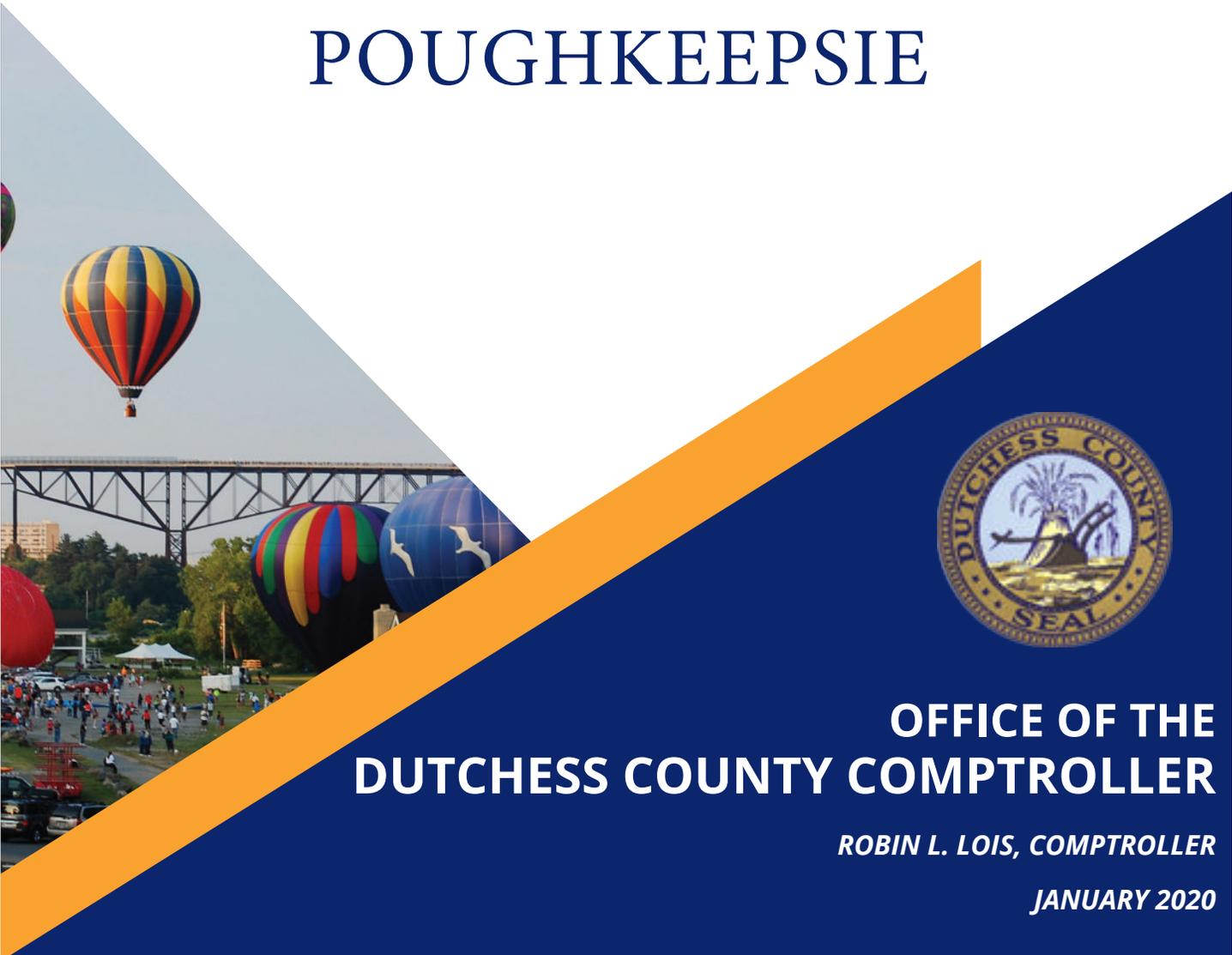


AUDIT REPORT

2020

RECONSTRUCTION OF
45 MARKET STREET
POUGHKEEPSIE



**OFFICE OF THE
DUTCHESS COUNTY COMPTROLLER**

ROBIN L. LOIS, COMPTROLLER

JANUARY 2020



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Dear County Officials & Taxpayers,

The Dutchess County Comptroller's Office has completed an audit report of the purchase and renovation costs for the property at 45 Market Street, Poughkeepsie, New York; the new home of the Public Defender's Office as of May 2019. This audit was conducted as a follow-up to concerns of the Legislature, the Comptroller's Office, and taxpayers regarding the tripling of the initial costs estimates for the project. The initial project request for the purchase and renovations of the building was \$2.4 million in 2016; in 2018, the Administration went back to the Legislature to request another \$4.6 million to complete the project. The full project cost to date is \$7.1 million.

The accelerated nature of the purchase of the 45 Market Street building is indicative of a weak control environment and contributed to a lack of a thorough risk assessment for this project. Our audit cites three major finding areas:

1. Lack of property comparison and cost analysis.

- No cost analysis was done comparing the purchase and renovation of the 45 Market Street property to other properties in the surrounding area or elsewhere.
- No Phase 1 or thorough property condition analysis was prepared on the property as a normal practice for purchase of commercial properties.

2. Lack of complete scope for renovations.

- A full understanding of the needs and function of the office was unknown at the time of original cost estimation resulting in an impractical scope and cost.
- A full understanding of the building condition and necessary code improvements was unknown upon estimating original costs.

3. Lack of oversight.

- The Legislature did not require, and a policy does not exist, to ensure a thorough and accurate analysis for property acquisitions by the County.
- The DPW Commissioner and the Administration did not communicate to the Legislature in a timely manner that the projects initial funding was inadequate and required additional funds to complete.

The Capital Project – Building Policy was adopted in 2018 in response to concerns from this project. We recommend the County enhance this policy or adopt a new policy which address this audit's concerns and recommendations. Other findings and recommendations can be found in the details of this report.

As a priority, the Comptroller's Office continues to monitor and scrutinize daily payments towards this and all capital projects to help ensure all payments are in accordance with the approved budgets and vendor contracts.

We thank the Department of Public Works and Commissioner Balkind for their assistance in gathering the necessary information to provide this report to the public.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robin L. Lois". The signature is fluid and cursive, with a prominent initial "R" and "L".

Robin L. Lois
Dutchess County Comptroller

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Background

Two funding requests were made to acquire and renovate the building at 45 Market Street, Poughkeepsie, to house the Public Defender's Office (PD, or PDO) as a proposed solution for "inadequate space for existing staff"¹. An initial request for funding by the Department of Public Works (DPW) accompanied Resolution 2016240 for \$2.393 million in funding for the acquisition and renovations to 45 Market Street. The initial project would not require bond funding as funding was listed as DTASC² revenue of \$1,000,000, State Aid from Indigent Legal Services (ILS) of \$498,000 and Contingency of \$895,000. The initial plan was to utilize the space 'as is' with minor modifications. The full legislature approved the project unanimously and the County Executive signed the resolution on October 13, 2016.

A second request for funding was initiated in 2018 for \$4.595M which required bond funding to complete the project. Several publicly broadcast meetings were held acknowledging the failure to initially define the full scope of the project properly. Monies were approved by the Legislature on April 9, 2018 to complete the project. This increased the total project to \$6.988M.

The county administration created the Capital Project – Buildings Policy in 2018 in response to the concerns raised by the Legislature, the Comptroller, and the public regarding this project. This policy details processes for capital building projects with a goal of consistency and accountability of those projects. Specifically, "for capital building projects expected to have a total project cost of greater than \$1,000,000, the Department of Public Works shall employ consultant services to prepare the cost estimate based on an accurate project definition, prevailing market conditions, institutional knowledge and professional judgment".

Scope and Objective

The purpose of this audit includes: 1) the review of funding for the purchase and planned renovation of the 45 Market Street property; 2) to review the costs incurred for the Renovation of 45 Market Street Project; and, 3) review the policy and procedures and internal controls surrounding the capital project.

