



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
September 21, 2012

SUMMARY OF FINDINGS/RECOMMENDATIONS

A joint investigation conducted by the New York State Inspector General and the Office of the State Comptroller found irregularities in procurements conducted by the New York State Department of Corrections and Community Supervision (DOCCS)¹ Auburn Correctional Facility (Auburn CF). Specifically, the apparent low bid on a procurement for boiler repairs was altered after its receipt at the facility to falsely indicate that the vendor had decided not to bid on the project. The person or persons responsible for the falsification were not identified.

In another procurement, a vendor's written quote containing his scope of work on his letterhead was provided by someone at Auburn CF to a competing vendor with only the pricing omitted. That competing vendor then submitted a written quote that was identical to the letter but for its pricing for the project. The investigation found the practice of disclosing the identity of a vendor and the vendor's specifications to competitors to be a violation of basic rules of competitive bidding, fundamentally unfair and vulnerable to opening the process to collusion among vendors.

The investigation also found that the facility lacked a separation of procurement duties as required by the State Comptroller and New York State Procurement Council Guidelines, and therefore recommended that this improper practice be modified to conform to policy. In addition, it was recommended that the DOCCS Institutional Steward, who currently conducts a limited verification of discretionary procurement bids, implement a more rigorous audit procedure.

DOCCS has implemented new procedures in accordance with the report's recommendations.

ALLEGATION

On April 19, 2010, the Inspector General's Office received a referral from DOCCS. An audit being conducted by the State Comptroller had identified issues regarding two separate procurements at DOCCS Auburn CF. In the first procurement, a potential vendor for a boiler repair project, H. M. Williams/Oneida Boiler Works, claimed its bid document had been altered after it was submitted to Auburn CF. In the second procurement, a project to repair a steam line, a written quote submitted by one vendor, M&N Plumbing and Heating, contained identical language to that of a competitor's written quote, with the exception of the bid amount.

¹ DOCCS was created on April 1, 2011, through a merger of the New York State Department of Correctional Services and the New York State Division of Parole.

SUMMARY OF INVESTIGATION

Scope and Methodology

The Inspector General and the State Comptroller reviewed relevant procurement packages and conducted 17 voluntary, recorded and sworn interviews of DOCCS employees and contractors. The investigators also obtained by subpoena relevant telephone and facsimile records relating to the transmittal of written quotes. Additionally, the investigators conducted a site visit at the correctional facility and secured and forensically analyzed two computers and several DOCCS e-mail accounts.

New York State Procurement

The purchasing of services and commodities by New York State agencies is governed by the State Finance Law and Economic Development Law, as well as guidelines issued by the State Comptroller. Each state agency is required to promulgate its own internal policies for procurements consistent with statewide procedures. Under state law, generally, purchases exceeding \$50,000 are subject to a competitive bidding process through a Request for Proposal (RFP) or similar solicitation. Purchases under \$50,000, so-called discretionary purchases, are not subject to the prescribed statutory bidding process required for purchases in excess of that threshold amount, but are still subject to procedures ensuring fair competition among vendors. Relevant to this investigation, DOCCS allows each facility to establish its own internal procurement procedures for discretionary purchases under \$15,000.² Auburn CF advised that it requires three written quotes when soliciting bids for such a project. Awards are to be made by the facility to the lowest bidder or the vendor that otherwise presents the best value to DOCCS. The agency must retain a procurement record for discretionary purchases showing the necessity of the purchase and outlining all steps taken in the procurement process.

The policy at Auburn CF dictates that discretionary purchases for maintenance goods and services are solicited by the Plant Superintendent's office. After a vendor is selected, the procurement package is reviewed by the Deputy Superintendent for Administration, the Superintendent, and the Institutional Steward.

