

PALM BEACH COUNTY

BOARD of COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: 3/10/2020

[X] Consent [] Regular
[] Public Hearing

Department:

Submitted By: County Internal Auditor's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A. Peer review engagement letter with the Association of Local Government Auditors (ALGA) for the triennial peer review of the County Internal Auditor's Office in an amount not to exceed \$10,000.
B. Waiver of certain elements of the County's Contract Development Policy.
C. Delegation of authority to the County Internal Auditor to approve peer review engagement letters in substantially the same form with ALGA for future peer reviews in amount not to exceed \$10,000 for each triennial review.

Summary: County Code Section 2-462(e) requires the County Internal Auditor to adhere to Generally Accepted Government Auditing Standards (GAS). Those standards require peer reviews at least every three years and, for audit organizations associated with ALGA such as our office, to have the peer review conducted by ALGA. ALGA has a standard form peer review engagement letter that does not conform to requirements of County's Contract Development Policy, necessitating waiver from certain provisions of the policy. The cost for the peer review is limited to reimbursement of the members of the peer review team for their travel costs in an amount not to exceed \$10,000. Countywide (DB)

Background and Justification: County policy PPM # CW-F-049 (Contract Development Policy) establishes requirements for development of county contracts. Due to the nature of the peer review engagement arrangement with ALGA, certain exemptions from the Contract Development Policy are necessary. The following clauses from the Contract Development Policy will need to be waived:

- M. Audit
V. Termination
X. Insurance
Y. Indemnification
BB. Office of Inspector General
CC. Third Party Beneficiary

Attachments:

- 1. Engagement letter with ALGA for peer review of County Internal Auditor's Office for the October 1, 2016 to September 30, 2019 period.
2. Excerpts from the Purchasing policy for the clauses being waived.

Recommended by:

Joseph F. Bergeron
County Internal Auditor

19 February 2020
Date

Recommended by:

County Administrator

2/29/2020
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures					
Operating Costs	10,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	10,000				
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes X No _____
 Does this item include the use of federal funds? Yes _____ No X
 Budget Account No.: Fund 0001__ Agency 500 Org. 5000 Object 4001
 Program Number _____ Revenue Source _____


B. Recommended Sources of Funds/Summary of Fiscal Impact:

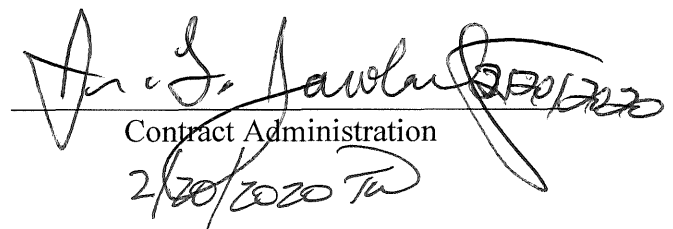
The peer review conducted in March 2017 cost \$5,090.93. The \$10,000 not to exceed amount should provide sufficient flexibility, within reason, to cover future peer reviews. The cost will vary based on the time of year the peer review is conducted (generally high season here), size of the peer review team (generally three members), airfare, lodging, and other travel expenses for the team members.


A. Department Fiscal Review:

III. REVIEW COMMENTS:

A. OFMB Fiscal and/or Contract Administration Comments:

 2/19/2020
 Budget/OFMB LH
2/19

 2/20/2020
 Contract Administration

B. Legal Sufficiency:
 2/20/2020
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.



Internal Auditor's Office
2300 North Jog Road
West Palm Beach, FL 33411
(561) 681-4480
FAX: (561) 681-4490
www.pbcgov.com/internalauditor



**Palm Beach County
Board of County
Commissioners**

Dave Kerner, Mayor

Robert S. Weinroth, Vice Mayor

Hal R. Valeche

Gregg K. Weiss

Mary Lou Berger

Melissa McKinlay

Mack Bernard

County Administrator

Verdenia C. Baker

*"An Equal Opportunity
Affirmative Action Employer"*

Official Electronic Letterhead

February 18, 2020

Stan Sewell
Region III Peer Review Coordinator
Association of Local Government Auditors
Chattanooga, Tennessee

Dear Mr. Sewell:

I would like to thank you for coordinating the peer review for the Palm Beach County Internal Auditor's Office. This letter confirms our understanding of the arrangements for the review. The peer review team will consist of Ina Chan as team leader, with Shirley McFadden and Justin Tully as team members.

