

**Presentation
To The
Erie County Legislature
Government Affairs Committee
Honorable Thomas J. Mazur, Chair
June 11, 2013**



**Regarding a Resolution
Re: Investigating the Careless Release of Confidential
Information by the Department of Social Services**

**By
Richard Tobe, Deputy Erie County Executive
Carol Dankert-Maurer, Commissioner Department of
Social Services**



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

June 11, 2013

Honorable Thomas Mazur, Chair
Government Affairs Committee
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Resolution - Investigating the Careless Release of Confidential Information by the
Department of Social Services

Dear Legislator Mazur:

I hereby provide a Report in response to the introduction of a Resolution by Legislators Lynne Dixon, John Mills, Kevin Hardwick, Edward Rath and Joseph Lorigo bearing the above caption. The responses described in this Report were undertaken by a number of departments including Social Services, Purchase, Law, Public Works, Budget, and staff members from the County Executive's office. In addition, outside counsel was consulted during the development of the responses.

The Report commences with events that occurred on April 17, 2009. Its last entry relates to events on June 7, 2013. The Report includes a "Timeline of Events and Related Attachments". The time line has 39 descriptive entries and includes 24 attachments under 22 tabs, which document and support the statements made in the Report.

The following are key findings:

1. Erie County has had a contract for the secure disposal of confidential documents at least since 2009. The contract currently in effect was extended in December 2011 by the outgoing Collins Administration and will lapse in April 2015.
2. In May 2012 the County Attorney engaged the Magavern, Magavern & Grimm law firm to help the County conduct a risk assessment and to develop a plan to meet all current standards for the protection of confidential records, particularly focusing upon HIPPA compliance. This effort is nearing its final stage.
3. Locked recycling totes were always available in the Rath Building, and were constantly in use by departments; however, at some point unlocked totes were delivered to some departments and floors in place of the locked totes that were called for. At other times, locked totes were properly delivered. It appears that when locked totes were not available

employees improperly placed confidential information in the unlocked totes that were at their work locations. When locked totes were available they were used. Locked and unlocked totes were taken to the sub-basement and collected by Cascade Recovery.

4. Other than with regard to the records taken by the Comptroller, there is no evidence that any records were improperly disclosed from the totes to any unauthorized persons.
5. Although no records are known to have been disclosed, there was an unacceptable risk that a records disclosure could take place and there was a need to improve the system to better protect confidential records.
6. As soon as the Administration was made aware of the problem on April 1, 2013, it took immediate actions to secure the totes, to analyze the problems and take steps to improve the systems on a long term basis.
7. On May 29, 2013 Erie County notified the United States Department of Health and Human Services of a risk of disclosure of HIPPA protected records. This notification was within the 60 day time period from discovery of a risk of disclosure, which occurred on April 1, 2013, to the notification.
8. Erie County notified several New York State agencies of the risk that some confidential records could have been disclosed, of the Administration's investigation and the actions that have been taken.
9. There is no evidence to support the Comptroller's claim that the Legislature and through the Legislature, the Administration was notified of a confidential records problem in October 2012. It appears that the Comptroller's assertion is related to comments made by one or more DSS employee who were seeking pay raises in the fall of 2012. A careful review of available information indicates that the Legislature was not advised of a problem with confidential records during the fall of 2012. The Comptroller's unsupported claim has placed the County in jeopardy of incurring a significant fine for failure to self-report within the 60 days specified by law. Despite the Comptroller's statements to the press, no evidence has been found to support the claim that a problem with confidential records was presented to the Legislature or the Administration in the fall of 2012 that would require a notification.
10. It appears that the Comptroller was advised (incorrectly we now believe) by DSS employees on Friday, May 24, 2013 or Saturday, May 25, 2013 that there had been notice to the Legislature of a confidential records problem in October 2012. Rather than conduct an investigation to substantiate or refute the allegations, the Comptroller notified the press of the unfiltered statement of one or more employee who was dissatisfied because they had not received a raise earlier in the year. The Comptroller's allegations appeared in the Buffalo News on Monday May 27, 2013. It has been relatively simple to determine that no such public notice to the Legislature or Administration of problems with confidential records ever occurred. The Comptroller's decision to immediately make a public statement without any due diligence or the skeptical mindset that should be one of the hallmarks of a Comptroller could seriously jeopardize the County.
11. In his May 17, 2013 letter, the Comptroller for the first time notified the Administration of a problem with confidential records. This was at least six weeks after he claims to have discovered a problem with confidential records. That notification was not initiated by the Comptroller, but rather was in response to my letter of May 8, 2013 asking if he had obtained confidential information. The Comptroller has not provided an explanation for this delay.
12. The Comptroller has taken and failed to return as requested, confidential information that he claims to have in his possession. Obtaining this information and storing it in a location

other than as specified in the Confidentiality and Non-Disclosure Agreements signed by his office is a breach of these agreements.

13. The Comptroller has yet to issue any official audit, draft audit, interim audit memorandum, audit alert, or any other document with regard to the protection of confidential information. He has however made numerous statements on social media, on his website and to the press.

The enclosed Report is current as of today. We believe all immediate risks have been addressed. We are still, however, collecting information that will allow a determination to be made if more long term improvements should occur. We must also complete the work now underway through the Magavern firm to come fully into compliance on a county-wide basis.

I would also offer one final comment. We have not found a system-wide breakdown, and we have not found actual disclosures of confidential information from the totes except to the Comptroller. When we became aware of the situation we took immediate action to correct those items most in need, have corrected or will correct other weaknesses that we found and will make further improvements beyond the system as it existed in 2009. We do not believe there is any reason for the District Attorney or any other outside agency to conduct an investigation as called for in the Resolution.

I hope that this information will be helpful to the Legislature and the Government Affairs Committee as you examine this matter.

Sincerely yours,



Richard Tobe
Deputy County Executive

Enc. 1

cc: County Executive Mark Poloncarz
County Attorney
County Comptroller
Erie County Legislature
Erie County Fiscal Stability Authority

County Record Security Review

Timeline of Events and Related Attachments

June 11, 2013

Tab	Date	Event	Attachment
	April 17, 2009	<p>Bids opened in response to solicitation 290154-002 by Division of Purchase for Paper Recycling for Erie County. The Bid:</p> <ul style="list-style-type: none"> -at paragraph A Purpose provides "The Contractor... will provide regular and secure methods for waste paper pickup and transport, ... will provide Certificates of Destruction,...." - at paragraph 3.0 requires at least "75% of totes be lockable and tamper free for sensitive or confidential materials" and specifies approximately three hundred 90 gallon totes and 4,000 plastic bins. -at paragraph 6.0 the contractor is required to "ensure that all reasonable care is given to the security and confidential nature of paper generated by the County by not allowing scrutiny of said paper prior to recycling. The contractor is required to make every effort to ensure the paper submitted for recycling is not made public or released into the environment, in whole or in part...." <p>Appendix A of the Bid specifies the locations at which totes are to be located. They were to be placed in 15 county buildings at 64 specified locations. Of which 6 building were under the control of DSS with a total of 24 DSS locations specified.</p> <p>The contract was for a three year term ending in April 2012.</p>	See Attachment 1 below.
1	April 20, 2009	<p>Division of Purchase entered into <u>Standard Agreement</u> with Metro Waste Paper Recovery US, Inc. (later renamed Cascade Recovery, Inc.) pursuant to the above referenced Bid.</p>	<p>Standard Agreement with Bid 290154 signed by Jeffrey Meyers, General Manager of Metro Waste (later Cascade Recovery) and dated April 20, 2009.</p> <p>Note: a fully executed copy of this Standard Agreement containing a signature of a county official could not be located.</p>

2	January 1, 2011	<p>Division of Purchase extended Agreement with Cascade Recovery (formerly Metro Waste) until December 31, 2012.</p> <p>Note: Agreement would have lapsed on April 20, 2012, three years after execution date of April 20, 2009.</p>	<p>Standard Agreement made as of January 1, 2011 but executed by Jeffrey Meyers, General Manager and the County Purchase Director on April 12, 2012, (contract 12-347-PU).</p>
3	December 20, 2011	<p>Division of Purchase extended Agreement with Cascade for an additional three year period to April 15, 2015. The original agreement, through this extension is still in effect.</p>	<p>Letter from Erie County requesting Cascade extend Bld No. 290155-002 for an additional three years. Signed by then Erie County Purchase Director Bridget Corcoran and by Jeffrey Meyers from Cascade dated December 20, 2011.</p>
	May 2012	<p>County Attorney engages the law firm of Magavern, Magavern & Grimm to assist the Department of Law with reviewing the Erie County Department of Mental Health's ("OMH") HIPPA policies and in preparing an Organized Health Care Arrangement and Data Use Agreement for external data sharing needs of OMH, along with developing privacy and security policy updates. By June of 2012, the County Attorney became aware that there was no single countywide HIPPA Compliance, or Privacy and Security Policies in place, and that such policies varied amongst the various county departments. The County Attorney immediately directed that the Magavern firm assist the Department of Law in developing a countywide HIPPA Policy, and Privacy and Security Policy, by developing a plan to conduct gap analysis and risk assessments of the various departments under the control and direction of the County Executive, in order to develop all stated policies and to ensure compliance with the current state of the law. This process is on-going and expected completion is anticipated by the end of July 2013.</p>	
	February, 2013	<p>DSS Commissioner Carol Dankert is informed, via letter dated January 31, 2013 that arrived on February 6, from Deputy Comptroller-Audit Teresa Fraas, that the Comptroller will audit the eligibility and recertification process for Medicaid and Public Assistance. The letter states that "if the confidential information shared with our office is accurate, Erie County could face serious repercussions." The letter further states that fieldwork will continue through March 8, 2013 but may be adjusted one way or the other.</p>	

4	February 13, 2013	DSS Commissioner Carol Dankert replies to Fraas letter of January 31, 2013 indicating that she was "...taken aback by the suggestion that the Comptroller will permit a six week span of time to pass before Social Services has information to address a potential deficiency...." Dankert continued, "We consider it our duty to act quickly to any situation that may be adverse to the interests of the County taxpayers. Please reconsider, and advise me of the allegations that you describe as potentially resulting in serious repercussions, so that we can launch an internal review and take timely action if required."	Letter from DSS Commissioner Dankert to Teresa Fraas Deputy Comptroller, dated February 13, 2013.
	February 14, 2013	DSS and the Comptroller's office hold an audit entrance conference to review the audit scope, objectives and methodology.	
5	March 14, 2013	<p>Comptroller's Office signed confidentiality agreements between DSS and Comptroller's office, as required by DSS, in order for Comptroller's staff to review certain client records and data.</p> <p>In paragraph 5, the Comptroller agreed that documents will be reviewed in an office provided by DSS and that they cannot be copied or removed, as per state directives.</p> <p>In paragraph 7, the Comptroller "agrees to keep any and all Confidential Information received in any form from the County in a secure and confidential manner in the office furnished to the Auditor by DSS."</p>	<p>-Confidentiality and Non-Disclosure Agreement As To An Audit of Temporary Assistance</p> <p>- Confidentiality and Non-Disclosure Agreement As To An Audit of Medicaid</p> <p>Both signed on March 14, 2013.</p>
	April 1, 2013	<p>Deputy County Executive Richard Tobe advised by Mark Cornell of a call or visit from a county employee expressing concerns about confidential documents in sub-basement of the Rath Building.</p> <p>-Tobe and Rizzo, Deputy Commissioner of DPW, Buildings and Grounds went to the sub-basement. There were a large number of locked and unlocked totes present. There were confidential documents in at least a few of the unlocked totes. Confidential documents retrieved from one of the unlocked totes originated in DSS.</p> <p>-Dankert, Purchase Director Vallie Ferraraccio, and others were called to the sub-basement.</p> <p>-Tobe orders all totes to be immediately moved into secure room in sub-basement.</p> <p>-Tobe confirms totes have been moved when he leaves in early evening.</p>	

6	April 2, 2013	<p>County Executive Mark Poloncarz briefed on events of prior day.</p> <p>-Poloncarz ordered follow-up investigation and action.</p> <p>-Poloncarz sent a memo to all executive departments :</p> <ol style="list-style-type: none"> 1) reminding them of the need to retain records as required by state law, 2) advising them that any records that are disposed of must be done in such a way as to assure that no confidential information is made available to any person not authorized to have access, 3) requiring the use the secure totes and to ask for them if needed, 4) advising that if totes are not available at a location, the department is to use another secure method for disposal, and that ordering that "under no circumstances may confidential information be removed from a work site, or from a tote, without the permission of the department head who is responsible for such records." and 5) he order that "Under no circumstances shall confidential records be removed from the care and custody of a department, or removed from authorized county work sites, without the permission of the department head who is responsible for such records. <p>In addition, department heads were directed to conduct an assessment and provide a report to the County Executive.</p>	Memorandum to Department Heads from Mark Poloncarz, April 2, 2012 (sic should be 2013).
7	April 3, 2013	Meeting between County staff and Cascade to review situation, gain assurance on proper disposal by Cascade, obtain training manual, and obtain copy of insurance certificate and certificates of destruction. All were subsequently provided; see Certificate of Guaranteed Destruction dated May 1, 2013 that was (subsequently provided) that covered April 2013.	Certificate of Guaranteed Destruction, from Cascade Recovery US, Inc. for April 2013, dated May 1, 2013.
8	April 4, 2013	Comptroller's Office writes to DSS notifying them that the Comptroller is significantly altering the audit scope by including new scope that will include "The activities associated with the tracking scanning, storage and disposal of original documentations." Other letters from the Comptroller's office followed that continued to widen the scope of the audit.	Letter Teresa Fraas, Deputy Comptroller-Audit to Carol Dankert, dated April 4, 2013.
	Following Weeks	<p>The following occurred during the subsequent weeks:</p> <ul style="list-style-type: none"> - It was determined that some floors and departments that should have received locked totes were receiving instead only unlocked totes, or an insufficient number of locked totes; - It appeared that this had occurred for some time, but it could not be determined when it had commenced; - Locked totes were sent to all floors; - DSS Commissioner reiterated that she only wanted 	

		<p>locked totes on her floor and this policy was implemented;</p> <ul style="list-style-type: none"> - An inventory was done of all totes, locked and unlocked, and their locations were established on each floor; - Secure tote pickups were increased from once per week to twice per week; - A new policy was established, whereby totes can only be removed from a floor under the supervision of one manager and only a few specified workers will now carry out this function. In the past a number of different staff members were authorized to remove full totes; - Research was conducted to determine what other steps might be implemented immediately and if there were longer term solutions that might improve the County's handling of confidential records. - Several Departments were instructed to provide the administration with recommendations on next steps, including a study of alternative methods to deal with confidential documents. Research is still underway on long term alternatives. 	
9	April 22, 2013	The Comptroller's Office asks DSS for a meeting to discuss, among other things "recently modified processes and procedures regarding the storage and disposal of original documentation".	Letter Teresa Fraas to Carol Dankert, April 22, 2013.
	April 26, 2013	During a spot check of totes awaiting secure disposal by Cascade, the administration developed concerns about some totes having too large an opening and a number of totes being filled to the top so that it might be possible to remove documents. Cascade was contacted and they removed totes with the large openings and replaced them with totes with smaller openings. Staff was also advised to only fill totes about 2/3 of the way full.	
	May 2, 2013	<p>Meeting between Comptroller's Office and DSS concerning the Comptroller's Medicaid "investigation". Only after questioning by DSS and Timothy Callan, about the new scope letter examining record retention and disposal did the Deputy Comptroller-Audit disclose that the Comptroller's office removed confidential records from the sub-basement. DSS and Callan asked Ms. Fraas why she waited over a month to reveal that there was a security concern. The Deputy Comptroller-Audit refused to answer any questions regarding such records, but stated that her office was going to inform the administration about the issue, but then decided not to. Ms. Fraas also stated that she was not aware of any security issue or risk at present.</p> <p>Commissioner Dankert notified Deputy County Executive Tobe of her concerns that the Comptroller's office may have obtained confidential records but could not confirm that this had</p>	

		occurred.	
10	May 8, 2013	<p>As a result of the communication with Commissioner Danker, Tobe wrote to Mychajliw asking if:</p> <ul style="list-style-type: none"> -his office removed confidential records, -if he still has such records, -if taken but no longer in his possession, to describe what happened to them, and - if he still has records, to return any records in his possession to DSS. 	Letter Tobe to Mychajliw, May 8, 2013
	May 10-14 2013	Decision was made to relocate certain shops in the sub-basement to provide space for a new secure room where locked and unlocked totes could be stored before their collection by Cascade.	
11	May 17, 2013	<p>Letter from Mychajliw to Tobe stating that:</p> <ul style="list-style-type: none"> - "...we feel compelled now to address a serious security issue involving the Department of Social Service's (DSS) improper disposal of highly sensitive documents containing personal information of many Erie County residents." - he had documents from 1,700 DSS cases, -documents were of 10 types, including personal medical information, -the Comptroller concluded that these were "public" documents for reasons stated in his letter, -he included information about state and federal laws, and - advised that one or more disclosures were required. <p>Of the ten categories of records mentioned in the Comptroller's letter, it appears at least one would meet the definition of personal medical information as such term is used in HIPPA. The number of Individuals, about whom such personal medical information was obtained by the Comptroller, is not known to the Administration at this time.</p> <p>The letter did not state when the Comptroller obtained the confidential documents, who obtained them, who has since seen them, where they are now located or if they are secure.</p> <p>The letter did not state, but implied that the Comptroller would not return the records as was requested.</p>	Letter Mychajliw to Tobe, May 17, 2013.
12	May 20, 2013	All Executive Departments Heads are directed to survey their department to determine if there were any known disclosures of confidential records from January 1, 2012 to date.	E-mail from Jennifer Hibit, Chief of Staff to all Executive Departments dated May 20,

			2013.
	Week of May 20 th	DSS Commissioner discussed possible records breach with Judy Arnold from NYSDOH and Kristin Proud from the Governor's office.	
	May 21-22, 2013	New secure room in the sub-basement was completed and a security camera was added. All totes not on a department floor are to be stored in this room and only a few designated employees will have access to the key. A protocol was established for the use and protection of the key.	
13	May 21, 2013	Minority Caucus of the County Legislature clocks in a resolution calling for an investigation of the "careless release of confidential information by the Department of Social Services."	Resolution from the five legislators who are members of the Minority Caucus, May 21, 2013.
	May 22, 2013	Tobe conducts previously planned inspection of DSS offices at 290 Main Street with DPW, Sheriff's Department, and DSS staff.	
14	May 23, 2013	Letter from Tobe to Mychajliw, acknowledging receipt of letter of May 17 from Comptroller and requesting the immediate return of documents Comptroller has now acknowledged as being in his possession to: <ol style="list-style-type: none"> 1) Mitigate harm to county and residents, 2) Determine if notification to state or federal authorities is required, 3) Allow notification to individuals, and 4) To secure records pending resolution of this matter. 	Letter Tobe to Mychajliw, May 23, 2013.
15	May 24, 2013	Letter from Mychajliw to Tobe stating Comptroller will "consider" request to return the documents	Letter Mychajliw to Tobe, May 24, 2013.
16	May 27, 2013	Buffalo News published an article by Sandra Tan in which Comptroller Mychajliw asserts that the legislature and former Comptroller David Shenk, and the Administration through the Legislature were aware of problems with confidential records in the totes as early as October 2012, and is cited as saying that an unnamed female county social services employee "brought their concerns to the administration's attention last year during budget hearings before the County Legislature's Health and Human Services Committee." The Comptroller stated in the article he would <u>not</u> return the records to DSS	Buffalo News article, Monday May 27, 2013, page B 6, "Administration knew of lax record security in fall, Mychajliw says".
17	May 28, 2013	Poloncarz administration conducted investigation of allegations contained in Buffalo News article of May 27, 2013. It was determined that three social services employees approached various parties in county government in October 2012 to seek pay raises and reinstatement to positions that had been eliminated by the Collins Administration during the development of the 2012 budget.	Letter from Annette Cole, Ellen Mosack, and Marti Kovach to Chairperson Betty Jean Grant requesting an upgrade for the three DSS employees, dated October 10, 2012.

	<p>The Poloncarz investigation included discussions with executive department and legislative staff who attended the relevant Legislative meetings, including Tim Callan, Brian Bray and Carol Dankert and a review of contemporaneous notes that Tim Callan took during these meetings. Tim Callan also provided notes and e-mails from the fall of 2012 from his meetings and conversations with the three DSS employees.</p> <p>There was also a discussion with the Chair of the Health and Human Services Committee about the events alleged to have taken place in the fall of 2012. He denied any knowledge about concerns about confidential records ever being mentioned.</p> <p>It was determined that:</p> <ul style="list-style-type: none"> -No county employee other than senior managers of DSS testified at the Finance and Management/Budget Committee meeting on the DSS 2013 budget. No issues of record security were mentioned at the Budget Hearing. -Three employees of the Department of Social Services complained to the Budget Office and to the Legislature about being downgraded when the Collins Administration eliminated the former Program Support Unit in DSS in 2011. These employees submitted a letter to the Legislature clocked in on October 10, 2012. Three DSS staff including the writer of the letter appeared at and at least one testified at the Health and Human Services Committee meeting on October 30, 2012. They complained about being downgraded when the 2012 budget was adopted and they sought to have the 2013 Executive Budget amended to reinstate them to their former titles and thus they were seeking raises. There is no evidence that they mentioned in their oral testimony or in their letter of October 10, 2012 an issue with records protection. -Similarly, the three DSS employees submitted another letter to the Legislature dated November 1, 2012, requesting restoration of their former title in the 2013 Budget. The November 1, 2013 letter did not mention records security. -It does not appear that an issue with records security was raised at the Legislature's November 19, 2012 public hearing on the 2013 budget. The Administration's notes on who testified at the public hearing do not include any of the three DSS employees. <p>In addition, the Buffalo News' county reporter attended the public hearing and filed an article on November 20, 2102 that</p>	<p>Letter from Annette Cole, Ellen Mosack and Marti Kovach, to Chairperson Betty Jean Grant requesting a meeting with the Fiscal Management Subcommittee (sic) and seeking support for an upgrade for the three DSS employees dated November 1, 2012.</p>
--	---	---

		<p>does not reference any testimony or any issue with record security.</p> <p>-Ms. Cole attended the Legislature's Health and Human Services Committee meeting on December 13, 2012 and she testified and advocated again for upgrades for herself and her colleagues. There is no evidence that she mentioned records protection.</p> <p>There is no evidence available to the Administration to support the Comptroller's claim that a records security issue was brought to the attention of the Administration and/or the Legislature during the 2013 budget process.</p>	
	May 29, 2013	Tobe conducts inspection of DSS offices at 478 Main Street with DPW and DSS staff. An issue was discovered that led to the disciplining of a manager at DSS and additional steps were taken to further secure records.	
	~ May 30, 2013	<p>All Executive Departments reported that they are not aware of any disclosure of confidential information as a result of the way the totes were handled, other than the disclosure to the Comptroller. Several departments reported incidents, including a mailing error involving a few letters (all of which were retrieved and sent to the correct party), improper access to electronic records by employees (who were disciplined) and a document was filed with Family Court that improperly contained a social security number. The Family Court refused to return the document after it was filed, but indicated the entire file was sealed from public viewing.</p> <p>None of these documents are or contain Personal Medical Information and therefore are not protected by HIPPA, but are none the less confidential records.</p>	
18	May 31, 2013	County Executive notifies U.S. Department of Health and Human Services of facts involving possible disclosure of personal health information as a result of Comptroller obtaining confidential records which he states contained personal medical information.	Letter from Poloncarz by Tobe to Leon Rodriguez, Director, Office of Civil Rights, US Department of Health and Human Services, May 31, 2013.
18	May 31, 2013	County Executive sent memorandum to all Executive Departments directing them to review draft HIPPA compliance materials as prepared by outside counsel to determine applicability of HIPPA law to department, provide feedback on draft implementation documents, and to appoint a departmental privacy officer.	Memorandum from Poloncarz to Executive Department Heads regarding HIPPA Privacy policy, dated May 31, 2013.
20	May 31, 2013	County Executive forwarded above Memorandum to elected department heads offering them assistance with HIPPA	Memorandum from Poloncarz to Elected

		compliance if desired.	Department Heads regarding HIPPA Privacy policy, dated May 31, 2013.
21	June 3, 2013	County Attorney Mike Siragusa directed Charles Krathaus, shift supervisor for building security, to "take all necessary actions to preserve the last six (6) months of video recordings of the Loading Dock Area and the Sub-Basement Area where recycle totes were placed of (sic or) may have been placed."	E-Mail from Mike Siragusa to Charles Krathaus, June 3, 2013.
	June 4, 2012	County Executive conducted a tour of DSS offices at 290 Main Street.	
	June 6, 2013	Commissioner Dankert-Maurer shared May 31 st letter from Tobe to the U.S. Department of Health and Human Services with Kristin Proud in the Governor's office overseeing two state agencies and Judy Arnold from NYSDOH.	
	June 6, 2013	Commissioner Dankert-Maurer conducted a tour of DSS offices at 43 Court Street.	
22	June 7, 2013	<p>DSS Counsel notifies Comptroller Mychajliw that he has violated the Confidentiality and Non-Disclosures Agreements (see March 14, 2013-Tab 5) signed by his office because he has taken possession of Confidential Information from the County and failed to keep "any and all Confidential Information received in any form from the County in a secure and confidential manner in the office space furnished to the Auditor by DSS."</p> <p>The Comptroller was informed if all records are not returned to DSS by the close of business on Monday June 10, 2013, the Non-Disclosure Agreements will be considered suspended and all access to confidential DSS information will be denied until the breach is cured.</p>	Letter to Comptroller Mychajliw from Thomas Kubiniec, Director, Office of Legal Affairs, DSS, June 7, 2013.



