

# Audit Report

## Records Storage Facility Lease Procurement Compliance

July 2019



Department of Audit and Control

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Comptroller

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# Audit Summary

## Records Storage Facility Lease Procurement Compliance



### What we did

Inquired about procurement procedures that occurred prior to entering into the agreement at 85 River Rock Road. Obtained responses and relevant documentation related to the lease to determine compliance with the applicable laws and policies.

### How we did it

Compared procurement procedures that occurred, to the statutes of NYS General Municipal Laws 103, 104, City policies and City Charter to determine compliance. Reviewed documentation to determine if the City obtained the best value and if sufficient analysis was performed to support the course of action taken.

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## Background

The City of Buffalo (The City) leases space at 85 River Rock Road for offsite records storage. The building was previously owned by the Buffalo Economic Renaissance Corporation (BERC) who leased space to the City. The building was sold on January 24, 2017 to Acquest Development, LLC (Acquest). The City entered into a 10 year lease agreement with Acquest on January 1, 2018 (the agreement). The terms of the agreement include, base rent increases of 3% annually, a common area maintenance charge and an early termination clause. The audit will examine if the procurement procedures used to enter into the lease comply with applicable New York State laws and City policies.

## What we found

### **No Documentation as to why the Agreement was Not Subject to Competitive Bidding**

A Request for Proposals (RFP) was not issued for the City's records storage needs. There is no documentation of the basis for this decision.

### **No Documented Cost Analysis of Alternatives**

There is no documentation of a cost analysis to determine if leasing, owning or outsourcing the records facility would be most cost efficient. Therefore, it is not possible to determine if the City obtained the best value.

### **Rent Increased 70% over 2 Years**

Rent expense increased 70% from \$53,072 in 2017 to \$94,335 in 2019.

## What we recommended

### **Research and Identify Alternatives for Record Storage**

The City should identify alternative locations and evaluate if leasing, buying, outsourcing or another alternative for a storage facility creates the best value.

### **Comply with NYS GML 103 & 104 and City Procurement Policy**

Documentation of the transaction should be sufficient to assure compliance with the applicable laws and policies, which require the best value is chosen.

## Preface

In accordance with the goals set forth in the Annual Audit Plan, we conducted an audit to determine if the procurement of the lease for the City's records storage facility at 85 River Rock Road complied with the statutes of NYS General Municipal Laws 103 and 104, the City Charter and the City's Procurement Policy.

The audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing issued by the Institute of Internal Auditors.

The City Clerk's Records and Research Facility is located at 85 River Rock Road. The building was previously owned by BERCO until being sold to Acquest in January 2017. After the sale, the Office of Strategic Planning Division of Real Estate (Division of Real Estate) negotiated the agreement between the City and Acquest. In December 2017 the Division of Real Estate first presented the agreement to the Common Council for approval. In May 2018 the Division of Real Estate presented an updated agreement which the Common Council approved (agenda item 18-817). The agreement was signed in May 2018 with an effective date of January 1, 2018.

## Summary of Lease Agreement

The City entered into a 10 year lease agreement with Acquest commencing on January 1, 2018. The space being leased is approximately 13,268 square feet. The space is used mainly for off-site records storage and also contains some office space.

- 1. Base Rent** - The monthly base rent is \$4 per square foot or \$4,423 per month for the first year, with base rent increases of 3% annually. In year 10 of the agreement, monthly base rent is \$5.22 per square foot or \$5,772 per month.
- 2. Common Area Maintenance Charge (CAM Charges)** - In addition to base rent, the City will be billed for their share (proportion based on square footage) of operating expenses/common area charges as set forth in the agreement. Operating expenses are defined in the agreement as any and all reasonable costs and expenses paid or included by the Landlord in connection with ownership, operation, servicing, management and maintenance of the property including but not limited to property tax, water and sewer tax, maintenance expenses and management fees. CAM Charges of \$3,306 per month were billed for calendar year 2018.
- 3. HVAC Maintenance** - The agreement requires the City to enter into a contract for quarterly service, maintenance and repairs of the heating and air conditioning units servicing the leased area.