The scope of the review will be to conduct a peer review in accordance with generally accepted *Government Auditing Standards* (GAS) peer review requirements contained in the *ALGA Peer Review Guide*, 2018 Revision. The objectives of the review will be to determine whether during the period October 1, 2016 through September 30, 2019, the Palm Beach County Internal Auditor's Office internal quality control system was suitably designed and operating effectively to provide reasonable assurance of complying with applicable GAS issued by the Comptroller General of the United States as well as applicable legal and regulatory requirements.

The peer review team will prepare a signed report and a letter to management, if appropriate, stating their conclusions. The review team will follow the reporting guidelines contained in the *ALGA Peer Review Guide*.

During the course of the review, the peer review team will have full access to the Palm Beach County Internal Auditor's Office policies and procedures, audit and attestation reports, supporting working papers, documents relating to non-audit services, and any other reports, correspondence, files, documents deemed pertinent by the peer review team. Such documents shall include those necessary to evaluate staff competency. Palm Beach County Internal Auditor's Office personnel will also be available for interview by the peer review team. During the course of the review, the review team and the Palm Beach County Internal Auditor's Office will exercise due care to understand and adhere to their professional obligations and this agreement, and will treat all parties involved in a professional and respectful manner.

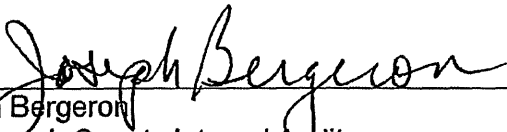
The on-site portion of the review will be conducted during the period March 30, 2020 through April 3, 2020. The final report will be issued on ALGA letterhead and will be delivered no later than April 24, 2020.

Palm Beach County will pay reasonable expenses incurred by the peer review team members relating to the review, not to exceed \$10,000. Meal and incidental travel expenses will be reimbursed based on the United States Federal Government GSA Schedule for the respective region. Air travel, hotel accommodations, rental car transportation, meal, and incidental costs will be coordinated and arranged through ALGA Member Services. The value delivered by the peer review team is a benefit of the ALGA Peer Review Program. In order to participate in the program, Palm Beach County Internal Auditor's Office will commit audit personnel to conduct similar peer reviews coordinated by ALGA. Fulfillment of this obligation is required to participate in the peer review program.


To the extent lawful, Palm Beach County ("County") agrees to hold ALGA and its officers and representatives harmless of any liability arising from the actions of the peer review team or issues resulting from the peer review.

If this letter correctly expresses your understanding, please sign and return to me at your earliest convenience. This agreement must be approved by the Palm Beach County Board of County Commissioners before it will be in full force and effect. I will notify you promptly once such approval has been obtained. I recognize and acknowledge delays related to the process necessary to obtain approval of the County Commission may limit ALGA's ability to perform the peer review on the timeline specified in this agreement and I will not hold ALGA responsible for the consequences should the timeline be impacted.

Sincerely,



Joseph Bergeron
Palm Beach County Internal Auditor

Accepted by:  _____
Stan Sewell, ALGA Peer Review Coordinator

Digitally signed by Stan Sewell
DN: cn=Stan Sewell, o=City of Chattanooga,
ou=Office of Internal Audit,
email=ssewell@chattanooga.gov, c=US
Date: 2020.02.19 13:48:43 -05'00'

REMAINDER OF PAGE INTENTIONALLY BLANK


ATTEST: _____
Sharon R. Bock, Clerk & Comptroller Palm Beach County, By Its
Board of County Commissioners

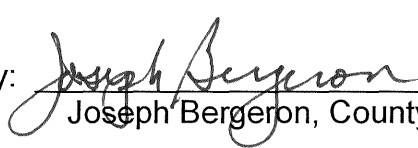
By: _____ By: _____
Deputy Clerk Dave Kerner, Mayor

(SEAL)

APPROVED AS TO
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By:  _____
County Attorney

By:  _____
Joseph Bergeron, County Internal Auditor



Excerpts from County Policy
Contract Development and Contract Responsibility
PPM # CW-F-049 Issued November 7, 2017

M. Audit: The authority and right is granted to the Internal Auditor, the Contract Development and Control Division and any other Board-approved Department or Division to review and audit any contracted vendor's records to determine the reasonableness of any charges billed to, or revenues paid to, the County.

