

New Castle County
Audit of Procurement Function
Audit Report

To: Yvonne Gordon, Chief of Administrative Services
Tracy Surles, Acting General Manager of Special Services
Christopher A. Coons, County Executive
Paul G. Clark, County Council President

Background

The following are the primary sections of the County Code that deal with the procurement of goods and services for the County:

- Chapter 2, Article 5, Section 2.05.303, “Purchasing of Contract Construction”: This section deals with the purchasing of contract construction by the County’s Department of Special Services.
- Chapter 2, Article 5, Section 2.05.502, “Purchasing of Supplies and Contractual Services”: This section deals with the purchasing of all goods and services by the County other than contract construction. The Purchasing Section of the Administrative Services Division is responsible for administering this section of the Code.
- Chapter 2, Article 2, Section 2.02.004, “Approval of Contracts by County Council”: This section addresses the circumstances under which the purchases of goods or services by the County must be approved by County Council.

During the period July 1st, 2004 through June 30, 2005, approximately \$114 million was encumbered, through purchase orders, for the purchase of goods and services by the County. During this same period, there were 4,704 purchase orders processed and 236 requests for proposals (RFPs) issued.

Audit Objectives and Results

After performing some preliminary research and after internal discussions, we decided that our overall objective for this audit would be to evaluate the County’s internal controls which help to ensure overall compliance with Sections 2.05.502, 2.05.303, and 2.02.004 of the New Castle County Code, as well as Purchasing policies and procedures. Specific objectives were as follows:

- Determine that County Council is being presented with all contracts that require County Council approval.
- Evaluate the policies and procedures behind adding, and removing if necessary, a vendor from the approved vendor list.
- Evaluate the controls over the initiation, approval, and review of purchase requisitions.

- Determine that Requests for Proposals (RFPs) are being initiated, processed, and reviewed in accordance with County Code and Purchasing policies and procedures.
- Evaluate the controls over the receipt and opening of bids.
- Determine that awards of business are made in accordance with County Code and Purchasing policies and procedures.
- Determine that contracts are reviewed and approved by the Law Department where required.
- Determine that contracts are executed within a reasonable amount of time and that they are clear as to the scope and cost of work.
- Determine that the County obtains “performance and payment” bonds where applicable.
- Determine that any add-ons or extensions/renewals to contracts receive the appropriate approvals (and are re-bid if applicable) as per County Code and/or Purchasing policies and procedures.
- Determine compliance with any relevant federal laws and/or regulations.
- Evaluate adequacy of policies and procedures manuals.

Please note that this audit primarily encompassed the procurement of goods and services up to the point in which the contract is executed with the vendor. We will be performing another audit this fiscal year, called the “Contract Monitoring” audit, where we will be looking at the controls over the monitoring of contracts after they are signed.

Scope

We conducted our audit in accordance with standards promulgated by the Institute of Internal Auditors, the United States General Accounting Office, and the National Association of Local Government Auditors. Our audit testing encompassed Fiscal Year 2005, i.e., the period July 1, 2004 through June 30, 2005.

Professional auditing standards require that we plan and perform the audit to obtain reasonable assurance whether internal controls are adequate in all material respects. Our audit of internal control included obtaining an understanding of the internal controls over the procurement function, testing the operating effectiveness of the controls, and performing such other procedures as we considered necessary in the circumstances.

Our evaluation of internal control may reveal three categories of internal control deficiencies. The first two categories are of a much greater magnitude than the third category.

- A Material Weakness is a matter that, in our judgment, could adversely affect New Castle County’s ability to accomplish its objectives related to the procurement of goods and services for New Castle County. There are no Material Weaknesses in this report.
- A Significant Deficiency is a control exception that is of a lesser magnitude than a material weakness; however, it could potentially have a significant, adverse impact upon the procurement function in the future and, therefore, warrants management’s attention. There are no Significant Deficiencies in this report.

- Other Reportable Items are opportunities for improvements in the system of internal control. There are 11 Other Reportable Items in this report.

In general, our testing involves audit sampling. We evaluate the results of the tests and use professional judgment, based on the number of exceptions and/or the materiality of such exceptions, whether to include exceptions in the audit report and, if so, in which category to include them. In some cases, we perform additional testing to help us obtain additional audit evidence in making such evaluation and determination.

Because the scope of an audit does not allow us to examine every single function and transaction performed by an area, an audit would not necessarily disclose all matters that might be material weaknesses, significant deficiencies, or other reportable items.

Opinion

In our opinion, during the period July 1, 2004 through June 30, 2005, adequate internal controls existed in all material respects over the initial procurement of goods and services for New Castle County. We do have several comments which are discussed in the following sections of this report:

- General Comments (comment #'s 1 and 2)
- Comments and Recommendations, Other Reportable Items (comment #'s 1 through 9) – Administrative Services Department
- Comments and Recommendations, Other Reportable Items (comment #'s 1 and 2) – Special Services Department

Recognition of Participation and Cooperation

We would like to thank the Chief of Administrative Services and the Chief of Special Services, and their staffs, in providing cooperation during the course of the audit, and in being receptive to constructive comments and recommendations to strengthen the controls over the procurement process.