Review Process

Our findings and recommendations are summarized in the following sections and are presented for consideration to improve policies, practices, and operational efficiencies;

- Preliminary expenses - Appraisal and Property Assessment - July and August 2016
- Initial Funding of Project - October 2016
- 45 Market Street Project Initiation:
 - Acquisition - February 2017
 - Design contract - February 2017
 - Demolition and remediation contract - November 2017
- Additional Funding - April 2018
- Project management and administration - Oversight and Monitoring - 2018 / 2019
- Procurement of construction services - 2018
- Examination of prime contractors' bids and actual contracted costs
- An accounting of 45 Market Street costs through December 31, 2019
- Inventory and Project Closeout - 2019 / 2020



Exterior View of 45 Market Street (Provided Courtesy of the Dutchess County Executive's Office)

Methodology Review

Our review consisted of examining the funding requests, resolutions, and associated documents including legislative hearings which were recorded and can be found on the County's Legislative website. In addition:

- We interviewed relevant staff in the Department of Public Works, the Department of Central Services, and the Public Defender's Office.
- In order to do a full accounting of funding and expenses, the Comptroller's Office reviewed all resolutions, agreements, and transactions.
- We reviewed bids, proposals, contracts, and financial transactions.
- We compiled spreadsheets from the department and county financial records to summarize costs by vendor. We asked questions regarding anomalies, significant changes in scope and funding.
- We toured the building after most of the construction was completed and prior to the staff moving in. This was done to increase our understanding of the work completed by the various vendors and to ask questions of DPW about some of the major scope changes. After the Public Defender staff moved in, we officially visited the newly renovated building and performed a random inventory review of furniture items.
- All payments made to the vendors were reviewed by the Comptroller's Office at the time of submittal and in summary as a part of this audit. This process includes a review of contracts and change orders relative to the invoices submitted.

Summary Major Findings & Recommendations

Findings:

- The purchase and renovation funding for 45 Market Street was swiftly presented and approved in 2016 by the Legislature with little debate or discussion. All County purchases of buildings require legislative approval; however, if bonding is not required then the normal two-month review process on capital investments can be bypassed, as it was in this instance.
- Although not required by law, a Request For Proposal (RFP) was not initiated and there was no documentation of other properties being evaluated for purchase or lease.
- At the completion of the 2017 design plan, construction estimate, demolition and asbestos remediation, it was determined that there was not enough money in the capital account to proceed with the construction. The original “as is” building layouts and cost estimates were found to be inadequate and impractical. Proper procedures were not in place to initially identify the project scope - including functional departmental needs, structural defects, and remediation - which subsequently caused major cost increases. These increases in scope and cost were not reported to the Legislature in a timely manner.
- While an internal structure was in place to monitor the accounting and project management for the reconstruction of 45 Market Street, change orders and contract amendments, due mostly to “unforeseen” building structural conditions, drastically increased the originally accepted bid costs and scope. The full project remained on budget; however, these costs depleted the entire contingency built into the project budget.
- There are no written procedures formalizing project closeout nor a “postmortem” review process.
- DPW submitted an insurance claim for the replacement of the boilers at 45 Market due to a flood in 2017. The repairs were completed and paid for in 2018 and the insurance claim was submitted in 2019. Per Dutchess County Risk Management, the process by which self insurance claims should be handled and processed was not followed for the boiler claim. No formal policy for self insurance claims exists.

Recommendations:

- The Legislature should require multiple property comparisons when deciding on approving a building purchase or long-term lease. The financial impacts on the county taxpayer funds for such a long-term investment should be completely understood and evaluated and therefore require more than one committee meeting to decide. Funding should only be granted when projects are thoroughly investigated and transparently presented to the Legislature and the public.
- The County should develop a comprehensive written policy to safeguard taxpayer funds for future decisions regarding purchasing or leasing of government properties. This would include developing comprehensive procedures to properly assess competitive properties possibly through an RFP process, feasibility of property, environmental issues and structural concerns. The County should consider as a policy that an Environmental Site Assessment (Phase 1), which is typically prepared when purchasing commercial property, be done for all acquisitions of county properties. (This could be in the form of a new separate policy or an enhancement to the current Capital Buildings Policy.)
- Procedures should be put in place by DPW to help ensure a thorough project scope can be determined at the beginning of a capital project. This would include understanding functional departmental needs, structural defects and possible asbestos remediation. Cost overages or changes in project scope and scale should be immediately and regularly reported to the Legislature.
- Additional examinations and inspections of the property and a more complete project scope with comprehensive design plans could reduce change orders.

- We recommend a written project close out process which would include a “postmortem” review of large capital projects by DPW. This review of “lessons learned” and process improvements should be documented as institutional knowledge in order to assist in strengthening future projects scope and execution.
- A formal policy for the process and procedure for self-insurance claims should be written and enforced by Risk Management. This policy should outline the process for submission of claims, what should be included and excluded, and the approval/acceptance process.

Funding Review

Total Project Funding

Phase I - October 2016 - Resolution 2016240	
Interfund Transfer - General Contingency	\$895,000
Appropriated Reserve - Capital (TASC)	\$1,000,000
Other State Aid Indigent Legal Services	\$498,000
Total Phase I Funding	\$2,393,000
Phase II - April 2018 - Resolution 2018059	
Serial Bonding	\$4,595,000
Total Phase II Funding	\$4,595,000
Total Funding - 45 Market Street	\$6,988,000

Preliminary Expenses

Preliminary studies completed for the proposed purchase of the property as shown in the chart below were paid by DPW Buildings from their operating budget, A.1620, which is a normal course of action.

Appraisal – July 2016	R.P. Hubbell and Company Inc.	\$1,750
Building Inspection and Assessment – August 2016	Morris Associates	\$7,025
Survey Services – August 2016	Morris Associates	\$1,837

Appraisal - July 2016

The appraisal for the 45 Market Street property was paid by the Public Works – Buildings operating budget in July 2016 for a total cost of \$1,750. This appraisal was used to justify the purchase price of the building in the initial funding request. The building was appraised at \$780,000.

Building Inspection & Assessment and Surveying Services – August 2016

Morris Associates received an on-call assignment to perform a building inspection and assessment of 45 Market Street (8/10/16). Morris Associates also received an on-call assignment for a boundary survey for closing purposes (8/22/16).

At the County’s request, Morris Associates expedited their review and provided a budget estimate on August 23rd – less than two weeks after being awarded the on-call assignment for the work. A full summary of findings was provided on October 5th – only one day before the Legislature’s Public Works and Capital Projects Committee meeting to discuss and approve the project.

Morris Associates indicated in their proposal “the County intends to renovate the floors to add additional office spaces with the renovations intended to be as limited as possible”. The above information was utilized in preparation of the original project funding request.

Initial Funding of Project

Hearings and Documentation Review for Initial Funding - October 2016

The appraisal and a document highlighting the expansion of Public Defense Services and proposed funding accompanied Resolution 2016240, appropriating \$2.393 million for the Acquisition and Renovation of 45 Market Street. The Deputy County Executive presented the advantages and justifications for the request, which included a housing the Public Defender in a separate building, its proximity to the Courts, and parking relief.³ Project funding was listed as TASC revenue of \$1,000,000, State Aid (Office of Indigent Legal Services) of \$498,000 and Contingency of \$895,000. The initial plan was to utilize the space ‘as is’ with minor modifications.

The Public Works and Capital Projects Committee approved the project on October 6, 2016. Resolution 2016240 was subsequently approved by the full legislature, and signed by the County Executive on October 13, 2016. This authorized the purchase and renovation of 45 Market Street, Poughkeepsie, and amended the 2016 adopted county budget to create a capital project account H0499. The purchase price negotiated was \$625,000 with an estimated \$1,750,400 for the anticipated cost of renovations. The funds were appropriated as follows:

Building Acquisition	\$627,600
Building Reconstruction	\$1,750,400
Real Estate Taxes	\$15,000
Total Expense for Resolution 2016240 - H0499	\$2,393,000

The Commissioner of Public Works who initiated this project resigned October 21, 2016.