COUNTY OF ERIE
CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

STANDARD AGREEMENT

This AGREEMENT, made as of the 20th day of April, 2009

by and between Metro Waste Paper Recovery US, Inc.

of 3241 Walden Ave., Depew, NY 14043

hereinafter referred to as the Contractor, and the County of Erie, a municipal corporation of the State of New York, hereinafter referred to as the County:

WHEREAS, in accordance with public open competitive bidding, sealed proposals were received and publicly opened by the County of Erie, Division of Purchase

on April 17, 2009 at 2:00 PM

for: Paper Recycling for Erie County

WHEREAS, the bid of the Contractor submitted in accordance therewith, the sum

of 35% to Erie County for Paper Recycling and \$.09/lb. for shredding

was the highest responsible bid submitted; and

WHEREAS, a contract is hereby awarded to the Contractor by the County, in accordance with the provisions therein contained; and

WHEREAS, the Notice to Bidders and Specifications make provisions for entering into a proper and suitable contract in connection therewith;

NOW, therefore, the Contractor does hereby for its heirs, executors, administrators and successors agree with the County of Erie that, the Contractor shall for the consideration mentioned, and in the manner set forth in Accepted Invitation to Bid No. 290154-002 Specifications and Provisions of Law annexed hereto and forming a part of this contract, furnish the equipment and materials and perform the work and services described in the Accepted Bid for the above sum.

XXXX

Paid monthly upon presentation of invoices.

Upon delivery, completion and approval of the work, as per specifications.

Please refer to the Invitation to Bid (Page 1) and the Instructions to Bidders which are part of this agreement.

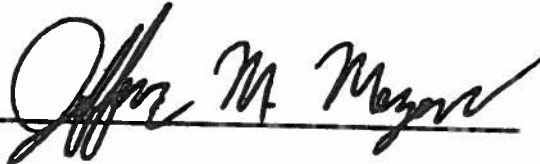
IN WITNESS THEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

COUNTY OF ERIE

Contractor: Metro Waste Paper Recycling US, Inc.

by _____
Director of Purchase

by



Title

General Manager

APPROVED AS TO FORM

Assistant County Attorney
County of Erie, New York

(date)

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.



COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

INVITATION TO BID

Bids, as stated below, will be received and publicly opened by the Division of Purchase in accordance with the attached specifications. FAX bids are unacceptable. Bids must be submitted in a sealed envelope to:

County of Erie
Division of Purchase
Attention: George Stipanovich, Jr., Buyer 716-858-6336
95 Franklin Street, Room 1254
Buffalo, New York 14202-3987

NOTE: Lower left hand corner of envelope **MUST** indicate the following:

BID NUMBER: 290154-002

OPENING DATE: APRIL 17, 2009

TIME: 2:00 PM

FOR: PAPER RECYCLING FOR ERIE COUNTY

NAME OF BIDDER: METRO WASTE PAPER RECOVERY US INC

If you are submitting other Invitations to Bid, each bid must be enclosed in a separate envelope.

Following EXHIBITS are attached to and made a part of the bid specifications, and part of any agreement entered into pursuant to this Invitation to Bid:

<u>X</u>	EXHIBIT "A"	- Assignment of Public Contracts
<u>X</u>	EXHIBIT "B"	- Purchases by Other Local Governments or Special Districts
<u> </u>	EXHIBIT "C"	- Construction/Reconstruction Contracts
<u> </u>	EXHIBIT "D"	- Bid Bond (Formal Bid)
<u>N/A</u>	EXHIBIT "E"	- Bid Bond (Informal Bid)
<u>X</u>	EXHIBIT "F"	- Standard Agreement
<u>X</u>	EXHIBIT "G"	- Non-Collusive Bidding Certification
<u>X</u>	EXHIBIT "H"	- MBE/ WBE Commitment
<u>X</u>	EXHIBIT "IC"	- Insurance (CLASS "A")
<u> </u>	EXHIBIT "P" & EXHIBIT "PBI"	- Performance Bond

(Rev. 7/95)

County of Erie
DIVISION OF PURCHASE
NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

- (1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or any competitor;
- (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
- (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTICE

(Penal Law, Section 210.45)

IT IS A CRIME, PUNISHABLE AS A CLASS A MISDEMEANOR UNDER THE LAWS OF THE STATE OF NEW YORK, FOR A PERSON, IN AND BY A WRITTEN INSTRUMENT, TO KNOWINGLY MAKE A FALSE STATEMENT, OR TO MAKE A FALSE STATEMENT, OR TO MAKE A STATEMENT WHICH SUCH PERSON DOES NOT BELIEVE TO BE TRUE.

BID NOT ACCEPTABLE WITHOUT FOLLOWING CERTIFICATION:

Affirmed under penalty of perjury this 14 day of April, 2009

TERMS _____ DELIVERY DATE AT DESTINATION _____

FIRM NAME METRO WASTE PAPER RECOVERY US INC

ADDRESS 3241 WALDEN AVE

DEPEW NY ZIP 14043

AUTHORIZED SIGNATURE [Signature]

TYPED NAME OF AUTHORIZED SIGNATURE _____

TITLE MATERIAL RECOVERY TELEPHONE NO. 716 570 3955
SPECIALIST

SPECIFICATIONS

A. Purpose

Erie County (the County) requires the services of a qualified paper recycling firm to collect and recycle waste paper and cardboard generated at multiple County office locations. The purpose of the contract is to provide the County offices the means, equipment, and resources to effectively and efficiently recycle waste paper from office operations, to eliminate paper from the regular sanitary waste stream, and to generate revenue from recyclable paper and cardboard waste recovery.

The County intends to contract with a fully-approved and licensed recycling collection firm (herein after referred to as the Contractor), that has all the necessary qualifications, commercial licenses, and approvals to collect and transport recyclables to an appropriate end market. Appropriate end markets do not include incineration or landfills. The Contractor will be responsible for providing and maintaining recycling containers for office paper collection, will provide regular and secure methods for waste paper pickup and transport, will provide data and reports to the County, will provide Certificates of Destruction, will maintain accurate records, will provide an effective method of waste stream measurement, will remit payment for recycle revenues, and will provide technical support to promote program efficiency and effectiveness. There will be no cost incurred by Erie County, other than for shredding of sensitive documentation as defined herein, as a result of implementation of this contract. This contract will be in effect for a three-year term.

B. Project Description

1.0 Locations

The County will require waste paper pickup at multiple government office buildings. Specific locations are listed in "Attachment A" included herein and incorporated as part of this bid specification.

2.0 Target Materials

The materials to be collected may include, but are not limited to: office paper, magazines, catalogs, advertisements, newspaper, glossy color inserts, phone books, undeliverable mail, computer paper, boxboard, manila folders, cardboard, ledger paper, newsletters, envelopes, etc. The County may add or delete materials through a modification of this contract.

3.0 Recyclables Generated

The County has historically generated 30 to 50 tons per month of waste paper recyclable materials from the listed office locations. Erie County does not guarantee any specific number of pounds/cardboard that will be generated on a monthly basis.

C. Scope of Work

1.0 Contact

The contractor is to appoint a primary contact representative responsible for expediting the services provided by this contract and to serve as liaison to the County. The contractor is to provide the name and all pertinent contact information for the primary representative.

2.0 Equipment

The contractor is to provide and maintain all necessary equipment, facilities, labor, and services necessary for collection, transportation and delivery of contracted recyclables. A list of available equipment to be used in the delivery of contracted services (i.e., vehicles) and a description of facilities, including operating locations, is to be provided as part of the response to this bid.

3.0 Containers

The contractor is to provide adequate, newly washed, 90-gallon totes to all collection locations listed in Attachment A. A sufficient number of totes are to be provided by the contractor to, as a minimum, provide one tote for each floor of each listed building on the attached list. The actual number and location of totes will be determined by mutual agreement between the County and contractor to facilitate the efficient collection of recyclables. The contractor is to maintain cleanliness, appearance, and operability of all totes. The County will require that approximately 75% of the paper-recycling totes be lockable and tamper free for sensitive or confidential materials. These totes must be provided with the same keyed locks. A sufficient number of keys must be provided to the County for use in case of emergency.

The contractor is to provide a sufficient quantity of plastic recycling bins to be used in office areas on each floor for the purpose of collecting paper to be deposited into the totes.

Approximately three hundred 90-gallon totes and four thousand plastic bins will be needed to meet the needs for the service.

4.0 Pick-up

4.1 Schedule

The contractor is required to pick up recyclables on a regular schedule as determined by mutual agreement between the County and the contractor. At a minimum, the contractor will be required to pick up recyclables at each location weekly. At certain locations, storage restrictions and paper volumes may necessitate more than one pickup per week. Pickups must be scheduled during regular business hours (Monday through Friday, 8am to 3pm). The contractor is to develop and submit, subsequent to award, a schedule of days and times for collection at each location. The contractor will be required to provide pickup service regardless of market conditions or demand for materials.

4.2 Location

The County will place filled totes/cardboard bundles at a mutually agreeable pickup location (i.e., the loading dock or front entrance) at each service site. The contractor must contact the designated County personnel assigned at each building location being serviced at the time of pickup. The contractor will be provided access to freight elevators and loading docks to accommodate removal of recyclables.

4.3 Pickup Receipt

The contractor is to provide the designated County personnel with a receipt at the time of pickup. The receipt must be signed by both the contractor and County designee and must clearly show the number and the weight of each tote picked up. The contractor, as part of the response to this proposal, is to propose a method of weight determination and documentation for payment purposes where on-site weighing is not available.

4.4 Special Pickup

Additional pickups may be required on an infrequent basis due to moving or a special event. The contractor will be notified by the County a minimum of one week in advance when additional or unscheduled pickups are required.

5.0 Records

The contractor is required to keep adequate records of all pickups and materials collected during the duration of this contract. The records must be available for review by the County upon request.

5.1 Reports

The contractor is required to provide reports to the County on a quarterly basis showing date, time, location of pickups, quantity of materials, and payments for recycled materials. In addition, the reports are to identify any problems incurred in the collection of recyclables or information regarding rejected/contaminated materials. The reports are to be sent to Michelle Mazzone at the address listed above.

6.0 Confidentiality

The contractor must ensure that all reasonable care is given to the security and confidential nature of paper generated by the County by not allowing scrutiny of said paper prior to recycling. The contractor is required to make every effort to ensure the paper submitted for recycling is not made public or released into the environment, in whole or in part, as a result of mishandling or non-containment of recycled materials. The contractor shall not use, allow access to, or offer for resale any papers, file record material, or any other form of records contained in the material. The contractor must provide, as part of the quarterly reports (Section 5.1.) or as required by the County, Certificates of Destruction for each collection point and pickup.

6.1 Shredding

As a bid option, the contractor is to provide a cost on a per pound basis for shredding of sensitive documents. Currently, no paper shredding is included in this contract; however, the contractor will be notified at the time of pickup of any materials deemed sensitive or confidential in nature that require shredding by the contractor. This may include up to 75% of the projected total paper generated by the County. The contractor is required to ensure the paper waste materials, deemed sensitive or confidential in nature, are secure prior to actual shredding. Documentation verifying the shredding of materials designated as sensitive or confidential shall be provided by the contractor in concert with, and in addition to, Certificates of Destruction.

7.0 Compliance

The contractor must have in its possession, and provide copies of, all permits, licenses, and approvals to comply with all Federal, State, and local laws and regulations to provide the services specified herein. All documents must be kept current for the duration of the contract.

8.0 Contamination

When bidding this contract, the contractor should consider the possible cost of contaminant and residual disposal. The County will not be liable for any or all incidental disposal costs incurred as a result of this contract. Any materials deemed unacceptable due to contamination will be documented on the receipt at the time of refusal and will be so noted in the quarterly report.

9.0 Marketing

All materials collected under this contract must be used or sold as recyclable materials to end-users. This material may not be incinerated or landfilled. End users must be identified in this proposal. This information shall remain confidential, presuming that it is submitted under separate cover and is clearly marked "CONFIDENTIAL."

10.0 Payment

The contractor is to provide payment to the County for recyclable materials. In part, the basis for the award will be the percentage to be paid to the County of the published price for recyclable materials as printed in the Official Board Market Yellow Book at the first of each month. All payments are to be made by check payable to "County of Erie, Division of Purchase" and delivered to the Director of Purchase, Erie County Purchase Division, 95 Franklin Street, Buffalo, NY 14202. Payment for recycled materials must be provided by the 15th of the month following pickup of materials. Payment must include a statement showing location, weight, and type of materials received along with a copy of the Official Board Market Yellow Book page showing the published price for each at the beginning of the month in which the pickup was made.

11.0 Bid Response

For consideration of award, a complete response must be submitted. Erie County reserves the right to reject any or all bid responses without cause. A complete bid package must contain the following:

11.1 Price Quotes

For consideration, contractors must provide, as a minimum, a response to the base bid as defined in 11.1a, and provide a quote for the alternative bid request as defined in 11.1b

11.1a Base Bid

The contractor must provide a percentage quote for payment to the County based upon the Official Board Market Yellow Book prices. Percentage for consideration by the County shall include:

- a. Mixed Office Paper 35 %
- b. Sorted Office Paper (SOP) 35 %
- c. Shredded Sorted Office Paper (SSOP) 35 %
- d. Cardboard 25 %

The contractor must provide, as an option, the cost per pound of shredding of mixed office paper.

- e. Paper Shredding \$ 0.09 /pound

11.1b Alternative Bid

In recognition of the expenses incurred by the contractor for collection services specified in this contract, in addition to the base bid, an alternative bid may be submitted. In the alternative bid, the contractor may assign a value for their collection services. The contractor may then retain all recycle revenues up to the collection services value stated in the bid.

The contractor would then pay Erie County a percentage of the amount equal to the difference of the value of the recycled paper (according to Official Board Market Yellow Book prices) above the value of the collection services, if the value of the recycled paper exceeded the value of the collection services.

- ☒ **OTHER (DESK SIDE RECYCLING CONTAINERS) ADDENDUM A**
- a. Mixed Office Paper _____ %
 - b. Sorted Office Paper (SOP) _____ %
 - c. Shredded Sorted Office Paper (SSOP) _____ %
 - d. Cardboard _____ %
 - e. Collection Services Value \$ _____

11.2 Qualifications

The contractor must be a firm with a minimum of three (3) consecutive, current years of doing business in the collection, removal, and recycling of waste office paper and cardboard.

11.3 References

The contractor must provide at least three references, including names and contact information, of business or government offices for which such service has been provided in the last twelve (12) months.

11.4 Insurance

The contractor must provide copies of documentation of insurance as specified in this bid solicitation as per the requirements of Erie County Standard Insurance Classification _____.

11.5 Permits

The contractor must provide copies of all permits, licenses, and approvals necessary to provide the services specified herein.

11.6 Subcontractors

The contractor is to identify any and all subcontractors that may be utilized in the performance of the services specified herein. All subcontractors will be responsible for meeting the requirements of this bid solicitation as the primary contractor.

11.7 Recycling Methods, Locations, and Equipment

The contractor is required to submit information on the recycling methods and locations which will be utilized by the contractor in providing this service. The County reserves the right to inspect, at its discretion, the locations and facilities utilized by the contractor. The contractor is also to provide a list of equipment, including transport vehicles, to be used in providing these services.

11.8 Tote Weighing

The contractor is required to propose a procedure for insuring accurate determination and documentation of the weight of paper received where on-site weighing of individual totes is impossible or impractical.

12.0 Termination

In addition to Paragraph 29, Page 5 of 6, of the Instructions to Bidders, either party may cancel this agreement upon thirty (30) days prior written notification.

County Executive

Contact: 858-8500
95 Franklin St
Buffalo, NY 14202
Floors: 16

Legislature

Contact: 858-8898
25 Delaware Avenue
Buffalo, NY 14202
Floors: 7

Department of Social Services

Contact Person: 858-7511
95 Franklin St
Buffalo, NY 14202
Floors: 1, 2, 3, 4, 7, 8, 11, 12 & Sub-basement

290 Main St
Buffalo, NY 14202
Floors: 3, 4, 5, 7, 8, 10

478 Main St.
Buffalo, NY 14202
Floors: 1, 2, 3, 4, 5, 6

608 William St/Jesse Nash
Buffalo, NY 14206

1500 Broadway/Gajewski Center
Buffalo, NY 14212

609 Ridge Rd/STRIDE Office
Lackawanna, NY 14218

**Department of Public Works
Highways and Buildings & Grounds**

Contact: 858-8376
95 Franklin St..
Buffalo, NY 14202
Floors: 14, Basement & Sub-basement

Erie County Home
11580 Walden Ave
Alden, NY 14004
937-5685

Environment & Planning

Contact: 858-6716
95 Franklin St.
Buffalo, NY 14202
Floors: 9 & 10

Div. of Sewerage Management

Contact: 858-8301

95 Franklin St.
Buffalo, NY 14202
Floors: 2, 9, 10

Erie County Health Department

Contact: 858-6976
95 Franklin St
Buffalo, NY 14202
Floors: 2, 8, 9

Erie County Public Health Laboratory
462 Grider St Bldg BB
Buffalo NY 14215
(Located behind Erie County Medical Center)

Board of Elections

Contact: 858-8772
134 West Eagle
Buffalo, NY 14202
Floors: 2 & 3

Erie County Central Library

Contact: 858-7185
1 Lafayette Square
Buffalo, NY 14203

Central Police Services

Contact: 858-6365
45 Elm Street
Buffalo, NY 14203

Erie County Clerk

Contact: 858-8867
25 Delaware Ave.
92 Franklin St.
Buffalo, NY 14202
Floors: 1

Erie County Probation Department

Contact: 858-8205
One Niagara Plaza
Buffalo, NY 14202

Veteran's Services

Contact: 858-6363
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1659

Emergency Services

Contact: 858-6578
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1351

Stop-DWI

Contact: 858-6848
134 W. Eagle St.
Buffalo, NY 14202
Floors: 5

Senior Services

Contact: 858-6046
95 Franklin St.
Buffalo, NY 14202
Floors: 13

Contact: 858-6758
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 270

Budget /Finance

Contact: 858-8515
95 Franklin St.
Buffalo, NY 14202
Floors: 16

Real Property
Contact: 858-4844
95 Franklin St.
Buffalo, NY 14202
Floor 1

Personnel

Contact: 858-8484
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 604a

Information & Support Services

Contact: 858-4940
95 Franklin St.
Buffalo, NY 14202
Floors: 15 (Administration)

Contact: 858-6893
95 Franklin St.
Buffalo, NY 14202
Floors: 15 (Data Center)

Contact: 858-6387
95 Franklin St.
Buffalo, NY 14202
Floors: Sub-Basement (Print Shop)

Contact: 858-6687
95 Franklin St.
Buffalo, NY 14202
Floors: 15 (Graphics Copy Center)

Comptroller's Office

Contact: 858-8400
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1100

Parks, Recreation & Forestry

Contact: 858-8353
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1359

Division of Purchase

Contact: 858-6315
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1254

Youth Services

Contact: 858-8211
One Niagara Sq
Buffalo, NY 14202

Contact: 858-8116
134 W. Eagle St.
Buffalo, NY 14202
Floors: Rm. 515

Commission on the Status of Women

Contact: 858-8307
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1655

Dept. of Mental Health

Contact: 858-8531
95 Franklin St.
Buffalo, NY 14202
Floors: Rm. 1237

Erie County Sheriff

Contact: 858-7412
10 Delaware Ave.
Buffalo, NY 14202

WAIVER RECOMMENDATION

COMPANY: METRO WASTE PAPER RECOVERY US INC

ADDRESS: 384 LEE ROAD ROCHESTER NY 14606

TELEPHONE NUMBER: (846) 839 0800 BID NO.: _____

1. Vendor has made a good faith effort to subcontract on this bid for which minority/women's business enterprises bids could be solicited; and
2. The total percentage of the bid which could be subcontracted for which minority business enterprises bids could be solicited is less than 10% for MBEs and/or 2% WBEs.

A waiver as provided for by Erie County Local Law, is hereby requested on the grounds that there are not insufficient (circle the appropriate term) minority/women's business enterprises in the market area of this bid.

- | | |
|---------------------------------------|-----------|
| 1. <u>METRO WILL NOT SUB-CONTRACT</u> | 6. _____ |
| 2. <u>ANY PORTION OF THIS BID</u> | 7. _____ |
| 3. _____ | 8. _____ |
| 4. _____ | 9. _____ |
| 5. _____ | 10. _____ |

(Use additional sheets if necessary.)

If a partial waiver is granted, the Vendor will make a good faith effort to meet the reduced goal.

4/15/09 DATE Gary V SIGNATURE OF AUTHORIZED COMPANY REPRESENTATIVE

Granted in Whole: _____

Granted in Part: _____

Comments: _____

DIRECTOR OF E.E.O. DATE

**COUNTY OF ERIE
STANDARD INSURANCE REQUIREMENTS**

**Vendor Insurance Classification A:
Contracts Involving Construction or Maintenance**

1. The contractor shall obtain, at his own cost and expense, the following insurance coverages with insurance companies licensed in the State of New York and shall provide a certificate of insurance as evidence of such coverages on the County of Erie Standard Insurance Certificate.