**4. Lease Termination Clause** - The agreement allows the City to terminate the lease without penalty, at any time with 180 days advanced notice.

## Procurement Standards

The legalities of purchasing and competitive bidding are contained in NYS General Municipal Law [103](#) and [104](#) (GML 103 and 104). The laws apply to all political subdivisions of NYS. The City also has a Procurement Policy that expands on the requirements of the GML 103, 104 and the City Charter.

The purposes of the procurement laws are to;

*-Guard against favoritism, improvidence, fraud and corruption.*

*-Foster honest competition in order to obtain the best goods and services at the lowest possible price.*

*-Ensure the prudent and economical use of public monies for the benefit of the taxpayers and facilitate the acquisition of goods and services of maximum quality at the lowest possible cost.*

<https://www.osc.state.ny.us/localgov/academy/pdf/Legalities-of-Purchasing-and-Competitive-Bidding-11-28-18.pdf>

### **GML 104-b**

*Every political subdivision must adopt policies and procedures governing all procurements which are not required to be made pursuant to competitive bidding requirements of NYS GML 103. Such policies must prescribe a procedure for determining whether the procurement is subject to competitive bidding and document the basis for any determination that competitive bidding is not required by law.*

### **City Procurement Policy**

*It is presumed that all procurement contracts entered into by the City of Buffalo are subject to formal competitive bidding pursuant to the Buffalo City Charter unless otherwise specifically authorized. Formal bids are issued for those purchases that the dollar amount is \$10,000 or more. Formal bids for Public Works are \$20,000 or more. It is the responsibility of the individual officer or employee seeking the procurement of goods or services to demonstrate that formal competitive bidding is not required whenever it is sought to procure outside of the formal competitive bidding rules. Such reason must be clearly documented in writing and placed on file with the procurement record. This Policy shall apply to all contracts entered into by the City of Buffalo whenever they are not required to be awarded by competitive bidding.*

## Audit Objective

The objective of the audit is to determine whether the lease agreement for the records storage facility was procured in compliance with the statutes of NYS General Municipal Laws 103, 104, City Procurement Policy and the City Charter.

To achieve the objective, auditors:

- Requested the Office of Strategic Planning Division of Real Estate provide documentation of procurement procedures taken in relation to the lease agreement.
- Reviewed supporting documentation related to procurement of the lease for compliance with applicable laws and policies.

## Audit Findings

### **No Documentation as to why the Agreement was Not Subject to Competitive Bidding**

No RFP was issued for the City records storage facility needs. The Department of Audit and Control (DAC) requested documentation demonstrating this lease was not subject to competitive bidding and none was provided.

### **No Documented Analysis of Alternatives to the Agreement**

The Office of Strategic Planning Division of Real Estate stated that multiple City departments performed analysis related to the records storage facility. Additionally, it was stated that external parties prepared reports and analysis related to the records storage facility. The DAC requested the documentation but none was provided.

