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Inspector General

**OFFICE OF INSPECTOR GENERAL
PALM BEACH COUNTY**



Inspector General
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“Enhancing Public Trust in Government”

Contract Oversight Report

CA- 2015-0076

Municipality Contract Monitoring Follow Up City of Lake Worth

November 30, 2016



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CONTRACT OVERSIGHT REPORT (CA- 2015-0076)

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MUNICIPALITY CONTRACT MONITORING FOLLOW UP – CITY OF LAKE WORTH

SUMMARY

Background

The Office of the Inspector General (OIG) issued the Contract Oversight Review (Review) 2014-R-0002 on March 31, 2014. It summarized the contract monitoring policies and procedures for the municipalities in Palm Beach County. The Review began with a survey distributed to all thirty-eight (38) municipalities, of which thirty-two (32) responded. The OIG conducted on-site verification of responses received in five randomly selected municipalities and chose a judgmental sample of sixteen contracts to test their contract monitoring program. The results of the survey and the on-site sampling were summarized in the Review document.

The purpose of the Review was to provide Palm Beach County municipalities with information to consider when developing a robust contract monitoring policy/procedure. The lack of a strong contract-monitoring program increases the risk of failing to detect, deter or prevent waste, fraud, mismanagement or abuse in contracting.

What We Did

The City of Lake Worth (City) did not respond to the survey request.

Therefore, the OIG decided to conduct an on-site follow-up to assess the extent and depth of contract monitoring policies and procedures used by the City.

What We Found

The City does not have any documented policy or procedure for contract monitoring, and there is no formal citywide process for monitoring contracts and the City does not have policies and procedures that addressed the implementation and maintenance of a contract file system.

The City does not have a contract risk assessment tool or procedure. Therefore, staff resources available for monitoring are not focused in an efficient and effective manner.

We found **\$595,000** in questioned cost from issues arising from two contracts reviewed.

What We Recommend

We recommend that the City implement written policy and procedures for contract monitoring that include adequate training of staff assigned contract management responsibilities.

The City accepted our findings and recommendations.

BACKGROUND

There are three generally accepted phases of public procurement; Pre-Award, Award, and Post-Award. The Pre-Award phase consists of the determination of need, the development of the requirements package, and selection of the contracting method. The Award phase consists of the solicitation of vendors/sources, receipt of responses, evaluation of responses and contract award. The Post-Award phase or contract administration phase includes contract monitoring, ensuring contractor delivery of specifications and contract closeout.

As mentioned, contract monitoring is part of the Post-Award procurement phase. Contract monitoring activities, where applicable, occur in the following areas: quality control, scheduling of deliverables, accepting deliverables, contract changes, contractor performance and assessing the risk of contract failure. The importance of contract monitoring increases when contracts are of high dollar value and when the terms and conditions of the contract are complex.

The follow-up to the original Review began with the OIG requesting the City to provide a list of all contracts that were in effect during the 2015 fiscal year (October 1, 2014, through September 30, 2015). The City provided us with a list of 165 contracts in effect during the review period. The OIG, selected a judgmental sample of twenty-five (25) contracts for review across several City departments. The City departments included in the review were: City Administration, Community Sustainability, Leisure Services, and Public Services.

The sample contracts included construction work and related design services, procurement of goods, and service contracts. Prior to our on-site review, we requested and received information from the City such as copies of the contract and any amendments, purchase orders, invoices, and payment documentation.

Each contract manager was interviewed in person and was asked questions that included the Review Tool elements in the original process.

REVIEW TOOL ELEMENTS

The OIG used the following review tool to assess the level of contract monitoring the City was actually doing based on the 8 elements of the tool.

- (1) Contract Name
- (2) Specific Staff Assigned to Monitor the Contract
- (3) Milestones Confirmed in Writing
- (4) Specific Staff Confirming Receipt of Deliverables
- (5) Specific Staff Confirming Milestones being Reached
- (6) Specific Staff Approve Payments
- (7) Contract File - Log of Payments
- (8) Change Orders and/or Amendment Maintained in File

Additionally, each Contract Manager was asked whether the department for which he/she worked had any type of documented policy/procedure for contract monitoring.

The OIG reviewed and discussed the thirty-one questions from the original survey with the Finance Director, the Assistant Finance Director, and the Purchasing Agent. The categories addressed in the survey were as follows:

- a) Documented policy/procedure for contract monitoring
- b) Contract monitoring
- c) Dedicated file maintenance for each contract
- d) Risk assessment tool

Within these broad categories, there were subsequent questions about important components, including degree of staff training; process for dispute resolution; and specific contract monitoring tasks.