Boiler Repair Project

In November 2009, two boilers at Auburn CF required repairs. Byron Schlenker, who at the time served as a DOCCS Plant Utility Engineer 3 in charge of the Auburn CF power plant, began the process of soliciting private contractors to repair the boilers. Schlenker contacted Nicholson & Hall Power Generation (Nicholson & Hall) and Mack Bros. Boiler & Sheet Iron Works Co. (Mack Bros.) to request price quotes. On November 16, 2009, Mack Bros. submitted a quote of \$3,950, and on November 18, 2009, Nicholson & Hall submitted a quote of \$6,035. Upon being advised by his supervisor, Plant Superintendent Michael Gray, that a third quote was required, Schlenker, on or about November 26, 2009, contacted H.M. Williams/Oneida County Boiler Works (H.M. Williams) requesting that it also submit a price quote.

According to H.M. Williams, owner of the firm bearing his name, after being contacted by Schlenker, he faxed Schlenker a written quote in the amount of \$1,875 on November 27, 2009.

² Discretionary purchases between \$15,000 and \$50,000 are subject to additional requirements.

However, Schlenker said he did not receive the fax, so he contacted the firm, requesting that it re-send its quote. On December 1, 2009, according to Williams, he again faxed the written quote to Schlenker.

On December 3, 2009, despite the twice-sent fax from H.M. Williams, Schlenker requested a Purchase Order and the project was awarded to Mack Bros. as the purported low bidder.³ Schlenker added the written quotes to the procurement package and forwarded it to Gray for review and processing.

In March of 2010, the State Comptroller conducted an audit of DOCCS discretionary purchases. The procurement package for the boiler repair project contained a written quote from Nicholson & Hall for \$6,035 dated November 16, 2009, a Mack Bros. written quote for \$3,950 dated November 18, 2009, and a document purportedly submitted by H.M. Williams indicating it would not be competing on the project, a so-called “no-bid”. The State Comptroller’s auditors contacted H.M. Williams to verify the accuracy of its submission and requested a copy of the document provided to Auburn CF for this project. To the auditors’ surprise, H.M. Williams provided a different document than the one contained in the procurement package. Rather than the no-bid contained in Auburn CF’s records, H.M. Williams sent the State Comptroller a document reflecting that it had actually submitted a bid on the repair for \$1,875 which would have been the lowest quote submitted in the procurement. Image 1, the purported no-bid, and Image 2, the \$1,875 quote, appear below:

Image 1

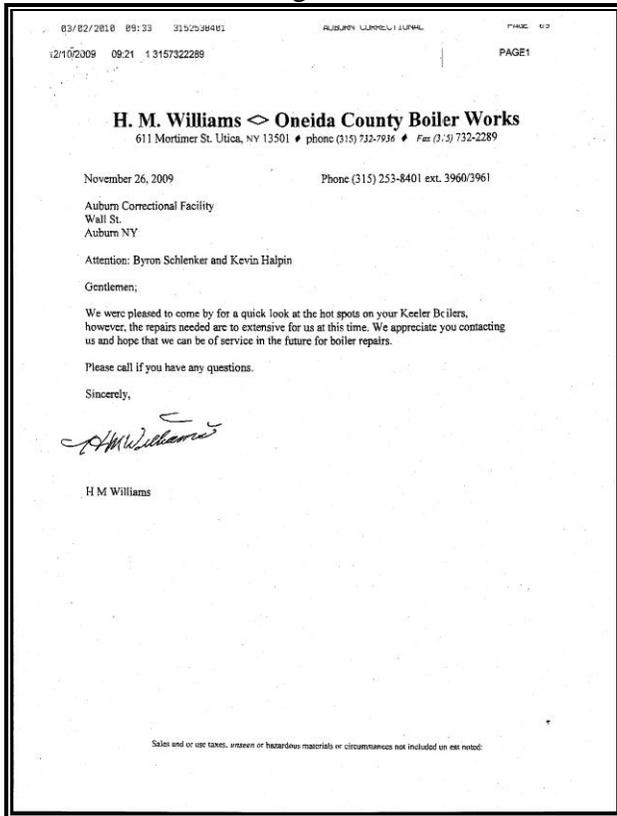
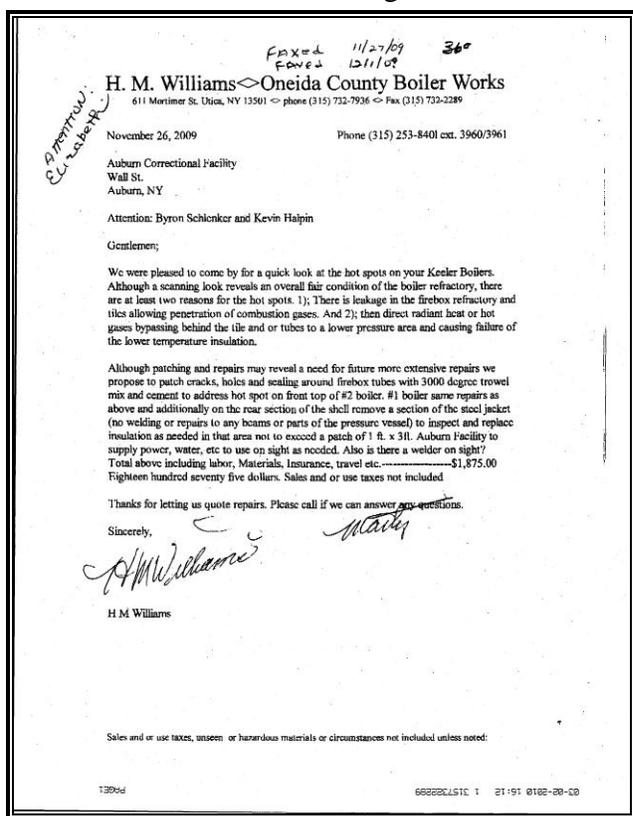


Image 2



³ Although Mack Bros was awarded the project at their bid proposal of \$3,950, two change notices were subsequently approved raising the final cost of the boiler repair project to \$15,050.

Confronted with these conflicting documents, investigators sought testimony from the aforementioned vendors and relevant DOCCS personnel.⁴ H. M. Williams, the firm owner, noted that this was the first time he had submitted a bid for work at Auburn CF, but that he had bid on projects at other DOCCS facilities. Williams testified that he inspected the boiler on Nov. 26, 2009. Afterwards, according to Williams, he drafted a written quote of \$1,875 and had his office staff fax this written quote to Auburn CF the following day – Nov. 27, 2009 (See Image 2 above). After Schlenker telephoned him and claimed not to have received his written quote, H.M. Williams said he re-faxed his written quote on December 1. H.M. Williams’s Verizon records obtained by subpoena corroborate Williams’s testimony that, in fact, faxes were transmitted from H.M. Williams to Auburn CF on November 27 and December 1. Williams further testified he never submitted the no-bid contained in Auburn CF’s records (Image 1 above).⁵

Investigators interviewed all correctional personnel associated with this procurement; none took responsibility for creating the ostensible no-bid. Schlenker, the individual responsible for this procurement, provided testimony regarding the discrepancies in the procurement package. He testified he never received the written quote that Williams stated was twice faxed to Auburn CF, but rather, he received the no-bid via fax instead. Schlenker further testified that although it was his responsibility to collect and evaluate the bids on this procurement, other Auburn CF employees had access to Williams’s fax once it was received at the facility and could have changed the quote prior to his receipt of it. In the alternative, Schlenker opined that contrary to Williams’s testimony, Williams might have faxed a no-bid to the facility.

According to Schlenker, when he advised Williams that he had not received the first written quote, Williams seemed annoyed that someone in his office had failed to send the quote to Schlenker. Schlenker testified that in this conversation, Williams “never indicated that he wasn’t going to bid,” and thus Schlenker asked him to re-fax his quote, which he did. Schlenker asserted that in light of this conversation he was “surprised” to receive the no-bid, but did not contact Williams to confirm that Williams had decided not to bid on the project. Williams testified his second submission was the same quote that had been transmitted on Nov. 27, 2009.