Observations

The County received the summary of findings from Morris Associates for the building inspection and assessment only one day before presenting the plan to the legislature’s Public Works and Capital Projects Committee for their approval. These were based on a budget estimate prepared in under two weeks - between August 10th and sent to the County on August 23rd.

We noted two recurring concerns expressed by the Legislature and the public during the recorded hearings of the October 2016 presentation regarding the purchase of the property, specifically:

- During the questioning related to the original funding request, a legislator asked if other properties had been considered and the administration stated other Market Street properties were considered. Comparative studies of area properties were not presented in the hearings or in the written resolution correspondence.
- Concerns were raised by legislators and a constituent in the hearings that the property was being removed from the tax rolls rather than the County leasing property which would continue to provide tax revenue to the city. The promised sale of 27 High Street, Poughkeepsie was mentioned several times during the meetings as a replacement property from the County to the tax rolls. The sale of this property has not taken place as of the writing of this report.

In comparing information provided to the legislature to be used in their decision making for this project to actual results, we noted costs were underestimated and anticipated revenues from state sources were overstated. Specifically,

COSTS: The engineer building evaluation report estimated \$1,973,432 in renovation costs. The County requested a lowered renovation budget of \$1,750,400 to the Legislature.

The administration responded that they decided to reduce the amount of the contingency that was built into the project.

REVENUE: It was presented to the Legislature that State funding was estimated at \$2.3 million in 2016, or 39% of the Public Defender’s operating budget, as part of the resolution presentation. It was also stated that Public Defender may soon be able to charge the State rent for the building. Deputy County Executive William O’Neil commented at the October 6th Committee Meeting:

“ILSF funding, combined with some other grant funding will amount to about \$2.3 million in 2016’s budget. And that equals about 39% of the Public Defender’s budget. And that percentage has been increasing over the past several years, and it is also leading to a shift where the Public Defender’s Office may soon be totally funded by the State. As a matter of fact, the Public Defense Mandate Relief Act was passed by both the New York State Assembly and the New York State Senate and it is currently waiting for the Governor’s signature. Now most people don’t believe that’s going to happen this year, but I think everyone believes it will happen eventually, very probably next year (2017). And when it does by owning this building, we would then be able to charge the State rent for the PD’s offices.”⁴

However,

- The Public Defender received \$1.5 million (29%) in 2016 State funding, not the \$2.3 million (39%) that had been budgeted.
- Although funding trended slightly up over prior years, there has been no large additions to State funding received (see chart below)
- There is no record of the Public Defender’s Office charging the state rent – including up to the writing of this report.

Year	Public Defender Total Revenue		
	Approved Budget	Actual (Realized)	Difference
2013	\$510,106	\$737,131	\$227,025
2014	\$1,291,436	\$1,230,404	\$(61,032)
2015	\$1,201,442	\$1,437,141	\$235,699
2016*	\$2,268,264	\$1,500,708	\$(767,556)
2017	\$1,729,797	\$1,583,002	\$(146,795)
2018	\$1,469,229	\$1,562,914	\$93,685
2019**	\$2,418,156	\$1,348,147	\$(1,070,009)

*\$498,000 of 2016 budgeted Indigent Legal Services State grant revenue was transferred from the operating budget to this capital project fund.

** As reported out of Dutchess County’s Financial Management System as of February 5, 2020

4 Transcript of October 6th, 2016 Dutchess County Committee Meetings, 43:33-45:30
<https://totalwebcasting.com/view/?func=VIEW&id=dutchess&date=2016-10-06&seq=1>

Findings

- A Request For Proposal (RFP) was not submitted for a new location for the Public Defender's Office nor was there evidence of a comparison of other properties being considered for purchase. Although not required by policy or legislation, we feel it is best practice to compare purchases of this magnitude that will result in ongoing, long-term operational expenses with taxpayer funds.
- Our review found the County does not have a written policy and process for property acquisition or leasing.
- Construction cost estimate documentation provided by the consultant did not support the funding request.
- Statements regarding state funding were overly optimistic and not supported by backup documentation such as contracts with the State.

Recommendations

- To ensure best practices, the County should advertise their requested need for space to encourage an open competitive forum as is done with other governmental purchasing and leasing activities.
- A cost analysis of properties should be documented and presented to the Legislature for public review and comment. The development of a policy should require due diligence in the examination of leasing and acquisition options.
- Funding documentation estimates should be used to support the funding request and explained if there is a variance.
- Statements regarding current and future funding should be accurate and supported by documentation particularly if being used to support requested approval by the legislature.



Interior View of Public Defender's Lobby and Waiting Room at 45 Market Street (Provided Courtesy of Dutchess County DPW)

45 Market Street Project Initiation

Acquisition - February 2017

Per the initial resolution, the County of Dutchess negotiated the purchase price of \$625,000 for the 45 Market Street property which is located at the corner of Cannon Street and Market Street. The County purchased the property from the Estate of Jean W. Patrick (by John Patrick and Gale Patrick as co-executors). The closing occurred on February 15, 2017 and total costs were \$635,579. The appraisal of the property (attached to the original funding resolution) indicated the market value was \$780,000.

Design Contract - February 2017

In February 2017, the architectural firm Lothrop Associates, LLP was chosen to provide professional services for design, construction documents and construction administration for renovation at 45 Market Street based on an RFP (Request for Proposal) dated January 26, 2017. The contract was signed with Lothrop Associates, LLP and work commenced. In addition to the design preparation, the engineer determined the services the County would procure and prepared the bid documents for the general construction, electric, plumbing, and HVAC.

Demolition and Remediation - November 2017

In October 2017, the demolition and hazardous material abatement RFB (Request for Bid) was issued. In November 2017 Jupiter Environmental Services, Inc. was awarded the bid, a contract was signed, and work commenced on demolition, abatement and remediation of the property.

Additional Funding – April 2018

Several legislative meetings were held to discuss the need for additional funds to complete the 45 Market Street project. DPW indicated after design work was completed and final plans and specifications submitted, the costs from the original resolution were underestimated as “the department did not have a clear scope of the renovation work at that time.”⁵ DPW indicated the original engineer was told to give a “barebones” estimate, for a minimum cost renovation project. In addition, it was stated the engineer had limited access to the building as it was fully occupied and had made assumptions about the level of demolition and renovation work needed.

The second resolution was requested to complete the project in February 2018, the new Commissioner of Public Works (Current Commissioner) submitted a resolution requesting additional funding for renovations. Detailed in this request were expenses not originally included as well as escalation costs on construction. These details were presented in the March 8, 2018 Public Works Committee meeting⁶:

- Professional services consultant fees for architects, engineers, construction management, special inspections, etc.
- Asbestos removal
- Technology and security equipment (network, security alarm, door access control)
- A building wide sprinkler system as required by current code
- An interior fire-rated stairwell for a second means of egress required by code
- Approximately 1300 square feet of space on the 1st floor that was not included in the renovation
- Office furnishings and equipment
- Functional space layout appropriate for the Public Defender’s Offices; alterations of the walls and floors
- HVAC upgrades

⁵ Request for additional funding memo from Commissioner Balkind to Deputy County Executive O’Neil 2/6/18.

⁶ Public Works & Capital Projects Legislative Committee meeting: <https://totalwebcasting.com/view/?func=VIEW&id=dutchess&date=2018-03-08&seq=1>

Additional documentation for the second resolution also provided analysis by DPW indicating inaccurate estimates of costs for risk mitigations, unknown risks, and optimistic assumptions on the project's cost and schedule which affected the total cost. DPW reported that greater- than- expected risks, such as from unforeseen conditions required more extensive restoration than anticipated and the unplanned -- mitigation of asbestos which increased the project's cost.