FINDINGS

FINDING (1):

The City did not have a documented policy or procedure for contract monitoring. Lack of such policy and procedure increased the likelihood of City funds not being expended appropriately.

OIG Review

None of the departments sampled had a written policy/procedure for contract monitoring. However, the Public Works and Utilities Departments had developed a contract matrix that tracks CCNA¹ contracts available to be used by service type such as civil engineering, environmental, and architectural services. Additionally, these departments have a computerized file system they use to store contract information such as contracts, purchase orders, payment request, and invoices. Some city administration staff maintained similar types of computerized and/or paper contract files.

All City contracts reviewed had a specific staff person assigned as the Contract Manager. However, because there is little to no written guidance or training regarding the responsibilities of a Contract Manager, there were significant differences in the way in which contract management, including contract monitoring, was conducted. For example, in Utilities and Public Works, most of the Contract Managers interviewed were professionals, such as engineers, who as a part of their profession have training and experience in project management, which includes contract monitoring as a significant responsibility.

Generally, there was a process by which milestones were confirmed in writing and a person identified who confirmed the receipt of deliverables. Generally, there was a person(s) who confirmed that milestones were being reached and specific staff were approving payments.

¹ Consultant Competitive Negotiation Act that rules the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services

However, for two contracts questioned cost² of **\$595,000** was identified, for detailed calculations, see Attachment “A” (Contracts with Questioned Cost).

1. The contract with Crabtree, Inc. Corporation is for website and graphic design services. The request for proposal and the resulting contract had a term of one year with an option to extend the contract for two (2) one (1) year periods. The contract was extended for the two (2) one (1) year periods. The contract was extended for a third one (1) year period, which was not provided for in the RFP or the original contract. Therefore, the **\$25,000** authorized in the third amendment is a questioned cost, because there does not appear to be any authority for this amendment.
2. The contract with Hy-Byrd, Inc. (Hy-Byrd) is for building official duties, plan review and inspection services. Section 2-112 (c)(6) Consulting Services of the City’s Purchasing Code Ordinance states, “The City Manager may select a consultant with a distinctive field of expertise without competitive solicitation for services which do not exceed the amount of fifty thousand dollars (\$50,000)”. The original contract amount with Hy-Byrd was for \$15,000. The first amendment in the amount of \$45,000 in addition to the original amount exceeded the City Manager’s authority for waiving competitive solicitation. Subsequently, this contract was amended eight (8) times for a total contract amount of \$620,000 to date. Therefore, there is a questioned cost in the amount of **\$570, 000**.

A policy serves as a guide to staff to ensure a consistent, effective and efficient contract monitoring process. A comprehensive policy provides direction across many subject areas such as staff roles and responsibilities, conflicts of interest, monitoring of contract performance, documentation of contract decisions, dispute resolution and managerial discretion. The guidance provided in a policy establishes the foundation for the detailed monitoring procedures for use by monitoring staff.

Established documented procedures provide detailed, specific direction to agencies and personnel to ensure clarity, consistency and quality control in the monitoring program. Procedures specify the steps and tools used in the monitoring process and methods of communicating monitoring results. Procedures generally include, but are not limited to the staff roles and responsibilities, contract correspondence, reports detailing monitoring efforts, documentation of contract administration actions and decisions, contract completion activities, guidance on handling disputes and professional development of staff. In addition, procedures clarify for those in monitoring roles what is expected of them while conducting on-site visits/desk reviews and interacting with vendors. Simply stated, procedures detail what is to be done, by whom, when, and how it is to be accomplished and documented.

² Questioned Costs can include costs incurred pursuant to a potential violation of a provision of law, regulation contract, grant, cooperative agreement or other agreement or document governing the expenditure of funds and/or a finding that such costs are not supported by adequate documentation, and/or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable in amount. As such, not all questioned costs are indicative of potential fraud or waste.

FINDING (2):

The City does not have a policy or procedure about the manner in which contract files are maintained. A clear policy and procedure would assist the contract managers in locating, using, managing, and maintaining contract information.

OIG Review

Contract payments can be accessed by authorized staff in the City's Avalon computer software system with the actual contract and amendments maintained by the City Clerk. In most departments, an actual contract file that contained the contract, amendments, change orders and payment log and documents was not maintained. When staff need any of these documents, access is not easily available.

The City does not have a contract file system that contains all of the following important contract information: a copy of the contract itself, payment logs, expiration dates, contract amendments, and approved change orders in one location. Having a centralized contract file system would benefit the City by reducing the risk of payment overruns, improving contract monitoring compliance and other contract management activities.