In the course of the investigation, the Inspector General and the State Comptroller noted the irregular delivery method of a fax from an outside source through the facility to the power plant office. According to various employees at Auburn CF, a fax sent by an outside source to a facility number can be directed by an operator to one of several fax machines. From there, a number of employees can retrieve this fax for hand delivery to the recipient’s mailbox. In the instant matter, this hand delivery requires that the fax be hoisted in a bucket over the facility wall by a correction officer to the power plant which is outside the secure perimeter. As a result of this process, unauthorized individuals could have access to a fax, and the fax could be delayed several days in reaching its intended recipient.

Gray, Schlenker’s supervisor, testified that when he received the procurement package from Schlenker, all materials appeared in order. He noted that written responses are required from all competing vendors even if a particular vendor opts not to participate in the procurement. In the instant procurement, Gray testified he received two quotes and one no-bid from Williams. Gray testified he had no knowledge of Williams’s submission of a \$1,875 written quote.

⁴ Testimony by employees of Mack Bros. and Nicholson and Hall supported the procurement documents they submitted.

⁵ Of note, the purported no-bid document bears an Auburn CF facsimile receipt date and time of December 10, 2009, at 9:21 a.m. While H.M. Williams’s Verizon records show no fax to Auburn CF on this date, the records do include a fax on November 27, 2009, at that exact same time.

The two documents in question – the written quote and the no-bid purportedly submitted by Williams – contain similar letterhead and wording. However, several subtle differences are noteworthy, including font and symbol changes indicative of an electronically altered document. Therefore, investigators sought to determine if electronic scanners were available at the facility to manipulate the document. It was discovered that, in fact, two were being utilized without authorization in the Power Plant at Auburn CF, despite the fact that scanners are considered contraband within the facility. One of the two scanners was attached to Schlenker’s assigned computer during the period the document was altered. The other scanner was reportedly attached to a computer utilized by Schlenker’s subordinate who did not appear to have involvement in this procurement.

Nevertheless, given the lack of direct evidence linking any specific individual to the manipulation of the document in question, and no indication of a conflict of interest involving Schlenker and Mack Bros. in the procurement, the investigators could not determine the identity of the employee who changed the H.M. Williams bid to a no-bid document.

Steam Line Repair Project

In November 2009, a steam line at Auburn CF required repair. HMI Mechanical Systems (HMI), M&N Plumbing and Heating (M&N), and Siracusa Mechanical (Siracusa) were solicited by Auburn CF to submit bids. HMI and M&N examined the steam line and prepared written quotes while Siracusa relied upon a scope of work provided by Auburn CF Acting Maintenance Supervisor Robert Trufant. HMI responded first to Plant Superintendent Gray with a description of the scope of work and a \$5,355 quote. Siracusa submitted a quote of \$4,405. Although M&N had conducted a site visit, it nonetheless requested that Gray provide the competitors’ scope of work so that M&N could review and prepare its quote. Donald Worden of M&N explained the reason for this request:

You can review this [quote] and find the wording is exactly as someone else’s, ok, and the reason for that is, I can’t bid on something unless I know exactly what someone else quoted. There’s too many variables that I could put in here . . . So, I want to know exactly what they’re figuring, if you’re going to want me to give you a competitive price. So if you’re looking for a shot in the dark, yeah, I can give you any kinda price you want.

Someone else gave [the facility] a quote for the same work, ok, and I said to them, I said, what exactly did they quote you on. Alright, so they took their quote [the other vendor’s quote] and they blacked out all the pertinent stuff and they sent me a copy of their quote. So that I could put in the same thing in my quote to make sure, I didn’t add insulation . . . than they can’t compare the quotes.

I can’t compete if I don’t know what the apples are . . . I can’t be competitive and I know that person’s a non-union contractor, so I know I got to be very competitive even though he has to pay prevailing wage, I know I’ve got to be competitive with him or I’m not going to get the work.

