

CITY OF FORT LAUDERDALE

OFFICE OF THE CITY AUDITOR

Operational Audit of the Procurement Services Department

Report #08/09-01

June 29, 2009

City of Fort Lauderdale

Our Vision

The City of Fort Lauderdale is committed to improving productivity, streamlining expenses and developing a stronger, more effective organization.

This City's vision embraces:

- **Fiscal Responsibility**
- **Accountability**
- **High Ethical Standards and**
- **Quality Delivery of Services**

Our Values

- **Respect** for the dignity of our citizens and co-workers and the diversity of all groups.
- **Integrity** as demonstrated by honesty and fairness and conduct beyond reproach.
- **Courage** to do the right thing, for the right reason, in the right way.
- **Teamwork** through recognition that excellence is achieved by cooperation, communication and collaboration.
- **Service** to the public, our elected officials and other employees that is exemplary and exceeds expectations.
- **Creativity** as the foundation for ingenuity and innovation in the delivery of service.
- **Accountability** for our decisions, actions and results.



CITY OF
FORT LAUDERDALE

City Auditor's Office

Memorandum

No: 08/09-10

Date: June 29, 2009

To: Mayor John P. "Jack" Seiler
Vice-Mayor Bruce G. Roberts
Commissioner Charlotte E. Rodstrom
Commissioner Bobby B. DuBose
Commissioner Romney Rogers

From: John Herbst, CPA, CGFO, MBA
City Auditor

Re: Audit Report #08/09-01: Review of the Procurement Services Department

We have completed an operational audit of the Procurement Services Department (PSD), covering policies and procedures for the purchasing and bid solicitation processes, as well as other relevant areas of PSD. An operational audit evaluates internal controls designed and implemented by management to provide reasonable assurance that the organization's operational goals and objectives will be achieved.

Our audit of the City's purchasing function revealed that except for the findings listed below, PSD generally has well-designed controls which are functioning as intended to help the department meet their stated objectives of:

Achieving excellent procurement services through technological advancement, improved procedures, and outreach programs with professionalism and teamwork.

We also determined that the goals and objectives of the PSD are aligned with, and support the City of Fort Lauderdale's vision. However, as discussed in more detail in the report, we did find a number of opportunities for improvement that would assist the department in strengthening internal controls, enhancing efficiency, and improving effectiveness.

The objectives of our audit were:

- To determine if the goals and objectives of the PSD align with, and support the City of Fort Lauderdale's Vision.
- To determine the adequacy and effectiveness of internal controls over the procurement function.

- To determine if the PSD has a comprehensive business continuity/disaster recovery plan that has been thoroughly tested.
- To determine if PSD has an updated policy and procedures manual and if the City's Purchasing Code reflects current practices.

Our review of the internal controls of the Procurement Services Department would not necessarily identify all deficiencies that might be significant deficiencies or material weaknesses. Of the findings listed below, we believe Findings 1, 5 and 6 to be material weaknesses. Findings 3 and 7 are considered to be significant deficiencies. The remaining findings are considered to be control deficiencies.

- A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis.
- A *significant deficiency* is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is *more than inconsequential* will not be prevented or detected.
- A *material weakness* is defined as a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a *material* misstatement of the financial statements will not be prevented or detected.

Summary of findings:

1. PSD does not have a policy to prohibit an employee authorized to create purchase requisitions and requisition authorizations in Direct Purchase (DP) from also being able to approve them. In addition, the list of authorized users included numerous terminated employees.
2. PSD does not have a *formal* bid protest/dispute resolution procedure. In addition, PSD's *informal* protest procedures do not include an independent review of the bid protest.
3. Fuel invoices were not reviewed to verify that Federal Excise Taxes were properly excluded, resulting in an overpayment of \$69,175 in excise taxes over the past 3 years.
4. The City of Fort Lauderdale (CFL) Municipal Code Chapter 2, Article V, Division 2 (Purchasing Code) does not incorporate all relevant sections of the Florida Statutes.
5. The Continuity of Operations Plan (COOP) has not been tested to ascertain whether or not the plan is viable and executable in the event of an actual emergency.
6. We noted instances of requisitions having been approved by the Finance Department prior to funds being available at the character level, resulting in the user department going over the appropriated budget amount.
7. Purchase requisitions are sometimes approved and posted to BidSync prior to verification of available budgeted funds.

8. The Purchasing Code, Sections 2-181 and 2-182, does not have a clear line of demarcation for the purchase of supplies and services that cost between \$1,000 and \$10,000.
9. PSD does not require Conflict of Interest Statements to be signed by personnel involved in the procurement process.
10. Purchasing procedures for proprietary purchases are not consistently followed.
11. The City Commission is not engaged in reviewing the bid specifications prior to advertisement of the solicitation.

Management's responses to the findings and recommendations are included in the report. We did not audit management's responses and accordingly, we express no opinion on them. We are pleased to note that management generally concurs with our recommendations and has already begun implementation on a number of them.

We would like to thank the staff of the Procurement Services Department for their cooperation and assistance during this review.

cc: George Gretsas, City Manager
Harry Stewart, City Attorney
Jonda Joseph, City Clerk
Kirk Buffington, Procurement Services Department Director

CITY OF FORT LAUDERDALE
CITY AUDITOR
Operational Audit of the Procurement Services Department

PURPOSE

To conduct an operational audit of the Procurement Services Department (PSD).

EXECUTIVE SUMMARY

We have completed an operational audit of the PSD covering policies and procedures for the purchasing and bid solicitation processes, as well as other relevant areas of PSD. An operational audit evaluates internal controls designed and implemented by management to provide assurance that the organization's operational goals and objectives will be achieved.