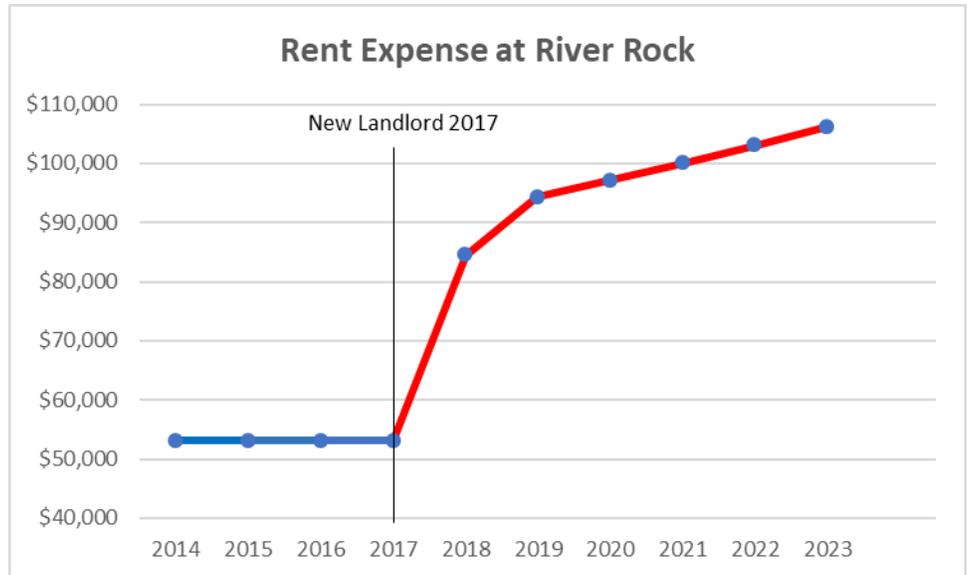
The DAC expected the analysis to include the following:

1. Listing and evaluation of City owned buildings that could house records storage
2. Price comparison of other records storage facilities
3. Cost estimates of relocating records to an alternative location
4. Cost estimates for third party records management service
5. Cost estimates of digitally archiving City records
6. Cost estimates to build or purchase a records storage facility
7. Buy versus lease analysis

Without documented analysis, it is impossible to determine if the City considered and evaluated other alternatives. Additionally, it cannot be determined whether the City obtained the best value.

### Rent Expense Increased 70% in 2 Years

Annual rent expense was \$53,072 in 2017 under the prior agreement. Under the current agreement, annual rent (rent and CAM charges) paid was \$84,517 for 2018 and is estimated to be \$94,355 for 2019.



In the above chart, the blue portion of the line is rent paid to the prior landlord and the red portion of the line is rent paid or estimated to be paid to the current landlord. Total rent is estimated for the years 2020 – 2023 based on a 3% annual increase. Rent expense for 2020 – 2023 could increase greater than 3% annually depending on CAM charge increases.

### CAM Charges are 40% of Total Rent

The agreement states that the tenant will be billed for their share (proportion based on square footage) of operating expenses. Operating expenses are defined as any and all reasonable costs and expenses paid or included by the landlord in connection with ownership, operation, servicing, management and maintenance of the property including but not limited to property tax, water and sewer tax, maintenance expenses and management fees. CAM charges of \$39,671 were billed for 2018.

### Cost of CAM Charges not Estimated in Common Council Filing

The cost of the CAM charges were not estimated in the Common Council Agenda item 18-817, which approved the agreement. The CAM Charges are 40% of the total cost. Without this estimate the Common Council and the taxpayers were not provided with enough information to determine the total cost of the agreement.

### **The City Did Not Consider Purchasing the Building from BERC**

In response to an audit inquiry, the Division of Real Estate stated the City did not consider purchasing or having BERC transfer ownership of 85 River Rock due to significant capital improvement needs. DAC requested information on the needed capital improvements and none was provided. Due to the lack of documented analysis, it cannot be determined if selling and subsequently renting this building provides taxpayers with the best value.

## **Audit Recommendations**

### **Comply with NYS GML 103 & 104 and City Procurement Policy**

All purchases and contracts/leases should be procured in a manner to comply with the applicable laws and City policies. Transactions such as the sale of 85 River Rock Road and subsequent lease of the building should be evaluated and executed in a transparent manner. Transactions must be accompanied with sufficient detailed analysis to ensure compliance with applicable laws and to enable determination that the City has obtained the best value.