Response

The Chief of Administrative Services and Chief of Special Services provided the County Auditor with written responses to their particular sections of the audit report. These responses have been incorporated into the report.

Cc: Jeffrey Bullock, Chief Administrative Officer
J. Michael Strine, Chief Financial Officer
Members of New Castle County Audit Committee
Members of New Castle County Council

General

In late 2003, the former County Auditor engaged an outside audit firm to perform an audit of the procurement function. The engagement letter stated that the audit was to cover the period July 1, 2001 through June 30, 2003. The engagement letter stated that “the audit shall be conducted in sufficient detail to allow an auditor to render and issue an opinion on New Castle County’s general compliance with New Castle County Code of Ordinances, Chapter 2, Article 5, Section 2.05.502 (entitled *Purchasing of Supplies and Contractual Services*) and Chapter 2, Article 2, Section 2.02.004 (entitled *Approval of Contracts by County Council*).” In using the term “an auditor”, the engagement letter did not specify whether it would be the audit firm or the County Auditor rendering and issuing the opinion.

When we decided to include the procurement function in our 2006 Annual Audit Plan, we performed further research to determine the extent upon which we could rely upon the opinion presented in the audit report. However, in reviewing the audit report issued by the audit firm, we discovered that the firm did not render an opinion on their work. We asked the Purchasing Division if they had any report other than the one issued by the audit firm; they did not. Thus, it appears that neither the audit firm nor the former County Auditor rendered an audit opinion. I called the audit firm and they confirmed that they never rendered and issued an opinion. While talking to the Director of this firm, he was also vague regarding the specific audit procedures they had performed.

As a result of the above, we placed minimal reliance on the audit report issued by the audit firm (for which the County paid approximately \$23,000). In addition, we noted that the engagement did not cover Chapter 2, Article 5, Section 2.05.303, “Purchasing of Contract Construction.” We did not understand this since a large portion of the services procured by the County is for contract construction.

General Comments

1. Continue to pursue with the City of Wilmington opportunities to streamline services and reduce or share costs.

The Memorandum of Understanding (MOU) between New Castle County and the City of Wilmington (created as a result of the \$15 million public safety grant from the County to the City of Wilmington), stated that various officials from the New Castle County and City of Wilmington governments were to meet “to study ways to reduce inefficient and duplicate government services to streamline services and reduce or share costs ...” This group of officials was to “prepare a written report of their collective suggestions and recommendations” and the written report was to “be distributed to the following officials as a contingency for distribution of the grant funds (\$3 million) for Fiscal Year 2006:

- Mayor of the City of Wilmington;
- New Castle County Executive;
- President of Wilmington City Council, for distribution to all members of City Council; and
- President of New Castle County Council, for distribution to all members of County Council.”

A meeting between certain County and City officials was held on August 25, 2005 to discuss areas in which there is an opportunity to reduce duplication and in which there is a potential for savings. The County’s Deputy Chief Administrative Officer informed us that the written report was issued to the above-named officials on August 31, 2005. This report contained two items relating to the procurement function:

- A finding that “savings may be realized through an expansion of the current procurement coordination underway” and a recommendation to “explore joint purchasing of like items. Study joint purchasing of such items as fuel for economies of scale.” The people assigned to work on this recommendation were the County’s Chief of Administrative Services, the City’s Purchasing Manager, and the City’s Deputy Finance Director.
- A finding that “there is a joint need for information on the operation of city and county government processes” and a recommendation to “conduct mapping of contracts and RFPs with dates so that the city and county can identify opportunities and begin to align major bids and contract opportunities, so that they may be aligned to provide more opportunities to cooperate on future bidding, procurement, or service provisions.” The people assigned to work on this recommendation were the County’s Chief of Administrative Services, the County’s Chief Financial Officer, the City Solicitor, and the City’s Deputy Finance Director.

We spoke to the City’s Purchasing Manager and the City Solicitor, neither of whom was aware of their assignments to work on these recommendations. The person who was the City’s Deputy Finance Director no longer works for the City.

It is our understanding that **formal** City/County Committees were never formed to work on these recommendations and to issue reports on their accomplishments. The County’s

Chief of Administrative Services and Chief of Special Services informed us that a working group of County and City Officials have worked together on certain aspects of the report's recommendations, particularly those relating to the Special Services Department. This working group has been meeting monthly to address common issues and to develop joint strategies where commonality exists.

We recommend that the Chief of Administrative Services and the Chief of Special Services continue to participate on this working group and continue to study ways to reduce inefficient and duplicate government services and/or reduce or share costs relating to the procurement of goods and services.