A. Comprehensive General Liability

- with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 per occurrence and annual aggregate. The coverage shall include:
- Premises and Operations
- Products and Completed Operations
- Independent Contractors
- Contractual Liability (sufficient to cover all liability assumed under contracts with the County of Erie)
- Broad Form Property Damage
- Explosion, Collapse and Underground Hazards (x, c, u)

B. Automobile Liability

- with a minimum combined single limit of liability for Bodily Injury and Property Damage of \$1,000,000 each occurrence. The coverage shall include Owned, Hired, and Non-Owned Autos (Symbol "1" should be designated for Liability coverage on the Business Auto Policy).

C. Excess "Umbrella" Liability

- with a minimum limit of \$1,000,000

D. Worker's Compensation and Employer's Liability

- providing statutory coverage in compliance with the Worker's Compensation Law of the State of New York.

E. Disability Benefits

- providing statutory coverage in compliance with the New York State Disability Benefits Law.

2. Comprehensive General Liability, Automobile Liability and Excess "Umbrella" Liability shall name the County of Erie and any Board, Bureau, Commission or Agency thereof as additional insureds.

3. All policies in which the County of Erie is named as an additional insured shall provide that:

A. The insurance company or companies issuing the policies shall have no recourse against the County of Erie for payment of any premiums or for assessments under any form of policy.

B. The insurance shall apply separately to each insured (except with respect to the limit of the liability).

4. Prior to cancellation, non-renewal or material change of the above policies, at least forty-five (45) days advance written notice shall be given to the County of Erie, Department of Law, 69 Delaware Avenue, Buffalo, N.Y. 14202, and the Agency requesting the certificate.

5. All certificates of insurance shall be approved by the Erie County Department of Law prior to the inception of any work.



METRO Waste Paper Recovery U.S. Inc.

Business References

- 1) Mr. Russell Rutkowski – Monroe County, State of NY – 585-753-7515**
- 2) Mr. Jerry Jenkins – Mentholatum Co. – 716-677-2500 x 1473**

3241 Walden Avenue, Depew, New York, USA 14043
Phone: 716.681.1560
Facsimile: 716.681.0902
www.metrowaste.com

Green... 
by Nature

Toronto, ON • Scarborough, ON • Ottawa, ON • Victoria, BC • Vancouver, BC • Surrey, BC • Kelowna, BC • Prince George, BC • Calgary, AB • Edmonton, AB • Winnipeg, MB
Buffalo, NY • Rochester, NY • Albany, NY



METRO Waste Paper Recovery U.S. Inc.

ADENDUM - A

- Desk-side containers

Metro Waste Paper Recovery US, Inc. can provide any number of desk-side recycling containers to Erie County at a cost per container of \$6.00.

3241 Walden Avenue, Depew, New York, USA 14043

Phone: 716.681.1560

Facsimile: 716.681.0902

www.metrowaste.com

Green... 
by Nature

**Toronto, ON • Scarborough, ON • Ottawa, ON • Victoria, BC • Vancouver, BC • Surrey, BC • Kelowna, BC • Prince George, BC • Calgary, AB • Edmonton, AB • Winnipeg, MB
Buffalo, NY • Rochester, NY • Albany, NY**

County of Erie
DIVISION OF PURCHASE
INSTRUCTIONS TO BIDDERS (FORMAL)

1. **BID SHALL BE SUBMITTED ON THESE COUNTY OF ERIE BID FORMS** or bid will not be considered. Bid must be typed or printed in ink. Original autograph signatures in ink are required. Facsimile or rubber stamp signatures will not be accepted. ALL PAGES OF THIS BID DOCUMENT MUST BE RETURNED INTACT.
2. **LATE PROPOSALS.** Any bids received in the Erie County Division of Purchase after the date and time prescribed will not be considered for contract award.
3. **EMERGENCY CLOSINGS.** In the event the closing of certain County facilities and/or operations and/or services due to any flood, fire, fire drill, power failure, uncontrolled weather conditions or other cause beyond the Division of Purchase control, only bids received in the Division of Purchase prior to the date and time or postmarked as of the date prescribed will be considered for contract award.
4. **ANY CHANGE IN WORDING OR INTERLINEATION BY A BIDDER OF THE INQUIRY AS PUBLISHED BY THE COUNTY OF ERIE** shall be reason to reject the proposal of such bidder, or in the event that such change in the Invitation to Bid is not discovered prior to entering into a contract, to void any contract entered into pursuant to such bid.
5. **THE COUNTY RESERVES THE RIGHT TO REJECT** any and all bids, to accept either in whole or in part any one bid or combination of bids, as may be provided in the bid specifications, or to waive any informalities in bids. The County does not obligate itself to accept the lowest or any other proposal.
6. **AWARD TO THE LOWEST RESPONSIBLE BIDDER.** For the purpose of determining which bidder is the lowest qualified responsible bidder, it shall be the lowest three bidders' responsibility, within FIVE DAYS of being so notified by the Division of Purchase, to present information and documentation to the Division of Purchase, to satisfy the County that the bidder possesses sufficient capital resources, skill, judgment and experience to perform the work or deliver the material, as per bid specifications.
7. **CONTRACT(S) OR PURCHASE ORDER(S) WILL BE AWARDED** after due consideration of the suitability of goods and/or services bid to satisfy these specifications, the total cost of such goods and/or services including all cost elements, and the timeliness of the agreed upon delivery date.
8. This **EXECUTORY CLAUSE** shall be a part of any agreement entered into pursuant to this bid:

IT IS UNDERSTOOD BY THE PARTIES THAT THIS AGREEMENT SHALL BE EXECUTORY ONLY TO THE EXTENT OF THE MONIES AVAILABLE TO THE COUNTY OF ERIE AND APPROPRIATED THEREFOR, AND NO LIABILITY ON ACCOUNT THEREOF SHALL BE INCURRED BY THE COUNTY BEYOND THE MONIES AVAILABLE AND APPROPRIATED FOR THE PURPOSE THEREOF.
9. **FAILURE TO MEET DELIVERY SCHEDULE** as per accepted bid may result in legal action by the County of Erie to recover damages.
10. **PRICES SHALL BE QUOTED F.O.B. DESTINATION AND DELIVERED INSIDE.** "Tailgate delivery" will not be accepted unless specified by the County.
11. **COLLECT TRANSPORTATION CHARGES WILL NOT BE PAID BY THE COUNTY.** All freight, cartage, rigging, postage or other transportation charges shall be prepaid and included in the bid. There will be no additional charges for delivery.
12. **NO TAXES ARE TO BE BILLED TO THE COUNTY.** Bids shall not include any Federal, State, or local excise, sales, transportation, or other tax, unless Federal or State law specifically levies such tax on purchases made by a political subdivision. The County of Erie Purchase Order is an exemption certificate. Any applicable taxes from which the County is not exempt shall be listed separately as cost elements, and added into the total net bid.
13. **THE SUCCESSFUL BIDDER** shall comply with all laws, rules, regulations and ordinances of the Federal Government, the State of New York and any other political subdivision of regulatory body which may apply to its performance under this contract.
ERIE COUNTY OFFICE BUILDING, 95 FRANKLIN STREET, BUFFALO, NEW YORK 14202 (716) 858-6395

County of Erie

DIVISION OF PURCHASE

14. GRATUITIES, ILLEGAL OR IMPROPER SCHEMES. The County may terminate this agreement if it is determined that gratuities in the form of entertainment, gifts or otherwise were offered or given by a vendor, his agent or representative to any County official or employee with a view towards securing favorable treatment with respect to the awarding of this bid or the performance of this agreement. The County may also terminate this agreement if it is determined that the successful bidder engaged in any other illegal or improper scheme promotive of favoritism or unfairness incidental to the bidding process or the performance of this agreement. In the event that it is determined that said improper or illegal acts occurred, the County shall be entitled to terminate this agreement and/or exercise any other remedy available to it under existing law.

15. INSURANCE shall be procured by the Successful Bidder before commencing work, no later than 14 days after notice of award and maintained without interruption for the duration of the Contract, in the kinds and amounts specified in Exhibit IC, unless otherwise stipulated in these Bid Specifications. IF THE INSURANCE IS NOT PROVIDED IN ACCEPTABLE FORM WITHIN THIS PERIOD OF TIME, THEN THE DIRECTOR OF PURCHASE MAY DECLARE THE VENDOR NONRESPONSIVE AND AWARD THE CONTRACT TO THE NEXT LOW RESPONSIBLE BIDDER.

CERTIFICATES OF INSURANCE shall be furnished by the successful bidder on Erie County Standard Insurance Certificate, Exhibit IC.

16. ANY CASH DISCOUNT which is part of bid will be considered as a reduction in the bid prices in determining the award of the bid. Date of invoice must not precede date of delivery. The County policy is to pay all claims in a timely manner within the specified time. However, if for some reason payment is delayed, the County will take the discount when payment is made. The County will not pay any interest charges, nor refund discount amounts taken after the discount period. If this is unsatisfactory, please quote net.

17. CHANGES IN THE WORK. The County may, as the need arises, through the Director of Purchase, order changes in the work through additions, deletions, or modifications without invalidating the contract. Compensation, as it may be affected by any change, shall be adjusted by agreement between the contractor and County through the Director of Purchase.

18. BID OFFERING MATERIAL OTHER THAN THAT OF SPECIFIED MANUFACTURER OR TRADE NAME will be considered unless stated otherwise. The use of the name of a particular manufacturer, trade name, or brand in describing an item does not restrict a bidder to that manufacturer or specific article. However, the substituted article on which a proposal is submitted must be of such character or quality that it would serve the purpose for which it is to be used equally well as the manufacturer or brand specified. Proposals will be accepted in accordance with specifications on file or approved equal.

19. IF MATERIAL OR SERVICES OTHER THAN THOSE SPECIFIED IN THIS BID DOCUMENT ARE OFFERED, the bidder must so state and furnish at the time of bid opening, if so requested, and as part of his bid the following information in duplicate:

- (a) Complete description of the item offered, and detailed explanation of the differences between the item specified and the item offered. If, in the opinion of the Division of Purchase, sufficient detail is not presented as a part of the sealed bid to permit definitive evaluation of any substitute item, the bid will not be considered.
- (b) Descriptive literature of item offered, for evaluation.
- (c) List of installations in Erie County of the item offered.
- (d) List of other installations.

20. ANY ADDITIONAL INFORMATION for which bidder desires to add to the bid shall be written on a separate sheet of paper, attached to and submitted with the formal sealed bid, to be read at the formal opening.

21. WORKMANSHIP MUST MEET WITH THE APPROVAL OF THE DEPARTMENT HEAD(S) INVOLVED, AND SHALL BE FIRST CLASS in every respect without exception and shall be equal to the best modern practices. Materials furnished are to be new and unused. All materials furnished or work performed are to be guaranteed free from defects. Anything found defective or not meeting specifications, no matter in what stage of completion, may be rejected and shall be made good by the contractor at his own expense.

22. CONTRACTOR SHALL CLEAN UP and remove all debris and rubbish resulting from the work and leave the premises broom clean to the approval of the department head.

ERIE COUNTY OFFICE BUILDING, 95 FRANKLIN STREET, BUFFALO, NEW YORK 14202 (716) 858-6395

County of Erie DIVISION OF PURCHASE

23. THIS BID IS FIRM AND IRREVOCABLE for a period of 45 days from the date and time of the bid opening. If a contract is not awarded within the 45 day period, a bidder to whom the bid has not been awarded, may withdraw his bid by serving written notice of his intention to do so upon the Division of Purchase. Upon withdrawal of the bid pursuant to this paragraph, the Division of Purchase will forthwith return the bidder's security deposit.

24. PRICES CHARGED TO THE COUNTY OF ERIE are to be no higher than those offered to any other governmental or commercial consumer. If a bidder has a New York State or a Federal GSA contract for any of the items covered in this bid or any similar items, he shall so indicate that he has said contract on these bid papers and automatically supply a copy of this contract within five days after notification of award.

25. PRICE IS FIRM. The unit prices bid shall remain firm, and any other charges bid shall also remain firm, for delivery of the equipment, material, work, or services described in this bid. No cost increase shall be charged for any reason whatsoever.

26. EXTENSION OF PRICE PROTECTION. Any contract entered into pursuant to this bid to supply the County's requirements of goods and/or services for a definite period of time as stated in the attached specifications may be extended for not more than two successive periods of equal length at the same bid price upon the mutual agreement of the successful bidder and the County. All extensions shall be submitted in writing and shall have prior approval by the County of Erie, Director of Purchase.

27. IN EXECUTING THIS BID, THE BIDDER AFFIRMS that all of the requirements of the specifications are understood and accepted by the bidder, and that the prices quoted include all required materials and services. The undersigned has checked all of the bid figures, and understands that the County will not be responsible for any errors or omissions on the part of the undersigned in preparing this bid. Mistakes or errors in the estimates, calculations or preparation of the bid shall not be grounds for the withdrawal or correction of the bid or bid security. In case of error in extension of prices in the bid, the unit price will govern.

28. ACCOUNTABILITY. The undersigned shall be fully accountable for his or its performance under this bid, or any contract entered into pursuant to this bid, and agrees that he, or its officers, will answer under oath all questions relevant to the performance thereof and to any transaction, act or omission had, done or omitted in connection therewith if called before any Judicial, County or State officer or agency empowered to investigate the contract or his performance.

29. TERMINATION OF CONTRACT:

a. This agreement may be terminated by either party upon seven (7) days written notice, should the party fail substantially to perform in accordance with its terms, through no fault of the party initiating the termination.

b. At its option, the County may at any time for any reason terminate this agreement and the Contractor shall immediately cease all work under the agreement upon receipt of written notice of such termination from the County.

c. In the event of termination for any reason other than the fault of the Contractor, or the nonavailability of funds as provided in the above Executory Clause, the Contractor shall be paid the amount due to date of termination, and all reasonable expenses caused by such termination.

30. THE SUCCESSFUL BIDDER TO WHOM THE BID IS AWARDED SHALL INDEMNIFY AND HOLD HARMLESS the County of Erie and its agents and employees from and against all claims, damages, losses or causes of action arising out of or resulting from such vendor's performance pursuant to this bid.

31. STATUS AS AN INDEPENDENT CONTRACTOR: The successful Bidder to whom the bid is awarded and the County agree that the Bidder and its officers, employees, agents, contractors, subcontractors and/or consultants are independent contractors and not employees of the County or any department, agency or unit thereof. In accordance with their status as independent contractors, the Bidder covenants and agrees that neither the Bidder nor any of its officers, employees, agents, contractors, subcontractors and/or consultants will hold themselves out as, or claim to be, officers or employees of the County or any department, agency or unit thereof.

32. GOVERNED BY NEW YORK LAW: This Agreement shall be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that for any cause of action arising out of this Agreement shall be brought in the County of Erie.

(Rev 1/09)

ERIE COUNTY OFFICE BUILDING, 95 FRANKLIN STREET, BUFFALO, NEW YORK 14202 (716) 858-6395

County of Erie

DIVISION OF PURCHASE

To facilitate correct drawing and execution of contract, bidder shall supply full information concerning legal status:

FIRM NAME METRO WASTE PAPER RECOVERY US INC

ADDRESS OF PRINCIPAL OFFICE STREET 384 LEE RD

CITY ROCHESTER

AREA CODE 585 PHONE 5278110 STATE NY ZIP 14604

Check one: CORPORATION ☒ PARTNERSHIP ☐ INDIVIDUAL ☐

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

If foreign corporation, state if authorized to do business in the State of New York:

YES ☐ NO ☐

TRADE NAMES: _____

ADDRESS OF LOCAL OFFICE STREET 3241 WALDEN AVE

CITY ORAN

AREA CODE 716 PHONE 6811540 STATE NY ZIP 14043

NAMES AND ADDRESSES OF PARTNERS:



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

ASSIGNMENT OF PUBLIC CONTRACTS

GENERAL MUNICIPAL LAW - Section 109:

1. A clause shall be inserted in all specifications of contracts hereafter made or awarded by an officer, board or agency of a political subdivision, or any district therein, prohibiting any contractor, to whom any contract shall be let, granted or awarded, as required by law, from assigning, transferring, conveying, subletting or otherwise disposing of the same, or of his right, title or interest therein, or his power to execute such contract, to any other person or corporation without the previous consent in writing of the officer, board or agency awarding the contract.
2. If any contractor, to whom any contract is let, granted, or awarded, as required by law, by any officer, board or agency of a political subdivision, or of any district therein, without the previous written consent specified in subdivision one (1) of this section, assign, transfer, convey, sublet or otherwise dispose of such contract, or his right, title or interest therein, or his power to execute such contract to any other person or corporation, the officer, board or agency which let, made, granted or awarded such contract shall revoke and annul such contract, and the political subdivision or district therein, as the case may be, and such officer, board or agency shall be relieved and discharged from all liability and obligations growing out of such contract to such contractor, and to the person or corporation to which such contract shall have been assigned, transferred, conveyed, sublet or otherwise disposed of, and such contractor, and his assignee, transferee or sublessee shall forfeit and lose all monies, theretofore earned under such contract, except so much as may be required to pay his employees. The provisions of this section shall not hinder, prevent or affect any assignment by any such contractor for the benefit of his creditors made pursuant to the laws of the State.

NO ASSIGNMENT OF ANY AGREEMENT pursuant to this bid shall be made without specific prior approval, in writing, by the Erie County Director of Purchase.

(Rev. 12/01/83)



COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

PURCHASES BY OTHER LOCAL GOVERNMENTS OR SPECIAL DISTRICTS

The Erie County Legislature has adopted the following resolution for the purpose of allowing the following-named local governmental or school districts to make purchases through the County bidding procedures.

Under the following conditions, the Director of Purchase may make purchasing services available to the following 88 participants:

1. When in the opinion of the Director of Purchase it will not create any burden or hardship upon the County and the anticipated prices will not be adversely affected thereby, the Director is authorized when he deems appropriate and as may be requested by the participants to provide in any particular County bid specification that the participants in Erie County shall have the right to make purchases based upon the bids received by the County.
2. The County Purchase Director, within the limits of his time and manpower, shall disseminate relevant contract information to the participants.
3. The participants in County contracts will issue purchase orders directly to vendors within the specified contract period referencing the County contract involved and be liable for any payments due on such purchase orders.

Bidders shall take notice that as a condition of the award of a County contract pursuant to these specifications, the successful bidder agrees to accept the award of a similar contract with any of the participants in Erie County if called upon to do so. The County, however, will not be responsible for any debts incurred by participants pursuant to this or any other agreement.

Necessary deviations from the County's specifications in the award of a participant's contract, particularly as such deviations may relate to quantities or delivery point, shall be a matter to be resolved between the successful bidder and participants. All inquiries regarding prospective contracts shall be directed to the attention of:

AKRON CENTRAL SCHOOL DISTRICT, District Clerk, 47 Bloomingdale Ave., Akron, NY 14001
AKRON VILLAGE OF, Clerk-Treasurer, 21 Main St., Akron, NY 14001
ALDEN CENTRAL SCHOOL DISTRICT, District Clerk, 13190 Park St., Alden, NY 14004
ALDEN TOWN OF, Town Clerk, Town Hall, 11901 Broadway, Alden, NY 14004
ALDEN VILLAGE OF, Village Clerk, 13336 Broadway, Alden, NY 14004
AMHERST CENTRAL SCHOOL DISTRICT, Business Manager, 4301 Main St., Amherst, NY 14226
AMHERST TOWN OF, Highway Superintendent, Town Hall, 5583 Main St., Williamsville, NY 14221
AMHERST TOWN OF, Town Supervisor, Town Hall, 5583 Main St., Williamsville, New York 14221
ANGOLA VILLAGE OF, Clerk-Treasurer, 41 Commercial St., Angola, NY 14006
AURORA TOWN OF, Town Clerk, Town Hall, 5 S. Grove St., E. Aurora, NY 14052
BLASDELL VILLAGE OF, Clerk-Treasurer, 121 Miriam St., Blasdell, NY 14219
BOCES, ERIE #1, Clifford N Crooks Svc. Ctr., 355 Harlem Rd. West Seneca NY 14224-1892
BOCES, ERIE CATTARAUGUS #2, Assistant Superintendent, 3340 Baker Rd., Orchard Park, NY 14127
BOSTON TOWN OF, Town Clerk, Town Hall, 8500 Boston State Rd., Boston, NY 14025
BRANT TOWN OF, Town Clerk, Town Hall, Brant North Collins Rd., Brant, NY 14027
BUFFALO BOARD OF EDUCATION, Purchasing Agent, 408 City Hall, Buffalo, NY 14202
BUFFALO CITY OF, Division of Purchasing, 1901 City Hall, Buffalo, NY 14202
BUFFALO SEWER AUTHORITY, General Manager, 1038 City Hall, Buffalo, NY 14202-3378
CHEEKTOWAGA CENTRAL SCHOOL DISTRICT, 3800 Union Rd., Cheektowaga, NY 14225
CHEEKTOWAGA-MARYVALE UNION FREE SCHL DIST., DIST., CLERK, 1050 MARYVALE DR., CHEEK, NY 14225-2386
CHEEKTOWAGA-SLOAN UNION FREE SCHOOL DISTRICT, District Clerk, 166 Halstead Ave., Sloan, NY 14212-2295
CHEEKTOWAGA TOWN OF, Town Hall, Broadway & Union Rds., Cheektowaga, NY 14227
CLARENCE CENTRAL SCHOOL DISTRICT, Business Administrator, 9625 Main St., Clarence, NY 14031-2083
CLARENCE TOWN OF, Town Clerk, 1 Town Place, Clarence, NY 14031
CLEVELAND HILL FIRE DISTRICT NO. 6, Secretary, 440 Cleveland Dr., Cheektowaga, NY 14225