Gray stated he believed that he instructed Trufant to forward HMI’s description of the scope of work to M&N. Gray testified he thought Trufant would have redacted HMI’s pricing and letterhead

from the document. However the document faxed to M&N was HMI's document in its entirety but for the pricing information. M&N subsequently submitted a lower quote of \$2,498 in a letter that copies verbatim the written quote document submitted by HMI. See Image 3, the redacted HMI quote, and Image 4, M&N's quote, below:

Image 3

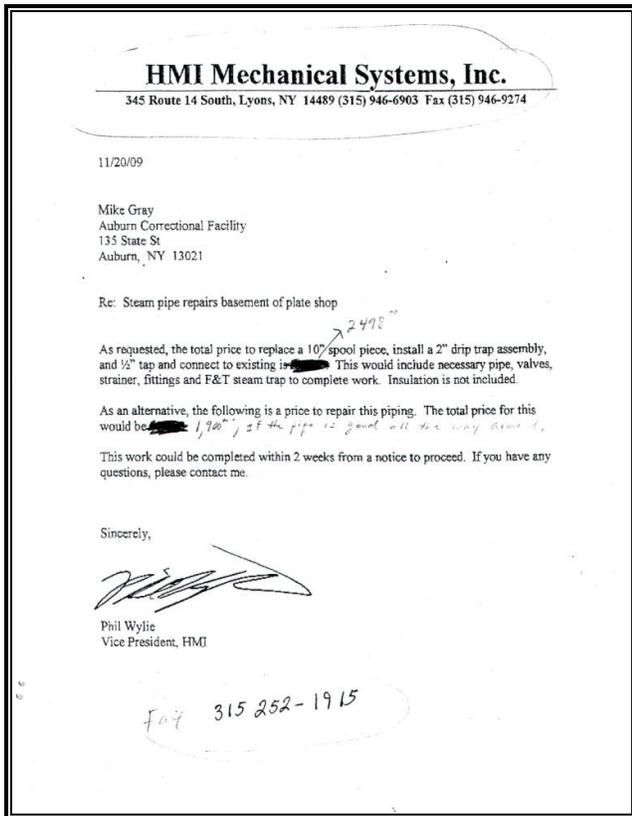
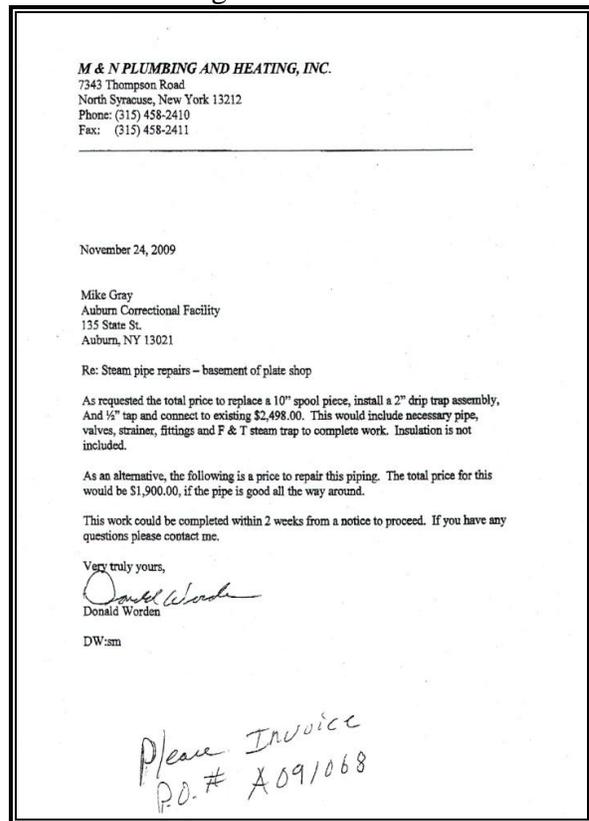


Image 4



When Trufant was shown the redacted HMI quote, he contradicted Gray's claim and testified that he did not fax it to M&N, and further asserted that he has never faxed a vendor's quote to another vendor as a scope of work. Trufant informed investigators that supplying a vendor with the names of his competitors could create an uneven playing field.