The City Auditor's Office (CAO) audit of the City's purchasing function revealed that except for the findings listed below, PSD generally has well-designed controls which are functioning as intended to help the department meet their stated objectives of:

Achieving excellent procurement services through technological advancement, improved procedures, and outreach programs with professionalism and teamwork.

We also determined that the goals and objectives of the PSD are aligned with, and support, the City of Fort Lauderdale's vision. However, as discussed in more detail in the report, we did find a number of opportunities for improvement that would assist the department in strengthening internal controls, enhancing efficiency, and improving effectiveness.

FINDINGS

1. PSD does not have a policy to prohibit an employee authorized to create purchase requisitions and requisition authorizations in Direct Purchase (DP) from also being able to approve them. In addition, the list of authorized users included numerous terminated employees..
2. PSD does not have a *formal* bid protest/dispute resolution procedure. In addition, PSD's *informal* protest procedures do not include an independent review of the protest.
3. Fuel invoices were not reviewed to verify that Federal Excise Taxes were properly excluded, resulting in an overpayment of \$69,175 in excise taxes over the past 3 years.
4. The City of Fort Lauderdale (CFL) Municipal Code Chapter 2, Article V, Division 2 (Purchasing Code) does not incorporate all relevant sections of the Florida Statutes.
5. The Continuity of Operations Plan (COOP) has not been tested to ascertain whether or not the plan is viable and executable in the event of an actual emergency.

6. We noted instances of requisitions having been approved by the Finance Department prior to funds being available at the character level, resulting in the user department going over the appropriated budget amount.
7. Purchase requisitions are sometimes approved and posted to BidSync prior to verification of available budgeted funds.
8. The Purchasing Code, Sections 2-181 and 2-182, does not have a clear line of demarcation for the purchase of supplies and services that cost between \$1,000 and \$10,000.
9. PSD does not require Conflict of Interest Statements to be signed by personnel involved in the procurement process.
10. Purchasing procedures for proprietary purchases are not consistently followed.
11. The City Commission is not engaged in reviewing the bid specifications prior to advertisement of the solicitation.

AUDITOR COMMENTS

- The City's Code of Ordinances currently separates procurement activities related to Public Works from PSD. This decreases the effectiveness of internal controls over purchasing by diffusing responsibility across departments.
- Towing revenues are posted to a departmental index code instead of posting to the index code of other general revenues of the City.
- PSD does not have a policy that requires Procurement Specialists (PS) to take at least one continuous week of vacation each year.
- PSD's performance measures may not be sufficient to measure departmental effectiveness as it relates to the City's Vision.
- PSD does not have a policy to require PS departmental assignments to be rotated on a regular basis.
- PSD does not have an effective system in place to monitor vendor performance and communicate the results to affected staff to enhance future purchasing decisions.
- Annual customer satisfaction surveys are not conducted for internal and external customers.
- PSD does not have a policy requiring written or email quotes for purchases greater than \$5,000.
- The Purchasing Code and Procurement Manual do not include a procedure for one-time purchases that are completed as a result of a bid solicitation.
- PSD has not revised the Purchasing Code to reflect changes in the procurement environment regarding purchasing thresholds and other purchasing policies.
- PSD's contract term length and number of extensions allowed may not encourage open and fair competition.
- The 2-page contract template and General Terms and Conditions utilized by PSD needs to be revised to include all relevant information in a clear and concise fashion.
- Section 2-181 of the City Code of Ordinances does not include a requirement for a written contract for all purchases > \$25,000.00
- CFL does not have a procedure to have vendor financial statements reviewed by the Finance Department when financial statements are required by the bid solicitation.

STATEMENT OF OBJECTIVES

- To determine if the goals and objectives of the PSD align with, and support the City of Fort Lauderdale's Vision.
- To determine the adequacy and effectiveness of internal controls over the procurement function.
- To determine if the PSD has a comprehensive business continuity/disaster recovery plan that has been thoroughly tested.
- To determine if PSD has an updated policy and procedures manual and if the City's Purchasing Code reflects current practices.

BACKGROUND

The acquisition of goods and services by the City of Fort Lauderdale is both centralized and decentralized. The authority to purchase goods and services is subject to dollar limit thresholds and has been delegated to the operating departments as well as the PSD. The City's Code of Ordinances establishes these thresholds.

The PSD provides administrative support for the City of Fort Lauderdale's purchasing functions. This department coordinates the acquisition of goods and services through the selection of vendors, competitive solicitations, review and approval of departmental purchase requisitions and issuance of purchase orders. PSD also administers and provides oversight to the City's Procurement Card program and develops purchasing policies and procedures. The City purchases a myriad of commodities each year and during FY07/08 PSD issued 2338 Purchase Orders (POs) and issued 294 competitive solicitations. (ITB's and RFP's). PSD reported total purchases for FY07/08 of \$80,575,287.39.

The CAO noted that PSD has a strong network of purchasing professionals who review purchase requisitions to ensure compliance with the City's Purchasing Code. PSD competitively procures goods and services when the contract amount is \$10,000 or greater through Requests for Proposal (RFP) and Invitations to Bid (ITB). The Department Director reviews all proprietary purchases, emergency purchases, and sealed bids to enhance accountability and adherence to established policies and procedures. The PSD staff adheres to the code of ethics of the National Institute of Governmental Purchasing, Inc (NIGP) and 75.0% of the Procurement Specialists hold a Certified Professional Public Buyer (CPPB) certification and the Director possesses a Certified Public Purchasing Officer (CPPO) designation.