### **Evaluate Alternatives for Records Storage and Document Analysis**

The City should identify and evaluate alternatives to the current lease. The evaluation should include, but not be limited to:

1. Evaluation of City owned buildings that could house records storage
2. Price comparison of other records storage facilities
3. Cost estimates of relocating records to an alternative location
4. Cost estimates for third party records management service
5. Cost estimates of digitally archiving City records
6. Cost estimates to build or purchase a records storage facility

This comprehensive analysis should be documented to identify the best alternative for the City's record storage needs.

### **Obtain the Best Value for Records Storage**

Implement the records storage option that provides the best value. If the best value is not provided under the current agreement, the City should re-evaluate the lease termination clause and strongly consider terminating the lease.

The best value alternative should be in place prior to the DAC performing a follow-up to this audit, which will occur in one year.

## **Audit of the Records Storage Facility Lease Procurement Compliance**

### **Office of Strategic Planning Division of Real Estate**

#### **Comments on the Status of Implementing Recommendation**

***Instructions:*** Please respond in the three fields listed under each Audit Recommendation including:

- 1. Status of Implementing Recommendation*
- 2. Implementation Date*
- 3. Reason for not implementing recommendation (if applicable)*

#### **Audit Recommendation 1**

##### **Comply with NYS GML 103 & 104 and City Procurement Policy**

All purchases and contracts/leases should be procured in a manner to comply with the applicable laws and City policies. Transactions such as the sale of 85 River Rock Road and subsequent lease of the building should be evaluated and executed in a transparent manner. Transactions must be accompanied with sufficient detailed analysis to ensure compliance with applicable laws and to enable determination that the City has obtained the best value.

#### **Division of Real Estate Comments on Audit Recommendation 1:**

Status of Implementing Recommendation:

*The Division of Real Estate complies with applicable laws and City policies. The Division of Real Estate explored options to the current location. The specifications for the Records Storage Facility greatly limited options. Furthermore, the rent for buildings that might meet the needs for the Records Storage Facility exceeded the rent offered at the current location. In addition the rent, the significant cost and effort of relocation was taken into account by the Division of Real Estate and Clerk's Office.*

*The Division of Real Estate is working with the City's Law Department to strengthen the process for entering into City leases at privately-owned properties.*

Implementation Date:

*Continuing.*

Reason for not implementing recommendation (if applicable):

N/A

#### **Audit Recommendation 2**

##### **Research Alternatives for Record Storage**

The City should identify and evaluate alternatives to the current lease. The evaluation should include all alternatives, including; leasing, building, purchasing and using available City-owned property for records storage. This comprehensive analysis should be documented to identify the best alternative.

## **Audit of the Records Storage Facility Lease Procurement Compliance**

### **Office of Strategic Planning Division of Real Estate**

#### **Comments on the Status of Implementing Recommendation**

##### **Division of Real Estate Comments on Audit Recommendation 2:**

Status of Implementing Recommendation:

*The Department of Public Works, Division of Buildings, conducted a review of buildings in inventory exploring the possibility of moving Record Storage to an existing building. DPW concluded that there were no suitable buildings in inventory. DPW is evaluating the construction of a new City-owned Records Storage Facility.*

Implementation Date:

*Continuing.*

Reason for not implementing recommendation (if applicable):

N/A

##### **Audit Recommendation 3**

##### **Obtain the Best Value for Records Storage**

Implement the records storage option that provides the best value. If the best value is not provided under the current agreement, the City should re-evaluate the lease termination clause and strongly consider terminating the lease.

The best value alternative should be in place prior to the DAC performing a follow-up to this audit, which will occur in one year.

Status of Implementing Recommendation:

*The current records storage option is the best value when comparable lease rates are considered along with the cost of moving the Records Storage Facility. As mentioned in the response to Audit Recommendation 2, DPW continues to explore locating the Records Storage Facility in a City-owned building. If that option, or any other, proves to be a better value, the City can exercise its option to terminate the lease at the current location on short notice.*

Implementation Date:

*Continuing*

Reason for not implementing recommendation (if applicable):

N/A

Completed by: Brendan Mehaffy

Date: September 10, 2019