Having all the contract information integrated and easily accessible allows important elements, including the scope, approved/budgeted amounts, deliverable dates, milestones, contract expiration dates and payments made, change orders and amendments to be readily available. Such information is critical for efficient contract management.

Established documented procedures provide detailed, specific direction to City staff to ensure clarity, consistency and quality control in contract administration. Procedures specify the steps and tools used in the administration process. Procedures generally include, but are not limited to the staff roles and responsibilities, contract correspondence, reports detailing monitoring efforts, contract completion activities, guidance on handling disputes and professional development of staff. Again, simply stated, procedures detail what is to be done, by whom, when, and how it is to be accomplished and documented.

FINDING (3):

There is no citywide risk assessment tool/model in use by the City departments. Therefore, staff resources available for contract monitoring are not focused in an efficient and effective manner.

OIG Review

Most government entities have limited resources and those resources should be used efficiently and effectively in order to maximize positive outcomes. "A thorough risk analysis considers factors such as; fraud potential, financial mismanagement or theft,

public perception of agencies and services, quality of services, monitoring reports, and vendor performance history.”³

It is also pertinent to note that some of the activities in the review tool were not completed due to the lack of available resources the City has experienced in the last years, so it is crucial for the City to implement the risk assessment tool to maximize the use of the scarce resources the City historically experiences.

A risk assessment tool should be designed to be effective for the type of contracts being monitored. Generally, a risk assessment tool is designed to take into account the types of risks specific to the type of contract being monitored. There are commonalities in a risk assessment tool such as the dollar value of the contract and the complexity of the scope of services, but there are important differences depending upon the type of contract being considered. For example, in a construction contract, the degree of innovation in the design and products being used could be key risks while in a contract for code enforcement services the staff qualifications and experience may be critical.

One sample of a risk assessment model is one developed for the Florida Department of Juvenile Justice, which includes the following criteria:

1. Type of Services for the Contract/Grant – Weights are assigned to the type of service depending upon the risk associated with each service category.
2. Annual Dollar Amount of the Contract/Grant – The higher the annual contract/grant dollar figures, the higher the risk the Department assumes in contracting with a provider.
3. Substantiated Incidents – The presence and/or the higher number of substantiated incidents from the Department’s listing of reportable incidents, the higher the risk the Department assumes in contracting or continuing to contract with a provider. For a City, these incidents could include missed deadlines, failure to properly submit an invoice or not in a timely manner, an inordinate number of requests for change orders, etc.
4. Prior Performance of Contract/Grant Monitoring Visit/Desk Review – Providers who have previously had serious financial, administrative or program deficiencies or difficulty in being responsive to Department requirements should be considered to present a higher risk than those who have not.
5. Prior Performance on QA Review – Providers who have previously failed to meet established minimum thresholds should be considered to present a higher risk than those who have not.

³ “Office of the Inspector General, Palm Beach County, Florida, Contract Oversight Manual”, May 27, 2014.

6. Staffing Issues – The presence of staff turnover of key staff or an administrator, or key staff or the presence of any staffing vacancy increases the risk the Department assumes in contracting with a provider.⁴

This is just an example of a thorough risk assessment tool designed for human services contracts. What works for one contract, or jurisdiction will not work for another, so careful consideration should be given to the development of criteria to be used.

QUESTIONED COST

Questioned Cost Total = **\$595,000.00**

RECOMMENDATIONS

- (1) Implement a citywide contract monitoring policy/procedure and provide staff training. At a minimum, it should address the following components:
 - (a) Use a Contract Monitoring Plan

An effective plan will identify, but not be limited to, the following: an analysis of risk factors, the scope of review, staff assigned, date(s) of review, schedule, tools/guides, type of monitoring procedures and processes for conducting monitoring, corrective action plans and documentation of results.
 - (b) Use a Standardized Monitoring Guide

The consistent use of a standardized and comprehensive guide provides consistency throughout the monitoring process.
 - (c) Address Corrective Action Plan

A clearly defined procedure will detail when corrective action plans are required; how they are to be developed; how and where to record them in contract files; how they are to be reported to the appropriate staff; and the process of following up on them.
 - (d) Address Resolution of Vendor Disputes

A clearly defined procedure(s) that outlines steps taken to resolve vendor disputes in a timely manner will help to minimize the risk that the contract being monitored will fall short of its goals and objectives.
 - (e) Address Monitoring Staff Training and Qualifications

The reliability and validity of the monitoring results are contingent upon appropriately trained monitors who also meet the qualifications for knowledge, skills, and ability.