To further understand the need for the additional funding, the Comptroller's Office inquired and received information regarding the resolution request. While it was originally the intent to utilize the building 'as is' with minor modifications to utilize the space; it was not feasible. The following information was also provided:

- The Public Defender's needs and requirements for the space changed since the original request in 2016 to accommodate the expansion of staff.
- Further review of the property condition found two buildings had been merged with different structures. The older one was wood and the newer one was steel. This required additional engineering and construction costs to improve the structural integrity of the building.
- Over the years the buildings had undergone multiple renovations resulting in layers of varying products which needed to be removed adding additional scope and cost changes regarding demolition and asbestos remediation. DPW explained that when asbestos is interrupted in any area, it requires remediation which is very costly.

Resolution 2018059 dated April 9, 2018 authorized the issuance of \$4,595,000 in serial bonds to pay a portion of the cost of reconstruction of the county owned building at 45 Market Street, Poughkeepsie with the maximum estimated cost not to exceed \$6,345,000. The H0499 account was increased by the additional funding.

Findings

- A comprehensive review of the building condition was not initially completed prior to original funding request resulting in an inaccurate scope and design.
- The needs and requirements of the Public Defender and County changed which altered the original scope and design plan.

Recommendations

- DPW should ensure full due diligence is performed to present an accurate scope and funding requirements for approval.
- A complete analysis of needs and costs for the project should be conducted and conveyed when requesting approval by the County Legislature.



View of the Public Defender's Office and Staff Training Room at 45 Market Street (Provided Courtesy of Dutchess County DPW)

Project Management and Administration – Oversight and Monitoring

Project Management and Administration commences at the initial planning of the project and includes all phases of planning (design and cost), purchasing of services (requests for proposals/bids, purchase orders) and vendor activities (day to day reconstruction). Fiscal monitoring is included in all phases.

DPW works with the administration to develop the architect's required services, review the design and costs for funding requests. After funding is in place, the project commences based on the accepted design plan. DPW advertises, reviews and awards the bids/proposals to the successful vendors. Various county departments are involved in the project as it progresses: Central Services for purchasing, the County Attorney's Office for contract administration, Risk Management for insurance requirements, Budget and Finance for accounting, and the Comptroller's Office for audit review of contracts and payments. In addition, to the internal government review, DPW works closely with the vendors to manage and oversee the project. This work is primarily facilitated by the Commissioner of Public Works, Buildings Design Administrator, the Director of Budget and Finance, and various support staff.

Observations

- Dutchess County DPW Commissioner and the Dutchess County Buildings Design Administrator closely monitored the project's design and reconstruction. Meetings and reviews of progress with the architect, construction manager and construction vendors, along with key county personnel were a critical part of the oversight.
- DPW provided 'real-time project financial management' by determining how the costs of the project were being affected as scope changes occurred. This on-going analysis provided the proper management of funds and timely processing of the respective contract changes and amendments.
- DPW's accounting for the project is primarily accomplished through the County's financial management software, the maintenance of spreadsheets, contracts, payments, change requests and justifications. DPW staff within the financial unit includes Contract Specialists, Accounting Clerks, Accountant, and Director of Budget & Finance, who process all transactions. There are routing slips in place for all payments to ensure the appropriate DPW staff including the Buildings Design Administrator, the Director of Budget and Finance, and the Commissioner (where applicable) have reviewed the relevant documentation prior to submittal for review and payment by the Comptroller's Office.

Findings

- While internal controls were in place to oversee and monitor the project on a day to day basis during reconstruction, additional controls were not in place to ensure the project was fully and accurately scoped.
- Unforeseen design and scope issues resulted in many change orders and an increased contract to vendors (details in next section of this report).
- Communication through meetings, real-time accounting and contract administration was evidenced to address the day to day project activities during construction. However, interim reports to the Legislature and the public on the 45 Market Street project were not evidenced.

Recommendations

- Opportunities exist to improve the review of the initial design plans to insure all aspects of the work that needs to be procured is known prior to the bidding of the project.
- An analysis of the reasons for change orders and solutions on how to minimize or prevent future change orders on new and existing projects should be done. The analysis should look at the design process, consultant usage, contract vendors and their work history, etc.
- To provide transparency of the use of taxpayer funds, scheduled interim reports should be prepared and presented to the Legislature and available to the public for major capital projects. Quarterly updates, made to the Public Works and Capital Projects Committee, of in-progress projects is recommended.

Procurement of Construction Services

The County issues requests for proposals and bids (RFP, RFB) based on the nature of the service. As part of this audit, we reviewed the selection of major service providers. RFP reviews are shown at Addendum I and RFB reviews are shown at Addendum II.

Request for Proposals (RFP)

Dutchess County issues Requests for Proposals (RFP) to seek detailed proposals for professional services as part of the procurement process. Due to the nature of these proposals, cost is not necessarily the only deciding factor in selecting the appropriate provider. For each RFP, a committee is selected to review each proposal submitted against the specified evaluation criteria. Points are then awarded to each vendor based on a specific weighted rating system as defined by the tasks of the project. Usually other factors such as the firm's profile, methodology, industry experience and references are weighted higher when proposals are rated by the committee members. RFP's reviewed were for Professional Services for Design of the 45 Market Street Property (January 26, 2017) and the Moving Services (June 7, 2018).

Request for Bids (RFB)

Demolition/Hazardous Material Abatement at 45 Market Street, awarded November 20, 2017, was the initial RFB for the 45 Market Street Project. Construction Bids were dated February 2018. The design engineer and the owner (Dutchess County) determine the services the County will procure to prepare the bid documents for construction. Documents for the services bid included: the general construction, electric, plumbing, and HVAC. Procurement of elevator modernization services occurred in August 2018.

The Department of Public Works adheres to the New York Consolidated Laws, General Municipal Law § 101 (known as Wicks Law), which states that when the total cost of contract work for the erection, construction, reconstruction or alteration of a public building exceeds \$500,000 or more, independent contractors must be used for:

- a. Plumbing and gas fitting
- b. Steam, heating hot water heating, ventilating and air condition apparatus
- c. Electric wiring and standard illuminating fixtures.
- d. Demolition
- e. General Trades

EXAMINATION OF PRIME CONTRACTOR BID AMOUNTS AND ACTUAL CONTRACTED COSTS

The original costs for the major vendors increased a total of 19.76 percent, or \$1,085,449, which resulted in the total contract values increasing from \$5,012,845 to \$6,003,274. During construction each change order that is requested by the vendor is thoroughly reviewed by the construction manager (if applicable) and then by the Department of Public Works project team to determine if the change should be accepted. These requests are often rejected. If approved, they clearly identify how and why the change differs from the original plan.

At our request DPW reviewed each change order and categorized the reason for the change orders using the following three reasons: "unforeseen", "architect error" or "owner requested". We compiled the following charts to report the original and final contract information by vendor (Chart III) and to report the costs in relationship to the reason for the changes (Chart IV). This information includes all executed change orders as of December 31, 2019.