SCOPE & METHODOLOGY

The CAO interviewed the Director and the Procurement and Contracts Manager of PSD and reviewed PSD expenditures from FY2005-2006 through September 2008. The CAO also tested compliance with the purchasing requirements from the City's Code of Ordinances, applicable Florida Statutes and the department's draft purchasing manual.

FINDING 1.

Condition

The CAO determined that 98 of 320 (31%) authorized Direct Purchase users could create and also approve their own requisition authorizations (RAs) and purchase requisitions.

We also determined that the Direct Purchase list of authorized users includes numerous terminated former employees.

Criteria

Segregation of duties is a fundamental component of an effective internal control system. It is strongly recommended that authorizing, processing, recording and reviewing of transactions be separated among individuals. Therefore, preparing a purchase requisition or requisition authorization and approving it are incompatible functions and should not be done by the same employee. Additionally, effective internal controls also require that terminated employees should have software access rights terminated as of their last day worked.

Cause

PSD management has not evaluated their software applications from a control perspective, therefore an improper segregation of duties exists because the ability to both create purchase requisitions and requisition authorizations and also approve them can be done by the same person. In addition, the Procurement Specialist (PS) relies on the department to inform them when an employee no longer needs access to Direct Purchase.

Impact

The potential for fraud, misappropriation or other improper procurement activities exists when incompatible functions are not separated or additional compensating controls are not in place. Furthermore, unauthorized users, including former employees, could have access to Direct Purchase.

Recommendation

The City Manager should require the PSD Director to develop a policy:

1. That prohibits an employee who has the authority to create purchase requisitions and requisition authorizations from also having the ability to approve their own purchase requisitions and requisition authorizations.
2. To annually recertify each employee's access privileges for each software program used by Procurement Services to assure that access is restricted to those who need it to perform current job duties.

Management Response

Management concurs: Policy will be reflected in the PSD manual, and shall be implemented within the Direct Purchase and BuySpeed purchasing software. TIME: thirty (30) days from report

On an annual basis PSD shall implement an audit/review of each employee whom has access to the Procurement software programs

FINDING 2.

Condition

The City of Fort Lauderdale has an informal bid protest/dispute resolution process that is not communicated to vendors and does not include an organizationally independent review of the protest.

Criteria

The CAO performed research of the Procurement function of other cities similar in size to Fort Lauderdale and determined that the bid protest/conflict resolution process should be a formal policy, authorized by the City Commission, incorporated into the Code of Ordinances and properly communicated to all potential bidders. Participants in the review should be independent of the procurement process and free from bias.

Cause

The PSD has not established and communicated a formal protest procedure because the department believes that such a policy would result in numerous frivolous protests.

Auditor Note: The CAO notes that having a formal protest procedure that includes a bond requirement could mitigate the risk associated with the above concern.

Impact

The informal nature of the bid protest/dispute resolution process may be perceived as biased and potential protesters may not be aware of the City's informal bid protest process.

Recommendation

The City Manager should require the Director of PSD to:

1. Obtain Commission approval for amending the Code of Ordinances and creating a formalized bid protest procedure.
2. Include the bid protest procedures in the bid documents.
3. Include a bond requirement and timeline for filing a bid protest.
4. Assign an Assistant City Manager to hear bid protests who is independent of PSD and the department making the purchase.

Management Response

1. Management concurs, with exceptions: A Bid Protest Policy and Procedures shall be written and presented to the Commission for their review and approval. TIME: Sixty (60) days from report
2. Once reviewed and approved the policy shall be included in the City's solicitation documents.
3. At this time Management does not recommend the requirement for a bid protest bond. The bond, if required, may prevent small businesses, with legitimate issues, from filing any protest.
4. The policy will reflect the assignment of an Assistant City Manager to review the bid protest.

FINDING 3.

Condition

The CAO found that CFL erroneously paid \$69,175 in Federal Excise taxes on gasoline purchased from our secondary gasoline suppliers for the last three fiscal years. As a governmental entity, CFL is entitled to an exemption from these taxes. Furthermore, the Florida sales tax exemption number in the General Terms and Conditions document was incorrect and the Federal Excise Tax number was no longer valid.

Criteria

According to Internal Revenue Service's Publication 510 (Excise Taxes) exemption no. 14, Non Taxable Users of Gasoline includes exclusive use by a state, political subdivision of a state, or the District of Columbia.

Cause

CFL does not have a written procedure to require that all fuel invoices be reviewed to verify that the City is not being charged for Federal Excise Taxes.

Impact

The City has overpaid \$69,175 in Federal Excise Taxes and forfeited any taxes paid outside of the three-year statute of limitations.

Recommendation

The City Manager should require the Director of PSD to:

1. Immediately provide all the existing fuel vendors with a completed Federal Excise Tax exemption certificate.
2. Establish a written procedure to require the Fleet Services Procurement Specialist to provide all new fuel vendors (including emergency purchases) with a copy of the exemption certificate.
3. Revise the General Terms and Conditions document to update the Florida Sales Tax exemption number and remove the reference to the former/invalid Federal Excise Tax exemption number and replace it with language about providing fuel vendors with CFL's exemption certificate.

The City Manager should also require the Finance Director to:

1. Establish a procedure and fix responsibility with appropriate staff to verify that CFL is not paying Federal Excise taxes on all fuel purchases.
2. Prepare and file a refund claim with the IRS to recover the \$69,175 in Federal Excise Taxes that has been erroneously paid to our fuel suppliers since FY05/06.