Management's Response

Regarding the Memorandum of Understanding with the City of Wilmington, significant progress has occurred on identifying and implementing a number of cost savings and efficiency strategies. First, a regular City/County work group is operating with City representation including the Mayor, City Council President, the Mayor's Chief of Staff, the Director of Public Safety and the Public Works Director. Participating from NCC are the County Executive, CAO, General Manager of Special Services and Administrative Services, Director of Public Safety, Deputy CAO, the Chief of Staff and President of County Council and his Policy Advisor. This group has been meeting on a monthly basis to address common issues and develop joint strategies where commonality exists. As a result, of this work group, progress has been made on a number of shared issues.

- **The NCC Dept. of Special Services and the Wilmington Public Works Department have met and regularly communicate on issues. Recently they have resolved payment issues on chlorination and reached a conclusion on odor-testing in NCC's pump stations.**
- **Under the leadership of the County Executive, the Mayor and their respective staffs after months of research and proposal reviews, a decision has been reached on the decades old issue of the upgrade of the City/County Building. The research revealed that the use of the County's ESCO Ameresco to implement an energy savings program through performance contracting will produce the results desired by both governments including: new major electrical systems, other energy efficient improvements, a more livable facility for its occupants and visitors, reduced annual operating costs, and no capital outlay required to finance the project. Further, both Council Presidents have obtained support from their respective legislative bodies.**
- **New Castle County and the City of Wilmington partnered with the State, Kent and Sussex counties to procure electricity at a discount for FY'07. The rate obtained through the partnership was significantly lower than the Delmarva rate offered. With a year of experience in the electric procurement market, we are in discussions with Ameresco (ESCO partner)**

about options available to the County next fiscal year utilizing their procurement division's expertise. We have shared this option with the City so they can decide if they wish to explore further, branch out on their own or remain in the aggregate partnership with the State.

- **The County and City always share bid information and both look for the best value opportunities. Both governments continue to find that larger organizations like the State of Delaware as well as purchasing cooperatives around the country like U. S. Communities, H-GAC Cooperative Purchasing Program and Western States Contracting Alliance, often provide stronger discounts and value. We will continue our practice of sharing procurement information including the County's vendor registration master file.**
- **The Department of Special Services has forged a process with the City Department of Parks and Recreation to facilitate the return of six city parks that have been maintained by NCC for the past two decades. A multi-year memorandum has been drafted and accepted by both departments for the turnovers in an orderly fashion over the next several years. Some properties will revert to the City in 2007.**
- **Finally, joint staffs from the City and NCC Public Safety Departments have collaborated on joint policing in Wilmington during summer months. Other collaborative efforts and task force strategies are being considered.**

2. Ask Law Firm to evaluate whether adding a "right to audit" clause to County contracts would be beneficial in certain situations.

The Chief of Administrative Services informed us that the County recently engaged a law firm to assist in reviewing the terms and conditions of the standard County construction contracts, professional services contracts, and goods/materials contracts, and to recommend revisions to such contracts based upon current law and best practices. Based upon the revisions recommended, this could also mean suggested revisions to the certain sections of the County Code.

We are glad this review is being performed and hope that it will ensure all County contracts contain language that adequately protects the County's interests. We also hope that further standardization of County contracts serves to reduce the amount of time the Law Department needs to spend reviewing County contracts prior to approval.

In preparing for this audit, we consulted a textbook titled "Auditing the Purchasing Function", which states that a "right to audit" clause is important if a contract includes any aspect of self-reporting by the vendor where no independent confirmation is practical (e.g., contracts based on cost of labor and materials). The right to audit the vendor should not be limited to using a mutually agreed upon third party; instead, the clause should give the buyer unlimited choice as to who can be chosen as auditor. The audit provision

should also, if applicable, include a “flow down” clause that requires the prime contractor to include a right to audit provision in all contracts with subcontractors.

We consulted with other governmental auditors belonging to the Association of Local Government Auditors (ALGA) and found other municipalities that do include “right to audit” clauses in their contracts.

The Directors of Administrative Services and Special Services believe a “right to audit clause” is not necessary because:

- Many contracts provide protection to the County by requiring a performance bond.
- Management scrutinizes vendor change orders.

In reviewing the terms and conditions of standard County contracts, we recommend that management ask the law firm to determine whether adding a “right to audit” clause to County contracts would be beneficial in any particular situations. To help in this regard, we have provided management with all information we obtained regarding “right to audit” clauses.

Management’s Response

A law firm with expertise in contract law is currently developing standard contracts that will serve as the basis for all County contract negotiations. The firm has been requested to review the necessity to have a “right to audit clause” in each type of contract being developed (professional services, goods and services, construction, purchase orders as contracts).