CLEVELAND HILL U.F.S.D. @ CHEEKTOWAGA, Business Manager, Mapleview Dr., Cheektowaga, NY 14225
 COLDEN TOWN OF, Deputy Town Clerk, Town Hall, S-8812 State Rd., Colden, NY 14033
 COLLINS TOWN OF, Supervisor, Town Hall, P.O. Box 420, Collins, NY 14035
 CONCORD TOWN OF, Town Clerk, Town Hall, Springville, NY 14141-0187
 DEPEW UNION FREE SCHOOL DISTRICT, District Clerk, 591 Terrace Blvd., Depew, NY 14043
 DEPEW VILLAGE OF, Village Clerk, Municipal Building, 85 Manitou St., Depew, NY 14043
 EAST AURORA VILLAGE OF, Village Clerk, Village Hall, 571 Main St., East Aurora, NY 14052
 EDEN TOWN OF, Town Clerk, 2785 East Church St., Eden, NY 14057
 EGGERTSVILLE FIRE DISTRICT, Secretary/Treasurer, 1880 Eggert Rd., Eggertsville, NY 14226-2233
 ELLWOOD FIRE DISTRICT #1, Secretary, Town of Tonawanda, 1000 Englewood Ave., Kenmore, NY 14223
 ELMA TOWN OF, Town Clerk, Town Hall, 1600 Bowen Rd., Elma, NY 14059
 ERIE COUNTY WATER AUTHORITY, Central Processing, 3030 Union Rd., Buffalo, NY 14227
 EVANS TOWN OF, Town Clerk, 42 N. Main St., Angola, NY 14006
 FARNHAM VILLAGE OF, Village Clerk-Treasurer, 528 Commercial St., Farnham, NY 14081
 FORKS FIRE DISTRICT #3, Commissioner, Town Cheektowaga, 3330 Broadway, Cheektowaga, NY 14227
 GOWANDA VILLAGE OF, Clerk/Treasurer, 27 East Main St., Gowanda, NY 14070
 GRAND ISLAND CENTRAL SCHOOL DISTRICT, District Clerk, 1100 Ransom Rd., Grand Island, NY 14072
 GRAND ISLAND TOWN OF, Town Clerk, 2255 Baseline Rd., Grand Island, NY 14072
 HAMBURG TOWN OF, Town Clerk, S-6100 S. Park Ave., Hamburg, NY 14075
 HAMBURG VILLAGE OF, Village Clerk/Treasurer, 100 Main St., Hamburg, NY 14075
 HOLLAND FIRE DISTRICT #1, Town of Holland, Holland, NY 14080
 HOLLAND TOWN OF, Town Clerk, 47 Pearl St., Holland, NY 14080
 HOPEVALE UNION FREE SCHOOL DISTRICT, District Clerk, 3780 Howard Rd., Hamburg, NY 14075
 IROQUOIS CENTRAL SCHOOL DISTRICT, Griddle Rd., Elma, NY 14059
 KENILWORTH FIRE DISTRICT #2, Commissioner, Tn. Tonawanda, 84 Hawthorne Ave., Buffalo, NY 14223
 KENMORE-TN OF TONAWANDA UNION FREE SCHOOL DISTRICT, district Clerk, 1500 Colvin Blvd., Buffalo, NY 14223
 KENMORE VILLAGE OF, Village Clerk-Treasurer, Municipal Building, Kenmore, NY 14217
 LACKAWANNA CITY OF, City Clerk, Lackawanna City Hall, 714 Ridge Rd., Lackawanna, NY 14218
 LAKE VIEW FIRE DISTRICT, Fire Commissioner, P.O. Box 145, Lake View, NY 14085
 LANCASTER TOWN OF, Town Clerk, 21 Central Avenue, Lancaster, NY 14086
 LANCASTER VILLAGE OF, Clerk-Treasurer, Municipal Building, 5423 Broadway, Lancaster, NY 14086
 MARILLA TOWN OF, Marilla Town Hall, 1740 Two Rod Rd., Marilla, NY 14102
 NEWSTEAD TOWN OF, Town Clerk, Town Hall, P.O. Box 227, Akron, NY 14001
 NIAGARA FRONTIER TRANSPORTATION AUTHORITY, 181 Ellicott St., Buffalo, NY 14205
 NORTH COLLINS TOWN OF, Town Clerk 2015 Spruce St., North Collins, NY 14111
 NORTH COLLINS VILLAGE OF, Village Clerk, 10543 Main St., North Collins, NY 14111
 ORCHARD PARK CENTRAL SCHOOL DIST, Asst. Superintendent Bus. & Support Svcs, 3330 Baker Rd. Orchard Park, NY 14127
 ORCHARD PARK TOWN OF, Town Clerk, Municipal Bldg., 4295 S. Buffalo St., Orchard Park, NY 14127
 ORCHARD PARK VILLAGE OF, Clerk, Municipal Bldg., 4295 S. Buffalo St., Orchard Park, NY 14127
 SARDINIA TOWN OF, Town Clerk, Town Hall, Savage Rd., Sardina, NY 14134
 SHERIDAN PARK FIRE DISTRICT NO. 4, Secretary, 738 Sheridan Dr., Tonawanda, NY 14150
 SLOAN VILLAGE OF, Clerk Treasurer, 425 Reiman St., Sloan, NY 14212
 SNYDER VOL. FIRE DEPT., Fire Commissioner, 4531 Main Street, Snyder, NY 14226
 SOUTH LINE FIRE DISTRICT #10, Fire Commissioner, 1049 S. French Rd., S. Cheektowaga, NY 14227
 SOUTH WALES FIRE DISTRICT #1, Secretary/Treasurer, P.O.Box 94, South Wales, NY 14139
 SPRING BROOK FIRE DISTRICT #1, Secretary, P.O. Box 97, Spring Brook, NY 14140
 SPRINGVILLE VILLAGE OF, Clerk Treasurer, Village Office, 5 W. Main St., Springville, NY 14141
 SWEET HOME CENTRAL SCHOOL DISTRICT, Dir. Finance & Plant Svcs. 1901 Sweet Home Rd. Amherst, NY 14228
 TONAWANDA CITY OF, Mayor, 200 Niagara St., Tonawanda, NY 14150
 TONAWANDA CITY OF, Superintendent, 150 Fillmore Avenue, Tonawanda, NY 14150
 TONAWANDA CITY SCHOOL DISTRICT, DISTRICT CLERK, 202 BROAD ST., TONAWANDA, NY 14150-2098
 TONAWANDA TOWN OF, Town Clerk, Municipal Building, Kenmore, NY 14217
 U-CREST FIRE DISTRICT #4, Fire Commissioner, 255 Clover Place, Cheektowaga, NY 14225
 UNION FREE SCHOOL DISTRICT, Dist. Clerk, Tn. Tonawanda, 1500 Colvin Blvd., Kenmore, NY 14223
 WALDEN FIRE DISTRICT #2, 20 Pine Ridge Road, Fire Commissioner, Cheektowaga, NY 14211
 WALES TOWN OF, Town Clerk, Big Tree Rd., Wales Center, NY 14189
 WEST SENECA CENTRAL SCHOOL DIST, district Treasurer, 1397 Orchard Park Rd., W. Seneca B Y 14224-4098
 WEST SENECA FIRE DISTRICT #4, Fire Commissioner, 100 Lain Rd., West Seneca, NY 14224
 WEST SENECA FIRE DISTRICT #5, Fire Commissioner, 2801 Seneca St., West Seneca, NY 14224
 WEST SENECA TOWN OF, Town Clerk, 1250 Union Road, West Seneca, NY 14224
 WILLIAMSVILLE CENTRAL SCHOOL DIST., DIST., CLERK, 105 Casey Rd, PO Box 5000, East Amherst NY 14051
 WILLIAMSVILLE VILLAGE OF, 5565 Main St., P.O. Box 1557, Williamsville, NY 14231-1557
 WYOMING, COUNTY OF, Office of the Board of Supervisors, 143 N Main St., Warsaw, NY 14569



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

STANDARD AGREEMENT

This AGREEMENT, made as of the _____ day of _____,

by and between _____

of _____

hereinafter referred to as the Contractor, and the County of Erie, a municipal corporation of the State of New York, hereinafter referred to as the County:

WHEREAS, in accordance with public open competitive bidding, sealed proposals were received and publicly opened by the County of Erie, Division of Purchase

on _____ at _____

for: _____

WHEREAS, the bid of the Contractor submitted in accordance therewith, the sum

of \$ _____ Dollars,

was the lowest responsible bid submitted; and

WHEREAS, a contract is hereby awarded to the Contractor by the County, in accordance with the provisions therein contained; and

WHEREAS, the Notice to Bidders and Specifications make provisions for entering into a proper and suitable contract in connection therewith;

NOW, therefore, the Contractor does hereby for its heirs, executors, administrators and successors agree with the County of Erie that, the Contractor shall for the consideration mentioned, and in the manner set forth in Accepted Invitation to Bid No. _____, Specifications and Provisions of Law annexed hereto and forming a part of this contract, furnish the equipment and materials and perform the work and services described in the Accepted Bid for the above sum.

_____ Paid monthly upon presentation of invoices.

_____ Upon delivery, completion and approval of the work, as per specifications.

Please refer to the Invitation to Bid (Page 1) and the Instructions to Bidders which are part of this agreement.

IN WITNESS THEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

COUNTY OF ERIE

Contractor _____

by _____
Director of Purchase

by _____

Title _____

APPROVED AS TO FORM

Assistant County Attorney
County of Erie, New York

_____ (date)



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

MBE/WBE COMMITMENT

The Erie County Legislature enacted Local Law No. 5 requiring a minority and women-owned business utilization commitment by persons or firms contracting with the County of Erie for supplies, materials, equipment, and insurance.

SECTION 1.

A. The supplier of all purchase contracts involving an expenditure of more than ~~\$15,000.00~~ shall take affirmative action to utilize bona fide minority business enterprises (MBE) and women business enterprises (WBE) on all contracts with the County. Affirmative action shall include, but not limited to:

1. Utilizing a source list of MBEs and WBEs; and
 2. Solicitation of bids from MBEs and WBEs; and
 3. Providing MBEs and WBEs sufficient time to submit proposals in response to solicitations; and
 4. Maintaining records showing utilization of MBEs and/or WBEs specific efforts to identify and utilize these companies; and
 5. A goal of awarding at least ten percent (10%) of the total dollar value of the contract to MBEs and at least two percent (2%) of the total dollar value of the contract to WBEs or, for those contracts governed by federal or state regulations with respect to MBE and/or WBE hiring the prevailing percentage set forth therein, whichever is higher, subject to waiver as provided below.
- B. All bidders must submit, with a bid, a list of all MBEs and WBEs from whom the supplier has solicited bids, or with whom the supplier has signed a binding contractual agreement, or with whom the contractor is presently negotiating an agreement, for the purpose of meeting the MBE and WBE utilization goals provided in subdivision (A) (5) above. A supplier's bid shall not be considered where the supplier fails to submit a list as provided for herein. A supplier's bid shall not be considered where examination of said list of MBEs and WBEs evidences failure by the supplier to comply with the affirmative action requirements provided herein, except that the County may, upon written request by the supplier, grant a complete or partial waiver of the provisions of subdivision (A) (5) where the availability of MBEs and/or WBEs in the market area of the contract is less than the ten percent (10%) MBE goal and two percent (2%) WBE goal.
- C. As evidence of compliance with the goals set forth in subdivision (A) (5) above, the supplier shall submit to the Director or Purchasing, at the bid opening, a schedule for MBE and WBE participation listing the MBEs and WBEs with whom the supplier intends to utilize; specifying the agreed upon price to be paid for such goods and identifying in detail the contract item or items to be supplied by each MBE and WBE. A copy of the participating schedule will be forwarded to the Division of E.E.O. from the Division of Purchasing. Contingent upon a contract award, a letter of intent to enter into a purchase agreement, signed by both the supplier and the MBE and WBE (unless a waiver is requested in one of those categories), indicating the agreed upon price and scope of work, shall be provided.
- D. As evidence of compliance with the goals set forth in subdivision (A) (5) above, the supplier shall provide to the County Division of E.E.O., copies of all the subcontracts and/or purchase agreements with the MBEs and WBEs within fifteen (15) days of contract award.

E. For the purpose of this section, the term "minority business enterprise" shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by minority group members or, in the case of a publicly-owned business, at least fifty-one percent (51%) of all stock is owned by minority group members. Such ownership shall be certified by the County Division of E.E.O.

For the purposes of this paragraph, "minority group members" are citizens of the United States who are African-American, Hispanic, Asian-American and American-Indian.

F. For the purposes of this section, the term "women-owned business enterprise" shall mean a business which performs a commercially useful function, at least fifty-one percent (51%) of which is owned by a woman or women or, in the case of publicly-owned business, at least fifty-one percent (51%) of all stock is owned by a woman or women. Such ownership shall be certified by the County Division of E.E.O.

NOTE:

It is the prime vendor's responsibility to obtain MBE/WBE vendors and NOT the County of Erie. However, some vendors may be obtained from:

Director
Erie County Division of E.E.O.
95 Franklin Street
6th Floor
Buffalo, NY 14202
(716) 858-7542

BID WILL NOT BE CONSIDERED IF THIS FORM IS NOT SUBMITTED WITH BID AS REQUIRED, REGARDLESS OF THE BID AMOUNT.

BID NO.: _____
BID DATE: _____

ERIE COUNTY MINORITY/ WOMEN BUSINESS ENTERPRISE UTILIZATION REPORT - PART A

COMPANY: METRO WASTE PAPER RECOVERY US INC
AUTHORIZED REPRESENTATIVE: MARK JOHNSON / GARY YAKAWIAK
ADDRESS: 384 LES LOPU ROCHESTER NY 14606
TELEPHONE NUMBER: 866-534-0800
BID NAME:

I. List actions taken to identify, solicit, and contact Minority Business Enterprises (MBE)/Women Business Enterprises (WBE) to bid on subcontracts for this project.

- 1.
- 2.
3. METRO WILL NOT SUB-CONTRACT ANY ASPECT OF THIS BID
- 4.
5. ECO EMPLOYER
- 6.

II. List all bona fide Minority/Women Business Enterprise subcontractors and suppliers solicited, contracted, or presently negotiating a contract in accordance with the minority business utilization goal set forth by the County of Erie. (Attach additional sheets if necessary.)

MBE/WBE OWNED FIRMS	SUPPLIER/SERVICE	AMOUNT OF PROPOSAL	PRIOR CERTIFICATION	CONTRACT EXECUTED	REASON IF CONTRACT NOT AWARDED
Name: _____				YES _____	
Address: _____				NO _____	
Telephone No. _____					
IRS # _____					
Name: _____				YES _____	
Address: _____				NO _____	
Telephone No. _____					
IRS # _____					

MBE/WBE OWNED FIRMS

SUPPLY/SERVICE

AMOUNT OF
PROPOSALPRIOR
CERTIFICATIONCONTRACT
EXECUTEDREASON IF
CONTRACT
NOT
AWARDED

Name: _____

YES _____

Address: _____

NO _____

Telephone No. _____

IRS # _____

Name: _____

YES _____

Address: _____

NO _____

Telephone No. _____

IRS # _____

Name: _____

YES _____

Address: _____

NO _____

Telephone No. _____

IRS # _____

- III. Total Dollar Amount to be subcontracted to
Minority Business Enterprise(s). \$
Women Business Enterprise(s). \$

- IV. Total Amount of Bid \$

- V. MBE Percent (%) of project bid %
WBE Percent (%) of project bid %

- VI. YOU MUST ATTACH COPIES OF RELEVANT CORRESPONDENCE
AND DOCUMENTS, INCLUDING RETURN RECEIPTS.

6am
SIGNATURE OF AUTHORIZED REPRESENTATIVE

4/15/09
DATE

(11/01/94)

MBE/WBE UTILIZATION REPORT - PART B

FINAL CERTIFICATION OF EXPENDITURES TO MBEs/WBEs

(To be completed by the prime vendor and submitted to the Erie County Division of E.E.O. when contract is complete)

Erie County reserves the right to require documentation, including, but not limited to, cancelled checks to verify these amounts.

VENDOR: Metro Waste Paper Inc. Buffalo NY BID NO. _____

N/A MBE TOTAL AMOUNT EXPENDED _____

N/A WBE _____

NOTING TO BE SUBTRACTED IN THIS BID

TOTAL OF ALL MBE SUBCONTRACTS \$ _____

TOTAL OF ALL WOMEN SUBCONTRACTS \$ _____

AMOUNT OF CONTRACT (PRIME) \$ _____

FINAL MBE PERCENTAGE \$ _____

FINAL WBE PERCENTAGE \$ _____

I, Gary Yampourak, as an official representative of Metro Waste Paper Inc., do hereby certify that the information listed above is correct and complete.

SIGNATURE

CONTRACTOR
TITLE

4/15/09
DATE

MAIL TO: Erie County Division of E.E.O.
95 Franklin Street
8TH Fl
Buffalo, NY 14202

(01/01/09)

RECEIVED 04-10-'09 12:30 FROM-

TO- Metro Waste Paper

P004/005

Ref. N° 2012-13-602

CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.
700, rue De La Gauchetière Ouest
Bureau 1600
Montréal, Québec H3B 0A4
tel. 514-842-5000

fax 514-842-3456

Re: All locations and/or operations of the insured.

Holder
Erie County
c/o Dept. Of Law
85 Franklin St.
Buffalo, NY 14203

Insurance as described herein has been arranged on behalf of the insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

Insured
Cascades USA Inc. and/or
Cascades Recovery U.S., Inc.

Coverage

Commercial General Liability

Insurer: Zurich Insurance Company

Policy #: 8837736

Effective: April 1, 2012 Expiry: April 1, 2013

Limits of Liability:

Per occurrence \$ 5,000,000
and in the aggregate for a limit of \$ 20,000,000

Products and Completed Operations \$ 5,000,000

Personal Advertising Injury \$ 5,000,000

Policy may be subject to a general aggregate and other aggregates where applicable.

Additional Insured

Only with respect to the above and arising out of the Named Insured's operations are the following name(s) added to the policy as Additional Insured(s). The policy limits are not increased by the addition of such Additional Insured(s) and remain as stated in the certificate.

Erie County with respect to Commercial General Liability.

Cancellation/Termination

The insurer will endeavour to provide 90 days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

This certificate constitutes a statement of the facts as of the date of issuance and are so represented and warranted only to the insured. Other persons relying on this certificate do so at their own risk.

ORIGINAL DOCUMENT
ON FILE

APR 19 2012

FILED IN A TWENT

Dated: 29 March 2012
Issued by: Miriam Salvatori
Tel: (514) 840-7048

Aon Reed Stenhouse Inc.



Signature

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE

Ref. N° 2012-13-603

CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.
700, rue De La Gauchetière Ouest
Bureau 1800
Montréal, Québec H3B 0A4
tel: 514-842-5000

fax: 514-842-3456

Re: All vehicles owned and/or leased by the insured.

Holder
Erie County
c/o Dept. Of Law
85 Franklin St.
Buffalo, NY 14203

Insurance as described herein has been arranged on behalf of the insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

Insured
Cascades USA Inc. and/or
Cascades Recovery U.S., Inc.

Coverage

Automobile Owners Form	Insurer:	Zurich Insurance Company
Policy #:	BAP3373818-09	
Effective:	April 1, 2012	Expiry: April 1, 2013
Limits of Liability:	Automobile Liability - Bodily Injury (including Personal Injury and Death Non-Owned and Hired Automobile Liability)	\$1,000,000 USD
Deductible:	Physical Damage Deductibles	
	Private Passenger	\$ 1,000 comprehensive and collision
	Trucks	\$ 3,000 comprehensive and collision

Additional Insured

Only with respect to the above and arising out of the Named Insured's operations are the following name(s) added to the policy as Additional Insured(s). The policy limits are not increased by the addition of such Additional Insured(s) and remain as stated in the certificate.

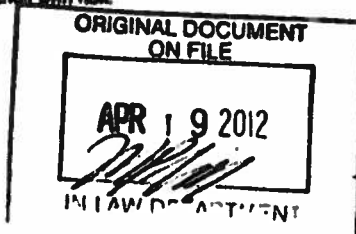
Erie County with respect to Automobile Liability

Cancellation / Termination

The insurer will endeavour to provide 90 days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

This certificate constitutes a statement of the facts as of the date of issuance and are so represented and warranted only to the insured. Other persons relying on this certificate do so at their own risk.

Dated: 29 March 2012
Issued by: Miriam Salvadori
Tel: (514) 840-7048



Aon Reed Stenhouse Inc.


Signature

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE

STATE OF NEW YORK
WORKERS' COMPENSATION BOARD

CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

1a. Legal Name & Address of Insured (Use street address only) Cascades Recovery U.S. Inc. 384 Lee Road Rochester, NY 14606 Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)	1b. Business Telephone Number of Insured 585-295-4140 1c. NYS Unemployment Insurance Employer Registration Number of Insured 44-31912 1d. Federal Employer Identification Number of Insured or Social Security Number 16-1560164
2. Name and Address of the Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder) County of Erie c/o Department of Law 95 Franklin Street, Room 1254 Buffalo, NY 14202 <div style="border: 1px solid black; padding: 5px; text-align: center;">ORIGINAL DOCUMENT ON FILE APR 9 2012 <i>[Signature]</i> IN LAW</div>	3a. Name of Insurance Carrier Zurich American Insurance Co. 3b. Policy Number of entity listed in box "1a" WC 4279847-04 3c. Policy effective period 03/31/2012 to 03/31/2013 3d. The Proprietor, Partners or Executive Officers are <input checked="" type="checkbox"/> included. (Only check box if all partners/officers included) <input type="checkbox"/> all excluded or certain partners/officers excluded.

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. (To use this form, New York (NY) must be listed under Item 3A on the **INFORMATION PAGE** of the workers' compensation insurance policy). The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The Insurance Carrier will also notify the above certificate holder within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.

Please Note: Upon the cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: Kelly Cade
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: *Kelly Cade* 04-13-12
(Signature) (Date)

Title: Vice President, Enterprise Support Specialist

Telephone Number of authorized representative or licensed agent of insurance carrier: 312.496.2400

Please Note: Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are NOT authorized to issue it.



County of Erie

CHRIS COLLINS
COUNTY EXECUTIVE

DIVISION OF PURCHASE

STANDARD AGREEMENT

This AGREEMENT, made as of the 1st day of January, 2011

by and between Cascades Recovery, Inc. (formerly Metro Waste Paper Recovery US, Inc.)

of 3241 Walden Ave., Depew, NY 14043

hereinafter referred to as the Contractor, and the County of Erie, a municipal corporation of the State of New York, hereinafter referred to as the County.

WHEREAS, in accordance with public open competitive bidding, sealed proposals were received and publicly opened by the County of Erie, Division of Purchase,

On: April 17, 2009 at 2:00pm

for: Paper recycling for Erie County

WHEREAS, the bid of the Contractor submitted in accordance therewith, the sum of 35% to Erie County for Paper Recycling and \$.09/lb. for shredding,

was the highest responsible bid submitted; and

WHEREAS, a contract was awarded to the Contractor by the County, in accordance with the provisions therein contained; and

WHEREAS, the Notice to Bidders and Specifications make provisions for entering into a proper and suitable contract in connection therewith;

NOW, therefore, the Contractor does hereby for its heirs, executors, administrators and successors agree with the County of Erie that, the Contractor shall for the consideration mentioned, and in the manner set forth in Accepted Invitation to Bid No. 290154-002, Specifications and Provisions of Law annexed hereto and forming a part of this contract, furnish the equipment and materials and perform the work and services described in the Accepted Bid for the above sum, for a period through December 31, 2012 under the same prices, terms and conditions as the original statement, which is attached hereto and made a part hereof.

XXX Paid monthly upon presentation of invoices.
 Upon delivery, completion and approval of the work, as per specifications.

Please refer to the Invitation to Bid (Page 1) and the Instructions to Bidders which are part of this agreement.

IN WITNESS THEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

COUNTY OF ERIE

by


Director of Purchase

Contractor, Cascades Recovery, Inc

by


Title General Manager US UPS

APPROVED AS TO FORM


Assistant County Attorney
County of Erie, New York

4/19/12

(date)

Document No.: 12-347-Pu



COUNTY OF ERIE

CHRIS COLLINS
COUNTY EXECUTIVE

December 20, 2011

Cascades Recovery U.S., Inc.
(formerly Metro Waste Paper Recovery U.S., Inc.)
ATTN: Mark Johnson
3241 Walden Avenue
Depew, NY 14043

Reference: Bid No. 290154 -002 "Paper Recycling for Erie County "

Dear Mr. Johnson,

Erie County Division of Purchase would like to extend this bid for an additional three year period through April 12, 2015, under the same pricing, terms and conditions as the original agreement. A copy of your bid is enclosed for your records.