Auditor Note: Recommendation 1 regarding providing exemption certificates to all existing fuel vendors was implemented effective 12/18/08.

Management Response

Management concurs, with the following notations of what has already been accomplished:

1. All existing fuel vendors have been provided with a Federal Excise Tax Exemption Certificate
2. This policy addition will be reflected in the Department's Policy and Procedure Manual
3. The General Terms and Conditions are being revised to reflect the suggested changes. TIME: thirty (30) days from report
4. FINANCE: The Finance Director has instructed the Treasurer to prepare and file the appropriate forms requesting a refund from the IRS.

FINDING 4.

Condition

The CAO determined that CFL's Municipal Code Chapter 2, Article V, Division 2 regarding purchasing does not incorporate all of the relevant sections of the Florida Statutes. The Florida Statutes in the table below are identified as being applicable to the CFL's purchasing function, but are not referenced in the code.

Florida Statutes x-ref	Description	Applicable to CFL	Included in Purchasing Ordinance
218.80	Public Bid Disclosure Act –all local government permits or fees payable by the contractor must be disclosed by the unit of government in bidding documents or RFP; prohibits local governments from halting construction for non-payment of fees that were not disclosed.	Yes	No
255.0525	Advertising requirements for competitive bids or proposals: construction project projected to cost more than \$200,000 shall be publicly advertised at least once in a newspaper of general circulation in the county where the project is located at least 21 days prior to the established bid opening and at 5 days before pre-bid conference. Projects projected to cost more than \$500,000 should be advertised at least 30 days prior and 5 days prior to scheduled pre-bid conference; disclosure of bid opening location, date and time requirements must be disclosed in bid or proposal advertisement.	Yes	No

Criteria

The Florida Statutes contain various provisions that are directly related to the procurement of goods/services by public entities that should be included in CFL's Purchasing Ordinance or Procurement Manual.

Cause

The PSD has not completed a major revision of the Purchasing Ordinance for many years.

Impact

The PSD may not be in compliance with various provisions of the Florida Statutes related to procurement activities by public entities.

Recommendation

The City Manager should require the Director of PSD to revise the Procurement Manual and consider proposing a revision to the CFL Code of Ordinances to include by reference all applicable sections of the Florida Statutes that relate to the procurement function.

Management Response

Management concurs, however it should be noted that the two instances referenced above, are both applicable to construction bidding, and historically these solicitations have been bid by the Public Works and Engineering Department. However, the Department Manual will reflect references and cross-checks to the applicable Florida State Statutes. TIME: thirty (30) days.

As the PSD prepares changes to the Code, as referenced in other parts of this report, the department will work with the City Attorney's Office, to reflect these references where appropriate.

FINDING 5.

Condition

The CAO determined the Continuity of Operations Plan (COOP) dated 2/26/07, prepared by All Hands Consulting, has not been tested and has the following limitations:

1. The Operational Capability section, which describes the method by which the department will be able to provide operational capability for essential functions within 12 hours, is still pending.
2. Validation of external communications capabilities at all alternate facilities has not been verified.
3. The COOP kit containing purchase orders, contracts, vendor lists, and other information and documents critical to PSD's ability to function outside of City Hall is stored on site at City Hall.
4. The plan does not include procedures for processing of payments by Accounts Payable (AP) to ensure compliance with Federal Emergency Management Agency (FEMA) requirements for reimbursements in a disaster/emergency situation.

Criteria

A comprehensive disaster recovery plan and periodic testing of that plan helps to demonstrate that essential purchasing functions can be completed and ensures the plan is viable and meets the needs of the City.

Cause

The PSD is not currently responsible for testing their portion of the COOP. Citywide testing of the COOP has been delegated to the Emergency Management Division (EMD) and a comprehensive test of the COOP has not been performed to date.

Impact

The COOP may not perform as designed on paper, which could cause PSD to lack needed functionality to sustain operations during the course of an actual emergency.

Recommendation

The City Manager should require the Director of PSD to:

1. Coordinate testing of their portion of the COOP in cooperation with the EMD to determine if the plan is viable and executable prior to an actual emergency.
2. Coordinate with the EMD to complete the Operational Capability section of the COOP to ensure that critical functions are achievable within 12 hours of plan activation.
3. Coordinate with the EMD and develop a policy that would require annual testing of the COOP Communications Plan and validate external communications at alternate facilities.
4. Establish a secure site away from City Hall to locate the COOP kit.
5. Coordinate with the Director of the Finance Department to review the purchasing component of the COOP in an attempt to proactively incorporate FEMA reimbursement requirements from an emergency purchasing perspective.

Management Response

Management Concur: PSD will begin working with both Emergency Management and the Finance Department to coordinate testing and develop a policy to achieve the above recommendations: TIME: on-going

FINDING 6.

Condition

The CAO determined that there have been times when a requisition is approved by the Finance Department prior to funds being available at the character level, resulting in the user department going over the appropriated budget amount.

Criteria

Effective internal controls require that special authorization be obtained when the appropriated budget will be overspent at the character level.

Cause

The purchasing process includes a funds availability check before a requisition can be entered in FAMIS. Once the user department approves a requisition it is then forwarded to Accounts Payable (AP) to record a pre-encumbrance in FAMIS and a check of available funds at the character level. According to the Senior Accountant, if funds are not available, he sends the requisition back to the user department informing them that the funds are not available. However, there are occasions when the user departments must purchase an item prior to funds being made available and the process is overridden.