Again, both Administrative Services and Special Services believe the following protections are in place in the County’s procurement processes that may reduce the need for a “right to audit clause”:

- **Performance Bond required on most bids and sole source awards.**
- **Prequalification of bidders for specialized work such as sewers includes submission of financials, experience, reference and equipment/assets capacity.**
- **Responsible Contracting Ordinance requires evidence of performance similar to that that would be discovered in a right to audit situation.**
- **Bid evaluation criteria, as stated in the Administrative Services Code, where price is not the only factor requires the bidder to be “responsible.” “Responsible” as defined in the County Code includes the following criteria: “vi. The sufficiency of the financial resources and ability of the bidder to furnish the supplies or perform the contract for contractual services, when the agent requires prequalification of bidders.” Further, the evaluation includes evidence of: timely performance, experience, quality of work on other jobs, availability and adaptability.**

Comments and Recommendations
Other Reportable Items – Administrative Services

1. Opportunity for County Council to comment upon Requests for Proposals (RFPs) prior to the RFPs being publicly bid -- No response necessary.

Please note that this comment relates to an RFP initiated by the prior Administration.

Our testing of a random sample of 15 non-Special-Services purchase orders revealed one item in which the competitively-bid Request for Proposal (RFP) stated that the vendor was to “furnish engineering / project management consulting services for sanitary sewer, civil, and wastewater projects for various projects as needed ... Each assigned project will require a separate purchase order specific to that project ...” The RFP indicated that the contract would continue through 6/30/02 and could be renewed for a period of three additional years on a year-to-year basis. The initial \$1,800,000 contract (purchase order # 109346, dated 03/19/02) executed between the County and the selected vendor was for the vendor to “furnish services required for the North Brandywine Sewer Rehabilitation Program.”

The purchase order (# 123058, dated 12/20/04) we selected in our sample was for a new \$2,200,000 contract executed between the County and the vendor to “furnish services associated with the planning, design, construction, and program management phases of the South Brandywine Sewer Rehabilitation Program.”

In performing further research, we discovered three other purchase orders (all associated with another new contract) associated with the original RFP. These were as follows:

- \$1,300,000 purchase order (# 113834, dated 03/25/03) “for professional services to provide engineering, design, and related services for the South Brandywine Hundred Project ...” Please note that there was a written contract for this purchase order.
- \$120,000 purchase order (# 116384, dated 08/08/03) to “increase PO113834 by \$120,000 making new total \$1,420,000. Increase is for flow-metering for the South Brandywine Hundred Sewer Rehab project.”
- \$100,000 purchase order (# 122842, dated 11/22/04) “to provide flow-metering services for the South Brandywine sewer rehabilitation program. New contract amount \$1,520,000.”

We also found a \$2,560,000 purchase order (# 122119, dated 09/14/04) “for professional engineering services for the continued design of Brandywine Hundred sewer rehab projects ...” There was a new, written contract associated with this purchase order, and this contract was also associated with the original RFP.

We realize that the RFP stated that the vendor was to “furnish engineering / project management consulting services for sanitary sewer, civil, and wastewater projects for **various projects** as needed”, and that the other contracts were for additional projects

(e.g., the South Brandywine Sewer Rehabilitation Program). However, we find it difficult to believe that County Council would have approved of an RFP which was basically an open-ended contract to assign multiple high-dollar projects to a single vendor. Adding up all of these purchase orders reveals a total of \$8,080,000 was expended for projects associated with the original RFP.

Since the County was initially looking for work to be performed for the North Brandywine Sewer Rehabilitation Program, we don't understand why the original RFP would not have stated this, and thus made it mandatory that the County put out another RFP for the South Brandywine Sewer Rehabilitation Program. At a minimum, we believe that County Council should have been formally informed that the County was contracting with the same vendor for work which was not part of the original contract.

In early 2006, County Council passed an ordinance which provides:

“Prior to the solicitation for competitive bids, competitively sealed bids or proposals, or the issuance of written purchase orders or contracts for any non-professional or professional services to be paid with public funds, ... the Administration shall provide to Council information ("Prospective Contract Information"), updated weekly,” ... regarding the prospective contract ... “Within seven (7) days after the receipt of such prospective contract information, if any member of Council has a concern regarding any prospective contract, and such concern is not alleviated through discussions with the administration, the Council member shall request that such prospective contract be placed on the next finance committee meeting as an agenda item.”

Had this ordinance been in effect at the time the RFP in our sample was put out for bid, County Council would have had the opportunity to question why the County was going to advertise an open-ended contract to assign multiple high-dollar projects to a single vendor. Since this ordinance is now in effect, a response to this comment is not necessary.