Extension is provided for by Paragraph 26, Page 5 of 6, of the bid specifications. This offer is for your immediate consideration and acceptance. Please indicate below whether you agree to extend or do not wish to extend, and return all copies of this letter to my attention

After execution by the County a fully signed copy of this letter will be returned to you for your files.

☒ Yes, I wish to extend my bid for the period above.

☐ No, I do not wish to extend my bid.

Contractor:

By:

Title:

CS
Enclosure

Sincerely,

Charles Saxe
Buyer

County of Erie

By: Bridget A. Corcoran
Director of Purchase



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

February 13, 2013

Teresa Fraas, Deputy Comptroller
Erie County Comptroller's Office
95 Franklin Street, 11th Floor
Buffalo, NY 14202

Dear Ms. Fraas:

Your letter tendered to us on February 6th (dated January 31) includes the following statement: "If the confidential information shared with our office is accurate, Erie County could face serious repercussions." Therefore on February 7th, we asked for additional details about the information received by your office. However, your response dated February 11, 2013, includes no information pursuant to my request.

It now appears that your audit team will not be in a position to inform the Department of your concerns for a full six weeks after the issue was first shared with your office. Your February 11th letter indicates that your office expects "that fieldwork will continue through March 8, 2013 but this may have to be adjusted one way or the other depending on the number of files selected for review and/or any unforeseen circumstances."

We are taken aback by the suggestion that the Comptroller will permit a six week span of time to pass before Social Services has the information to address a potential deficiency in our processes or procedures. It seems a disservice to the County taxpayers to compel Social Services to wait over a month to take appropriate corrective action. We are certain that is contrary to the goal of the Whistleblower Hotline Initiated by County Executive Mark Poloncarz to ensure that the County investigates waste, fraud and abuse of county resources.

We consider it our duty to act quickly on any situation that may be adverse to the interests of the County taxpayers. Please reconsider, and advise me of the allegations that you describe as potentially resulting in serious repercussions, so that we can launch an internal review and take timely appropriate action if required.

Thank you in advance for your anticipated cooperation.

Sincerely,

Carol Dankert, Commissioner
Erie County Department of Social Services

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
AS TO AN AUDIT OF MEDICAID**

COMPTROLLER'S
RECEIVED

13 MAR 14 AM 11:32

This Agreement, effective on March 14, 2013, is by and between:

The County of Erie Department of Social Services, a department of a municipal corporation of the State of New York, having an office and place of business at 95 Franklin Street, 9th floor, Buffalo, New York 14202 (hereinafter referred to as the "DSS"), and

The Erie County Comptroller Division of Audit & Control (herein referred to as "Auditor") having an office and place of business at 95 Franklin Street, 11th floor, Buffalo, New York 14202.

WHEREAS, the Auditor is proceeding with an independent audit of Medicaid pursuant to County Charter Sec. 18 as set forth in an Engagement Letter tendered to DSS on February 6, 2013 and filed with the Erie County Legislature on February 6, 2013; a Supplement to the Engagement Letter tendered to DSS on February 11, 2013; and

WHEREAS the Entrance Conference took place on February 14, 2013; and

WHEREAS, in connection with the Audit, the Auditor will review certain confidential information from the County's records with respect to Medicaid payments, to look at the processes and testing transactions as they relate to the eligibility requirements within the Medicaid Unit; specifically to 1) determine that if all persons that have been deemed eligible for Medicaid benefits have met the eligibility requirements as prescribed by state or federal regulation; 2) to document the process flow of the transactions from application intake to eligibility determination, and subsequent recertification; 3) that the initial work will require Audit to perform walk-throughs which will require a discussion with DSS personnel involved in those transactions to sit down with the Auditor's team and help to draft a flowchart of that flow of transactions; 4) in addition, the Auditor will identify the internal controls that are present, test those controls to ensure that they're working as intended and identify controls that are not present; 5) as to the controls that are not present, the Auditor will identify a particular risk associated with that absence and then test to either confirm or deny that that risk is minimal or that the risk is more than the Auditor is willing to accept; and

WHEREAS, in connection with the Audit, once the walk-through and assessment of internal control is completed, the Auditor will assess the information and develop a plan; that this process contemplates an on-going dialogue between the Auditor and the Commissioner of DSS; and that the Auditor will issue a further supplement to its Entrance Letter to outline the objectives, scope and methodology for the Audit as to Medicaid, which will be tendered to DSS and filed with the Erie County Legislature, and

WHEREAS, on February 14, 2013, DSS provided: 1) a departmental organizational chart; 2) relevant job descriptions; 3) working hours: 8:30 a.m. – 5 p.m.; 4) identification of the key DSS person for Medicaid, Frank DeCarlo, Assistant Commissioner; 5) the time limit manual containing work codes for Temporary Assistance regarding tracking and the use of TA funds

under the Work Opportunity Act; 6) the source book for Public Assistance which outlines the eligibility process for TA applicants and recipients; 7) an ITAP manual which is a training manual for training TA examiners and used as a reference; 8) a TA and Medicaid desk guides that developed to help guide DSS staff at their desks; 9) Category of Assistance, which explains the different eligibility categories; 10) the standardized application used for TA, SNAP benefits and Medicaid; 11) an Access New York insurance application, used only for Medicaid applications; 12) a Medicaid assistant guide which contains processing for Medicaid applications; 13) the New Worker Training Guide, consisting of two volumes; 14) various web links.

WHEREAS, in order to comply with federal and state statute and regulation, DSS requires that such information accessed by or disclosed to the Auditor be kept confidential and that re-disclosure of information is prohibited except when specifically permitted in this Agreement and as permitted by state and federal laws and regulations; and

WHEREAS, the parties intend to protect the privacy and security of Protected Health Information (PHI) accessed or disclosed between the parties in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and regulations promulgated thereunder (45 CFR Parts 160-164) by the U.S. Department of Health and Human Services, and with the requirements of Subtitle D, the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery & Reinvestment Act of 2009, 42 U.S.C. § 17921-17954 ("HITECH"), New York State Social Services Law Secs. 367(b) and 369(4), and other applicable federal and state laws.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. In connection with the Audit of Medicaid, DSS will disclose to the Auditor certain of its confidential and/or proprietary information (hereinafter the "Confidential Information.") The term Confidential Information shall include all data, information, materials, medical records (including, but not limited to, claim eligibility, submission, request for payment, provider history and patient history), technology, computer programs specifications, manuals, plans, software, policies and procedures, and any other information disclosed in any form or media or any information not in the public domain disclosed to the Auditor by DSS. The term Confidential Information specifically includes PHI as this term is defined by the HIPAA Privacy Rule.
2. The Auditor covenants and agrees to hold the Confidential Information in trust and confidence and agrees that it shall only be used for purposes of auditing the Medicaid unit and shall not be used for any other purpose. The Auditor shall disclose the Confidential Information only to its staff acting on behalf of the Auditor, who: (1) need to access, use or disclose the Confidential Information in order to perform his or her duties and responsibilities in the context of this Audit and (2) have signed this confidentiality agreement with the County. The Auditor will not disclose, publish, or otherwise reveal any of the customer Confidential Information received from the County to any other party whatsoever, except to the New York State Office of Medicaid Inspector General (OMIG) or other appropriate State or federal agencies as required. Except as specifically permitted in this Agreement, the Auditor must request and receive written

authorization of DSS prior to disclosing, publishing or otherwise revealing Confidential Information to any other entity. The Auditor will take reasonable steps to ensure that appropriate methods are used to ensure the security of Confidential Information disclosed to OMIG and any other third parties.

3. The Auditor acknowledges that all staff members have read and understand policies and procedures related to Confidential Information, and participated in HIPAA training concerning the protection of Confidential Information. The Auditor will abide by County of Erie policies and procedures and will abide by all applicable laws and regulations pertaining to the protection of Confidential Information.
4. It is understood that DSS will tender Confidential Information to the Auditor in hard-copy form, redacted in accordance with the policy stated by the NYS Department of Health.
5. The Auditor agrees that there will be no photocopying or reproducing of confidential information furnished in tangible form. The Auditor agrees that all files will be reviewed in the office space furnished to the Auditor by DSS and agrees that all files are not to be removed from that office space. Both parties agree that these safeguards are intended to prevent the confidential information from being reproduced or released to the public in any way.
6. The obligations set forth in this Agreement shall be effective and continuing for the duration of the Audit. Moreover, the obligation to safeguard and protect Confidential Information shall survive the termination of the Audit, regardless of the reason for such termination.
7. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise to the Auditor in any Confidential Information. The Auditor agrees to keep any and all Confidential Information received in any form from the County in a secure and confidential manner in the office space furnished to the Auditor by DSS.
8. It is agreed that in the event DSS determines that there has been a material breach by the Auditor or one of its staff, then DSS shall have the right to immediately terminate this Agreement upon written notice to the Auditor. If DSS does not terminate the Agreement, the Auditor shall take reasonable steps to cure the breach. If the Auditor's efforts to cure the breach are unsuccessful, then DSS, in addition to any other right or remedy it might have, may terminate this Agreement and/or the Engagement. The Auditor acknowledges that if there is a breach of this Agreement, then DSS, in addition to terminating this Agreement and taking any other actions available to it, may obtain a court injunction to stop the breach. The parties agree and consent to jurisdiction in New York State Supreme Court, Erie County Commercial Part, for such disputes.
9. The parties agree that the waiver by either party of a breach of this Agreement does not constitute a waiver of any prior or subsequent breach.
10. The Auditor further agrees that if any person or entity requests, subpoenas, or otherwise attempts to obtain Confidential Information or other material relating to DSS, then the Auditor will immediately notify DSS and provide DSS an opportunity to seek a protective order or other

appropriate remedy. Upon receipt of a subpoena or other request for Confidential- Information covered by this Agreement, the Auditor agrees to send written notice immediately to Michael Siragusa, Erie County Attorney, 95 Franklin Street, Room 1634, Buffalo, New York 14202.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

Thomas Kubiniec
Thomas Kubiniec
Director of Legal Affairs
Department of Social Services

3/14/13
Date

Teresa Frass
Teresa Frass
Deputy Comptroller for Audit & Control
Office of the Comptroller

3/14/13
Date

David Kinda
David Kinda
Senior Auditor
Office of the Comptroller

4/26/13
Date

Frank Belliotti
Frank Belliotti
Staff Auditor
Office of the Comptroller

3/14/13
Date

Kim Kajdasz
Kim Kajdasz
Staff Auditor
Office of the Comptroller

3/14/13
Date

Ruby Jain
Ruby Jain
Accountant-Auditor
Office of the Comptroller

3/14/13
Date

Approved As to Form:

Michelle Parker
Michelle Parker
First Assistant County Attorney
Document No. 13-223-CO

3/14/13
Date

COMPTROLLER'S
RECEIVED
MAR 14 AM 11:32

**CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT
AS TO AN AUDIT OF TEMPORARY ASSISTANCE**

This Agreement, effective on March 14, 2013, is by and between:

The County of Erie Department of Social Services, a department of a municipal corporation of the State of New York, having an office and place of business at 95 Franklin Street, 9th floor, Buffalo, New York 14202 (hereinafter referred to as the "DSS"), and

The Erie County Comptroller Division of Audit & Control (herein referred to as "Auditor") having an office and place of business at 95 Franklin Street, 11th floor, Buffalo, New York 14202.

WHEREAS, the Auditor is proceeding with an independent audit of Temporary Assistance ("TA") pursuant to County Charter Sec. 18 as set forth in an Engagement Letter tendered to DSS on February 6, 2013 and filed with the Erie County Legislature on February 6, 2013; a Supplement to the Engagement Letter tendered to DSS on February 11, 2013; and

WHEREAS the Entrance Conference took place on February 14, 2013, at which time it was identified that the Audit would also cover issues related to Temporary Assistance payments *transactions* which was not identified in the Entrance Letter nor the supplement to same dated February 11, 2013; and

WHEREAS, in connection with the Audit, the Auditor will review certain confidential *transactions* information from the County's records with respect to Temporary Assistance payments, to look at the processes and testing transactions as they relate to the eligibility requirements within the Temporary Assistance Unit; specifically to 1) determine that if all persons that have been deemed eligible for Temporary Assistance benefits have met the eligibility requirements as prescribed by state or federal regulation; 2) to document the process flow of the transactions from application intake to eligibility determination, and subsequent recertification; 3) that the initial work will require Audit to perform walk-throughs which will require a discussion with DSS personnel involved in those transactions to sit down with the Auditor's team and help to draft a flowchart of that flow of transactions; 4) in addition, the Auditor will identify the internal controls that are present, test those controls to ensure that they're working as intended and identify controls that are not present; 5) as to the controls that are not present, the Auditor will identify a particular risk associated with that absence and then test to either confirm or deny that that risk is minimal or that the risk is more than the Auditor is willing to accept; and

WHEREAS, in connection with the Audit, once the walk-through and assessment of internal control is completed, the Auditor will assess the information and develop a plan; that this process contemplates an on-going dialogue between the Auditor and the Commissioner of DSS; and that the Auditor will issue a further supplement to its Entrance Letter to outline the objectives, scope and methodology for the Audit as to Temporary Assistance, which will be tendered to DSS and filed with the Erie County Legislature, and

WHEREAS, on February 14, 2013, DSS provided: 1) a departmental organizational chart; 2)

relevant job descriptions; 3) working hours: 8:30 a.m. – 5 p.m.; 4) identification of the key DSS person for Temporary Assistance, Karen Rybicki, the Assistant Deputy Commissioner; 5) the time limit manual containing work codes for Temporary Assistance regarding tracking and the use of TA funds under the Work Opportunity Act; 6) the source book for Public Assistance which outlines the eligibility process for TA applicants and recipients; 7) an ITAP manual which is a training manual for training TA examiners and used as a reference; 8) a TA and Medicaid desk guides that developed to help guide DSS staff at their desks; 9) Category of Assistance, which explains the different eligibility categories; 10) the standardized application used for TA, SNAP benefits and Medicaid; 11) an Access New York insurance application, used only for Medicaid applications; 12) a Medicaid assistant guide which contains processing for Medicaid applications; 13) the New Worker Training Guide, consisting of two volumes; 14) various web links.

WHEREAS, in order to comply with federal and state statute and regulation, DSS requires that such information accessed by or disclosed to the Auditor be kept confidential and that re-disclosure of information is prohibited except when specifically permitted in this Agreement and as permitted by state and federal laws and regulations; and

WHEREAS, the parties intend to protect the privacy and security of Protected Health Information (PHI) accessed or disclosed between the parties in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and regulations promulgated thereunder (45 CFR Parts 160-164) by the U.S. Department of Health and Human Services, and with the requirements of Subtitle D, the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of the American Recovery & Reinvestment Act of 2009, 42 U.S.C. § 17921-17934 ("HITECH"), and other applicable federal and state laws.

NOW, THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. In connection with the Audit of Temporary Assistance, DSS will disclose to the Auditor certain of its confidential and/or proprietary information (hereinafter the "Confidential Information.") The term Confidential Information shall include all data, information, materials (including, but not limited to, claim eligibility, submission, request for payment, provider history and patient history), technology, computer programs specifications, manuals, plans, software, policies and procedures, and any other information disclosed in any form or media or any information not in the public domain disclosed to the Auditor by DSS. The term Confidential Information specifically includes PHI as this term is defined by the HIPAA Privacy Rule.
2. The Auditor covenants and agrees to hold the Confidential Information in trust and confidence and agrees that it shall only be used for purposes of auditing the Temporary Assistance unit and shall not be used for any other purpose. The Auditor shall disclose the Confidential Information only to its staff acting on behalf of the Auditor, who: (1) need to access, use or disclose the Confidential Information in order to perform his or her duties and responsibilities in the context of this Audit and (2) have signed this confidentiality agreement with the County. The Auditor will not disclose, publish, or otherwise reveal any of the customer Confidential Information received from the County to any other party whatsoever, except to the

New York State Office of Medicaid Inspector General (OMIG) or other appropriate State or federal agencies as required. Except as specifically permitted in this Agreement, the Auditor must request and receive written authorization of DSS prior to disclosing, publishing or otherwise revealing Confidential Information to any other entity. The Auditor will take reasonable steps to ensure that appropriate methods are used to ensure the security of Confidential Information disclosed to OMIG and any other third parties.

3. The Auditor acknowledges that all staff members have read and understand policies and procedures related to Confidential Information, and participated in HIPAA training concerning the protection of Confidential Information. The Auditor will abide by County of Erie policies and procedures and will abide by all applicable laws and regulations pertaining to the protection of Confidential Information.

4. It is understood that DSS will tender Confidential Information to the Auditor in hard-copy form, redacted in accordance with the policy stated by the NYS Department of Health.

5. The Auditor agrees that there will be no photocopying or reproducing of confidential information furnished in tangible form. The Auditor agrees that all files will be reviewed in the office space furnished to the Auditor by DSS and agrees that all files are not to be removed from that office space. Both parties agree that these safeguards are intended to prevent the confidential information from being reproduced or released to the public in any way.

6. The obligations set forth in this Agreement shall be effective and continuing for the duration of the Audit. Moreover, the obligation to safeguard and protect Confidential Information shall survive the termination of the Audit, regardless of the reason for such termination.

7. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise to the Auditor in any Confidential Information. The Auditor agrees to keep any and all Confidential Information received in any form from the County in a secure and confidential manner in the office space furnished to the Auditor by DSS.

8. It is agreed that in the event DSS determines that there has been a material breach by the Auditor or one of its staff, then DSS shall have the right to immediately terminate this Agreement upon written notice to the Auditor. If DSS does not terminate the Agreement, the Auditor shall take reasonable steps to cure the breach. If the Auditor's efforts to cure the breach are unsuccessful, then DSS, in addition to any other right or remedy it might have, may terminate this Agreement and/or the Engagement. The Auditor acknowledges that if there is a breach of this Agreement, then DSS, in addition to terminating this Agreement and taking any other actions available to it, may obtain a court injunction to stop the breach. The parties agree and consent to jurisdiction in New York State Supreme Court, Erie County Commercial Part, for such disputes.

9. The parties agree that the waiver by either party of a breach of this Agreement does not constitute a waiver of any prior or subsequent breach.

10. The Auditor further agrees that if any person or entity requests, subpoenas, or otherwise

attempts to obtain Confidential Information or other material relating to DSS, then the Auditor will immediately notify DSS and provide DSS an opportunity to seek a protective order or other appropriate remedy. Upon receipt of a subpoena or other request for Confidential Information covered by this Agreement, the Auditor agrees to send written notice immediately to Michael Siragusa, Erie County Attorney, 95 Franklin Street, Room 1634, Buffalo, New York 14202.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

Thomas Kubiniec
Thomas Kubiniec
Director of Legal Affairs
Department of Social Services

3/14/13
Date

Teresa Fraas
Teresa Fraas
Deputy Comptroller for Audit & Control
Office of the Comptroller

3/14/13
Date

David Kinda
David Kinda
Senior Auditor
Office of the Comptroller

4/26/13
Date

Frank Belliotti
Frank Belliotti
Staff Auditor
Office of the Comptroller

3/14/13
Date

Kim Kajdaz
Kim Kajdaz
Staff Auditor
Office of the Comptroller

3/14/13
Date

Ruby Jain
Ruby Jain
Accountant-Auditor
Office of the Comptroller

3/14/13
Date

Approved As to Form:

Michelle Parker
Michelle Parker
First Assistant County Attorney
Document No. 13-222-CO

3/14/2013
Date



MEMORANDUM

ERIE COUNTY

EXECUTIVE'S OFFICE

TO: Executive Department Heads

FROM: County Executive Mark C. Poloncarz, Esq.

DATE: April 2, 2012

RE: Proper Disposal of Confidential Records

A handwritten signature in dark ink, reading "Mark C. Poloncarz", is written over the "FROM:" line of the memorandum.

Erie County is obligated by law and this administration is committed to the protection and security of confidential records and information created or obtained in the fulfillment of services provided to the public.

Recognizing the need to maintain confidentiality, commissioners and department heads reminded to instruct all staff on the proper maintenance and disposal of sensitive or confidential records including the following practices:

1. Department managers should be aware of and insure compliance with the County and State record retention policies.
2. Any records that can be disposed of pursuant to the records retention guidelines must be disposed of in a method that assures that no confidential information is made available to any person who is not entitled to such information. Data (especially paper documents) that is confidential or sensitive should never be disposed of in the garbage or in regular blue paper recycling bins.
3. In general, records that are suitable to be disposed that contain confidential information must be placed in a secure tote (one that is locked and from which material may not be removed without the use of a key). Such materials are then to be taken from work sites by a contractor who has provided assurances acceptable to the department that all confidential records will be shredded, burned or otherwise disposed of in such a way that confidential information will not be disclosed to any person. If your department does not have such secured totes and are in need of one, please contact Dan Rizzo, Deputy Commissioner of Buildings and Grounds at x2725.

4. If such totes are not available at a work location an alternative secure method for disposal shall be utilized. Under no circumstances may confidential information be removed from a work site or from a tote without the permission of the department head who is responsible for such records.
5. Under no circumstances shall confidential records be removed from the care and custody of a department, or removed from authorized county work sites, without the permission of the department head who is responsible for such records.

In order to strengthen safeguards against the unauthorized or accidental disposal or disclosure of confidential records and information, commissioners and department heads are hereby instructed to:

1. Assess current departmental records retention compliance practices.
2. Assess the confidentiality protocols both in maintenance and disposal of sensitive materials.
3. Provide a written assessment of these protocols and actionable items for remedying potential lapses as part of your April 5, 2013 weekly report.

If you have any questions regarding this memorandum or issue, please contact my office.
Thank you.

CERTIFICATE OF GUARANTEED DESTRUCTION

This is to certify that:

Cascades Recovery U.S., Inc.
384 Lee Road
Rochester, NY 14606

Hereby guarantees that this procedure hereinafter described is the method employed by this company in the destruction of all confidential documents, records and papers removed from your company.

That from the moment your documents, records, tabulating cards, or any other papers of a confidential nature are removed from your premises, they are immediately transported in containers, directly to our confidential shredding department at our recycling plant. The material is then weighed, confidentially shredded and baled entirely within the plant premises under the personal direction of a member of this firm during the entire process and proceedings above described.

That following this process, the bales are shipped directly to the paper mill.

That upon arrival at the paper mill, the bales are placed in a paper beater, pulped, macerated, and so physically transformed in substance and in form as to lose all identity as paper and eventually changed to a heavy liquid mass. All inks, writings, printings, and impressions are eradicated and washed away in this "wet-beater" process. The heavy liquid mass as described above is then recycled as paper in a different form (i.e. white bond or tissue).

This guarantee shall apply to all documents, records and papers designated by the customer to Cascades Recovery U.S., Inc., as being confidential and removed from the customer's premise by Cascades Recovery U.S., Inc., to be used in the manufacture of recycled paper.

The following tonnage, individual sites listed, was collected and destroyed during April 2013.

Site 1	Rath Bldg	13660 pounds
Site 3	290 Main	1920 pounds
Site 4	478 Main	2640 pounds
Site 2	Convention Tower	320 pounds

CASCADES RECOVERY U.S., INC.