Impact

Departments could exceed budgeted appropriations at the character level without management in the Finance Department and the Office of Management and Budget being informed.

Recommendation

The City Manager should develop a policy that would require the Finance Director to review and approve a requisition prior to the application of a funds control override that results in overspending of the appropriated budget amount at the character level.

Management Response

The Finance Department has enhanced the review and approval process for requisitions in requiring "special authorization" be obtained from the Finance Director when the appropriated budget will be overspent at the character level. The Controller will act in the Finance Director's absence to ensure timely processing.

FINDING 7.

Condition

The CAO determined that the purchase requisition and associated pre-encumbrances in FAMIS were not entered before the bids were evaluated. This condition was noted for 1 of 9 (11%) Invitations to Bid (ITB), and for 5 of 8 (63%) Requests for Proposal (RFP).

Criteria

According to CFL's Purchasing Manual (Rev 1984), *Quotations and Bids*, (p57), "a purchase requisition is required to initiate the process for formal bids". Furthermore, per *General Information*, (p33), "requisitions shall be issued for items that have an unencumbered balance in the budget". (Section 243 of Ordinance No. C-84-16).

Cause

The user department often creates the requisition after the bid is evaluated and awarded, which is when the pre-encumbrance is booked.

Impact

The timely recording of encumbrances in a governmental accounting system represents a critical internal control. Failure to adhere to this procedure increases the risk of overspending budgeted appropriations.

Recommendation

The City Manager should require the Director of PSD to ensure that all requisitions be prepared and approved and pre-encumbrances posted to FAMIS prior to the bid being posted to BidSync.

Management Response

Management concurs: The exceptions referenced above represent a total of 14 out of 295 competitive solicitations. PSD agrees that the internal control referenced is important and valuable to the critical budgeting process. The PSD will revise the policy to require that the City Manager approve the release of any competitive solicitation if pre-encumbrances have not been posted to FAMIS.

FINDING 8.

Condition

The CAO determined that the City Municipal Code, Section 2-182, relating to purchases of supplies and contractual services requires that three (3) competitive bids be obtained by mail or by telephone whenever the total cost does not exceed \$25,000.

This is in conflict with Section 2-180, which states that when the estimated cost shall exceed \$10,000, written and sealed bids are required and the bid is awarded to the lowest and best responsible bidder.

Criteria

The Municipal Code should clearly state the purchasing and contracting requirements for supplies and contractual services.

Cause

The Municipal Code Section 2-182 does not have a clear line of demarcation for the purchase of supplies and services that cost between \$1,000 and \$10,000.

Impact

The ambiguity of the purchasing thresholds and requirements could result in the City not acquiring goods and services at the best prices.

Recommendation

The City Manager should require the Director of PSD to review the CFL Code of Ordinances and suggest revisions that would resolve the conflicts between Sections 2-180 and 2-182 by more clearly defining the purchasing and contracting requirements for supplies and contractual services.

Management Response

Management Concur. See Management Response to Finding 4 above.

FINDING 9.

Condition

The CAO determined that Conflict of Interest Statements are not required to be completed by personnel involved in the procurement process.

Criteria

The written disclosure of potential conflicts of interest by key participants in the procurement process is needed to ensure that biases and other relationships that could unduly influence the purchase decision are properly revealed.

Cause

The Purchasing Code does not include a provision to require that individuals involved in the procurement process complete a Conflict of Interest Statement.

Impact

By not requiring personnel involved in the procurement process to complete a Conflict of Interest Statement, the City has failed to establish clear and transparent guidelines for conducting public business.

Recommendation

The City Manager should require the Director of PSD to develop a policy that would require Conflict of Interest Statements be completed by key personnel involved in the procurement process.

Management Response

Management concurs: PSD employees, as members of the National Institute of Governmental Purchasing (NIGP), subscribe to the Institute's Code of Ethics; however, PSD will require each PSD employee, involved in the procurement process, to sign a Conflict of Interest statement at time of each employee's annual review. *Additionally, each PSD employee will execute a Conflict of Interest Statement for each competitive solicitation in which they are involved.* Other departmental personnel involved in the process, *shall* also be required to acknowledge and sign a Conflict of Interest statement, depending on their level of involvement; i.e., members of selection and evaluation committees. *PSD will also review the current requirements regarding departmental personnel involved in the informal quote process and establish a policy requiring that those employees also acknowledge and sign a Conflict of Interest Statement. . TIME: on-going*

FINDING 10.

Condition

The CAO determined that the procedures for proprietary purchases are not consistently followed. Our testing revealed the following:

- 8 of 16 (50%) of items tested did not have a Proprietary Quotation Form approved by the Department Director or designee.
- 11 of 16 (69%) of items tested did not have price documentation included.
- 6 of 17 (35%) of items tested did not have a statement of justification included.

Criteria

Effective internal control systems rely on consistent adherence to established policies and procedures. Accordingly, the Proprietary Quotation Form must be completed for all proprietary purchases.

Cause

The Procurement and Contracts Manager indicated that a Proprietary Quotation Form is not completed for contract renewals, maintenance and service agreements, software upgrades, and leases. The Proprietary Quotation Form and required documentation is completed for the purchase of goods.

Impact

Proprietary purchases, which inhibit competition, may not be justified and the City may not be acquiring goods and services at the best prices. Generally, proprietary purchases

are an area that has been subjected to frequent manipulation and represents a higher potential risk for fraud. Accordingly, a greater level of review and scrutiny is necessary.