Management's Response

The purpose of the RFP and subsequent contracts was to remedy environmental issues which resulted in a Secretary's Order with the Delaware Department of Natural Resources and Environmental Control (DNREC). Pursuant to the Order, the County had to collect data and monitor the entire Brandywine Hundred sewer system, develop a hydraulic model of the system, develop a plan to fix the system and eliminate overflows, design and construct extensive system improvements (over one hundred million dollars) and update DNREC annually on the progress. With the unique nature of this situation, which required the County to coordinate closely with a regulatory agency related to environmental violations, the Special Services Department felt that the County would be best served with one vendor developing and overseeing all plans for the entire system. It was not clear the full scope of work that would be necessary until after the data gathering, testing and hydraulic model

were complete. By retaining the same consultant once a plan was developed, the County could best ensure compliance with the plan.

In addition, it was far less expensive and expedient to perform the work with one vendor because if multiple firms were hired they would likely conduct duplicate research and analysis, because of each firm's unwillingness to rely on the work of another firm over which they had no oversight or control.

Now that the findings are complete, the Special Services Department has separately advertised and awarded other large design contracts related to the project (Governor Printz Interceptor, North Delaware Interceptor, Lateral Inspection, etc.). However, the department felt that it was more cost effective to have the original vendor perform some of the smaller design projects. In so doing, the primary vendor subcontracted some of the design work to eleven other firms.

The Special Services Department has regularly updated Council with respect to this project due to the Secretary's Order and due to the significant cost of the project.

In summary, because all of the Brandywine Hundred work is being performed pursuant to a Secretary's Order, it is critical to stay in compliance with the EPA and DNREC. In such instances, it is often better to have one firm develop a comprehensive plan and obtain agency buyoff rather than to have multiple firms with competing ideologies and methodologies. Furthermore, with the tight compliance schedule, the initial vendor already understands the project and is in the best position to manage it overall at this point, with other firms working on individual projects.

2. Ensure vendor complies with insurance requirements in RFP. Consider having the Risk Management Division sign off on any insurance policies where the Purchasing Agent is not certain whether or not the insurance requirements are met.

Our testing of a random sample of 15 non-Special-Services purchase orders revealed two instances in which it appeared that the vendor did not provide evidence that it complied with all of the insurance requirements per the Request for Proposal (RFP). These instances were as follows:

- One insurance policy provided by a vendor did not address an umbrella policy or a Dishonesty of Employees policy as required by the RFP. There was an e-mail in the file asking the vendor for these, but apparently evidence of such policies was never obtained. The vendor's proposal stated that the vendor agreed to all insurance requirements and would provide insurance certificates upon the awarding of the bid.
- One insurance certificate obtained from a vendor did not indicate, as required by the RFP, that the vendor had automobile insurance, workers compensation insurance, or employer's liability insurance. The insurance certificate also did not include \$2,000,000 in annual aggregate for general liability and did not identify the "hazards" named in the RFP. We did see notes in the files indicating that automobile, workers

compensation, and employer's liability are not needed because the workers are "offsite." We discussed the meaning of "offsite" with the Risk Management Division who informed us that "offsite" means that the people working under the contract will not normally be performing their work at County facilities and, thus, these types of insurance are not necessary to protect the County. Thus, it appears that the Purchasing Division sometimes uses standard insurance language in the County's Requests for Proposal (RFPs) that does not necessarily reflect the insurance requirements the County actually expects. Please note that the insurance policies received from this vendor in later years did show that the vendor has \$2,000,000 in general aggregate for general liability.

Although it definitely looks like the Purchasing Agents are checking for all insurance requirements required in the RFP, and are consulting with the Risk Management Division when they have questions, we recommend that management implement one or more of the following procedures to strengthen internal controls and ensure evidence exists that the vendor is in compliance with all insurance requirements. For example, management could:

- implement a checklist which requires the Purchasing Agent to sign off that all insurance requirements have been met, or
- designate a specific individual in either Purchasing or in the Risk Management Section of Human Resources who checks all insurance policies.

Management's Response

Procurement specifically states in the bid specifications the required insurance levels as dictated by the County Risk Management Office. Upon award, the vendor's proper insurance certificates must be on file before a purchase order is issued. We have added insurance certificates to our bid package checklist. Procurement's Senior Office Assistant monitors this list and any required renewals.

3. Update/enhance Purchasing Manual.

The existing Purchasing Manual is dated 08/05/03 and is in need of revision due to Code changes and other reasons. We reviewed the purchasing manuals for a few other municipalities and have several suggestions to enhance the Manual's value to County employees. We also believe that the Purchasing Division should form a small working group to discuss other potential enhancements. Our suggestions are as follows. (Please note that we do not necessarily expect to see all of our suggestions encompassed in the Manual. Management must establish their own priorities on what, and when, to include in the Manual.)

- Place the manual on the County's Portal so that it is easily accessible to all employees.
- Include an index in the Manual. In doing so, consider the whole structure of the Manual and whether the layout is most conducive to being easily understood by the users. For example, management may want to create separate sections on User

Requirements, Vendor Requirements, Purchasing Division Requirements, and County Council Requirements.