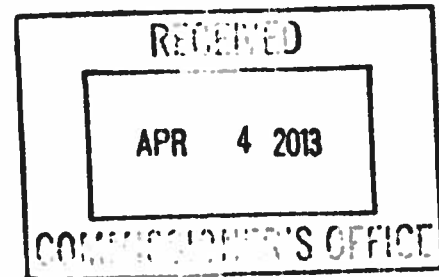
Per: Mark Johnson
Date: 01-May-13



COUNTY OF ERIE
STEFAN I. MYCHAJLIW
COMPTROLLER

April 4, 2013

Carol Dankert, Commissioner
Erie County Department of Social Services
95 Franklin Street, 8th Floor
Buffalo, New York 14202



Dear Commissioner Dankert:

We have commenced a performance audit of the Eligibility and Recertification processes within the Public Assistance Unit of the Department of Social Services (DSS).

The scope of our audit will include but is not limited to:

- The activities associated with the eligibility process from the time an application is received to the determination and client notification of eligibility.
- The activities associated with the recertification process.
- The activities associated with the tracking, scanning, storage and disposal of original documentation.
- The review of the application controls associated with the On Base, Oracle, WMS systems or any other system not yet identified that is used in the eligibility and/or recertification processes. Application controls include but are not limited to input controls, data processing, interface controls, security administration and output controls.

We will be looking at the processes and perform testing for the period January 1, 2011 through March 31, 2013. Our objectives are to:

- Document, evaluate and test internal controls to determine if the controls are sufficient to minimize risks. Tests will be performed to confirm that identified controls are working as intended.
- Perform tests to determine if all persons that have been deemed eligible for benefits have met the eligibility and recertification requirements as prescribed by regulation and to determine if eligibility determination or recertification was completed timely.
- Evaluate the DSS systems application controls to determine compliance with policies and that the application environment is appropriately protected.

An entrance conference was held on Thursday, February 14th at 2:00pm in Room 805. We discussed working hours, access to records and met with key personnel with whom we will be working. I also explained how findings will be handled and how I will communicate our audit progress.

At that time, we also obtained the following:

1. Departmental organizational charts with a brief summary of key tasks performed by job title.
2. Copies of departmental policies and procedures.
3. Copies of regulatory guidance that prescribes procedures for determining eligibility and required documentation in files.

At the initial entrance conference, we also asked for copies of any audits performed by 3rd parties in 2011 and 2012. As these have not yet been received, we again request that copies of these audits be provided. Additionally, we would also like a copy of your responses to the recommendations in those reports if they are not already included therein.

Before we commenced fieldwork, the Audit and Control Unit provided evidence of HIPAA training obtained by the audit staff and signed confidentiality agreements to Thomas Kubiniec, Director of Legal Affairs for the Department of Social Services. Our initial walkthrough of the eligibility process commenced on March 15, 2013 with Karen Rybicki, Assistant Deputy Commissioner, Frank DeCarlo, Assistant Commissioner – Administration, Thomas Kubiniec, Director of Legal Affairs, Teresa Fraas Deputy Comptroller – Audit and Control and Ruby Jain, Accountant – Auditor.

We will shortly commence a walkthrough of the recertification process and then begin our testing and compliance fieldwork. It is expected that fieldwork will continue through the end of May but this may have to be adjusted depending on the testing procedures we develop and/or any unforeseen circumstances or delays that are encountered. A report will be issued based on the results of our audit.

For clarification purposes, please be aware that a performance audit of the eligibility and recertification processes within the Medicaid Unit will commence upon completion of our Public Assistance audit. A similar, but separate announcement letter will be issued for the Medicaid audit.

Should you have any questions, please feel free to contact me at x8430.

Sincerely,

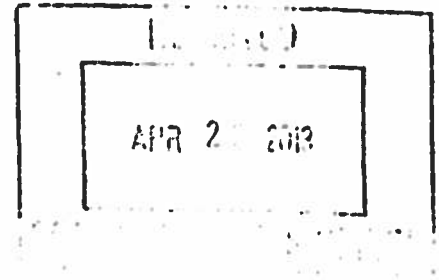


Teresa Fraas, Deputy Comptroller – Audit and Control
Erie County Comptroller's Office

CC: Hon. Stefan I. Mychajliw, County Comptroller
Hon. Mark C. Poloncarz, County Executive
Hon. Erie County Legislature
Robert W. Keating, Director, Budget and Management
Erie County Fiscal Stability Authority



COUNTY OF ERIE
STEFAN I. MYCHAJLIW
COMPTROLLER



April 22, 2013

Carol Dankert-Maurer, Commissioner
Department of Social Services
95 Franklin Street, 8th Floor
Buffalo, New York 14202

Dear Commissioner Dankert-Maurer:

I am in receipt of your letter dated April 16, 2013 with the attached copies of recent Temporary Assistance ("TA") and Medicaid ("MA") audit reports pertaining to the Erie County Department of Social Services (DSS). When you receive it, please provide us with a copy of the final report of the Medicaid Eligibility Quality Control Unit Audit (MEQC) completed by the state on December 21, 2012.

Please be advised that Mr. Kinda's e-mail to Mr. DeCarlo on April 10, 2013 was in regard to Comptroller Mychajliw's and my investigation into a whistleblower tip on the auto-recertification of Medicaid participants for January and February 2013. The interviews we are requesting are part of this investigation and should not be confused with the audit. We tried to follow the same contact protocol that we agreed upon at the entrance meeting, but if you prefer that a different means of contact be established and followed for our whistleblower investigation, please advise so that we can arrange these interviews.

You have acknowledged receipt of our revised audit entrance letter dated April 4, 2013. We understand that you have asked for additional detail on sample size and methodology as well as end dates for the audit and field work. Once our walkthroughs are completed and internal controls identified, we will design our testing procedures. Various audit sampling techniques are used to determine the number of item(s) to be tested. Audit sampling methodology is not ordinarily disclosed to the auditee during the audit but rather included as additional information in the final audit report. We can only provide an estimate as to an end date for the audit and field work which we have provided to you. It is my belief that once testing procedures begin, we will have a clearer picture of timeframe for completion of fieldwork which will be communicated to you. Also, standard audit procedure permits the auditor to expand and/or reduce the scope of an audit without the input of the auditee.

Lastly, it has come to our attention that you have recently modified your processes and procedures regarding the storage and disposal of original documentation. Accordingly, we would like to discuss with the appropriate individuals what changes were made and what caused these changes. We request that you arrange this meeting for Comptroller Mychajliw, Dave Kinda and me to attend.

At that time, we also obtained the following:

1. Departmental organizational charts with a brief summary of key tasks performed by job title.
2. Copies of departmental policies and procedures.
3. Copies of regulatory guidance that prescribes procedures for determining eligibility and required documentation in files.

At the initial entrance conference, we also asked for copies of any audits performed by 3rd parties in 2011 and 2012. As these have not yet been received, we again request that copies of these audits be provided. Additionally, we would also like a copy of your responses to the recommendations in those reports if they are not already included therein.

Before we commenced fieldwork, the Audit and Control Unit provided evidence of HIPAA training obtained by the audit staff and signed confidentiality agreements to Thomas Kubiniec, Director of Legal Affairs for the Department of Social Services. Our initial walkthrough of the eligibility process commenced on March 15, 2013 with Karen Rybicki, Assistant Deputy Commissioner, Frank DeCarlo, Assistant Commissioner – Administration, Thomas Kubiniec, Director of Legal Affairs, Teresa Fraas, Deputy Comptroller – Audit and Control and Ruby Jain, Accountant – Auditor.

We will shortly commence a walkthrough of the recertification process and then begin our testing and compliance fieldwork. It is expected that fieldwork will continue through the end of May but this may have to be adjusted depending on the testing procedures we develop and/or any unforeseen circumstances or delays that are encountered. A report will be issued based on the results of our audit.

For clarification purposes, please be aware that a performance audit of the eligibility and recertification processes within the Medicaid Unit will commence upon completion of our Public Assistance audit. A similar, but separate announcement letter will be issued for the Medicaid audit.

Should you have any questions, please feel free to contact me at x8430.

Sincerely,



Teresa Fraas, Deputy Comptroller – Audit and Control
Erie County Comptroller's Office

CC: Hon. Stefan I. Mychajliw, County Comptroller
Hon. Mark C. Poloncarz, County Executive
Hon. Erie County Legislature
Robert W. Keating, Director, Budget and Management
Erie County Fiscal Stability Authority



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

May 8, 2013

Honorable Stefan I. Mychajliw
Erie County Comptroller
95 Franklin Street, 11th Floor
Buffalo, New York 14202

Re: Department of Social Services Recycling and Comptroller Inquiry

Dear Comptroller Mychajliw:

As I think you know, our Administration has been working over the last month to ensure that governmental records are retained as required by state law. In addition, we have been working to insure that confidential documents that are not being retained are properly protected and then destroyed. We discovered some weaknesses in the security and destruction process and have moved aggressively to cure all defects. We immediately imposed certain temporary solutions and have developed and now implemented a longer term plan to guarantee the security of all confidential records that are scheduled for disposal.

I have been advised by the Department of Social Services ("DSS") that members of your office, perhaps including you personally, were observed entering a secure DSS storage area in the sub-basement of the Rath Building and reviewing paper items from recycling totes. It is alleged that this occurred in late March or early April of this year.

Please advise me:

- If anyone from the Comptroller's Office removed any confidential records belonging to any county department;
- If your office still has any such records; and,
- If such records were taken, but are no longer in the possession of your office, what has happened to them, including whether or not they were they properly disposed of.

If your office still has any such records, please return them to the appropriate department so that they can be properly destroyed.

Please be advised that Section 805 of the General Municipal Law subjects any municipal officer or employee to very severe penalties for the disclosure of "confidential information acquired by him in the course of his official duties...."

Based on an April 22nd letter from Deputy Comptroller Audit Teresa Fraas to DSS Commissioner Carol Dankert-Maurer as well as comments made to Commissioner Dankert-Maurer by Ms. Fraas at a meeting on May 2nd, it is clear that your office knew about a possible security issue with recycling totes, but elected to keep that information to yourself. When asked why the Comptroller's Office chose not to report the issue to DSS or my office, Ms. Fraas could not or would not provide an answer other than to confirm you entered a secure DSS space without permission and removed paper documents from a tote or totes and did not notify the department that is the custodian of such records or our office of a possible safekeeping issue.

This administration is committed to securing client, employee and other data which is required to be confidential and/or securely maintained. In late March, we were made aware that there was a potential issue with the disposal of confidential records. Certain actions were immediately taken to secure all totes. After an initial review, on April 2, 2013, the County Executive issued a memorandum to his executive department heads reiterating the need for protecting and securing records and information, as well as the appropriate process and protocol for disposing of unneeded paper documents through both secure and non-secure recycling totes. The administration twice met with a representative of Cascades Recovery, the County's recycling vendor, and reviewed procedures for the secure recycling and shredding of paper. The administration also took steps to place secure totes on floors and make such devices available to County employees, as well as securing totes in the sub-basement in an alternative locked area.

We were responding to our own concerns about the security of documents and the potential for documents to be inappropriately disposed. In fact, we found several areas of concern, and we immediately took action to address the issues. Unfortunately, there will always be some employees in any organization who do not comply with policy or behave irresponsibly. Where necessary and appropriate, we will take disciplinary action to ensure that client and other sensitive data is disposed of securely and properly under State law.

While the Comptroller's Office may have elected not to take any action to address this matter, we have taken corrective measures and will continue to do so. I can only hope that in the future, if you or your auditors find an area of concern, you will bring it to my attention for immediate action and not wait weeks or months later.

We know that our systems and the humans who implement them can be fallible. It is our job to seek continuous improvements in systems and performance. Problems, when discovered, must be addressed and addressed promptly. What is most troubling about these events is not that there was a need to improve a county system but that once you became aware of this need, you failed—for over a month—to notify the administration, thus allowing a serious problem to go unaddressed. Fortunately, we also became aware of the weakness and immediately addressed it.

In the future, should you discover a serious matter that requires prompt action, please notify our administration as soon as practicable. We will act promptly, as we did in this matter.

Sincerely,



Richard M. Tobe, Esq.
Deputy County Executive

cc: Erie County Executive Mark C. Poloncarz
Erie County Legislature
Erie County Fiscal Stability Authority
Erie County Attorney Michael Siragusa
Carol Dankert-Maurer, Commissioner of Social Services



COUNTY OF ERIE
STEFAN I. MYCHAJLIW
COMPTROLLER

Received
5/17/13
4:50 p.m.
Rust

May 17, 2013

Mr. Richard M. Tobe, Esq.
Deputy Erie County Executive
Rath Building, 16th Floor
95 Franklin Street
Buffalo, NY 14202

Dear Deputy County Executive Tobe:

We are in receipt of your correspondence dated May 8th, 2013. Even though we are still in the middle of our audit we feel compelled now to address a serious security issue involving the Department of Social Service's (DSS) improper disposal of highly sensitive documents containing personal information of many Erie County residents. Due to the lack of sufficient internal controls and the lack of sufficient monitoring activities, the Department of Social Services has allowed for the disclosure of confidential information that is a violation of federal and state regulations.

You state in your letter that your Administration is committed to securing client, employee and other data that is required to be confidential and/or securely maintained. This rhetoric is not supported by facts. By your own admission, confidential records must be securely maintained but were placed in unsecured totes by your employees and placed outside of the Rath Building on the loading dock for pickup by a recycling company. Unfortunately these documents were readily accessible to anyone walking by the loading dock, to anyone near or in the recycling truck and to persons at the recycling facility.

Placing these documents in a place where they are available to someone other than the data subject is considered disclosure of personal and confidential information, which is prohibited by both federal and state regulations.

Only until our audit began to determine whether or not you were placing highly confidential information in unsecured boxes and totes did you take steps to rectify this serious security breach. Our office is pleased that once our audit brought this serious matter to your attention that you took steps to stop putting highly sensitive and personal documents of Erie County residents in the trash in unsecured totes without protecting people from identity theft.

What is most troubling about this process is that the records your employees have been carelessly discarding in the garbage in an unsecured manner are the same documents DSS claims are so sensitive in nature that our auditors cannot look at them. Auditors from the Office of Comptroller have been denied access to records that would supposedly violate privacy regulations, yet your workers have been placing the very same documents in open boxes in an unlocked, unsecured storage room in the Rath Building or in unsecured bins on the loading dock that allowed anyone walking by to retrieve them.

Facts show the Department of Social Services (DSS) workers were discarding highly confidential and personal information of individuals who were applying and re-applying for Temporary Assistance (TA):

- Your Administration is responsible to notify the State of New York and the Federal government that you inappropriately disclosed confidential information by simply throwing highly confidential, personal documentation in the trash.
- Your Administration did not protect the identities of thousands of Erie County residents by not securing and properly disposing of highly sensitive documents of children and adults including, but not limited to copies of: birth certificates, personal medical information, social security cards, social security numbers, passports, payroll records, inmate records, court records, tax returns, and bank account numbers
- As far as we are aware, your Administration never contacted individuals who applied for services provided by the Erie County Department of Social Services to notify them exactly how you were irresponsibly disposing of their most sensitive documents, to inform them that your lack of controls put them at risk for being the victims of identity theft

Facts show your Administration left thousands of Erie County residents vulnerable to identity theft by leaving their most personal documentation unsecured and accessible to persons other than the data subject. These highly sensitive documents were left unsecured in an unlocked part of the Rath Building, discarded in unsecured totes which were then taken to the loading dock for pickup by a recycling company, accessible to the public.

Your own employees have been putting Erie County residents at risk by placing their most sensitive records and documentation in unsecured boxes and recycle bins. Highly sensitive documents were placed in open bins and boxes in an unlocked area of the basement of the Rath Building, where they were then taken to the loading dock for recycling. Anyone could have retrieved the highly personal documents of the people we serve by simply taking them out of the unsecured bins.

You wrote that in late March 2013, you were made aware that there was a potential issue with the disposal of confidential records. Does this mean that there were no written policies and procedures in place at the time so that you were not able to determine if there was an issue or not? How were you made aware that there was an issue with the disposal of confidential records? What weaknesses in the process did you discover? What policies were in place regarding the disposal of confidential records at the time when you were made aware of this situation? Have the processes that were in place been changed? What new processes have been implemented?

By your own admission, documents containing confidential information were placed in unsecured totes and required that certain actions be immediately taken to secure all totes. This could be interpreted that management did not have sufficient internal controls in place to prevent and/or detect the inappropriate and PROHIBITED disclosure of confidential information.

Let me remind you that management not only has a responsibility for implementing sufficient control activities over processes but more importantly, it is also management's responsibility to provide ongoing monitoring activities to ensure that the internal controls in place are performing as intended.

You also state: "there will always be some employees in any organization who do not comply with policy or behave irresponsibly." Did you find that an Erie County employee did not comply with County policy or behaved irresponsibly? If so, what policy(s) was not complied with and/ or irresponsible behavior took place and what has been done to ensure that this doesn't re-occur?

It appears your Administration did not have effective internal controls over the storage and disposal of confidential documents, nor were there effective monitoring activities in place to ensure that controls were working as intended. If there were, the disclosure of confidential information might have been prevented and management may have

detected, in a timely manner, when an employee(s) are not complying with established policy and/or behave irresponsibly.

The fact that this deeply disturbing security breach of dumping highly confidential information in the garbage without protecting taxpayers was not detected in a timely manner shows the troubling lack of sufficient internal controls within the Department of Social Services (DSS). This issue hasn't been around for a few weeks or months. It appears it goes back many years and was not detected by your employees until our audit began.

Your Administration did not protect the identities of thousands of Erie County residents by not securing and properly disposing of highly sensitive documents of children and adults including, but not limited to copies of: birth certificates, personal medical information, social security cards, social security numbers, passports, payroll records, inmate records, court records, tax returns, and bank account numbers.

Your Administration admitted that you discovered some weaknesses in security and destruction processes. This is a massive understatement. Your Administration is responsible for leaving our most vulnerable residents open to have their identities stolen, and as far as we are aware, your employees did not report it to New York State and the Federal government as required by law, and you did not let the people we serve know that you threw their most sensitive records in the garbage, unsecured. Thankfully our audit of your controls brought the issue to light, brought it to your attention, and we will determine in our audit whether or not the new controls put in place protect the identities of those applying for Temporary Assistance.

You also state that you have responded to concerns about the security of documents and the "potential" for documents to be "inappropriately disposed." This statement is inaccurate. There are no issues whether or not there was the "potential" that DSS exposed thousands of Erie County residents to the perils of identity theft. This took place. Confidential documents were inappropriately disposed of. We found this serious breach of security as part of our audit, and your employees did nothing about it for months and even years prior.

Our audit has determined that documents containing confidential information were placed in unsecured recycle totes or open boxes, were left in an unsecured and unlocked area of the Rath Building where anyone could have retrieved them, and then the unsecured totes were subsequently taken and placed on the loading dock, outside of the County building, accessible to the public.

Documents with confidential information were disposed of in unsecured totes, placed outside of the county building, and then picked up by a recycling company in trucks that could be left unattended and the documents readily accessible to the public. Documents that contained confidential information were placed in unsecured totes, placed in trucks with no guarantee that the totes actually arrived at the recycling facility. If a tote arrived at the facility, employees of the recycling company SORT documents with confidential information, once again, disclosing confidential information to the public.

In addition, as you are well aware, the Audit Division has been attempting to conduct a performance audit of the eligibility and recertification processes within the Medicaid unit of DSS.

Once notified that we wanted to commence an audit of the Medicaid eligibility and recertification processes, Commissioner Dankert requested a legal opinion regarding the Erie County Comptroller's ability to access Medicaid applications and files in furtherance of this audit. Thomas Kubinec responded to her request in a letter dated February 20th, 2013.

In this letter reference is made to New York State Social Services Law § 367(b) and § 369(4) that requires Medicaid information to be confidential. The letter goes on to say that the county DSS would violate HIPAA and SSL if it were to tender the entire application and/or file to the Comptroller.

The letter further states that the County could provide individually identifiable information to the Comptroller by following the de-identification standard and implementation specifications in 45 CFR 164.514(a)-(b).

Information that must be redacted prior to disclosure includes (but is not limited to): names, addresses, all elements of dates, phone numbers, fax numbers, electronic mail addresses, social security numbers, medical record numbers, certificate/license numbers.

Documentation containing individually identifiable information was not redacted prior to being inappropriately disposed of by being placed in unsecured recycling totes and placed outside of the Rath building where it was accessible to the public.

We find it disturbing that DSS went to such great lengths to determine that the Comptroller's office would not be able to access any Medicaid files unless such records were redacted as per the above mentioned regulation, yet the exact same documentation that we wanted to review was carelessly discarded in a manner that was readily accessible to the public.

While performing a walkthrough of the processes involved in the eligibility and recertification processes for Temporary Assistance, our Auditors were shown the process for the scanning, storage and disposal of original documentation. We were shown that documents were placed in unsecured recycle totes for destruction. Our office had no knowledge of the disposal process after that point.

We were not provided with any departmental policies or procedures regarding the scanning, storage or disposal of original documentation so we were not able to assess what the procedure should be or if internal control activities within this process were sufficient.

Our subsequent review of the process revealed that at no point during the disposal process were the recycle bins secured prior to being placed outside of the building and placed in recycle trucks. Documents containing confidential information were inappropriately disposed of in violation of numerous regulatory requirements some of which are listed at the end of this correspondence.

Audit has in its possession documents from 1,700 DSS cases that we obtained from an unsecured recycle bin placed outside of the County Building accessible to the public. They are now unfortunately public documents because you put them in the garbage. Your workers unfortunately made them public documents by placing them in unsecured cardboard boxes and bins in an unlocked and unsecured portion of the Rath Building, and then placed the highly sensitive documents outside of the Rath Building where any member of the public could have taken them.

Please be assured that all the copies of documents in our possession are safely secured. Some of the confidential information that we obtained includes but is not limited to copies of:

- Birth certificates
- Social security cards
- Social security numbers on various county forms
- Passports
- Payroll records
- Personal medical information
- Inmate records
- Personal bank account numbers
- Tax returns
- Court records

The disclosure of confidential information is a serious matter. The law is clear. DSS workers violated numerous privacy laws and regulations. NYS Personal Privacy Protection Law protects individuals against disclosures of personal information without their consent, except in circumstances specified in the law.

If you have not already done so you must report this disclosure of confidential information to both the Federal and State authorities immediately. You must also inform Erie County taxpayers that their confidential information has been inappropriately disclosed. There are also remedies available to persons whose confidential information was inappropriately disclosed.

NYS Personal Privacy Protection Law § 97 Civil remedies states:

(1) Any data subject aggrieved by any action taken under this article may seek judicial review and relief pursuant to article seventy-eight of the civil practice law and rules

(2) In any proceeding brought under subdivision one of this section, the party defending the action shall bear the burden of proof, and the court may, if the data subject substantially prevails against any agency and if the agency lacked a reasonable basis pursuant to this article for the challenged action, award to the data subject reasonable attorneys' fees and disbursements reasonably incurred.

(3) Nothing in this article shall be construed to limit or abridge the right of any person to obtain judicial review or pecuniary or other relief, in any other form or upon any other basis, otherwise available to a person aggrieved by any agency action under this article.

Privacy Act of 1974 § 552a.

(g)(1) Civil remedies

Whenever any agency (D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(i)(1) Criminal penalties: Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e) (4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.

Because of the remedies available to them, your Administration is required to inform the individuals whose confidential information was inappropriately disclosed that this occurred. Since there are criminal penalties that could possibly be assessed on County employees, your Administration was responsible and continues to be responsible to report this event to federal and state agencies. We are not aware that any of these actions have taken place.

