring the maximum quality at the lowest possible costs.

While competitive bidding practices provide assurance that the lowest price is obtained, it may not be appropriate for all types of procurement transactions. For these types of transactions, there are other practices that could be employed to ensure that maximum quality is obtained at the lowest cost. It is generally considered good business practice to solicit competition and regularly compare the costs and services of various providers. These practices ensure authorities are not incurring higher costs than necessary and that procurements are not influenced by favoritism, extravagance or fraud. In addition, the Government Finance Officers Association recommends governmental entities engage in a competitive process for certain professional services such as financial audit services.

## **Public Authority Procurement Reporting**

Based on data reported by public authorities for the fiscal year ending in 2014, there is a wide variance in the extent that competitive selection processes are used by public authorities in procuring contracts and services. Not-for-profit corporations that are defined as local authorities report that 73 percent of the total value of procurements are competitively selected; state authorities report that 65 percent of the total value of procurements are competitively selected; local authorities report that 57 percent of the total value of procurements are competitively selected; and IDAs report that 32 percent of the total value of their procurements are competitively selected. The degree to which competitive selection is used does not appear to be due to differences in the types of goods or services being purchased, since our reviews of public authority operations show that the operations and purchases of most of the not-for-profit entities and IDAs are very similar. Yet the not-for-profit entities report the greatest percentage of competitively selected procurements, while IDAs report the lowest percentage of competitively selected procurements.

Further, there is also a significant variance in the use of competitive selection reported by the different IDAs. For example, 33 IDAs reported that they did not competitively select any procurements, while 10 IDAs reported that all of their authority procurements were competitively selected.

To evaluate whether the use of competitive selection practices had an impact on procurement costs, we identified types of procurement contracts that are common to most IDAs. All public authorities are required to have an annual financial audit performed by an independent certified public accountant, so the procurement of audit services is common to all IDAs. In addition, most IDAs have a general counsel to provide legal services such as attending board meetings, reviewing contracts and providing legal advice on general matters. Many IDAs do not have attorneys as employees, so it is common practice to contract for these legal services. Therefore we analyzed the costs of audit service contracts and the cost of legal service contracts reported by IDAs for the 2014 fiscal year.

To provide a comparable basis for IDAs of different size or degree of activity, we determined the costs of these contracts based on the number of active projects reported by the IDAs. It is reasonable that an IDA with many active projects would be expected to incur higher costs than an IDA that has only a few active projects. Therefore, a dollar for dollar comparison would not provide meaningful results. We found that there is a strong correlation between the number of active projects and the total costs for audit contracts and some correlation between the number of active projects and the costs of legal service contracts.

Based on the data reported by IDAs, we determined that IDAs that report using competitive selection procedures generally incur a lower cost per project for audit and legal service contracts. In 2014, 73 IDAs reported audit contracts in their

annual Procurement Report and, in total, reported spending an average of \$191 per project for audit service contracts. However, those IDAs that report that they generally do not use competitive selection spent an average of \$240 per project on audit service contracts, while those IDAs that reported frequent use of competitive selection spent an average of \$150 per project on audit service contracts.

### **Compliance Review Objectives**

The Authorities Budget Office (ABO) is authorized by Title 2 of Public Authorities Law to review and analyze the operations, practices and reports of public authorities, to assess compliance with various provisions of Public Authorities Law and other relevant State statutes, and to make recommendations concerning the reformation and structure of public authorities. Our objective was to determine the extent competitive selection practices were used and its impact on the costs of audit and legal service contracts.

### **Compliance Review Scope and Methodology**

Our review was conducted between December 2015 and February 2016. We reviewed the 2014 audit and legal service contracts for 16 IDAs to determine the amount paid for those services and whether the IDAs followed competitive selection practices. The IDAs selected for our review are identified in Appendix A. To perform our review we relied on the following documentation and data sources:

- Policies and procedures for procurement practices
- Competitive selection documentation
- Board meeting minutes
- Financial records for payments for audit and legal services
- Data reported in PARIS by the IDAs

In addition to reviewing documents and records, we interviewed IDA officials and reviewed other documentation as necessary to achieve our objectives. Our report contains recommendations to improve the effectiveness of IDA procurement practices.