- In general, ensure the Manual is consistent with the recent changes made to Chapter 2, Article 5, Section 2.05.502, “Purchasing of Supplies and Contractual Services”; Chapter 2, Article 5, Section 2.05.303, “Purchasing of Contract Construction”; and Chapter 2, Article 2, Section 2.02.004, “Approval of Contracts by County Council.”
- Include an overall Mission Statement for the Purchasing Division.
- Include exhibits when referring to specific forms, reports, or computer screens.
- Place in the Manual the new policies and procedures for the Purchasing Review Committee, as well as any other new policies and procedures. It helps the user if all policies and procedures regarding the purchasing function are in a central location.
- Although we realize that the County does have a Code of Ethics (located on the New Castle County Ethics Commission’s website), we believe it makes good sense to include in the Purchasing Manual either the County’s Code of Ethics as a whole or those items from the Code which apply to the purchasing function. In doing so, management should strongly consider including any Ethics Commission Advisory Opinions which relate specifically to the procurement function. We also believe it makes good sense for the Purchasing Agents to be required annually to acknowledge that they have read and understand the Code of Ethics.
- Include procedures for how to complete a purchase requisition on the Tier System.
- Consider adding specifics on how the County determines whether the vendors “... are financially stable, have high ethical standards, and have a record of adhering to specifications, maintaining shipping promises, and giving a full measure of service.”
- Consider further clarifying the term “lowest responsible vendor.” This term was recently clarified in the “Purchasing of Contract Construction” section of the County Code and we believe it also makes good business sense to clarify it (and/or develop certain forms for the vendor to submit to demonstrate being “responsible”) in the “Purchasing of Supplies and Contractual Services” section of the Code also.
- Consider increasing the 30-day timeframe by which an award has to be made as this timeframe is not realistic in many situations. (Please note that this would require a change to County Code.)
- Add information to the Manual on purchases made under the State’s contract or other similar contracts.
- Add information to the Manual on sole-source purchases; in particular, the definition and the approval process for these.
- Add information to the Manual for the procedures to follow when a bidder protests the award of a contract to another vendor.
- Include information in the Manual on the typical insurance requirements to be included in a Request for Proposal.
- Re-evaluate the rule for when a performance deposit will not be required, i.e., “... any amount on contracts for supplies or contractual services if the contract is for an estimated amount of \$75,000 or less and performance is to occur within 120 days.” There could be instances where a user may desire to obtain a performance deposit in such a situation.
- Define and/or clarify the types of situations where the Director of Administrative Services may make the “... determination that the use of competitive sealed bidding

is either not practicable or not advantageous to the using agency ...” and procurement should instead “... be effected by competitive sealed proposal.”

- Make it clear in the Manual, as in the County Code, that “contract splitting” (i.e., separating large purchases into multiple smaller purchases to avoid the competitive bidding process or the County Council approval process) is prohibited. Also, make clear the penalties for doing so.
- In the section titled “Contract Process”, make it clear the situations where a written contract is needed and where one is not. Also include information on the process for contracts that are renewed annually (e.g., user must give authorization to extend/renew contract).

We recommend that management update/enhance the Purchasing Manual, giving consideration to the above suggestions.

Management’s Response

The Purchasing Manual will be updated to reflect the revised Administrative Services’ section of County Code and the appropriate administrative policies and procedures currently in effect.

4. Ensure vendors, in multi-award situations, are informed that such awards are no guarantee of County business.

The Purchasing Manual states “An agency may award a contract for a material or nonprofessional service to two or more firms if the Chief Procurement Officer makes a determination that such an award is in the best interest of the County. If such a determination is made, the bid shall include a notification of the right of the agency to make such an award.”

Our testing of a random sample of 15 non-Special-Services purchase orders revealed one item in which the purchase order selected was for information technology services awarded to a vendor under a multi-award contract. (Please note that this particular RFP did contain the notification mentioned above.)

The proposals for this particular RFP were ranked based on various factors contained within the RFP and the firms that were multi-awarded the contract were the top seven ranked firms. The Director of Administrative Services and the Chief Purchasing Agent informed us that it is common to multi-award a contract for information technology services so that the County can ensure it will have a vendor ready to do the work when the work is needed.

As indicated above, neither the Code nor the Purchasing Manual state that the award must be made solely to the highest-ranked firm, and the Purchasing Manual allows for contracts to be multi-awarded. However, as protection for the County in the event of one of the awarded firms questioning why it does not get more of the business during the life

of the contract, we believe it makes good sense to notify the vendor in writing that the awarding of the bid (in a multi-award situation) does not in any way guarantee that the vendor will in fact receive any County business.

The Director of Administrative Services informed us that the above recommendation has been implemented.

Management's Response

All multi-award bid specifications/RFPs, award letters and contracts now include clarifying language stating, "...that New Castle County is vested with the discretion to award a request for services and/or products in a manner and degree as determined by New Castle County. There is no guarantee that New Castle County will grant to any awardee any request for services and /or products."