⁴ "State of Florida, Department of Juvenile Justice Contract Management and Program Monitoring Implementation Guidelines", [http://www.djj.state.fl.us/docs/policies/contract_monitoring_guidelines], April 2010, 43-44.

(f) Address Access and Storage of Contract Documents and Files

A standard file format developed and implemented for the layout of contract documents, correspondence, monitoring reports, outcome reports and checklists provide uniformity in contract files and ease of review by management.

(g) Address Closing Out Contracts

Formal written procedures ensure that important administrative, contractual and program elements are not overlooked when closing out contracts.

The Office of Inspector General recognizes that each municipality has different operating capacities. However, the City of Lake Worth is a mid-size municipality in Palm Beach County with an expense budget of over \$167,000,000 for fiscal year 2015. Therefore, it is critical that the City implement a robust contract monitoring policy/procedure and/or process.

(2) Address in a policy and/or procedure a uniform method by which contract files are maintained

It is important to be able to access information about a contract in a timely manner. At a minimum, a contract file should include a copy of the contract; all amendments; change orders, when completed; and information about payments authorized and made. Maintaining information in an easily accessible and uniform manner allows authorized employees to access information when needed, especially when the designated contract manager is absent.

(3) Develop and implement a contract monitoring risk assessment tool.

Use of a risk assessment tool allows the governmental entity to focus its resources on contracts that potentially have a higher potential for implementation issues. Staff resources are finite, so a risk assessment tool can be useful, for example, to determine which contracts should be monitored using a site visit versus those that can be monitored through a desk review.

RESPONSE FROM MANAGEMENT

The City accepted our findings and recommendations. The City's complete response is included as Attachment "B"

ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to the City of Lake Worth for the cooperation and courtesies extended to us during the contract oversight process.

This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to Dennis L. Yeskey, Contract Oversight Manager, by email at inspector@pbcgov.org or by telephone at (561) 233-2350.

ATTACHMENTS

"A"

Contracts with Questioned Cost

Contract and Amendment for Hy-Byrd, Inc.			
	Dates		Amount
Original Contract	1-Oct-12	31-Dec-12	\$ 15,000.00
First Amendment			\$ 45,000.00
Second Amendment	1-Jan-13	30-Sep-13	\$ 70,000.00
Third Amendment			\$ 120,000.00
Fourth Amendment	1-Oct-13	30-Sep-14	\$ 70,000.00
Fifth Amendment			\$ 115,000.00
Sixth Amendment	1-Oct-14	30-Sep-15	\$ 70,000.00
Seventh Amendment	1-Oct-15	30-Sep-16	\$ 70,000.00
Eighth Amendment	1-Oct-16	30-Sep-17	\$ 45,000.00
Total Contract Amount			\$ 620,000.00
Allowable Amount Per Policy			\$ 50,000.00
Question Cost (1)			\$ 570,000.00

Contract and Amendment for Crabtree Ink Corporation			
	Dates		Amount
Original Contract	17-Oct-12	16-Oct-13	\$ 50,000.00
First Amendment	17-Oct-13	16-Oct-14	\$ 20,000.00
Second Amendment	17-Oct-14	16-Oct-15	\$ 25,000.00
Third Amendment	18-Oct-15	18-Oct-16	\$ 25,000.00
Total Contract Amount			\$ 120,000.00
Allowable Amount Per Policy			\$ 95,000.00
Question Cost (2)			\$ 25,000.00

Total Question Cost [(1) + (2)]	\$ 595,000.00
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“B”

City of Lake Worth Response

From: [Marie Elianor](#)
To: [Dennis Yeskey](#); [Michael Bornstein](#)
Cc: [John Carey A.](#); [Debbie Brooks](#); [Max Heredia](#); [Sharee Haynes-Dyer](#); [Corinne Elliott](#)

Subject: RE: Draft Contract Monitoring Report
Date: Monday, November 28, 2016 3:43:28 PM
Attachments: [RE Report Response.msg](#)

Good afternoon,

My apologies for the misunderstanding on how the City was to respond to the report. Please accept the following as the City's response:

We accept the recommendations and realize this a critical issue for the City. We hired a management analyst that will be developing and implementing all of the recommendations listed.

Management accepts the findings and the three (3) recommendations. Management will implement a citywide contract monitoring policy/procedure and provide staff training. Management will address in a policy and/or procedure a uniform method by which contract files are maintained. Management will develop and implement a contract monitoring risk assessment tool. The department of financial services has hired a management analyst that will be responsible for citywide contract management.

Sincerely,
Marie

[Marie W. Elianor, M.A., CGFO](#)

Director | Financial Services Department