Summary of Change Orders for 45 Market Street Renovation Project

Vendor	Contract	Total # of Changes	Total Value of Changes	Percentage Increase	Original Contract Amount	Final Contract Amount
Clean Air Quality Services*	C#18-0138 -12/18-PW	6	\$145,754.98	13.66%	\$1,066,880.00	\$1,212,634.98
Jupiter Environmental Services Inc	C#17-0595-2/18-PW	2	\$48,820.00	8.64%	\$564,999.00	\$613,819.00
Dutchess Mechanical Inc**	C#18-0146-12/18-PW	4	\$22,260.45	5.13%	\$434,100.00	\$456,360.45
J & J Sass Electric Inc***	C#18-0149-12/18-PW	16	\$39,440.20	7.29%	\$541,000.00	\$580,440.20
Meyer Contracting Corp****	C#18-0139-12/18-PW	56	\$515,324.51	24.82%	\$2,076,300.00	\$2,591,624.51
Otis Elevator Company Inc	C#18-0552-1/19-PW	2	\$3,429.00	2.15%	\$159,666.00	\$163,095.00
Lothrop Associates LLP*****	C#17-0108-3/18-PW	9	\$215,400.00	126.78%	\$169,900.00	\$385,300.00
Totals		95	\$990,429.14	19.76%	\$5,012,845.00	\$6,003,274.14

* Clean Air Quality Services had 4 amendments but 6 requests for changes

** Dutchess Mechanical Inc had 3 amendments but 4 requests for changes

*** J & J Sass Electric Inc has 2 amendments but 16 PCOs

**** Meyer Contracting Corp has 8 amendments but 56 PCOs.

***** Lothrop had 3 amendments but 9 requests for changes

Summary of Reason for Change Order for 45 Market Street Renovation Project

Vendor	Unforeseen Changes		Architect Error Changes		Owner Requested Changes		Total Cost of All Changes
	#	Cost	#	Cost	#	Cost	
Clean Air Quality Services	3	\$9,763.76	0	\$0.00	3	\$135,991.22	\$145,754.98
Jupiter Environmental Services Inc	1	\$48,820.00	0	\$0.00	1	\$0.00	\$48,820.00
Dutchess Mechanical Inc	1	\$11,885.00	0	\$0.00	3	\$10,375.45	\$22,260.45
J & J Sass Electric Inc	9	\$27,305.77	2	\$2,401.70	5	\$9,732.73	\$39,440.20
Meyer Contracting Corp*	35.4	\$400,004.91	15.3	\$130,335.56	5.3	-\$15,015.96	\$515,324.51
Otis Elevator Company Inc	1	\$3,429.00	0	\$0.00	0	\$0.00	\$3,429.00
Lothrop Associates LLP	7	\$200,900.00	0	\$0.00	2	\$14,500.00	\$215,400.00
	56.6	\$778,128.44	17.2	\$142,237.26	19.2	\$165,083.44	\$1,085,449.14

*Note: the total amount of the Owner Requested changes for Meyer Contracting Corp. reflects an overall reduction in project cost.

Observations

- The largest net increase to a contract was to the General Contractor, Meyer Contracting. As shown above Meyer Contracting had 56 change orders and the contract increased 24.82%, or \$515,324. (We noted this was also the case in a prior audit and project of the County for 230 North Road, Poughkeepsie, NY. In the 230 North Road project, Meyer Contracting was contracted for \$1.2M with 60 change orders and the contract increased \$400,000 or 32%.)
- The architect - Lothrop Associates had 9 change orders totaling \$215,400 or 126.78% increasing the original contract from \$169,900 to \$385,300.
- As shown in the Summary of Reason chart above, over 60% of the changes were due to unforeseen conditions, which represented 72% of the increase in costs. The owner requested changes were 20% of the changes which represented 15% of the increase in costs and the remaining 18% of the changes were due to architect error increasing the costs by 13%.

- The above change orders include payments for the boiler which were initially charged to the H0499 but later reclassified to the Insurance Account, A.1910.12.4463. A total of \$136,738.09 was reclassified for the following vendors:

Lothrop - \$14,500; Meyer - \$3,304.82; J&J Sass - \$5,685.05; and Clean Air - \$ 113,248.22.

Information regarding the purpose of expenditures and change orders was prepared with the assistance of the Dutchess County Department of Public Works. DPW's assessment is a best practice that helps to provide an understanding of the project changes which may assist in future project development.

Recommendation

- DPW should analyze all prior contracts and change orders/amendments awarded to Meyer Contracting Corp. Procurement procedures require the County to award a Request For Bid (RFB) to the "lowest responsible bidder". DPW should compare Meyer to other construction companies contracted in the past to understand if a 25%-32% increase in contract bid amount is both reasonable and normal.

Finding

- The original design of the project did not fully identify the scope due to unforeseen building conditions. As a result, contracts awarded to various vendors were understated along with the scope of work. As shown above, change orders totaled over \$1 million dollars representing 94 changes for the 7 vendors listed. This is a substantial amount of work representing a 19.76% increase in costs that was not originally planned. These costs depleted the entire contingency built into the project however the full project remained on budget.

Recommendation

- A procedure should be developed and implemented to analyze the original design of each project to fully identify the project scope to ensure bid documents contain all work to alleviate future cost overruns which could increase a vendor's contract value. As a result, contracts awarded to various vendors were understated along with the scope of work.

Accounting of Costs Through December 31, 2019

The following is a summary of capital and operating expenses for 45 Market Street as of December 31, 2019:

Building Acquisition & Taxes	\$647,855.88
Professional Fees	471,678.32
Furniture, Fixtures and Equipment	216,018.29
Reconstruction	5,351,942.83
Bond Costs	13,858.50
Costs Expended- H0499	\$6,701,353.82
Costs Encumbered- H0499	240,432.47
Total Capital Costs - H0499	\$6,941,786.29
Additional Capital Costs - H0465*	\$4,384.00
<i>Additional Operating Costs</i>	
Waiting Room Furniture - A.1170	15,529.94
Boiler Costs - A.1910	136,738.09
HVAC Repair - A.1170	2,708.11
Total Additional Operating Costs	\$154,976.14
Total Costs - 45 Market Street	\$7,101,146.43

* Asbestos monitoring in August 2016 was charged to H0465 (Hazmat Bond)

A total of \$6,701,353.82 was charged to Project H0499 as of December 31, 2019.

Encumbrances represent funds set aside for contract commitments or liabilities; unused funds can be liquidated in the event that a liability does not become a realized expense. A total of \$240,432.47 remained encumbered as of December 31, 2019. In recent correspondence, DPW indicated routing for final payment for Clean Air, Meyer and Unlimited were in process. QUEST will be liquidated as there are no final claims. Horizon and Dutchess Mechanical need to provide a final bill.

Additional Capital Costs from H0465 represent initial asbestos testing for services rendered August 2016 totaling \$4,384. This Capital account, charged in 2016 prior to the establishment of H0499, was for established for Hazard material testing in various County-owned buildings.

Additional costs charged to operating fund budgets were reviewed. As shown above, \$15,259.94 in operating funds were paid from the Public Defender's budget for waiting room furniture in 2019. This furniture was not a part of the original plan to purchase, and therefore was not included in the capital project. Funds were not originally budgeted for this purpose in the Public Defender's budget either, but were transferred from appropriated personnel funds budgeted in the Public Defender's Office.

The Boiler costs, totaling \$136,738.09, were charged to A.1910.12.4463 (Self Insurance) to cover flooding damage. This amount was originally charged to the Capital H0499 account; it was eventually determined by the Commissioner of Finance as being related to a casualty/insurance claim, and therefore the expense was moved to a Judgment and Claims account in the operating funds.