Worden of M&N noted that this was not the first time it received a job description drafted by another vendor. There have been other instances, including projects at other correctional facilities, where he received a copy of another vendor's scope of work. The owner of Mack Bros. also said this practice is fairly commonplace. He added, however, the original vendor's name is usually removed from any document that is shared with other vendors.

HMI's owner testified that he strongly objected to the practice of providing a competitor's procurement (quote) document to a competing vendor and he did not give Auburn CF permission to share his quote with one of his competitors. Although the quoted amount was redacted, he said that by sharing his scope of work with a competitor, Auburn CF placed his company at a competitive disadvantage. He noted vendors generally know the pricing factors considered by their competitors, as is evidenced by M&N's above-mentioned statement regarding HMI's union workers.

Gray both defended and criticized the practice. While he stressed that quotes must be based on the same specifications – "We try to get everybody to bid on the same thing" – Gray also said some

vendors don't like their quoted specifications shared with their competitors. "Vendors don't like that because they'll come in here and they have to do all the footwork to tell you what's wrong with it and then you just turn right around and you use that same scope (of work) and let other people bid it – a lot of people get that bid (and) not the guys who actually came in and did all the work. That's happened many times." Oddly, in this particular instance, M&N conducted a site visit to review the boiler project yet still requested from Auburn CF the scope of work as described by the other vendor.

It could not be determined who sent the above redacted document to M&N. However, the investigation found the practice of disclosing a vendor's competition to be a violation of basic rules of competitive bidding, fundamentally unfair and vulnerable to opening the process to collusion among vendors.

Issues Identified During the Investigation

Decentralized Procurements at DOCCS

This investigation found a substantial disparity in procedures among correctional facilities with regard to discretionary procurements under \$50,000, engendered by the lack of a comprehensive policy, procedure and practice for these procurements. Indeed, in the absence of agency-wide policy and procedures for discretionary purchase under \$50,000, each DOCCS facility is expected to set individual guidelines and thresholds for soliciting, evaluating and awarding proposals. However, the investigation found that facility employees involved with these procurements – even within the same facilities - held different beliefs as to these guidelines. For example, Auburn CF Institutional Steward Cheryl Cole advised she requires two quotes for procurements under \$2,000, three quotes for procurements in excess of \$2,000, and three written quotes when above \$5,000. However, Plant Superintendent Gray was under the impression that procurements under \$2,500 require only one quote and those over this threshold require three quotes. Further, Schlenker, now the Plant Superintendent at Mid-State CF, reported all procurements there require three written quotes, of which he obtains the first and the business office obtains the remaining two.

Additionally, according to State Comptroller Procurement Guidelines, a clear separation of duties must be in place when conducting procurements. Indeed, DOCCS Directive on Purchasing Supplies and Equipment reads, "internal control guidelines require that the following functions be preformed by different personnel; 1) preparing purchasing specifications; 2) receiving responses to proposals; 3) evaluating proposals; 4) receiving; and 5) payment." Clearly, Auburn CF's process of allowing the same individual to prepare purchasing specifications, receive bid proposals, evaluate and select the vendors violates that directive.

Project Specifications

During the course of the investigation, questions arose about how project specifications (the scope of work for a project) were formulated at Auburn CF. In some instances, the facility developed the specifications and distributed them to the vendors. In other instances, the specifications created by the first vendor to conduct a site visit and submit a quote became the specifications for the project and were transmitted to other vendors. Investigators even found some instances in which a vendor was paid to prepare specifications and subsequently allowed to compete on that project. The propriety of such a process is questionable.