Recommendation

The City Manager should require the Director of PSD to:

1. Create a policy that would require that procedures for proprietary purchases be applied to: contract renewals, maintenance and service agreements, software upgrades and leases.
2. Revise the format of the quarterly Contract Renewal report for service maintenance agreements to separate proprietary renewals from those, which were initially competitively bid. To further enhance the usefulness of the Contract Renewal report a comment box should be added to provide explanatory language to justify the reason for the proprietary renewal.

Management Response

1. Management Concur: however, in some cases where the Proprietary Quotation form was not completed, the department head had instead written and presented, via PSD, a City Commission item explaining the justification and need for a particular proprietary purchase. It should also be noted, that any proprietary purchase exceeding \$10,000, including software and maintenance agreements and contract renewals, requires City Commission approval, with the exception of those proprietary purchases made entirely with grant funds.
2. This has already been accomplished, as the last quarterly report reflected those contracts, which were proprietary.

FINDING 11.

Condition

The City Commission is not involved with reviewing the bid specifications for Requests for Proposals (RFPs).

Criteria

Review of bid specifications for all RFPs >\$100,000 by the City Commission can help align major purchasing decisions with the public policy goals of the Commission.

Cause

RFPs are prepared by staff and advertised without Commission input.

Impact

Commission review of the Bid Specifications for all RFPs > \$100,000 could minimize the chance of staff weighting the selection criteria in a manner inconsistent with the Commission's perspective.

Recommendation

The City Manager should require the Director of PSD to revise the department's procedure to provide the Commission with copies of bid specifications for RFPs > \$100,000 after an RFP has been issued but prior to bid award.

Management Response

Management Concur: TIME: thirty (30) days

AUDITOR COMMENT 1.

Condition

The City's Code of Ordinances, Section 2-174 (d) currently separates procurement for Public Works from PSD. As a result, Public Works has developed its own purchasing system with separate purchase order numbers. We can find no compelling reason why the responsibility for all purchasing should not be invested solely in the PSD, which has the necessary skills, training and expertise to administer purchasing in a manner consistent with the applicable city policy, ordinances and Florida Statutes.

Recommendation

The City Manager should propose a change to the Code of Ordinances to consolidate all purchasing activities in the PSD.

Management Response

Management will begin an analysis of the impact of this change to the organizational structure.

AUDITOR COMMENT 2.

Condition

The CAO determined that towing fees were posted to revenue subobject N907, index code PMM010101 however, these permit fees do not directly support PSD like a program user fee. To enhance financial reporting, these fees should be captured in FAMIS under a non-departmental index code with the other general revenues of the City.

Recommendation

The City Manager should require the Finance Director to direct the Treasurer to record the revenue received from West Way Towing, Inc in the same index code as the other general revenues of the City. Furthermore, to ensure consistency and completeness in the receipting, recording and monitoring of revenues, the Treasury division should account for all contract revenues.

Management Response

The Finance Director has instructed the Treasurer to transfer FY 2009 revenue posted from PMM010101 Procurement, subobject N907 Towing Fees to FIN040301 Other General Fund Revenue, subobject N907 Towing Fees and all future revenue will be posted to FIN040301 Other General Fund Revenue, subobject N907 Towing Fees.

AUDITOR COMMENT 3.

Condition

The CAO determined that 1 of 8 (13%) Procurement Specialists did not take an absence, vacation or sick leave, for at least one full week in FY07/08. One Procurement Specialist was excluded from the testing because he started on 11/5/07; therefore he was not an employee for the full fiscal year.

Recommendation

The City Manager should require the Director of PSD to establish a policy to have each Procurement Specialist take at least one continuous week of vacation every year.

Management Response

Management notes the comment, and will effectuate a policy that will require each Procurement Specialist to take at least one week of annual leave, with the understanding that as conditions change, i.e., loss of an employee, natural disaster, commission priority, an employee may not be able to take leave. Ultimately, service to the citizens must be the first priority.

AUDITOR COMMENT 4.

Condition

The CAO determined that the performance measures included in the FY07/08 Annual Operating Budget for the PSD were accurately calculated. However, the performance measures could be improved to include the four elements of the Balanced Scorecard approach: customer, internal processes, learning & growth, and financial. Four of the six (67%) measures are financial and 2 of 6 (33%) relate to internal processes. Incorporating these four elements in the performance measurement would enable the PSD to better measure departmental effectiveness as it relates to the City's Vision.

Examples of this would be:

- **Customer** - Perform customer satisfaction surveys for internal and external customers and report results in annual performance measures.
- **Internal Processes** - Include the number of bid award recommendations accepted by the City Commission, estimated average number of days to process requisitions, purchase orders (PO,s), RFP's etc., number of protests filed and number of protests upheld.
- **Learning & growth** - Include performance measures related to training provided to staff regarding p-card, the bid solicitation process, and outreach provided to Women and Minority Business Enterprises.
- **Financial** - Include performance measures pertaining to average monthly amount spent on p-cards, % total expended on p-cards, and number of POs and total yearly amount.

Recommendation

The City Manager should require the Director of PSD to evaluate the appropriateness of the six current performance indicators, which are primarily focused on financial measures of efficiency. Emphasis should be placed on identifying additional indicators that PSD must meet or exceed to satisfy its stakeholder's needs, such as customer satisfaction, throughput, turnaround times and commitment to learning and continuous

improvement. These additional measures should also be incorporated into the Annual Budget (target vs. actual).

Management Response

Management concurs: PSD will review performance measures as described, and incorporate them, where and when appropriate into the budget process.

AUDITOR COMMENT 5.