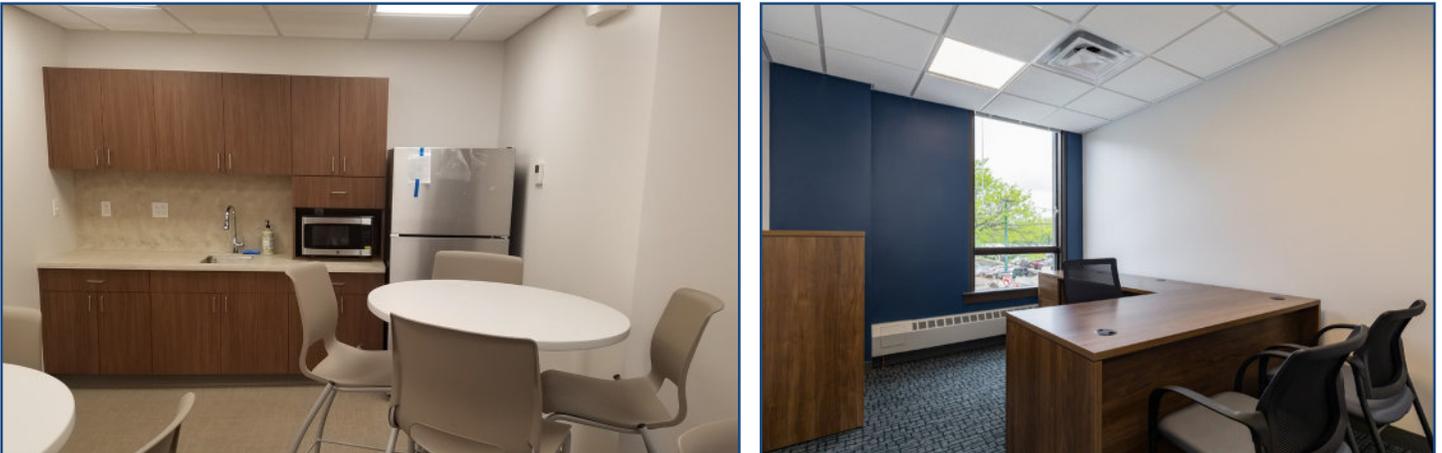
HVAC Repair costs totaling \$2,708.11 were charged to the Public Defender's Office operating budget. In June 2019 an HVAC unit that the County chose not to replace during the renovation experienced a failure, and DPW was unable to maintain temperatures on the first floor of the building. DPW directed the Public Defender's Office to pay for the repairs out of their operating budget.

Finding

- Per Risk Management, the process by which self insurance claims should be handled and processed was not followed for the boiler claim. No formal policy for self insurance claims exists.

Recommendation

- A formal policy for the process and procedure for self-insurance claims should be written and enforced by Risk Management. This policy should outline the process for submission of claims, what should be included and excluded, and the approval/acceptance process.



View of the Kitchen and a Staff Office at 45 Market Street (Provided Courtesy of Dutchess County DPW)

CHART I - H0499: 45 MARKET STREET - EXPENDITURES BY VENDOR

Expenditures Through 12/31/19

VINCENT J DIMASO	\$21,875.00
QUEEN CITY ABSTRACT CORP	\$5,871.50
ESTATE OF JEAN W PATRICK	\$607,832.87
CITY OF POUGHKEEPSIE	\$12,276.51
Total Building Acquisition Costs	\$647,855.88
Architectural fees	
LOTHROP ASSOCIATES LLP	\$370,800.00
Survey/Mapping of existing structure	
M J ENGINEERING AND LAND SURVEYING PC	\$15,000.00
Commissioning agent	
HORIZON ENGINEERING ASSOCIATES LLP	\$29,088.32
Special inspection consultant	
ATLANTIC TESTING LABORATORIES LIMITED	\$4,898.00
Asbestos monitoring consultant	
QUALITY ENVIR. SOLUTIONS & TECHNOLOGIES INC (QUEST)	\$30,682.00
Elevator consultant	
MGI ELEVATOR	\$11,850.00
Movers	
ARNOFF MOVING & STORAGE INC	\$9,360.00
Total Professional Fees	\$471,678.32
Alarm System	
DOYLE SECURITY SYSTEMS, INC	\$14,691.00
Network Equipment	
RETROTEL INC	\$4,524.00
FUNCTION5 TECHNOLOGY GROUP LTD	\$1,861.00
Equipment (appliances)	
HOME DEPOT	\$3,641.40
Furnishings	
W B MASON CO INC	\$190,307.76
B&H FOTO ELECTRONICS INC. d/b/a B&H PHOTO VIDEO	\$993.13
Total Furniture , Fixtures and Equipment	\$216,018.29
Asbestos Removal & General Demolition	
JUPITER ENVIRONMENTAL SERVICES INC	\$613,759.00
BSB CONSTRUCTION INC	\$45,760.00
General Construction	
MEYER CONTRACTING CORP	\$2,472,443.38
Plumbing	
JD JOHNSON CO. INC	\$43.44
DUTCHESS MECHANICAL INC	\$415,359.43
HVAC	
CLEAN AIR QUALITY SERVICES	\$1,027,601.30
Electric	
J & J SASS ELECTRIC INC	\$574,755.15
Technology	
COMMERCIAL CARD SOLUTIONS	\$1,957.58
CMS COMMUNICATIONS INC	\$2,935.39
FUNCTION5 TECHNOLOGY GROUP LTD	\$8,907.00
COMPUTECH INTERNATIONAL, INC	\$6,193.01
FUNCTION5 TECHNOLOGY GROUP LTD	\$4,650.00
Elevator	
OTIS ELEVATOR COMPANY INC	\$163,095.00
Miscellaneous	
PSH CORP dba JOHN HERBERT COMPANY	\$520.13
ONE TIME CARPENTRY LLC	\$1,371.00
DAVIES HARDWARE	\$68.34
HOME DEPOT CREDIT SERVICES	\$402.79
RELIABLE GLASS & DOOR CORP	\$11,781.50
ADVERTISING	\$339.39
Total Reconstruction Construction Costs	\$5,351,942.83
BOND COSTS	\$13,858.50
Total Costs	\$6,701,353.82

CHART II - H0499: 45 MARKET STREET - DETAIL OF ENCUMBRANCES

Vendor	Original Encumbered Amount	Amount Expensed Through 12/31/19	Remaining Encumbrance Amount
Clean Air Quality Services	\$1,212,634.98	\$1,140,849.52	\$71,785.46
Meyer Contracting Corp.	\$2,586,535.07	\$2,470,658.76	\$115,876.31
Dutchess Mechanical Inc.	\$456,360.45	\$415,359.43	\$41,001.02
Unlimited Metalwork, LLC	\$6,280.00	\$0.00	\$6,280.00
Quality Environmental Solutions & Technologies, Inc (QUEST)	\$24,680.00	\$21,602.00	\$3,078.00
Horizon Engineering Associates, LLP	\$31,500.00	\$29,088.32	\$2,411.68
Remaining Encumbrance Amount			\$240,432.47

Additional Costs paid from Operating Expenses – 2016 to March 2018

After the purchase of the building, the following costs were incurred from DPW operating funds, Department A1620: gas and electric charges totaling \$18,528 for the time period March 2017 - April 2019; and water charges totaling \$1,615 for the time period November 2016 - August 2018.

Of the \$1,615, a payment was made to the City of Poughkeepsie Water/Sewer Department in the amount of \$236 for the time period November 4, 2016 - January 31, 2017, which was prior to the purchase of the building.

Inventory and Project Closeout

Inventory

As part of this audit, we reviewed the furniture and fixtures purchased to validate that the items were received and in their respective areas. Items were primarily purchased from WB Mason. A total of \$190,307.76 was paid to WB Mason from the H0499 account: This amount included a storage fee of \$5,600 and an installation fee of \$28,000. The storage fee resulted from the delay in the building’s completion date. According to DPW’s Buildings Design Administrator, two 40-foot tractor trailers containers filled with furniture were already in route from the manufacturer and an agreement was made to pay a storage fee until the County could accept delivery. An additional purchase for waiting room furniture was made from the Public Defender’s operating account A1170 in September 2019 for a total of \$15,259.94. Some of this furniture replaced ‘new furniture’ purchased from H0499 that the Public Defender did not want. A random sample of all items purchased from WB Mason were chosen for review and there were no anomalies noted.

Project Closeout

DPW does not have a formal written policy on closing out projects. While most vendors for 45 Market Street were paid the full amounts due, seven months have elapsed since the Public Defender’s Office took occupancy. DPW’s project management team indicated they continued to confirm all project requirements were being satisfied and work completed. The open encumbrances for the six vendors represent contracts that have not been fully paid and or completed and therefore not closed out. While these items are of minor value in comparison to the original contracted amount to each vendor, every effort should be made to close out each contract of the project in a timely manner.