5. Ensure user area provides adequate support for amount of original purchase order as well as purchase order increases.

Our testing of a random sample of 15 non-Special-Services purchase orders revealed three purchase orders in which it was difficult for us to determine how the amount of the purchase order was determined (either the original purchase order or an increase made to it). We realize that establishing the amount of a blanket purchase order necessarily involves estimates (e.g., how much the County expects to pay the Pension Program actuary in a given year); however, we believe the user should provide Purchasing with adequate documentation supporting the estimate. Also, if the user requests a change to an existing purchase order, we believe the user should provide adequate supporting documentation along with the Advice of Change. For example, one of the advices of change we reviewed, for \$90,000, had the language "This increase should accommodate invoicing for March, April, May, and June for professional fees including actuarial valuations, accounting reporting, consulting, and administration." The advice of change was not accompanied by any documentation supporting that these services would cost approximately \$90,000. The Purchasing Manual merely states: "In order to amend a Purchase Order, an Advice of Change must be sent to Purchasing."

It should be noted that the following mitigating controls exist.

- There currently exists a Purchasing Review Committee (PRC). The PRC is responsible, per an Administrative Services Policy dated 01/10/06, to "... hear and respond to requests for contract/project amendments/change orders, add-ons, and overruns." The Chief Purchasing Agent informed us, however, that this policy only relates to capital projects.
- The Chief Purchasing Agent informed us that when a Purchasing Agent inputs a purchase order (or a change to an existing purchase order) to the Tier System, the System automatically performs a financial check for sufficient funds. If funds are not available in the particular area's budget, the Agent will receive a "fatal error" and the new/changed purchase order will not post.

We still feel it is important, however, for the user area to provide sufficient documentation for the amount of a purchase order or a change to it.

We recommend that the Purchasing Division always require the user to submit adequate supporting documentation, authorized by the Department Manager, for the amount of an initial purchase order as well as for any changes to existing purchase orders.

Management's Response

The amount of initial blanket purchase orders represents the requesting department's best estimate of funding necessary for the year. Often, past usage history, professional estimates and or identifiable or anticipated changes in business operations are utilized to develop the initial allocations. Once the requisition is received, Procurement reviews the submission and determines acceptance or requests modification.

6. Require documented approval from user for the renewal/extension of existing contracts.

The Purchasing Manual does not contain a section on the renewal/extension of existing contracts. Our testing of a random sample of 15 non-Special-Services purchase orders revealed eight purchase orders that were extensions of existing contracts. For four of these purchase orders, the file did not contain authorization for the extension from the user. Although we have confidence that the Purchasing Agent did indeed discuss the extension with the user area, we believe it makes good business sense to have the user formally document their approval.

In instances where the County is extending an existing contract, we recommend that the Purchasing area require the user to formally document their approval.

Management's Response

We currently accept e-mail confirmation from the user department general manager or his/her designee. A copy is placed in the permanent bid file and is available for inspection.

7. Document approval from users authorizing completed specifications for Requests for Proposal.

The Purchasing Manual states: "Completed specifications will be sent to the Department's General Manager or Row Officer for final approval prior to going to bid. Agencies shall approve specifications by signing and returning to Purchasing." Our testing of a random sample of 15 non-Special-Services purchase orders revealed eight items for which a formal request for proposal (with specifications) was required. For six

of these items, we did not see evidence in the files that the user agency had formally approved the completed specifications. Although we have confidence that the Purchasing Agent did indeed ensure the user agency approved the completed specifications, we believe it makes good business sense to have the user formally document their approval.

In accordance with the requirements of the Purchasing Manual, we recommend that the Purchasing area ensure that the user formally approves the completed specifications by signing and returning them to Purchasing (or by sending an e-mail specifying their formal approval).

Management's Response

Procurement requires the requesting general manager respond in writing their approval of the bid specifications before a bid announcement is released. The approval is placed in the permanent bid file and is available for inspection.

8. Consider designing a standard checklist to ensure that all major steps during the procurement process are performed as intended.

For all of the files we looked at in our testing, we noted that the outside of the file envelope contained a checklist which is not being used. Also, some of the files contained a checklist which the Chief Purchasing Agent informed us can be used by the Purchasing Agent as an aid but is not required.

Although the Purchasing area does not require the Purchasing Agents to complete a standard checklist, we believe that some of the findings in this report would not have occurred had the use of a standard checklist been in place.

To ensure compliance with all key steps that occur during the procurement process, we recommend that management consider designing a standard checklist which Purchasing Agents would be required to complete (and sign/initial) and which would become a part of the file.

Management's Response

The current practice requires the checklist be utilized to ensure all bid processes and requirements have been met and documented.

9. Develop policies and procedures for keeping master vendor file current.

We did not review the master vendor file because of its size and the fact that our ACL audit software was not available at the time of the audit. Had we reviewed it, a key item we would have looked for was vendors who have not had any activity with the County

for an extended period and the County's efforts to purge these vendors from the file (if deemed applicable).