Condition

The CAO determined that PSD does not have a policy to require the Procurement Specialists to be rotated every 3 years to reduce the risk of employee/vendor procurement fraud. PSD has divided the City into 26 departments/divisions for the purpose of assigning Procurement Specialists to a specific department/division. Seven Procurement Specialists are assigned to the 26 departments/division, 3 such employees have been employed in the PSD for more than three years. We excluded from testing the 4 Procurement Specialists that have been in the PSD for 3 years or less.

The CAO determined that of the 3 Procurement Specialists that have been in the PSD for more than three (3) years they have been assigned to the same departments/divisions as follows:

- 12 of 14 (86%) for more than 3 years
- 2 of 14 (14%) for less than 3 years.

We determined that one Procurement Specialist was assigned to one department/division for 12 years. Effective internal controls require rotating of job assignments to deter fraud/theft.

Recommendation

The City Manager should require the Director of PSD to develop a policy that would require Procurement Specialists to be rotated among the various departments/division at least once every 3 years.

Management Response

Management concurs with the premise, but also has to maintain a level of service to every department within the City. Four procurement specialists were all hired within a year of each other, and therefore, rotation of assignments has been difficult. Additionally, at the same time, a long term Procurement Specialist retired. Generally, it takes a minimum of a year, of the Procurement Specialist working with the assigned departments to develop a comfort level and technical expertise to support the assigned departments. PSD will review assignments on an on-going basis, and will rotate, when the rotation and reassignment can be done, without impacting the service level to any department or to our citizens.

AUDITOR COMMENT 6.

Condition

PSD does not have an effective system in place to monitor and communicate problems with vendors to enhance future purchasing decisions. Furthermore, PSD does not have a

vendor disqualification list. PSD management explained that problems with vendors may be documented through the use of the vendor complaint form, which is completed by the user department. The vendor complaint form is submitted to PSD to be included as written documentation in the contract file; however they are not used in a meaningful way to improve vendor performance.

Recommendation

The City Manager should require the Director of PSD to develop an Access or similar database, which includes all complaints and the actions taken to resolve these complaints to further enhance the documentation process. Additionally, once a complaint has been investigated by PSD, any actions necessary to resolve the problem should be communicated to all user departments throughout the City who work with that vendor.

Management Response

Management concurs, however the development of any database, Access or otherwise, will require resources that currently are not available, for both PSD and all using departments. The previously mentioned vendor complaint form is now available and accessible by all using departments, through the shared drive network.

Disqualification (suspension or debarment) are serious actions that should not be taken lightly. PSD has not, up to this point, been presented with appropriate evidence and documentation that would lead to the suspension or debarment of a vendor.

AUDITOR COMMENT 7.

Condition

The CAO determined that PSD conducted a survey of its internal customers in 2004. The survey respondents were generally satisfied with the operation of the PSD; however, they expressed dissatisfaction with the low purchasing dollar thresholds. PSD has not performed a customer satisfaction survey since 2004, but has indicated that they will be performing another survey in FY08/09 of its internal customers.

Auditor Note: The CAO also noted that PSD has not performed a survey of external vendors.

Recommendation

The City Manager should require the Director of PSD to:

1. Perform an annual customer satisfaction survey of both internal customers and external vendors;
2. Summarize the results of the survey and develop an action plan to address those items of greatest significance.

Management Response

Management concurs: An internal customer survey will be conducted before the end of the current FY. The results will be reviewed, and an action plan developed where appropriate.

AUDITOR COMMENT 8.

Condition

The PSD requires user departments to obtain three (3) written or verbal quotes for goods/services, with the exception of goods/services purchased using established contracts. The PSD prefers that departments obtain written quotes for purchases over \$5,000, however this is not mandatory.

Our testing revealed that 3 of 18 (16.7%) did not have proof of written quotes in the purchasing file. While not currently a formal requirement, the CAO believes that as part of an effective system of internal controls, written quotes should be obtained and kept on file for all purchases over \$5,000.

Recommendation

The City Manager should require the Director of PSD to develop a policy requiring all purchases greater than \$5,000 to have written quotes or emails to:

- preserve the audit trail
- promote transparency, and
- enhance the integrity of the process.

Management Response

Management concurs: PSD intends to continue and roll-out the use of our e-procurement software (bidsync) to using departments for the purchase of goods and services exceeding \$5,000. The use of bidsync will preserve and electronic audit trail, promote transparency by use of the internet, and enhance the integrity of our small dollar purchasing process.

AUDITOR COMMENT 9.

Condition

The CAO noted that written contracts are not required for one-time purchases resulting from an ITB, only a purchase order is used. It is PSD's policy to not require a written contract for a one-time commodity purchase.

Recommendation

The City Manager should require the Director of the PSD to include in the Procurement Manual a procedure for one-time purchases that are completed as the result of a bid solicitation.

Management Response

Management concurs, and has begun drafting a change to the manual.

AUDITOR COMMENT 10.

Condition

The CAO created a procurement questionnaire and solicited responses from comparable cities to determine what the "usual" procurement practices are relating to purchasing dollar thresholds, the bid solicitation process and staffing norms. The City purchasing thresholds are generally lower than other peer group cities as noted below and CFL purchasing policies differ in the following areas:

- 4 of 4 (100%) cities have formal bid thresholds of \$15,000 - \$50,000 compared to CFL's \$10,000 threshold
- 3 of 4 (75%) cities allow external parties to be a part of the evaluation committee with no strict guidelines that limit the number allowed.
- 2 of 4 (50%) cities have a policy prohibiting bidders and their lobbyists from having contact with members of the evaluation/selection committee prior to the official announcement of the award.