Observation

- DPW works in a multi-project environment which requires them to jump from one project to another. A formalized written policy closing out a project including identifying opportunities for improvement, was not available to assist in accountability, closure and future improvements.

Finding

- A formal written closeout procedure is not available to address concerns encountered during projects and formalizing actions that could be taken to improve outcomes.

Recommendation

- In order to provide accountability and improve future project management, the County should develop a closeout policy which includes an assessment of the project to identify opportunities for improvement and how to implement positive change.

ADDENDUM I - REQUEST FOR PROPOSALS REVIEW

Professional Services for Design

RFP-DCB-01-17, issued January 5, 2017 with a due date of January 26, 2017, for Professional Services for Design, Construction Documents and Construction Administration for Renovations for 45 Market Street. This RFP was awarded to Lothrop Associates, LLP.

A total of eight proposals were evaluated based on the criteria identified in the RFP. As a result of this initial scoring process and a review of each firm's work history with Dutchess County, four firms were selected as a "short list" for further consideration. The firms were Lothrop Associates, Peter Sweeny Architects, Tinkleman Architecture and C.T. Male Associates. The review committee met and ranked the four remaining proposals.

The fees and services bid by each vendor are as follows:

Vendor	Building Condition Assessment	Schematic Design	Design Development	Construction Documents	Bidding Phase	Construction Admin/ Construction Mgmt	Reimbursable Consultant Expenses	Construction Management	Total Consideration
Lothrop Associates LLP	\$20,000.00	\$22,500.00	\$30,000.00	\$60,000.00	\$7,500.00	\$29,900.00	\$0.00	\$0.00	\$169,900.00
Peter Sweeny Associates	\$8,500.00	\$31,200.00	\$21,915.00	\$58,440.00	\$8,325.00	\$29,200.00	\$0.00	\$0.00	\$157,580.00
C.T. Male Associates	\$13,960.00	\$27,910.00	\$47,100.00	\$43,620.00	\$6,980.00	\$34,890.00	\$24,000.00	\$179,800.00	\$378,260.00
Tinkleman Architecture	\$9,000.00	\$34,000.00	\$63,000.00	\$63,000.00	\$4,000.00	\$65,000.00	\$0.00	\$0.00	\$238,000.00

While not the lowest bidder, the DPW Commissioner explained in a letter to the administration (2/10/17), Lothrop Associates was awarded the bid based on qualifications, cost and services included within their fee proposal.

Observation

- While comparing the individual scoring sheets to the score summary sheet for this bid, the score for one vendor was incorrectly transferred to the score summary sheet. However, this did not affect the overall outcome of the bid award.

Moving Services for Various Departments of Dutchess County Government

RFP-DCP-41-18, issued May 14, 2018 with a due date of June 7, 2018, was for moving services for various departments of Dutchess County Government within the Greater Poughkeepsie New York area. The purpose of this RFP was to find a qualified firm or firms to supply labor, equipment and materials to relocate five Dutchess County Departments. The departments identified in the RFP were the DC Sheriff's Office, DC Department of Planning and Community Development, DC Division of Central Services, DC Office for the Aging and the DC Public Defender's Office. The County could have awarded each Department's move separately or as a single award package for all Department moves, or in any combination to promote the best interest of the County. A total of five bids were received and Arnoff Moving & Storage, Inc. was awarded all five moves for Dutchess County Departments.

The listing of vendors who submitted proposals and their bids for the 45 Market Street move follow:

Vendor	Proposed Bid
Arnoff Moving & Storage, Inc.	\$9,360.00
East Side Movers, Inc.	\$9,500.00
McCollister's Transportation Group, Inc.	\$50,269.60
Santiago Worldwide Moving & Storage, Inc.	\$22,974.00

Finding

- The score for one vendor was incorrectly transferred to the score summary sheet.

Recommendation

- Summary score sheets should be verified to the individual score sheets in order to ensure the bid is awarded correctly.

ADDENDUM II - REQUEST FOR BIDS REVIEW

Demolition/Hazardous Material Abatement at 45 Market Street

RFB-DCB-19-21, issued October 25, 2017 with a due date of November 20, 2017, was for the demolition and hazardous material abatement for 45 Market Street.

BSB Construction, Inc. and Jupiter Environments Services, Inc. submitted bids for this project. This RFB was awarded to Jupiter Environmental Services, Inc. based on their bid amount. We reviewed the documents associated with this bid and found no discrepancies.

BID RESULTS REPORT - Demolition/Hazardous Material Abatement at 45 Market Street		
Alterations to 45 Market Street		
RFB-DCB-19-21		
Bid Opening: November 20, 2017 @ 2:30pm		
Contractor Name	City/State	Base Bid
Jupiter Environmental Services, Inc.	Pine Brook, NJ	\$564,999
BSB Construction, Inc.	Poughkeepsie, NY	\$798,900

Alterations to 45 Market Street

All the bids for construction were identified as RFB-DCB-02-18. The results and our observations follow:

General Contractor proposals are provided on the following chart, with the award to Meyer Contracting, Corp. as the low bidder. The County awarded Meyer the base bid and Alt GC-3 for a total contract amount of \$2,076,300. Alternate GC-3 was to remove and replace the existing rough slab on grade in the south east quadrant of the first floor and replace with a new reinforced concrete slab.

BID RESULTS REPORT - General Contractor (GC)						
Alterations to 45 Market Street						
RFB-DCB-02-18						
Bid Opening: April 5, 2018 @ 3:00pm						
Contractor Name	City/State	Base Bid	Alt GC-1	Alt GC-2	Alt GC-3	Grand Total (Base Bid + Alts)
Meyer Contracting Corp.	Pleasant Valley, NY	\$2,067,000	(\$1,500)	\$5,700	\$9,300	\$2,080,500
Key Construction Services, LLC	Poughkeepsie, NY	\$2,134,000	\$1,400	\$6,200	\$12,000	\$2,153,600
Worth Construction Co., Inc.	Bethel, CT	\$2,194,000	\$0	\$5,450	\$20,000	\$2,219,450
B & B Contracting Group, LLC	New York, NY	\$2,990,000	(\$1,350)	\$2,000	\$24,121	\$3,014,771

Observation

- The amounts for the base bid submitted by B & B Contracting Group were different. The numerical amount was \$2,099,000 while the amount written in words was, "Two Million Nine Hundred Ninety Thousand". DPW indicated they were advised by the County Attorney to use the amount written in words as the official bid amount. This discrepancy did not change the outcome of the accepted bid as Meyer's bid was lower.

Mechanical Construction (HVAC) proposals are provided below. As shown, Clean Air Quality Service, Inc. was the low bidder for a total of \$1,066,880 for the HVAC construction.

BID RESULTS REPORT - Mechanical Construction (HVAC)		
Alterations to 45 Market Street		
RFB-DCB-02-18		
Bid Opening: April 5, 2018 @ 3:00pm		
Contractor Name	City/State	Base Bid
Clean Air Quality Service, Inc.	Hawthorne, NY	\$1,066,880
Southeast Mechanical Corporation	Brewster, NY	\$1,115,000
Sun Dance Energy Contractors, Inc. dba Markley Mechanical	Peekskill, NY	\$1,162,479
S&O Construction Services Inc.	Pleasant Valley, NY	\$1,299,054

Electric Construction proposals are provided on the following chart, with the award to J & J Sass Electric, Inc. As shown, J & J Sass Electric, Inc. was the lowest eligible bidder for the total of the electric construction base bid and alternates EC-1 (Electrical Outlet-Receptacle or Switch with 20 feet of wire) and EC-2 (Data Outlet with 20 feet of wire).