Please provide us with your detailed plan for these communications as soon as possible.

We have included further legal documentation that clearly shows DSS workers should have immediately reported how they were disposing of highly sensitive records for months and even years prior.

1. Medicaid Confidentiality Regulations and standards as established by § 1902(a) (7) of the Social Security Act (42 USC § 1396a (a) (7)):

FEDERAL MEDICAID CONFIDENTIALITY STANDARDS:

The federal Medicaid confidential data standard is established by §1902(a)(7) of the Social Security Act (42 USC §1396a(a)(7)). The law requires that a "State plan for medical assistance must: (7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan."

STATE MEDICAID CONFIDENTIALITY STANDARDS:

Federal Medicaid confidentiality standards have been implemented in State law in various provisions of the Social Services Law (SSL), and the Social Services regulations at Title 18 NYCRR §369 of the SSL provides that all information received by social services and public health officials and service officers concerning Medicaid applicants and recipients may be disclosed or used only for purposes directly connected with the administration of the Medicaid program. Also, pursuant to § 367b(4) of the NY Social Services Law, information relating to persons APPLYING FOR medical assistance shall also be considered confidential and shall not be disclosed to persons or agencies without the prior written approval of the New York State Department of Health.

18 NYCRR §357.5 sets forth specific procedures for storing and using individually identifiable information. These procedures apply to all recipient identifying information, including Medicaid data, maintained by the Department of Health, local social services districts, and other authorized agencies. Records containing individually identifiable information must be marked "confidential" and kept in locked files or in rooms that are locked when the records are not in use. When in use, records must be maintained in such a manner as to prevent exposure of individual identifiable information to anyone other than the authorized party directly utilizing the case record.

No records can be taken from the place of business without prior authorization by supervisory staff of the Department of Health, the local social services district, or other authorized agency, nor can records be taken home by agency staff except upon prior supervisory authorization.

Records must be transmitted from one location to another in sealed envelopes stamped "confidential", and a receipt must be obtained documenting delivery of the records. Interviews with clients must be conducted at a location and in a manner which maximizes privacy. Medicaid program administration employees of the Department, Social Services, local social services districts, and other authorized (via M.O.U.) agencies are permitted access to individual identifying information only where their specific job responsibilities cannot be accomplished without access to individual identifying information.

2. NYS Personal Privacy Protection Law § 92, 94, and 96:

§ 92 Definitions:

(4) Disclose. The term "disclose" means to reveal, release, transfer, disseminate or otherwise communicate personal information or records orally, in writing or by electronic or (by) any other means other than to the data subject.

§ 94 Agency obligations.

(1) Each agency that maintains a system of records shall:

(h) establish appropriate administrative, technical and physical safeguards to ensure the security of records;

- (i) establish rules governing retention and timely disposal of records in accordance with law;
- (j) designate an agency employee who shall be responsible for ensuring that the agency complies with all of the provisions of this article;

3) Each agency, for disclosures made pursuant to paragraphs (d), (i) and (l) of subdivision one of section ninety-six of this article, except for disclosures made for inclusion in public safety agency records when such record is requested for the purpose of obtaining information required for the investigation of a violation of civil or criminal statutes within the disclosing agency, shall:

- (a) keep an accurate accounting of the date, nature and purpose of each disclosure of a record or personal information, and the name and address of the person or governmental unit to whom the disclosure is made;

§ 96 Disclosure of records.

- (1) No agency may disclose any record or personal information unless such disclosure is:

- (a) pursuant to a written request by or the voluntary written consent of the data subject, provided that such request or consent by its terms limits and specifically describes:

- (i) the personal information which is requested to be disclosed;

- (ii) the person or entity to whom such personal information is requested to be disclosed; and

- (iii) the uses which will be made of such personal information by the person or entity receiving it; or

- (b) to those officers and employees of, and to those who contract with, the agency that maintains the record if such disclosure is necessary to the performance of their official duties pursuant to a purpose of the agency required to be accomplished by statute or executive order or necessary to operate a program specifically authorized by law; or

- (c) subject to disclosure under article six of this chapter unless disclosure of such information would constitute an unwarranted invasion of personal privacy as defined in paragraph (a) of subdivision two of section eighty-nine of this chapter; or

- (d) to officers or employees of another governmental unit if each category of information sought to be disclosed is necessary for the receiving governmental unit to operate a program specifically authorized by statute and if the use for which the information is requested is not relevant to the purpose for which it was collected; or

- (e) for a routine use, as defined in subdivision ten of section ninety-two of this article; or

- (f) specifically authorized by statute or federal rule or regulation; or

- (g) to the bureau of the census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title XIII of the United States Code; or

- (h) to a person who has provided the agency with advance written assurance that the record will be used solely for the purpose of statistical research or reporting, but only if it is to be transferred in a form that does not reveal the identity of any data subject; or

- (i) pursuant to a showing of compelling circumstances affecting the health or safety of a data subject, if upon such disclosure notification is transmitted to the data subject at his or her last known address; or

(j) to the state archives as a record which has sufficient historical or other value to warrant its continued preservation by the state or for evaluation by the state archivist or his or her designee to determine whether the record has such value; or

(k) to any person pursuant to a court ordered subpoena or other compulsory legal process; or

(l) for inclusion in a public safety agency record or to any governmental unit or component thereof which performs as one of its principal functions any activity pertaining to the enforcement of criminal laws, provided that, such record is reasonably described and is requested solely for a law enforcement function; or

(m) pursuant to a search warrant; or

(n) to officers or employees of another agency if the record sought to be disclosed is necessary for the receiving agency to comply with the mandate of an executive order, but only if such records are to be used only for statistical research, evaluation or reporting and are not used in making determination about a data subject.

§ 96-a. Prohibited conduct.

1. Beginning on January first, two thousand ten the state and its political subdivisions shall not do any of the following, unless required by law:

(a) Intentionally communicate to the general public or otherwise make available to the general public in any manner an individual's social security account number. This paragraph shall not apply to any individual intentionally communicating to the general public or otherwise making available to the general public his or her social security account number.

3. Privacy Act of 1974 5 USC § 552 (b) and (e)(10)

(b) Conditions of disclosure:

No agency shall disclose any record, which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under § 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with § 3711(e) of Title 31.

e) Agency requirements:

Each agency that maintains a system of records shall establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

4. NYS Codes, Rules and Regulations, Social Services Law - Assistance and Care Title 1 - § 136 Protections of Public Welfare Records:

1. The names or addresses of persons applying for or receiving public assistance and care shall not be included in any published report or printed in any newspaper or reported at any public meeting except meetings of the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town; nor shall such names and addresses and the amount received by or expended for such persons be disclosed except to the commissioner of social services or his authorized representative, such county, city or town board or body or its authorized representative, any other body or official required to have such information properly to discharge its or his duties, or, by authority of such county, city or town appropriating board or body or of the social services official of the county, city or town, to a person or agency considered entitled to such information. However, if a bona fide news disseminating firm or organization makes a written request to the social services official or the appropriating board or body of a county, city or town to allow inspection by an authorized representative of such firm or organization of the books and records of the disbursements made by such county, city or town for public assistance and care, such requests shall be granted within five days and such firm or organization shall be considered entitled to the information contained in such books and records, provided such firm or organization shall give assurances in writing that it will not publicly disclose, or participate or acquiesce in the public disclosure of, the names and addresses of applicants for and recipients of public assistance and care except as expressly permitted by subdivision four. If such firm or organization shall, after giving such assurance, publicly disclose, or participate or acquiesce in the public disclosure of, the names and addresses of applicants for or recipients of public assistance and care except as expressly permitted by subdivision four, then such firm or organization shall be deemed to have violated this section

and such violation shall constitute a misdemeanor. As used herein a news disseminating firm or organization shall mean and include: a newspaper; a newspaper service association or agency; a magazine; a radio or television station or system; a motion picture news agency.

2. All communications and information relating to a person receiving public assistance or care obtained by any social services official, service officer, or employee in the course of his or her work shall be considered confidential and, except as otherwise provided in this section, shall be disclosed only to the commissioner, or his or her authorized representative, the commissioner of labor, or his or her authorized representative, the commissioner of health, or his or her authorized representative, the welfare inspector general, or his or her authorized representative, the county board of supervisors, city council, town board or other board or body authorized and required to appropriate funds for public assistance and care in and for such county, city or town or its authorized representative or, by authority of the county, city or town social services official, to a person or agency considered entitled to such information. Nothing herein shall preclude a social services official from reporting to an appropriate agency or official, including law enforcement agencies or officials, known or suspected instances of physical or mental injury, sexual abuse or exploitation, sexual contact with a minor or negligent treatment or maltreatment of a child of which the official becomes aware in the administration of public assistance and care nor shall it preclude communication with the federal immigration and naturalization service regarding the immigration status of any individual.

5. Health Information Portability and Accountability Act (HIPAA)

6. NYS Social Services law Sec 367(b) and 369(4)

By haphazardly disposing of highly confidential documents your Administration has disclosed confidential information of many Erie County residents, you should have reported this some time ago to the State of New York, the Federal government and Erie County taxpayers. Please inform the Erie County Office of Comptroller exactly how and when DSS is reporting this security breach to the State of New York, Federal government and Erie County Taxpayers.

We will keep you informed on the progress of our audit of Temporary Assistance and when our work is complete.

Sincerely,



Stefan I. Mychajliw
Erie County Comptroller

cc: Erie County Legislature
Erie County Fiscal Stability Authority
Erie County Attorney Michael Siragusa
Carol Dankert, Commissioner of Social Services

Tobe, Richard

From: Hibit, Jennifer
Sent: Monday, May 20, 2013 8:38 AM
To: Tobe, Richard
Subject: FW: Confidential records

Importance: High

This went to all commissioners and department heads..I will gather all responses and share with you.

--

Jennifer Hibit | Chief of Staff to the Erie County Executive
Erie County | Office of the County Executive
95 Franklin St., 1600 | Buffalo, NY 14202
P:(716) 858 2919 | F:(716) 858 8411
Jennifer.Hibit@erie.gov

From: Hibit, Jennifer
Sent: Monday, May 20, 2013 8:38 AM
To: Hibit, Jennifer
Cc: Tobe, Richard
Subject: Confidential records
Importance: High

In order to properly and fully comply with the laws regarding the protection of confidential client records, it is necessary for the administration to know if you are aware of any improper disclosure of confidential information that has occurred by accident or intentionally. Please survey your staff as appropriate and reply to me no later than Wednesday May 22, 2013. You may limit your search to any disclosures that have taken place over since January 1, 2012.

If there has been no disclosure, please advise.

If there have been any disclosures, please provide the details including the name of the client and the information that has been disclosed.

Thank you.

--
Jennifer Hibit | Chief of Staff to the Erie County Executive
Erie County | Office of the County Executive
95 Franklin St., 1600 | Buffalo, NY 14202
P:(716) 858-2919 | F:(716) 858-8411
Jennifer.Hibit@erie.gov

May 21, 2013

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATORS DIXON, MILLS, HARDWICK, RATH & LORIGO**

Re: Investigating the Careless Release of Confidential Information by the Department of Social Services

WHEREAS, during the course of a recent audit of the Temporary Assistance for Needy Families program, the County Comptroller discovered that confidential records were routinely disposed of by depositing them in trash left for disposal; and

WHEREAS, as such, information such as social security numbers, bank account information, medical records and other sensitive information was routinely available just outside of the Rath Building, waiting on the curb for identity thieves; and

WHEREAS, since the County Comptroller reported this breach, the County Executive reports that corrective measures have been taken to ensure that the confidential and sensitive personal information of future applicants for public assistance is not carelessly handled in a way to reveal the information to individuals not entitled to possess the information; and

WHEREAS, the non-specific assurances are a good initial step toward correcting this unacceptable situation, however many questions remain regarding the impact of past careless handling of sensitive information; and

WHEREAS, for example, a discussion of the specific steps that have been taken to insure that personal information of future applicants for assistance is secure is necessary to respond to resident concerns and to evaluate the effect of the new policy on the budget; and

WHEREAS, also, it is important to understand how long the county has been carelessly disposing of records in this fashion; and

WHEREAS, further, clarifying whether the careless disposal of personal information is a county-wide problem or is limited to the Social Services Department is important to make sure that applicants for county services in all departments have their information protected; and

WHEREAS, knowing how many individuals have had their personal information exposed to release in this fashion is useful in determining the breadth of the problem; and

WHEREAS, likewise, determining whether these individuals have been notified that their information has been compromised would assist in determining what steps, if any, individuals should take to avoid negative consequences of the release of private information; and

WHEREAS, additionally, determining the current location of information that was left at the curb for disposal is necessary to make sure that information is not currently accessible; and

WHEREAS, moreover, knowing whether Erie County or any of its employees is subject to criminal or civil liability as a result of disposing personal information in a careless manner is important for personnel and budgetary reasons; and

WHEREAS, furthermore, understanding Erie County's current privacy policy will assist the Legislature in its oversight capacity; and

WHEREAS, the past disposal of personal information in a careless fashion cannot be corrected simply by changing policies going forward; and

WHEREAS, because the disposal of personal information in a careless manner has potential wide-reaching consequences to Erie County and its residents that have not been addressed in a satisfactory fashion, further thorough investigation of the breach is necessary, proper and responsible.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature will conduct an investigation into the careless disposal of information by the Department of Social Services; and be it further

RESOLVED, as part of the investigation, the Erie County Legislature will require the attendance of a knowledgeable representative of the County Executive's administration, the Commissioner of Social Services, and other individuals whose testimony is deemed informative to the Legislature's inquiry; and be it further

RESOLVED, the Erie County Legislature will also request the testimony of the District Attorney and the County Attorney to discuss legal issues related to the careless disposal of personal information; and be it further

RESOLVED, the Erie County Legislature will complete its investigation by July 2, 2013; and be it further

RESOLVED, that a certified copy of this resolution be forwarded to the County Executive, County Comptroller, District Attorney, County Attorney and Commissioner of Social Services.

Fiscal Impact: None.



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE
May 23, 2013

VIA HAND DELIVERY

Honorable Stefan Mychajliw
Erie County Comptroller
95 Franklin Street, 11th Floor
Buffalo, New York 14202

*Hand Delivered on 5/23/13
clocked in Comptroller's office
@ 4:30 pm, handed to
Natalie*

Re: Return of Confidential Records

Dear Comptroller Mychajliw:

I received your letter of May 17, 2013 raising issues concerning the disposal process used by the Department of Social Services ("DSS"). We are continuing to investigate the various accusations outlined in this letter and will respond under separate cover at the conclusion of our investigation.

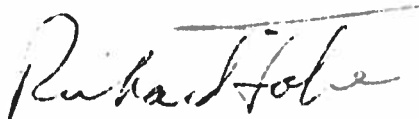
The purpose of this letter is urgently to reiterate our request that you immediately return the confidential records that you state in your May 17th letter were removed by your staff and placed in your offices without authorization, and that you sign the enclosed Confidentiality and Non-Disclosure Agreement. This is necessary to enable us to (1) mitigate any potential harm that could be caused to Erie County and its residents, (2) determine whether state or federal law requires Erie County to notify any state and federal agencies, and/or individuals potentially affected by disclosure of the records, (3) notify any impacted individuals if such notification is required and (4) secure the records pending resolution of this matter. Failure to return the records and sign the enclosed agreement would further impede Erie County's investigation and response to the situation.

All records should be returned to Social Services Commissioner Carol Dankert-Maurer at her office in the Rath Building on or before Friday, May 24, 2013.

Honorable Stefan Mychajiw
May 23, 2013
Page 2 of 2

In addition, please note that the enclosed Confidentiality and Non-Disclosure agreement requires that you provide a list of the identities of all individuals who may have accessed the records while in your possession.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Tohe". The signature is fluid and cursive, with a horizontal line drawn above the name.

Richard M. Tohe
Deputy County Executive

cc: Erie County Executive Mark C. Poloncarz
Carol Dankert-Maurer, Commissioner of Social Services



COUNTY OF ERIE
STEFAN I. MYCHAJLIW
COMPTROLLER

May 24th, 2013

Mr. Richard M. Tobe, Esq.
Deputy Erie County Executive
Rath Building, 16th Floor
95 Franklin Street
Buffalo, NY 14202

Dear Deputy County Executive Tobe:

First and foremost, our office fully supports Erie County Executive Mark Poloncarz's public statement that once he determines the members of his administration that were responsible for the continued practice of dumping highly confidential records of our residents in the trash and allowed it to happen, they should be terminated. In the coming weeks we will see if he lives up to his word.

"If I can pinpoint who was responsible to it and knew about it and allowed it to happen, yeah, they probably should be fired."

Source: Honorable Mark Poloncarz, WIVB.com, "Confidential Records Left Out in Open," 5/20/13

As you are well aware our audit into your administration's haphazard mishandling of personal records that left the residents we serve susceptible to have their identities stolen is ongoing. One cause of concern, and one issue that will be addressed in our findings, is the timeline Mr. Poloncarz told the people of Erie County.

"I'm disappointed, and to say how disappointed and upset I was, we acted upon it immediately."

Source: Honorable Mark Poloncarz, WGRZ.com, "Personal Files From Erie County Social Services Found Discarded," 5/20/13

"County Executive Mark Poloncarz says he found out what was happening in early April, and put a stop to it right away."

Source: Buffalo YNN.com, Erie County Social Services Improperly Disposes of Records," 5/20/13

"When we found out about it, we put a stop to it."

Source: Honorable Mark Poloncarz, WGRZ.com, "Personal Files From Erie County Social Services Found Discarded," 5/20/13

We are in receipt of your letter dated May 23rd, 2013 concerning your request to have returned what are unfortunately now public documents that your employees haphazardly tossed in the trash. If you cared so much to have these highly confidential documents in your possession, then why did Mr. Poloncarz as County Comptroller and County Executive allow them to be tossed in the garbage under his watch going back to 2006?

"As best as we can tell, this has been going on for many years, perhaps during the Collins or even the Giambra Administrations."

Source: Honorable Mark Poloncarz, WIVB.com, "Confidential Records Left Out in Open," 5/20/13

Mr. Poloncarz may be irritated that I, as the independently elected Comptroller, discovered this disturbing security breach in my first few months in office. He was asleep at the switch as Comptroller and County Executive going back to 2006.

Facts will show your administration is more concerned with playing hyper partisan political games and finger pointing than protecting taxpayers from identity theft. What is disheartening is that while the administration focuses on dodging, deflecting, and denying responsibility, for years you left thousands of residents vulnerable to the perils of identity theft. Our auditors did more to protect Social Service applicants in my first few months in office than Mark Poloncarz has done in his roles as Comptroller and County Executive for the past seven years.

Our office will consider your request to have the public documents that were thrown in the trash returned. Based on the irresponsible past practice of your administration, our auditors are very concerned about your ability to keep the now public documents safely stored or securely destroyed.

Sincerely,



**Stefan I. Mychajliw
Erie County Comptroller**

**cc: Erie County Legislature
Erie County Fiscal Stability Authority
Erie County Attorney Michael A. Siragusa
Carol Dankert, Commissioner of Social Services**

Administration knew of lax record security in fall, Mychajliw says

Poloncarz demands documents' return

By SANDRA TAN
NEWS STAFF REPORTER

In response to claims that top Erie County administrators were unaware of the improper disposal of confidential social services records until April, a social services employee said last week that she and other employees complained about the matter as early as October, said Comptroller Stefan Mychajliw.

"We have reason to believe, based on what employees are telling us, that the administration was made aware of this last year," he said.

Meanwhile, the County Executive's Office is demanding the return of numerous unsecured social services documents that are now in the possession of the Comptroller's Office.

"Currently, the county executive is looking into whether holding onto these documents constitutes a punishable offense, which could result in fines against Erie County," said Peter Anderson, spokesman for County Executive Mark C. Poloncarz.

The County Legislature will hold a committee hearing Tuesday regarding the improper disposal of confidential records.

Last month, Deputy County Executive Richard Tobe sent a letter to the comptroller seeking the return of confidential Department of Social Services records that were scooped up by Mychajliw's office after being left unsecured in the basement of the Rath Building for eventual trash pickup.

Among the improperly disposed records were copies of birth certificates, personal medical records, Social Security numbers, bank accounts, tax returns, inmate records, payroll information, court records and passports, the comptroller said.

Poloncarz has stated he was unaware of the lax record disposal practices until early April, when the matter came to the administration's attention.

Mychajliw, however, said a county employee came forward and spoke on Friday and Saturday with his deputy comptroller of the audit.

"She felt her concerns fell on deaf ears so she came to us," he said.

The employee, whose name is being withheld until the comptroller's audit is complete, said she and several other employees brought their concerns to the administration's attention last year during budget hearings before the County Legislature's Health and Human Services Committee, Mychajliw said.

The employees also said So-



"We have reason to believe, based on what employees are telling us, that the administration was made aware of this last year."
Erie County Comptroller
Stefan Mychajliw

cial Services Commissioner Carol Dunhart-Maurer and former Comptroller David J. Sherk were aware of the lax record security issue, Mychajliw said.

Finally, Mychajliw stated, Poloncarz's administration was aware that unshredded social services documents were left unprotected on March 15 when two social services workers showed county auditors the storage of the documents in the Rath Building basement.

In response, Anderson said Poloncarz reasserts his position that he was unaware of the improper disposal of records until April.

He also said the county executive is looking into whether Mychajliw is engaging in a punishable offense by holding onto Social Services documents that were not meant for his office to possess.

In response, Mychajliw said those documents are now public documents because county employees threw them in the trash without adequate safeguards. He also raised concerns about the ability of the county to safely secure and destroy them.

"Why would we give them back to an administration that threw them in the trash?" he said. "That's laughable."

Anderson said Mychajliw's point of view may not be in keeping with the law.

"He is not authorized to be holding on to those," Anderson said.

email: sttan@buffnews.com

BM Monday 5/27/13



Annette Cole
201 Madison St.
Buffalo, NY 14206
716-858-7362 (work)
716-856-0863 (home)

Mrs. Betty Jean Grant - Chairperson
Erie County Legislature
92 Franklin St. 4th floor
Buffalo, New York 14202

October 10, 2012

Dear Mrs. Grant

As you know the Department of Social Services provides critical and often sensitive services to a diverse population. The current commissioner of Social Services and her administrative staff have unnecessarily eliminated civil service positions critical to the operation of the many programs that most of the citizens of Erie County rely on to maintain a certain quality of life.

Because of this we would like to meet with you to elicit your support for the restoration of the Sr. Social Services Support Program Support Specialist to the Department of Social Services 2013 budget and beyond.

Thank you in advance for your time and attention to this matter. I look forward to hearing from you upon receipt of this letter to schedule a face to face meeting.

Sincerely,
Annette Cole
Ellen Mosack
Marti Kovach

Sr. Social Service Program Support Specialist

The following is a composite of staff that comprised the Program Support Unit, in the department of Social Services. This unit was staffed with civil service positions JG DX, (see attached list of job duties) Sr. Social Service Support Specialist. The last test for this position was given in the Spring of 2011 and individuals serving provisionally in this title were certified by the Personnel Department in the summer of 2011. Sr. Program Support Specialist were liaisons between Program areas and outside agencies in addition to performing audits on the outside agencies to establish compliance with operating mandates required for services these agencies may provide on behalf of the County.