An Access and Audit clause shall be contained in all County contracts where the County is charged or invoiced for the subject matter of the contract, or entitled to revenue. The County shall be permitted to review appropriate support documentation and records upon which charges or revenues are based to justify all charges, expenses and costs incurred in estimating and performing work under the contract.

V. Termination: The contract should contain language stating that the County shall have the right to "terminate" the contract for any one of the following reasons:

1. Lack of funding
2. Cause (contractor default)
3. Convenience of the County

X. Insurance: Insurance requirements must be adequate to protect the County, and verified by the Risk Management Department.

1. Proof of Insurance (Insurance Certificate) shall be included with the contract document prior to approval and execution by the County.
 2. The expiration date must be clearly shown on the Certificate of Insurance.
 3. The County must be shown as an "additional insured" on the Certificate of Insurance".
 4. It shall be each department's responsibility to coordinate the insurance requirements of any given contract with the Risk Management Department, prior to execution by the contractor. Therefore, the insurance certificate must contain all coverages required in the contract language, with no exceptions. If there is a waiver granted by Risk Management to an area of coverage or in an amount of coverage, it must be reflected in the final contract language.
-

Y. Indemnification/Attorney's Fees:

Indemnification of County: Contractors shall indemnify Palm Beach County from and against matters arising during performance of the contract. The following language should be utilized:

[Name of Contractor] shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of their performance of the terms of this Agreement or due to the acts or omissions of [Name of Contractor].

The indemnification provision and the insurance provision should not cross reference each other.

Indemnification by County: County Policy prohibits the County from agreeing to indemnify or hold harmless a non-governmental person or entity. Accordingly, County contracts may not include provisions which required the County to indemnify, hold harmless, defend, or otherwise reimburse or protect any non-government person or entity for any reason or under any circumstances. Florida Statutes Section 768.28 contains a waiver of the County's sovereign immunity to a limited extent for matters arising in tort. In the event the contracting party is insistent that indemnification be addressed in the contract, the County can only agree to the following provision in lieu of indemnification:

County acknowledges the waiver of sovereign immunity for liability in tort contained in Florida Statutes Section 768.28 and acknowledges that such statute permits actions at law against the County to recover damages in tort for money damages up to the amounts set forth in such statute for injury or loss of property, personal injury, or death caused by the negligence or wrongful act or omission of an employee of County while acting within the scope of the employee's office or employment under circumstances in which County, if a private person, would be liable under the general laws of this State.

Florida law permits the County to indemnify the state or state agencies or subdivisions for acts of the County (but not for such other entities' negligence). Such indemnification and hold harmless provisions should be agreed to only in limited appropriate circumstances.

The following language should be utilized:

"Each party shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend and hold harmless [Name of Entity] against any actions, claims or damages arising out of County' negligence in connection with this Agreement, and [Name of Entity] shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of [Name of Entity]'s negligence in connection with this Agreement. The foregoing indemnification shall not constitute a

waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions."

Attorney's Fees Provisions: No County contract shall contain provisions requiring the County to pay any costs or expenses of another party related to litigation, dispute resolution or otherwise including, without limitation, prevailing party attorney's fees provisions.

Any exception to the foregoing requirements or language shall require the prior written approval of the Risk Management Department and the County Attorney's Office.

BB. Office of the Inspector General: Palm Beach County has established the Office of the Inspector General as contained in the Palm Beach County Code, Sections 2-421 - 2-440, as may be amended.

Where applicable and feasible, all contracts shall contain language which addresses the Inspector General's authority to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes but is not limited to the power to audit, investigate, monitor and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud.

CC. Third Party Beneficiary: There shall be language in all County contracts that do not permit third party beneficiaries as a result of the contract. Contracts shall contain a clause specifically making it clear that the contract is not intended to, nor shall be construed, to create a third party beneficiary. If the situation warrants, this clause may be left out of a contract where a third party beneficiary is intended. If such is the case, absence of the clause shall be approved in advance by the County Attorney's office.