Recommendation

The City Manager should require the Director of PSD to consider proposing a revision to the CFL Code of Ordinances that would:

1. Increase the dollar threshold for when sealed bids are required and adjust all the other thresholds accordingly.
2. Include a provision to periodically adjust the thresholds for inflationary factors.
3. Include a policy that the Director of PSD appoint a selection committee containing at least three members, whose duties include evaluation of proposers' responses, ranking of proposers, and recommending the top ranked proposer for award of a contract.
4. Include a policy prohibiting bidders and their lobbyists from having contact with PSD or members of the evaluation/selection committee prior to an award announcement.
5. Revise the purchasing code to require that price/cost be weighted at least 33% of the evaluation criteria for all competitive solicitations.

Management Response

Management concurs: See Management Response to finding 4 above. Our own survey conducted by PSD two years ago, showed that the City's thresholds were lower than many other agencies of comparable size and complexity. PSD currently works with the using departments in the formulation of the selection committees, but concurs with the Auditor recommendation that PSD should be the appointing party. The PSD currently has a document which is distributed to all members of the evaluation and selection committee, which advises against contact with vendor representatives during the evaluation process. PSD will incorporate this into the department's policy and procedures manual.

AUDITOR COMMENT 11.

Condition

The CAO determined that the PSD sets the majority of contracts for no more than a total of five (5) years, including the initial term and extensions. However, the contract could exceed 5 years in special situations such as where the vendor must invest a significant amount in capital or equipment to be able to provide services or when the availability of the good or service in the market place is scarce.

The CAO also determined that the City is a party to some contracts whose initial term is greater than 1 year.

Recommendation

The City Manager should require the Director of PSD to consider proposing a revision to the Code of Ordinances that would:

1. Require the length of a contract not exceed four (4) years including the initial term and extensions.
2. Allow a contract term not to exceed five (5) years for those contracts in which the vendor has to make an upfront investment of at least \$50,000.
3. Incorporate into the Code of Ordinances language from Article 5.11 from the General Terms and Conditions document as follows:

"The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law."

Management Response

Management concurs: PSD will begin the change to the length of contracts, with that release for bidding on or after July 1, 2009. Management believes that at times there may be an occasional exception to the policy of four years, and would request Commission approval of these exceptions prior to release of a formal solicitation.

AUDITOR COMMENT 12.

Condition

The CAO determined the 2-page purchasing contract template could be improved with the provisions set forth in Florida Statutes 287.058, which are representative of best practice. The CAO reviewed the two-page standard contract template, the General Terms and Conditions Section 5.12, and Florida Statutes 287.058.

The CAO also determined that the right to audit clause in the General Terms and Conditions could be improved as follows: e.g. section 5.12 stating "The form of all records and reports shall be subject to the approval of the City's Internal Auditor" should be removed. Additionally, an enhanced right to audit clause regarding retention of records should be included with language stating "all books of account, reports and records relating to this contract should be retained for the duration of the contract and for three years after the final payment under this Agreement, or until all pending audits, investigations or litigation matters relating to the contract are closed, whichever is later."

Recommendation

The City Manager should require the Director of PSD to:

1. Include similar language from Florida Statutes 287.058 regarding provisions of contract documents, for example:

- a. A provision that bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof.
 - b. A provision dividing the contract into units of deliverables, which shall include, but not be limited to, reports, findings, and drafts, that must be received and accepted in writing by the contract manager prior to payment
2. Revise the General Terms and Conditions Section 5.12, Records/Audit to delete the statement "The form of all records and reports shall be subject to the approval of the City's Internal Auditor".
 3. Revise the General Terms and Conditions Section 5.12, Records/Audit to include language similar to the following "all books of account, reports and records relating to this contract should be retained for the duration of the contract and for three years after the final payment under this Agreement, or until all pending matters are closed, whichever is later."

Management Response

Management concurs: PSD has been working in collaboration with the City Attorney's Office for the last few months in formulating a new contract template. The above suggestions will be incorporated into the new template, where appropriate, and with agreement of the City Attorney's Office.

Revisions to the General Terms and Conditions are also being reviewed by the Attorney's Office, and the above will also be incorporated where appropriate.

AUDITOR COMMENT 13.

Condition

The CAO also reviewed Section 2-181 of the City's Code of Ordinances and concluded that the absence of a formal contract is not in the best interest of the City. According to this section of the code " When the estimated cost of supplies and contractual services is twenty-five thousand dollars (\$25,000) or over, a contract for same may be awarded by the city commission to the lowest and best responsible bidder without formal contract."

Recommendation

The City Manager should require the Director of PSD to propose an amendment to the Purchasing Code to require a formal contract for all purchases greater than \$25,000.

Management Response

Management concurs: Although this exception is in the Code the PSD, as a rule, has made this a practice.

AUDITOR COMMENT 14.

Condition

The CAO noted that CFL does not have a procedure to have vendor financial statements reviewed and evaluated by the Finance Department when they are required as part of the solicitation process. A thorough financial evaluation of prospective vendors will help the City determine if a vendor has sufficient financial capacity to perform under the contract.

Recommendation

The City Manager should require the Finance Director to establish a procedure to have knowledgeable finance staff perform an analysis of the financial capacity of competing bidders.

Management Response

The Finance Director will seek the resources necessary to contract with local Certified Public Accountants to provide an analysis of the financial capacity for bidders or, in the alternative, will utilize available financial analyses to be provided by bidders in response to an RFP as a measure of financial capacity.

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