



Mayor Jim Newberry

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Division of Internal Audit

INTERNAL AUDIT REPORT

DATE: August 20, 2007

TO: Jim Newberry, Mayor

CC: Joe Kelly, Senior Advisor for Management
Kyna Koch, Commissioner of Finance
Logan Askew, Commissioner of Law
Brian Marcum, Director of Purchasing
Urban County Council Members
Internal Audit Board Members

FROM: Bruce Sahli, Director of Internal Audit

RE: Bid & Request for Proposal (RFP) Process Audit

Background

In general, all purchases for more than \$20,000 made by the Lexington Fayette Urban County Government (LFUCG) are required by law to be purchased via competitive sealed Bids. Exceptions to this requirement include Sole Source contracts (only one legitimate vendor exists), Emergency Purchases (when the Mayor declares an emergency exists and therefore suspends normal bidding procedures), and the purchase of professional services via a Request for Proposal (RFP). As part of the Bid process, an Invitation to Bid must be publicly advertised in the local newspaper, Bid offers from vendors must be submitted to the Division of Purchasing in sealed envelopes, and the opening of Bids to determine whose offer is accepted must be strictly controlled. For the most part, LFUCG awards its contracts to the lowest bidder. An exception may be made if the lowest bidder has a history of underperformance with regard to previously awarded contracts, or if the lowest bidder's proposal does not meet the required specifications.

Requests for Proposal (RFPs) govern the selection of professional services costing \$25,000 or more. When written pricing is received for requested professional services, these are reviewed by a panel. The panel's charge is to rank each quote based on seven preset criteria as noted in Chief Administrative Officer (CAO) Policy #1. This preset criteria includes specialized experienced and technical competence of the person or firm (including a joint venture or association) consistent with the type of service required; the capacity of the person or firm to perform the work (including any

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specialized services within the time limitations); the character, integrity, reputation, judgment, experience and efficiency of the person or firm; past records and performances on contracts with LFUCG or other governmental agencies and private industry with respect to such factors as control of cost, quality of work, and ability to meet schedules; familiarity with the details of the project; the degree of local employment to be provided by the person or firm in the performance of the contract; and the estimated cost of services. The professional services purchased and the purchase amount for RFP Contracts costing more than \$50,000 in any fiscal year must be approved via an Urban County Council Resolution.

Scope and Objectives

The general control objectives for the audit were to determine that:

- The Bid and RFP solicitation, selection, and award processes were consistent with LFUCG policies and regulatory requirements
- Records were maintained to support all competitively Bid contracts and RFPs
- Single source contracts had proper justification
- Emergency purchases were made only during an emergency event

The scope of our audit included Bid and RFP proposals for January 1, 2005 through March 23, 2007.

Statement of Auditing Standards

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions regarding the organization, program, activity or function under audit. An audit also includes assessments of applicable internal controls and compliance with requirements of laws and regulations when necessary to satisfy the audit objectives. We believe that our audit provides a reasonable basis for our conclusions.

Audit Opinion

In our opinion, the controls and procedures provided reasonable assurance that the general control objectives were being met. Opportunities to enhance controls are included in the Summary of Audit Findings.

SUMMARY OF AUDIT FINDINGS

RFP Selection Criteria Documentation not Retained

RFPs govern the selection of professional services costing \$25,000 or more. Written pricings offering to provide such services are reviewed by a panel charged with ranking each pricing based on CAO Policy #1's seven preset criteria as noted in the Background section of this report. The RFP awards in our sample varied in cost from \$26,710 for a Sanitary Sewer Conveyance Study to \$5,654,101 for ERP Software and Implementation Services (STARS). After excluding the high-end cost of the STARS project, the average cost of the RFP awards in our sample was \$89,185. Our examination of RFPs noted that, for the most part, no documentation was retained by the Division of Purchasing to provide a record of the panel's RFP discussions and decisions. We were also informed by Division of Purchasing personnel that any documents used by the panel to rank proposals would typically be destroyed by the individual panel members.

RFP's can result in contractual arrangements committing LFUCG to extensive projects of significant cost, and it is important that the RFP award process be designed to provide accountability and transparency. It is therefore recommended that CAO Policy #1 be amended to require that vote tallies and any other documentation used by the panel to award RFPs be maintained in the Division of Purchasing project file as support for the RFP award process.

Division of Purchasing Management Response: The Division of Central Purchasing concurs with the recommendation to use a vote summary sheet, which includes the selection group members, and retain this information with the RFP project file. Any other information shared by the group for the selection will be included in the project file.

Commissioner of Finance Management Response: The Commissioner of Finance concurs with the response from the Division of Purchasing.

Commissioner of Law Management Response: The Commissioner of Law agrees with the recommendation. Additionally, I recommend that the Policy be amended to correct an inconsistency which permits no-bid contracts for professional services up to \$50,000 by CAO in one section, but requires Council approval of all contracts in another section. Further, selection of outside counsel needs to be specifically addressed in the Policy.

Receipt of Bid Documentation

The Division of Purchasing uses a Bid log to record Bids and RFPs received by that Division. The Bid log includes the Bid/RFP receipt date and time, and in some instances also contains the Bid amount once the Bid is opened. The Bid log is the only documentation retained by Purchasing that records the date and time Bid or RFP proposals are received, and is therefore an important document establishing proper compliance within the Bid/RFP process. Our detail testing noted one Bid whose date and time of receipt was not noted on the Bid log and one RFP proposal that was included in their related Purchasing files but was not entered on the Bid log.

In the case of the RFP proposal, the Director of Purchasing stated that this RFP was received after the opening deadline and that it would be Purchasing's normal practice to discard such Bids. He stated that the related file would normally contain a copy of the reject letter sent to the vendor stating that the Bid was received after the opening deadline.

It is recommended that Purchasing consistently log all Bids and RFPs received for a given project on the Bid log. When Bids are received after the opening deadline, the reject letter accompanied by a copy of the envelope with the date/time stamp documenting the late filing should be consistently included in the related file. This will improve accountability by documenting the disposition of all Bids and RFPs received by LFUCG.

Division of Purchasing Management Response: The Division of Purchasing concurs with the recommendation to revise our existing process to include a copy of the late Bid envelope showing the date and time it was recorded in the project file.

Commissioner of Finance Management Response: The Commissioner of Finance concurs with the response from the Division of Purchasing.

Contracts Unavailable in Council Clerk Records

As stated in the Charter of the Urban County Government, the Council Clerk's Office is responsible for the keeping of all Council records, which includes all contracts authorized by the Council and executed by the Mayor. Two RFP contracts from our total sample of 25 were not available in the Council Clerk records. (This is a repeat finding from the Construction Contract Change Order Procedures Audit reported on June 9, 2005, which identified seven missing contracts out of a sample of 23). We have been informed by Council Clerk personnel that this typically is caused by the originating Division's failure to produce the final executed copy for retention in Council Clerk records. It is recommended that Departments and Divisions be formally reminded of this Charter requirement and that the original document and two copies be provided to the Council Clerk's Office for all Contracts, Agreements, Leases, Memorandums of Understanding, and Change Orders.

Senior Advisor for Management Response: The Senior Advisor for Management agrees with the recommendation and will issue a memo to all Commissioners, Directors, and the Chief of Staff reminding them to send original executed contracts and two copies to the Council Clerk in order to ensure compliance with the Charter's record keeping requirements.