When the Audit Department sent out RFPs for particular projects during fiscal year 2006, we noticed that the list of firms provided to us by Purchasing appeared to be outdated. For example,

- There were several firms whose names were hand written on the list. We are assuming this means that these firms are not listed on the master vendor file.
- There was at least one firm whose name has changed but the name change was not reflected on the file. It should be noted that Purchasing really has no way of knowing about a name change unless the firm itself contacts them.
- There appear to be some firms who were once used by the County but haven't been used for a number of years.
- There were some firms that Purchasing had crossed out on the list, indicating that Purchasing itself knew that these firms should no longer be on the file.

We understand that Purchasing has many key responsibilities and that "cleaning up" the master vendor file is not a top priority. However, as time allows, we recommend that:

- Purchasing develop a written policy identifying the circumstances under which a vendor can be deleted from the file.
- Develop a procedure to quickly add a vendor to the master file when a vendor requests to be so added.
- Develop a procedure by which Purchasing will be informed of vendor name changes.

Management's Response

The County's small business development technology partner – DeIEXCHANGE – has initiated a project to update/cleanup our vendor master file. The vendor information update includes obtaining: W-9s, M/WBE classifications, commodity/service classifications, and e-mail addresses as a cost-effective outreach tool. At the completion of this project, the County master file will contain updated information on all current vendors as well as those in our master file that are not actively doing business with the County but wish to remain in our data base. Once the vendor registration application is made available via the internet, the ability to continuously update vendor information will be at our fingertips.

Comments and Recommendations
Other Reportable Items – Special Services

1. Policies and procedures for complying with County Ordinance No. 06-117 dealing with responsible contractor principles for contractors bidding on Special Services contracts. No response necessary.

County Code Section 2.05.303.D.5.a requires construction contracts to be awarded to the “lowest responsible bidder.” Our testing of a random sample of 20 special services purchase orders revealed that the Special Services Department, during the audit period, usually required certain forms that dealt with helping to ensure the contractor was a “responsible” one, e.g.,

- Notarized Non-Collusion Statement.
- Notarized Statement of Uncompleted Contracts.
- Notarized Affidavit of Intended Utilization of MBE/WBE (Minority Business Enterprise, Women’s Business Enterprise) Subcontractors.
- Notarized Certification that all State income and county property and sewer fees have been paid.

When such documents were required in the RFP for our testing items, we generally located such documents in the file. (There were a few exceptions which we have provided to management.)

In October, 2006, County Council passed an ordinance to help:

- Define the word “responsible” as it relates to bidders on special services contracts.
- Add greater assurance that all work under special services contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personnel, and other qualifications and resources necessary to successfully perform and complete such projects in a timely, reliable, and cost effective manner.
- Ensure greater compliance with the section of the County Code dealing with workplace diversity and equal employment opportunity.

This ordinance requires contractors submitting bids to submit a Contractor Responsibility Certification for contracts where the probable cost of the contract is expected to exceed \$100,000. Such Certification must include, among other things,

- “Certification that the bidder has the necessary experience, technical qualifications, and resources ... to successfully perform the special services contract ...
- Certification that the bidder has all valid, effective licenses, registrations, or certificates required by federal, state, county, or local law ...
- Certification that the bidder meets the bonding requirements for the special services contract ... and any insurance requirements per applicable law or contract specifications ...
- Certification that the bidder has not within the past three years been found ... in violation of any law applicable to its contracting business ...
- Certification, for each trade or classification in which the bidder will employ craft workers for the special services contract, the bidder” participates (or commits to participation) in an apprenticeship program that meets certain requirements.

- “Certification that the bidder will fully abide by the equal employment opportunity requirements of all applicable laws ...
- Certification that the bidder will produce ... a list of subcontractors it will use ..., a brief description of their work, and completed and executed copies of Subcontractor Responsibility Certifications for the identified subcontractors.” (applies only to those subcontractors with subcontracts of \$50,000 or more)

We understand that Special Services management has already developed certification forms and procedures to ensure compliance with the ordinance passed by County Council. We also understand that County Council was given the opportunity to review the forms and procedures and did not have any comments.

2. Maintain minutes of all pre-construction meetings.

Our testing of a random sample of 20 special services purchase orders revealed 16 instances where there was a pre-construction meeting with the applicable contractor(s). Although it is a procedure to record written minutes of these meetings, we could not locate minutes for seven of these instances. Management informed us that the meetings were held but that the minutes could not be found. Not having written minutes could cause a problem if questions were to arise later regarding what transpired during the meeting.

We recommend that management ensure that written minutes are recorded and maintained for all pre-construction meetings.

Management’s Response

Special Services will continue to ensure that minutes of pre-construction meetings are recorded and maintained and are available for inspection.