The program support unit was renamed Quality Analysis and Control Unit in December 2010; however the staff were not retitled, the director of the Program Support Unit, Carol Sobolewski was reassigned to the Food Stamp Division to assume the duties of the program director who is now holding a provisional title as Director of Energy Programs in the HEAP division. The Assistant Program Support Director, Judith Dewald, was retained to supervise remaining staff. When the program support unit was eliminated from the budget she and her title were retained in the 2012 budget. In the beginning of 2012 Judith DeWald was retitled with no change in duties. The list for Assistant Program Support Director was established in 2011, and is still active, will this title be filled or will it be replaced in 2013 Social Service Budget by the new title currently being held by Judith Dewald.

Sr. Social Service Program Specialist conducted analysis of all the units from January of 2011 through May 2011 with the intent of identifying potential efficiencies. In summary the final recommendations made to the Commissioner and senior staff all divisions was to eliminate positions that were currently vacant or anticipated to become vacant due to confirmed staff retirements that would occur by 12/31/2011.

Position Salary County% County Share Fed/State Share

Tech Support Programmer Analyst \$47,740 0.29 \$13,973.50 \$33,767

This individual was transferred to Dept of Info & Support Services (DISS) budget therefore this position was recommended for elimination

Prog Support Fiscal Analyst \$41,884 0.29 \$12,282.88 \$29,601

This individual was transferred to the Division of Youth budget for 2012 / the position was recommended for elimination

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

This individual was upgraded 2 (two) job groups and transferred to the Food Stamp Division under the title Sr.SS Support Specialist for 2012 therefore this position was recommended for elimination

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

This individual was appointed as HEAP Assistant Program Director upgrade of 1 (one) job group on July 18 2011 a position that was created after the elimination of 9 (nine) HEAP part time and clerical workers therefore this position was recommended for elimination

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

This individual has been out on indefinite sick leave since August 2011 and is expected to retire by the end of 2011, therefore this position was recommended for elimination

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

Sr. Social Service Program Support Specialist

Sr SS Program Specialist \$48,373.75 0.29 \$13,573.60 \$32,800

Senior Clerk Typist \$31,482.00 0.29 \$ 9,208.68 \$22,273

In January of 2011 the Staff of the Quality Analysis Unit also consisted of:

4 System Support Specialist each with approximate salaries of \$68,000; the Commissioner transferred these individuals in March 2011:

1 transferred to Food Stamp Division, 1 transferred to assume duties of Welfare to Work

Coordinator 1 transferred for Temporary Assistance Program, 1 transferred to the Welfare to Work program in Temporary Assistance but retired in April or May of 2011, and 1 transferred to the

Children Services Division all remain in Social Services.

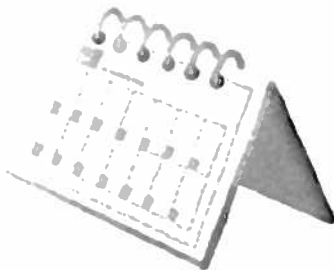
1 Senior Clerk Typist at an approximate salary of \$26,000. This individual was transferred to the Human Resource Division in June of 2011

What is the total Administrative staff budget for the Department of Social Services for 2012?

What is the total Administrative staff operating budget proposed for 2013?

Since the duties of the Sr. Social Services Program Support Specialist are still being performed why not reinstate at least 4 staff positions to do the work.

Any Social Service Administrative Staff positions that did not exist or were vacant in 2011 should not be funded in 2013 unless Sr. Social Service Program Support specialists are reinstated.



COMM 19M-9 10-19-12

Annette Cole
201 Madison St.
Buffalo, NY 14206
716-858-7362 (work)
716-856-0863 (home)

Mrs. Betty Jean Grant - Chairperson
Erie County Legislature
92 Franklin St. 4th floor
Buffalo, New York 14202

November 1, 2012

Dear Mrs. Grant;

Re: Sr. Social Service Support Specialist, Department of Social Services.

After having met with the Health and Human Service sub - Committee Tuesday October 30, 2012 regarding the elimination of Sr. Social Service Support Specialist from the 2012 budget; we would like your endorsement of our request to meet with the Fiscal Management Subcommittee during their next session.

We believe that the support of this committee would be helpful to obtaining legislative action in support for the restoration of the Sr. Social Services Support Program Support Specialist to the Department of Social Services 2013 budget and beyond.

Thank you in advance for your time and attention to this matter. I look forward to being added to agenda for the next meeting of this committee.

Sincerely,
Annette Cole
Ellen Mosack
Marti Kovach



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

May 31, 2013

**Leon Rodriguez, Director
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201**

Re: Erie County, New York - Disclosure to Comptroller Stefan Mychajliw

Dear Mr. Rodriguez:

The purpose of this letter is to advise your office that Erie County recently learned that some of its employees were not complying with document destruction procedures, and that this resulted in an unintended disclosure of confidential records to Erie County Comptroller Stefan Mychajliw. As explained below, Protected Health Information ("PHI"), as defined under the Health Insurance Portability and Accountability Act of 1996 Privacy Rule ("HIPAA Privacy Rule"), was not compromised as a result of this disclosure. Nevertheless, this event revealed that in some instances Erie County employees were not following established procedures concerning the destruction of PHI. As detailed below, Erie County is conducting a thorough investigation of its current procedures, and is in the process of reviewing and updating its procedures to ensure that there are appropriate administrative, technical and physical safeguards to protect PHI of Erie County residents.

A. Background Information

The governmental structure of Erie County, New York is that of a municipal corporation. The officers of the corporation are different elected officials, all of whom owe a duty of loyalty to the County but who generally operate independently of each other. The County Executive leads all Executive Branch functions and is thereby responsible for the general administration of Erie County. This division is hereafter referred to as the "Executive Branch." The Executive Branch does not include the County Legislators, Sheriff, Clerk, Comptroller or appointed members of the Board of Election.

In May 2012, the Erie County Department of Law retained outside counsel to review the privacy policies and procedures in place in departments under the control and direction of the Executive Branch. As part of this project, these departments completed a comprehensive risk

assessment and gap analysis. The risk assessment and gap analysis has formed the basis of Erie County's compliance plan and new privacy policies and procedures. Covered county departments are currently reviewing the updated policies and procedures, which will replace existing policies and procedures in July 2013.

B. Notice of Improper Disposal Practices and Response

On April 1, 2013, Deputy County Executive Richard Tobe was told by Mark Cornell, Director of Policy and Communications for the Executive Branch, that he had been advised by county employees that there was a problem, not specified, with confidential records in the sub-basement of the Rath County Office Building. Although the sub-basement is not open to the public, only parts of this area are secure. Access is gained by means of two of the building's common elevators. The Executive Branch and the leaders of most other Erie County departments, including but not limited to the Erie County Comptroller and Erie County Department of Social Services ("Erie County DSS"), are located, in whole or in part, in this building.

Upon learning that there may be a problem with the protection of confidential materials in the sub-basement, Mr. Tobe and the Deputy Commissioner of the Department of Public Works, Buildings and Grounds Division, Dan Rizzo inspected the sub-basement on the afternoon of April 1. It was determined that confidential documents had been improperly placed in unlocked totes contrary to long-standing practice of the Executive Branch requiring staff to maintain confidential materials in locked totes until they are removed by a vendor for destruction.¹ At the time of the discovery Mr. Tobe partially examined the contents of several of the unlocked totes and found some confidential information originating from Erie County DSS. Mr. Tobe returned the documents to the totes and immediately notified the Executive Branch's Director of Purchase and the Commissioner of Erie County DSS, Carol Dankert-Maurer. These individuals along with certain high level staff met Mr. Tobe in the sub-basement. After an inspection and discussion Mr. Tobe ordered that all totes be immediately secured in a locked room located in the sub-basement. When Mr. Tobe left the building later that evening, he went to the sub-basement and confirmed that all totes had been secured in a locked room as directed. He also visually inspected the building loading dock, and noted that there were no totes or other containers located outside of the Rath Building.

¹ A "tote" is a large wheeled container with a lid, approximately 3.5 feet high and approximately 29 inches by 29 inches at the top. These totes are commonly used to collect paper and other items designated for destruction. Locked totes are secured with a hasp and padlock that holds the lid down. There is a small slot cut in the top of secure totes through which confidential documents are placed. Locked and unlocked totes are temporarily stored in the sub-basement awaiting collection by the County's document destruction vendor. Under current practice, the documents contained in the locked totes are shredded by the vendor, who is under a contractual obligation to maintain the confidentiality of all Erie County documents. Unlocked totes are to be used for recycling of non-confidential paper.

The following day the Executive Branch launched an internal investigation and took steps to reduce the risk of unauthorized access to confidential information. For example, the Executive Branch sent a memo to all County department and division heads on April 2, 2013, directing them to remind all staff of the proper procedures for the maintenance and disposal of sensitive or confidential records, including the use of disposal methods that assure no confidential information is disposed of in unlocked totes. The memorandum also directed commissioners and senior staff to, among other things, assess the confidentiality protocols concerning the maintenance and disposal of sensitive materials and provide a written assessment of protocols and recommendations for action items.

Based upon the review that was conducted and the replies from department and division heads there is no evidence of any improper disclosure of records from the totes.

In the following days efforts were made to determine why confidential records were placed in unlocked totes. The investigation revealed breakdowns in the system. It now appears that some departments on some occasions received unlocked totes instead of locked totes, and that as a consequence confidential information was placed in unlocked totes. The Executive Branch took an inventory of the totes and immediately dispatched locked totes to departments that did not have sufficient access to locked totes. The Executive Branch also directed that all totes, locked and unlocked, not on a floor in a department be stored in a locked room in the sub-basement until the County's document destruction vendor removes the totes for destruction. A new secure storage room has been built in the sub-basement that contains a security camera. The Commissioner of DSS has ordered that only locked totes will be used in her department, so all paper waste is now treated as confidential. In addition, the Executive Branch is continuing to investigate and will implement other measures that it determines will improve the security of Erie County's document disposal and destruction process.

C. Disclosure to Erie County Comptroller

The Erie County Comptroller is an independent elected official charged with, among other duties as specified in the County Charter, conducting various financial and compliance audits of county officers, management and performance audits of county administrative units and county funded programs. The Comptroller and his staff are referred to hereafter as the "Comptroller's Office."

The Comptroller's Office is presently performing two audits of programs of the Erie County DSS in which the Comptroller's Office has asked for records that contain confidential information, including PHI. The objectives of the audits are, among other things, to determine whether applicants for Medicaid and Temporary Assistance were eligible for these government benefits. In the course of providing the requested information, Erie County DSS entered into two confidentiality agreements with the Comptroller's Office, each dated March 14, 2013. The agreements require the Comptroller's

Office to review Medicaid and Temporary Assistance records in an office furnished by Erie County DSS, and do not permit the Comptroller's Office to photocopy or remove records from this office.

In early April the Executive Branch started to suspect that the Comptroller's Office may have gained access to confidential records that were stored in the sub-basement but had no confirmation of this suspicion. On May 2, 2013, Erie County Deputy Comptroller-Audit, Teresa Fraas, alluded to the removal of confidential records from the sub-basement to the Comptroller's Office during a meeting with Erie County DSS Commissioner Dankert-Maurer. Ms. Dankert-Maurer reported her concerns to Mr. Tobe, who then wrote to Comptroller Mychajliw to ask whether his office had removed confidential records. By letter dated May 17, 2013, Comptroller Mychajliw notified the Executive Branch that his office removed Erie County DSS records pertaining to 1,700 DSS cases. The Comptroller has refused to supply details of the cases, except that he noted in the same letter that his office found at least ten categories of documents in the tote that he considered "confidential information." Only one of the ten categories, could involve PHI: "personal medical information." On May 23, 2013, Mr. Tobe replied to the Comptroller's letter and requested the immediate return of all records in his possession. He also requested Comptroller Mychajliw to execute a new Confidentiality and Non-Disclosure Agreement. On May 24, 2013, Comptroller Mychajliw replied to the request, stating that he would "consider" the request to return records.

At this point in time, after a thorough investigation, the Executive Branch believes that the records were removed from the sub-basement of the Rath Building on or prior to April 1, 2013. There is no evidence that suggests that any persons other than Comptroller Mychajliw and his staff accessed or removed confidential information from the sub-basement. Mr. Mychajliw was requested to confirm that neither he nor his staff copied or disclosed the records, or took any action that could compromise the security of these records. To date he has not responded to this request.

The Comptroller's Office has a duty under New York and federal law to protect the confidentiality of these records, and is bound by two confidentiality agreements executed on March 14, 2013. There would be severe consequences if the Comptroller's Office compromised the security of confidential records. See e.g., General Municipal Law § 805-a(b) (prohibiting municipal officers or employees from disclosing confidential information acquired in the course of his official duties, or from using such confidential information to further personal interests); Social Security Law § 136(4) (prohibiting persons and agencies from disclosing or using confidential Medicaid records for commercial or political purposes).

Even though the Executive Branch does not believe that Erie County is required to notify the Secretary of the Health and Human Services or any other agencies due to the fact that there is no evidence of public disclosure of PHI and because the disclosure to the Comptroller did not

Leon Rodriguez, Director
May 31, 2013
Page 5 of 5

compromise the security of the records, we want to advise you of the situation and our ongoing efforts to improve our policies and procedures related to the confidentiality of PHI. Please do not hesitate to contact me should you have any questions concerning the substance of this letter.

Very truly yours,

Mark C. Poloncarz, Esq.
Erie County Executive

By



Richard Tobe, Esq.
Deputy Erie County Executive

cc: **Office for Civil Rights Regional Office II Regional Manager, Linda Colna**
Erie County Deputy County Executive, Richard M. Tobe
Carol Dandert-Maurer, Commissioner of Social Services
Michael A. Siragusa, Erie County Attorney
Erie County Legislature

MEMORANDUM

ERIE COUNTY EXECUTIVE'S OFFICE

TO: Executive Department Heads
FROM: County Executive Mark C. Poloncarz, Esq. *MP*
DATE: May 31, 2013
RE: HIPAA Privacy Policy

Erie County is committed to protecting the security of confidential records and conducting business in compliance with all state and federal privacy requirements. The Department of Law has conducted a comprehensive review of the current policies and procedures for safeguarding "Protected Health Information." As part of this process, you and your staff were asked to complete a risk assessment. The Department of Law identified a number of opportunities for improvement during this review.

The draft HIPAA Privacy Policy and Appendices to this Policy are enclosed in a binder for your review. Appendix A of the Policy identifies the departments which we believe must comply with this Policy. These departments are classified as Erie County Designated Health Care Components or "Erie County DHCC". We recognize that in some cases it is appropriate for Erie County DHCC to implement policies and procedures that are supplemental to this Policy and provide additional detail concerning specific services provided in the department. The HIPAA Privacy Policy permits supplemental policies and procedures provided that the policies and procedures are consistent with the Erie County HIPAA Privacy Policy and approved by the Chief Privacy Officer.

Please review these materials and provide the following information to Erica Bennett, Esq., Assistant County Attorney, no later than Friday, June 15, 2013:

- Classification of Department and Applicability of HIPAA Privacy Policy: Appendix A identifies the departments within Erie County that the Department of Law concluded must comply with the HIPAA Privacy Policy. Review this Appendix to determine whether your Department is covered by the Policy. Following this review, please email Erica Bennett at Erica.Bennett@erie.gov to confirm that you reviewed Appendix A and that you either (1) agree with the classification of your department, or (2) disagree with the classification (if you disagree, explain why you disagree with the classification).

- **Feedback Concerning Implementation:** Departments classified as Erie County DHCC must review the Erie County HIPAA Privacy Policy and Appendices thereto. After review, applicable departments must confirm that they are able to implement the policies and procedures set forth in the Erie County HIPAA Privacy Policy. In some instances, federal and state laws allow some flexibility with how Erie County implements safeguards. In other instances, standards are required by law and there is little or no flexibility with implementation. Either way, Erie County needs understand any implementation concerns so that we can determine whether there is flexibility in the law that might permit revisions to the Policy, or if the department procedures must change to permit compliance with legal requirements. Email Ericka Bennett at Ericka.Bennett@erie.gov if you believe that one or more sections of the Policy will be difficult to implement as currently drafted. Emails should specify: (1) applicable section(s) of the Policy; (2) the reason for your concern; and (3) proposed revisions to the Policy. We will assume that your department is capable and ready to implement all sections of the Policy unless you notify Ericka Bennett with specific concerns on or before June 15, 2013.
- **Identification of Departmental Privacy Officer:** Section 2 of the HIPAA Privacy Policy provides specific information about policy oversight. All Erie County DHCCs will designate one or more persons to serve as the Departmental Privacy Officer. Departmental Privacy Officers will be responsible for overseeing compliance with the HIPAA Privacy Policy in each department, and will serve on the Privacy Compliance Committee. If your department is classified as an Erie County DHCC, email Ericka Bennett the name and contact information for the person who will serve as Departmental Privacy Officer. Please note that Departmental Privacy Officers should be Management Confidential employees.

V0573.008-0387924.doc

ERIE COUNTY EXECUTIVE'S OFFICE
95 Franklin Street, 16th Floor
Buffalo, New York 14202

*emailed @ 4:33pm
on 5/31/13*

MEMORANDUM

DATE: May 31, 2013

TO: Hon. Betty Jean Grant
Hon. Frank Sedita
Hon. Christopher Jacobs
Sheriff Timothy Howard
Hon. Stefan Mychajliw
Hon. Robert Graber

FROM: Richard Toba, Deputy County Executive *RMT*

CC: Mark C. Poloncarz, County Executive
Michael A. Siragusa, County Attorney

SUBJECT: HIPAA Privacy Policy for Erie County

Please be advised that the departments that fall under the oversight of the County Executive have been in the process of implementing an Erie County HIPAA Privacy Policy concerning the handling and disposition of protected health information handled by County employees.

The attached memo was sent to all Executive Branch Departments. If your department or office possesses protected health information, you should have a HIPAA Privacy Policy in place. The Department of Law is heading up this effort. If you need assistance in implementing such a policy, or if you have any questions, please contact Michael A. Siragusa, County Attorney.

Tobe, Richard

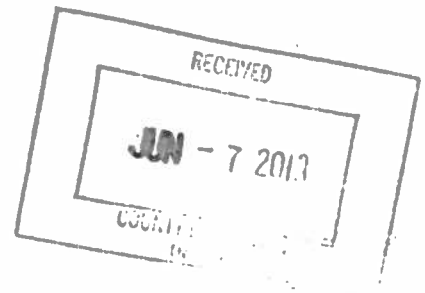
From: Siragusa, Michael
Sent: Monday, June 03, 2013 12:49 PM
To: Krathaus, Charles
Cc: Tobe, Richard; srugnetta@magavern.com; Fisher, Cheryl S. (cfisher@magavern.com); Dankert-Maurer, Carol
Subject: Request for Retention of Video Surveillance of Loading Dock Area and Sub-Basement Area where Recycle Totes Were Placed

Chuck:

As we discussed today, please take any and all necessary action to preserve the last six (6) months of video recordings of the Loading Dock Area and the Sub-Basement Area where recycle totes were placed of may have been placed. At this point, we only need them preserved. If we need diskettes made at a point in the future, I will advise at that time. Please contact me with any questions. Thank you. MIKE

--
Michael Siragusa | Erie County Attorney
Erie County | Department of Law
95 Franklin St., 1634 | Buffalo, NY 14202
P:(716) 858-2201 | F:(716) 858-2281
Michael.Siragusa@erie.gov | <http://www.erie.gov>

This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual or entity they are addressed to. The information contained in this e-mail and any files transmitted with it is information protected by the attorney-client and/or attorney/work product privilege. It is intended only for the use of the individual(s) named above and the privileges are not waived by virtue of this having been sent by electronic transmission. If the person actually receiving this e-mail or any other reader of this e-mail is not the named recipient or the employee or agent responsible to deliver it to the named recipient, any use, dissemination, distribution, forwarding or copying of any part of the message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by return e-mail and delete it from your system. Unauthorized use of this material is strictly prohibited and may be unlawful.



COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

June 7, 2013

Honorable Stephan Mychajliw
Erie County Comptroller
95 Franklin Street
Buffalo, New York 14202

Re: Return of Records

Dear Comptroller Mychajliw,

On March 14, 2013 your office executed two Confidentiality and Non-Disclosure Agreements as to an Audit of Medicaid and Temporary Assistance. The agreements allowed only the signed parties from the Comptroller's Office to have access to Temporary Assistance and Medicaid files. You were not a signed party to the agreements.

The Confidentiality and Non-Disclosure Agreements paragraph 5 reads as follows:

5. The Auditor agrees that there will be no photocopying or reproducing of confidential information furnished in tangible form. The Auditor agrees that all files will be viewed in the office space furnished to the Auditor by DSS and agrees that all files are not to be removed from that office space. Both parties agree that these safeguards are intended to prevent the confidential information from being reproduced or released to the public in any way.

The Confidentiality and Non-Disclosure Agreements paragraph 7 reads as follows:

7. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise to the Auditor in and Confidential Information. The Auditor agrees to keep any and all Confidential Information received in any form from the County in a secure and confidential manner in the office space furnished to the Auditor by DSS.

I am writing you today to request the return of all records that you obtained from county recycling and/or shredding bins or totes.

On May 8th, 2013 Deputy County Executive Richard M. Tobe asked if you had any confidential county records in the possession of your department and asked you to return the same. In your May 17, 2013 letter you admitted that the Erie County Comptroller's Office is in possession of 1,700 DSS cases that you obtained from the Rath building sub-basement.

On May 23, 2013 Deputy County Executive Richard M. Tobe reiterated his request that you immediately return the confidential records you admitted the staff of the Erie County Comptroller's Office removed and placed in your offices. At that time, you were provided and requested to sign a Confidentiality and Non-Disclosure Agreement. To my knowledge you have not done so. You were also requested to return all records to the Social Service's Commissioner's Office by Friday, May 24, 2013. To date, you have not done so.

As Erie County Comptroller, you acknowledged receipt of the May 23, 2013 above referenced letter by way of a response letter on May 24, 2013. In that letter you noted that as Erie County Comptroller you would "consider" the request to return the documents.

The Erie County Comptroller's Office by your own admission is in possession of records that they have taken from the County and is storing the records in the Office of the Comptroller. This is a direct violation of the Non-Disclosure Agreements signed by your office. Your office agreed that all records would be retained in the offices of DSS and that access to all records would be limited to certain specific employees of your office. The Office of the Comptroller and you directly, have been requested to return the records on at least three occasions. However, you, as Erie County Comptroller, have refused to return the records. The records that you obtained from the County are not being kept "... in a secure and confidential manner in the office space furnished to the Auditor by DSS."

Based upon the foregoing, the Non-Disclosure Agreements and your admission to possessing confidential records without authorization in a manner that violates paragraphs 5 & 7 of the Confidentiality and Non-Disclosure Agreements, your office is in breach of the said agreements. Respectfully, if the records are not returned to Commissioner Dankert-Maurer's office by close of business Monday, June 10, 2013, I have determined that you have breached the Non-Disclosure Agreements. As a result, the Non-Disclosure Agreements will be considered suspended and your office will not be provided any further access to confidential records until the breach is cured.

I thank you for your attention in this matter,

Sincerely,



Thomas D. Kubinieć, Director

Office of Legal Affairs

Erie County Department of Social Services

Cc: Commissioner Carol Dankert-Maurer