Compounding the confusion and disparities caused by a lack of statewide guidance regarding discretionary purchases, not all of the employees who are directly involved in procurement at the facility level receive training. Indeed, Schlenker and Gray, the Auburn CF staff who had significant procurement responsibilities, testified they received no procurement training. Some employees had misconceptions about the proper method of determining what specifications were required in a procurement document and when specific makes/models could be required from a vendor. Training would assist to clear up these misconceptions. Furthermore, from a policy standpoint, procurements should not limit the vendors to specific makes or models unless an agency determines in advance that only a specific product or brand will fill a need, and this justification is documented in the procurement record.

FINDINGS AND RECOMMENDATIONS

A joint investigation conducted by the Inspector General and the State Comptroller found irregularities in procurements conducted by DOCCS's Auburn CF. Specifically, an apparent low quote for boiler repairs submitted by a vendor was not considered in a procurement and the documentation submitted by the lowest bidder was altered to falsely state that the vendor was not bidding on the project. The person or persons responsible for the falsification were not identified. In another procurement, a vendor's written quote containing its scope of work on its letterhead was provided by Auburn CF to a competing vendor with only the price redacted. That competing vendor then submitted a written quote that was identical to the letter but for their (lower) price for the project. The investigation found the practice of disclosing the identity of a vendor and the vendor's specifications to competitors to be inequitable and, at a minimum, creating the appearance of favoritism and collusion.

Investigators also found that the facility lacked a separation of procurement duties as required by the State Comptroller and New York State Procurement Council Guidelines, and therefore recommends that this improper practice be modified to conform to policy. In addition, it is recommended that the agency's Institutional Steward, who currently conducts a limited verification of discretionary procurement bids, implement a more rigorous audit procedure.

Auburn CF's odd document delivery system, which includes numerous fax machines and a bucket and rope system to hoist documents over the prison wall, also adds unnecessary confusion and possible delays to the procurement process. It is therefore recommended that each DOCCS facility establish a central location for the receipt of incoming procurement documents.

Finally, the investigation found that those individuals who were involved in the procurement process (Institutional Steward, Plant Superintendent and his subordinates) had widely varying understandings of procurement requirements and testified they had received no training in this area. It is therefore recommended that DOCCS consider training facility procurement personnel and require periodic training thereafter. Additionally, DOCCS should consider promulgating a uniform policy for discretionary purchases for all facilities. This policy could include standardized dollar thresholds and solicitation requirements.⁶

⁶ The Inspector General and OSC note that the New York State Office of General Services (OGS) enters into Service Maintenance Contracts with vendors to provide a range of services to State agencies. These negotiated agreements with vendors strive to secure best values and assist agencies in procurements. During the period of the procurements described in this report, a Service Maintenance Contract was in force for maintenance and repair of correctional facility power plants, among other things, and had been used several times by Auburn CF to repair and maintain its boilers. DOCCS, therefore, may wish to consider utilizing OGS Service Maintenance Contracts when appropriate, as opposed to conducting individual discretionary procurements at each DOCCS facility.

Response of the Department of Corrections and Community Supervision

In response to the report's findings and recommendations, DOCCS reported that a local procedure has been developed to ensure compliance with the DOCCS directive governing discretionary purchases over \$5000. In the procedure, technical project data is prepared by plant operations staff and provided to vendors. Three vendors are solicited for price quotes and directed to forward their price quotes to the business office. In cases where there isn't a signed bid document, the institutional steward or designee will contact vendors via telephone to confirm their price quote.

DOCCS also advised that staff has received direction prohibiting the sharing of information that is contained in bid documents among competing vendors. The delivery system of bid documents is now restricted to the business office, which eliminates any unauthorized access to confidential bids. Separation of duties with respect to projects has also been implemented.

Additionally, the facility Internal Controls Committee has begun semi-annual audits of discretionary purchases over \$5000 to confirm compliance with the local procedure. When appropriate, DOCCS will consider utilizing OGS Service Maintenance Contracts as opposed to conducting individual discretionary procurements at each facility.