## Review Results

Our review found that IDAs that seek competition in awarding audit and legal service contracts obtain significantly lower costs than IDAs who do not competitively select their audit and legal service contracts.

### Audit Contracts

Of the 16 IDAs we reviewed, seven issued requests for their proposals for audit service contracts, while nine IDAs did not seek competition in selecting their audit service contracts. The average audit contract cost per active project for the seven IDAs was \$101, while the average audit contract cost per active project for the nine IDAs that did not seek competition was \$183. The IDAs that did not seek competition in awarding these contracts paid 81 percent more than those IDAs that sought competition.

<b>Audit Service Contracts – Competitive Selection</b>			
<b>Name of IDA</b>	<b>Cost</b>	<b>Number of Projects</b>	<b>Cost Per Project</b>
Tompkins County IDA	\$7,000	60	\$117
Rensselaer County IDA	\$12,152	60	\$203
Onondaga County IDA	\$13,200	85	\$155
Suffolk County IDA	\$19,500	131	\$149
Erie County IDA	\$38,693	276	\$140
Monroe County IDA*	\$12,800	408	\$31
New York City IDA	\$55,000	553	\$99
<b>Average Cost Per Project</b>			<b>\$101</b>
<b>Average Cost Per Project excluding outliers(*)</b>			<b>\$125</b>

<b>Audit Service Contracts – No Competitive Selection</b>			
<b>Name of IDA</b>	<b>Cost</b>	<b>Number of Projects</b>	<b>Cost Per Project</b>
Montgomery County IDA	\$9,500	12	\$792
Albany County IDA	\$5,900	15	\$393
Delaware County IDA	\$9,200	15	\$613
Essex County IDA	\$8,000	16	\$500
Broome IDA	\$18,650	35	\$533
Ulster County IDA	\$8,100	36	\$225
Genesee County IDA*	\$8,500	92	\$92
Albany City IDA*	\$7,000	104	\$67
Nassau County IDA*	\$17,500	180	\$97
<b>Average Cost Per Project</b>			<b>\$183</b>
<b>Average Cost Per Project excluding outliers(*)</b>			<b>\$460</b>

While in general those IDAs that used competitive selection processes had lower costs per project, there are some outliers. Specifically, the audit contract costs per



active project for Monroe County IDA, Genesee County IDA, Albany City IDA and Nassau County IDA were significantly lower than the IDAs that followed similar procedures. Yet, the cost advantage of competitive selection for audit services is even more pronounced when these outliers are excluded: the average audit cost per active project is \$125 for the IDAs that sought competition, while the average audit cost per active project is \$460 for the IDAs that did not seek competition. This is more than three and a half times higher than those IDAs that sought competition.

These results also indicate that geographic location does not appear to be a significant factor affecting the costs of audit service contracts. For example, Broome IDA did not competitively select its audit contract and its cost per active project was \$553. Tompkins County IDA, which is located within an hour's distance, competitively selected its audit contract and had a cost per active project of \$117. Since these IDAs are geographically close, their cost difference appears to be solely due to the selection process used.

### **Legal Contracts**

We found that only 11 of the 16 IDAs contracted for general counsel services, since the other IDAs relied on internal counsel, had counsel provided by the sponsoring municipality or did not have a general counsel. With this limited sample we found that the size of the IDA as measured by the number of active projects does not correlate with the costs of legal service contracts. As such, we were unable to draw reliable conclusions and did not include our results in this report. However, we note that three of the eleven IDAs did seek competition in selecting their legal service contracts, while eight IDAs did not use any competitive selection process when choosing their legal service contracts.