BID RESULTS REPORT – Electric Construction				
Alterations to 45 Market Street				
RFB-DCB-02-18				
Bid Opening: April 5, 2018 @ 3:00pm				
Contractor Name	City/State	Base Bid	Alt E-1	Alt E-2
J & J Sass Electric, Inc.	Kingston, NY	\$541,000	\$175/each	\$150/each
RLJ Electric Corporation	Peekskill, NY	\$666,000	\$298/each	\$225/each
Otero Construction & More, Inc.	Stanfordville, NY	\$397,500	\$455/each	\$655/each
The NY-Conn Corporation	Danbury, CT	\$524,375	\$120/each	\$120/each

Observations

- Otero Construction was the lowest bidder: However, the company withdrew their bid on 4/18/2018, due to the inability to obtain the required payment and performance bonds as specified in the bid documents.
- The NY-Conn Corporation is an out of state vendor and could not be considered for the project because the project is not funded in whole or in part with federal funds as per the NYS DOL Apprenticeship Reciprocal Program. They did however have a CT apprenticeship program that would transfer to NY if the project was federally funded.

Plumbing and Fire Protection Construction proposals are provided on the following chart. Dutchess Mechanical, Inc. was awarded the bid. PC#1 was the price per sprinkler head with 10' pipe.

BID RESULTS REPORT – Plumbing and Fire Protection			
Alterations to 45 Market Street			
RFB-DCB-02-18			
Bid Opening: April 5, 2018 @3:00pm			
Contractor Name	City/State	Base Bid	PC#1
Dutchess Mechanical, Inc.	Hopewell Junction, NY	\$434,100	\$325/each
S & O Construction Services, Inc.	Pleasant Valley, NY	\$512,923	\$357/each
Clean Air Quality Service, Inc.	Hawthorne, NY	\$570,000	\$325/each
S&L Plumbing and Heating Corp.	White Plains, NY	\$646,000	\$1,000/each

Elevator Modernization and Maintenance of One Passenger Elevator at 45 Market Street

RFB-DCB-18-18, issued August 1, 2018 with a due date of August 15, 2018, was for the modernization and maintenance of one passenger Elevator at 45 Market Street. Otis Elevator Company was the only bidder and therefore was awarded the bid, totaling \$159,666.

EXHIBIT I - DEPARTMENT RESPONSE

MARCUS J. MOLINARO
COUNTY EXECUTIVE



ROBERT H. BALKIND, P.E.
COMMISSIONER

DAVID C. WHALEN
DEPUTY COMMISSIONER

COUNTY OF DUTCHESS DEPARTMENT OF PUBLIC WORKS

February 3, 2020

Robin Lois, Comptroller
County Office Building, 4th Floor
22 Market Street
Poughkeepsie, NY 12603

RE: Audit of Public Defender's Building Project
45 Market Street, Poughkeepsie, NY 12601

Dear Comptroller Lois:

DPW offers the following response to the Draft Audit of the Public Defender's Building Project located at 45 Market Street, Poughkeepsie, NY. I wish to thank you and your staff for conducting a thorough audit. Your office took extra effort to collect and verify the data presented in the audit report and I appreciate your diligence. The capital project to reconstruct and improve the facility at 45 Market Street was initiated under the former DPW Commissioner's leadership and was completed under my oversight. As with most large building reconstruction projects, the Department faced many challenges during design and construction. As the audit report noted there were two separate funding requests for this project; an original request for funding in October 2016 to purchase the building and perform minimal improvements in order to reuse the building "as-is," and a subsequent funding request in April 2018 after the scope of the reconstruction work was expanded to provide for a much more comprehensive renovation of the building.

The following responses are offered to the "Summary of Major Findings and Recommendations" beginning on page 3 of the Draft Audit Report:

The Legislature had the opportunity to ask any questions and debate the merits of the project at the time of the original funding request in October 2016 and the subsequent funding request in April 2018. The due diligence review by the Legislature was done in accordance with the County's Administrative Code and Charter.

When making the second request for funding in April 2018, the Department included construction contingency costs to mitigate the risk of possible unforeseen building conditions, which could lead to increased construction costs. The Draft Audit Report accurately states that the "...costs depleted the entire contingency built into the project..." The decision to add contingencies, and the amount of those contingencies, was a prudent and well calculated decision by the Department. The project, while it used contingency funding as planned for, remained within the revised budget.

Shortly after taking ownership of the building, a pipe break in the basement caused flooding of the furnace room that destroyed all of the boilers that serviced the building. These boilers were slated for re-use in the reconstructed building. The Department placed the County Risk Manager on notice at the time of the incident but did not pursue an insurance claim since it was hopeful that the building project funding could cover the cost of replacement boilers even though they had not been budgeted for replacement. As the project came to a close, it became evident that all contingency funds were going to be exhausted, and therefore the new boiler expenses would need to be paid from an insurance claim. The Recommendations seem to focus on creation and implementation of numerous new policies and procedures. The Department will seriously consider any suggestion to improve the delivery of services and to provide improved accountability and transparency, provided that any new policy or procedure does not unnecessarily restrict the department. Each project is different, with different issues and complexities and to set a policy that would address all possible issues that may arise in all projects may not be efficient or effective in its application.

Under the section of the Audit Report entitled “Funding Review – Initial Funding of Project - October 2016” the findings and recommendations on page 8 discuss the method used by the County to acquire the property, and the quality of the information provided to the Legislature as they considered the initial funding request. Your findings accurately indicate that a Request for Proposals (RFP) is not required by policy or legislation when purchasing property. The Department and Administration followed all proper procedures to acquire the property at 45 Market Street. Your findings also indicate that information provided to the Legislature “...was overly optimistic and not supported by backup documentation...” The information provided to the County Legislature was based on public knowledge of NYS Legislation that was passed and awaiting the Governor’s signature at the time the funding request was presented to the County Legislature. The 39% revenue budgeted was included and Adopted in the 2016 operating budget of the Public Defender’s Office. As noted at our meeting, the revenue that was not realized in the operating budget also had offsetting cost savings as the revenue was moved to instead offset the new building capital project costs maximizing the County’s draw down of ILSF funds that year.

The consultant’s construction estimates for the proposed “bare-bones” improvement project was reduced slightly by reducing the contingency amount before it was presented to the Legislature. This was done with the understanding that the improvements were very minimal in nature and therefore should not require a substantial contingency allowance. As the scope of improvements ultimately evolved and expanded, the cost estimate also expanded to include a larger contingency amount based on the risk assessment for the larger scope.

Under the section of the Draft Audit Report entitled “Examination of the Prime Contractor Bid Amounts and Actual Contracted Costs,” the findings state “The original design of the project did not fully identify the scope due to unforeseen building conditions.” This is an accurate statement; however, the unforeseen building conditions could not have been identified during the design process because most of these conditions were not revealed until the contractors were working in the building, uncovering the hidden conditions. As the Department discovered during the reconstruction process, 45 Market Street was comprised of three different buildings with separate structural systems. Upon review of the existing structural support systems discovered, the County’s design consultant determined that the systems did not comply with modern structural building codes and had to be improved. Similar issues were discovered with the existing HVAC

systems which were to be re-used. The Department agrees that it is always advisable to perform a thorough and detailed analysis of an existing building to better understand and document the potential costs of a reconstruction project. To the extent possible, this analysis was done on the 45 Market Street project. It must be noted that reconstruction projects carry a much larger risk in this regard than new construction projects which is why the contingency was built into the project.

In closing, the Draft Audit Report appears to be comprehensive and the fiscal data appears to be accurate. Your report recommends new policies and procedures and the Department will explore these suggestions with the Administration. I also believe that the creation and implementation of the new Capital Projects- Building policy in 2018 will serve the County well and afford Legislative interaction at appropriate decision-making intervals. Thank you for the opportunity to offer this response to the Public Defender's Office 45 Market Street Draft Audit.

Sincerely,



Robert H. Balkind, P.E.
Commissioner

c: C. Boston, DPW Building Design Administrator
M. Aldrich, DPW Director of Budget and Finance



DUTCHESS COUNTY COMPTROLLER
ROBIN L. LOIS, COMPTROLLER

**22 MARKET STREET
POUGHKEEPSIE, NEW YORK 12601**