### **IDA Perspectives**

IDAs that did not competitively select their audit and legal service contracts justified their approach by stating that they are not required to competitively bid professional service contracts under General Municipal Law. However, Section 104b of General Municipal Law does require that goods and services not subject to competitive bidding requirements must still be obtained in a manner that assures that maximum quality of services is obtained at the lowest possible costs. Without employing some type of competitive selection process, these IDAs are unable to meet this requirement.

Further, simply because a process is not required in the law doesn't mean that good business practices are not necessary. All IDAs are subject to the same legal requirements, yet we found other IDAs such as Erie County and Onondaga County regularly incorporate competitive selection practices in their selection of audit and legal service contracts. Officials from these IDAs indicated that they seek

competition as a mechanism to obtain lower contract costs while maintaining service quality for professional service contracts.

Eleven of the IDAs indicated that competition was not sought for professional service contracts because it was not required by their procurement policies. However, two of the IDAs that do not require competition in their policies actually did use competitive procedures in selecting the audit service contracts. Further, five of the 16 IDAs decided to incorporate some level of competitive selection for professional services into their procurement policies, either through request for proposals (RFP) or written quotes. For example, Erie County IDA has a professional service RFP process that requires the IDA to solicit proposals for certain professional services on an established schedule. Erie IDA officials indicated that this ensures the IDA is being accountable and transparent with its funds in accordance with Public Authorities Law.

Some IDA officials told us that they believe it is in the IDA's best interest to retain the same auditor and attorney over an extended period. They indicated that the long term relationship allows the individuals to develop an institutional knowledge of the IDA and that changing firms could potentially cost the IDA more money and time if they transition to a firm with no historical knowledge of the IDA.

However, this justification and fear appears to be unfounded. Selecting these contracts on a competitive basis provides assurance the IDA is getting the best quality service for the best price. For example, in 2009 Erie County IDA changed law firms as the result of a competitive selection process. IDA officials indicated that there were minimal issues associated with the transition to a new general counsel and that the schedule for renewing the contract allows an appropriate amount of time for a new firm to become well informed and proficient in the IDA's structure and operations. Erie IDA officials stated that assessing the cost effectiveness of their professional service contracts on a routine basis provided significant value.

Further, a competitive selection process does not always result in a new firm being selected. Instead, employing a competitive selection process could affirm that an existing contract for professional services is the most cost effective choice or it could reveal that there are other firms available that can provide the same quality service at a lower cost. As an example, Onondaga County IDA issued an RFP to select its audit and legal service contracts and the results showed that the existing firms for audit and legal were providing the best quality for the lowest price.

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## **Conclusion and Recommendation**

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In general, IDAs that use competitive selection procedures to select professional services such as audit and legal services incurred lower costs than those IDAs that did not seek competition. Although professional service contracts, such as audit and legal services, are not required to be competitively bid, there are other methods of seeking competition, such as issuing requests for proposals or obtaining quotes. These other methods often result in significant cost savings and can help to ensure that funds are used prudently and that maximum quality services are obtained at the lowest price. A competitive selection process allows the IDA to seek proposals from various providers and can help ensure that the IDA receives the desired services for the most cost effective terms, encourages accountability and transparency and provides the IDA with assurance that its funds are being used effectively.

We note that, as part of our review, two IDAs indicated their intent to incorporate competitive selection practices in the future when obtaining professional service contracts, and four IDAs (Albany County IDA, Broome IDA, Delaware County IDA, Ulster County IDA) have issued requests for proposals for audit or legal service contracts for subsequent years.

We recommend that IDA boards establish procurement policies and procedures that require the IDA to follow a competitive selection process for awarding professional service contracts.

**IDAs Reviewed**

Albany County IDA  
Albany City IDA  
Broome IDA  
Delaware County IDA  
Erie County IDA  
Essex County IDA  
Genesee County IDA  
Monroe County IDA  
Montgomery County IDA  
Nassau County IDA  
New York City IDA  
Onondaga County IDA  
Rensselaer County IDA  
Suffolk County IDA  
Tompkins County IDA  
Ulster County IDA