

FOLLOW-UP AUDIT
REPORT OF THE
PROCUREMENT
FUNCTION

*Final Report
April 30, 2014 from
the New Castle
County Auditor's
Office*

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Follow-up Audit Report of the Procurement Function

To: Tonney Gardner, Chief of Administrative Services

Andria Smith, Chief Purchasing Agent

Background

In February 2007, the County Auditor's Office issued an Audit Report on the Procurement Function. (See Appendix 1.) The Audit Opinion stated: "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."

This is a follow-up audit to determine whether Administrative Services and Special Services have implemented the recommendations in that report. There were eleven comments in the report which included an audit recommendation and required a management response regarding corrective action.

Audit Objective

Delaware Code, Title 9, Chapter 14, Section 1405 states "The County Auditor shall follow up on audit recommendations ... to determine whether corrective measures have been implemented ..."

Therefore, the primary objective of this follow-up audit was to determine that either (1) corrective action was taken on the comments and recommendations from the February 2007 audit report and that such action is achieving the desired results or (2) Executive Branch management has assumed the risk of not taking corrective action.

Specifically, we:

- Met with management to determine the current status of each comment and recommendation.
- Where deemed applicable, performed audit testing.

Audit Scope

We conducted this follow-up audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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.

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 the County’s ability to accomplish its major objectives regarding the procurement function.
- A Significant Deficiency is a control exception that is of a lesser magnitude than a material weakness; however, it could potentially, in the future, have an adverse impact upon the County’s ability to accomplish its major objectives regarding the procurement function and, therefore, warrants management’s attention.
- Other Reportable Items are opportunities for improvements in the system of internal control over the procurement function.

Audit Results

We use the following terms to classify our testing results for the recommendations from the February 2007 audit report.

- **Implemented:** Sufficient and appropriate evidence exists to support that all elements of the recommendation have been implemented.
- **Partially Implemented:** Sufficient and appropriate evidence exists to support that certain – but not all -- elements of the recommendation have been implemented.
- **Not Implemented:** Evidence did not support meaningful movement towards implementation or implementation will take additional time before progress can be measured.
- **N/A:** The recommendation is no longer applicable to the area or the decision was made by the County Auditor that the recommendation did not need to be tested.

Our audit revealed the following:

Recommendation	Implemented	Partially Implemented	Not Implemented	N/A
Recommendations made to Management	3	4	1	3

A chart showing each of the audit recommendations from the February 2007 report, and its current status, can be found in Appendix 2. Beginning on page 6, we have provided more detailed information concerning the current status of each recommendation.

As a result of this follow-up audit, we also have some new Comments and Recommendations beginning on page 14.

Overall, this report contains one material weakness and several other reportable items. The material weakness is on page 6, Other Reportable Item #2.

Recognition of Participation and Cooperation

We would like to thank the Chief of Administrative Services (former and current), the Acting Chief of Special Services, and the County Attorney, as well as their staffs, for providing cooperation during the course of the audit.

Response

Management's response is included after each individual report comment.

cc: Thomas Gordon, County Executive
David Grimaldi, Chief Administrative Officer
James McDonald, Chief of Staff
Wayne Merritt, Acting Chief of Special Services
Bernard Pepukayi, County Attorney
Antonio Prado, Communications Director
Tracey Surles, Special Services Senior Manager
Cathy DiCristofaro, Special Services Finance Officer
New Castle County Council Members
New Castle County Audit Committee Members

Status of Recommendations from Prior Report

General Comments from Prior Report

#1 – City of Wilmington Opportunities

Continue to pursue with the City of Wilmington opportunities to streamline services and reduce or share costs. (Note: This comment appeared in the audit report because \$3 million of the \$15 million public safety grant the County made to the City of Wilmington was contingent upon various officials from the County and City governments meeting to study ways to reduce inefficient and duplicate government services. The report produced from this meeting(s) included two items relating to the procurement function.

N/A – We did not perform any audit work in this area. However, it is our understanding that the Gordon Administration intends to work closely with the City of Wilmington to identify areas where the County and City can collaborate.

#2 - Right to Audit Clause

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

Implemented - The Professional Services contract and the Special Services contract both contain the "right to audit" clause.

Other Reportable Items from Prior Report

#2 – Compliance with Insurance and License Requirements

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.

Partially Implemented - Follow-up testing revealed this area is still a challenge for Purchasing and Special Services. Testing highlighted a Material Weakness in that controls are not adequate to ensure that applicable County vendors have current, required insurance coverages and licenses. It should be noted that Purchasing has the responsibility for following up on these items for all contracts other than construction contracts. Special Services has the responsibility for following up on these items for construction contracts.

We tested a sample of 17 bid files which required the vendor to have a particular insurance coverage(s) and a valid Delaware business license, and found the following:

1. The Purchasing Division utilizes a checklist to ensure key steps are performed throughout the procurement process. However, the checklist step "PA (Purchasing Agent) received Certificate of Insurance and Business License" was not completed for any of the checklists. Furthermore, we could not locate the actual insurance certificate in four (24%) of the files, an indication that it may have never been obtained. This step should be completed as evidence that the PA ensured these documents were received.
2. Of the 13 files that did contain an insurance certificate, six (46%) of the certificates were not current. The Chief Purchasing Agent informed us that she has now implemented a manual tickler file, for contracts other than construction, to follow up with vendors whose insurance certificates are due to expire.
3. Of the 13 files that had insurance certificates, the coverage on eight (62%) of the certificates did not match the requirements in the RFP. Also, there were two insurance certificates we could not compare to the RFPs because the RFPs did not specify any particular insurance coverage.
4. Four (24%) of the files were missing copies of the firm's Delaware business license. Furthermore, of the 13 files that did contain a business license, nine (69%) of them were not current. The Chief Purchasing Agent informed us that she has now implemented procedures, for contracts other than construction, to enhance the controls over ensuring NCC has current Delaware business licenses. When a contract is extended, the Purchasing Division now asks for a copy of the vendor's business license and insurance certificate to be included in the paperwork that is returned to the County confirming the extension of the contract.
5. Most of the bid files for Special Services construction projects had the necessary NCC contractor's licenses, but over half of them were out of date. Thus, the County could be losing revenue. It appears that Special Services has not implemented a control to follow up on these.
6. Some of the contracts we reviewed required professional liability insurance to be carried for three years after the completion of the project. It appears that there is no mechanism in place to follow up on these. Please note that our testing revealed a situation (involving an architect) where we did not see evidence that the required professional liability insurance coverage was being maintained after the completion of the project.

As a result,

- The County could be subject to liability in a lawsuit if the vendor does not have the proper insurance coverage.
- The County could be dealing with unreliable vendors if such vendors do not have a valid Delaware business license.

Recommendations - Purchasing

We recommend that Purchasing management:

- Ensure the PA's complete the "PA received Certificate of Insurance and Business License" step on the checklist.
- Monitor the new controls over ensuring vendors have current insurance certificates (which provide the insurance coverages per the RFP) and Delaware business licenses.
- Follow-up on the insurance aspect of contracts in which the County "piggybacks" the State or other entity. Purchasing needs to have a procedure in place to ensure the County is covered under the vendor's insurance policy.
- Establish a mechanism to follow up on vendors where professional liability coverage is still required three years after the completion of a project.
- If and when a team is formed to investigate a new County financial system, inform this team that one of Purchasing's requirements would be the ability to track, and receive notifications of, expiring insurance policies and Delaware business licenses.

Management Response – Purchasing

Since the follow up audit, Purchasing has initiated an audit of all bid files to ensure current insurance certificates and business licenses are up to date and the checklist is completed. A tickler file has been established to monitor expiring insurance certificates and business licenses. We will work on a process to ensure NCC is covered under piggyback contracts.

We agree that an automatic notification should be a key feature when looking to upgrade the Purchasing module of the Tier Performance System.

Recommendations – Special Services

We recommend that Special Services management:

- Implement enhanced controls over ensuring vendors have current insurance certificates (which provide the insurance coverages per the RFP), Delaware business licenses, and NCC contractor's licenses.
- If and when a team is formed to investigate a new County financial system, inform this team that one of Special Services' requirements would be the ability to track, and receive notifications of, expiring insurance policies, Delaware business licenses, and contractor's licenses.
- Consider requiring evidence of insurance coverages and licenses, at key points during a project, when the vendor submits bills for payment. Such language could be incorporated into the contract or RFP.

Management Response – Special Services

The Contracts Officer verifies licenses and certificates of insurance prior to award. The Special Services Contracts Officer reviews licenses and insurance requirements prior to the pre-construction meeting for each project. If any licenses or insurance requirements are outdated or insufficient, the Contracts Officer requests the proper licensing and insurance and this is documented in the meeting minutes.

Special Services has modified its pay estimate to include a line for each required license and certificate of insurance. Special Services' finance section will review these lines before processing payment. The finance section will notify the County project manager a month or more before any license or insurance requirements expire so that the project manager can request new documents from the contractor. No payments will be made without proof of current and sufficient licenses and certificates of insurance. The Contracts Officer is currently reviewing all open contracts to establish the expiration dates to add to the pay estimates.

Special Services will add language to construction contracts notifying contractors that proof of valid licenses and insurance will be required prior to payment of invoices.

Finally, if and when a team is formed to investigate a new County financial system, Special Services will tell this team that one of Special Services' requirements is the ability to track, and receive notifications of, expiring insurance policies, Delaware business licenses, and contractor's licenses.

#3 – Purchasing Manual

Partially Implemented - Purchasing updated their Purchasing Manual on 2/1/2011. In the 2007 audit report, Audit provided many suggestions on what to include in the next revision of the Manual. Some of the suggestions were accepted; others were not.

Recommendation

We reviewed the changes that were made to the Purchasing Manual in light of our suggestions and provided Purchasing management with a list of items that management should consider the next time it makes a revision to the Manual.

Management Response – Purchasing

We are taking these recommendations under consideration.

#4 – Multi-award Situations

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

Management 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.”

Not implemented - The County Auditor's Office did not see the language mentioned in Management's response in recent RFPs, award letters or contracts. One RFP we reviewed, which sought unpriced proposals from professional architectural firms, did include the following statement:

Pursuant to New Castle County Code section 205.502 B.8., New Castle County may multi-award this contract.

However, this statement does not inform the potential awardees that such award is no guarantee of County business.

We also saw conflicting messaging being sent to a vendor -- first rejecting the vendor, then including them in a multi-award correspondence when there was no indication in the RFP that the bid would be multi-awarded. Management informed us that occasionally a contract may be multi-awarded if the RFP had multiple items on it and not all vendors could supply all of the requested items.

Recommendation

We recommend that Purchasing management consult with the Law Department to ascertain if the language included in management's response to the 2007 audit report should be included in all multi-award letters and contracts.

Management Response – Purchasing

Purchasing feels the above statement in the bids is sufficient; however, going forward, all award and renewal letters for multi-awarded bids will have a statement that no work is guaranteed under the multi-award. This language was reviewed and agreed upon with the attorney assigned to Purchasing.

#5 - Adequate Support for PO Increases

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

N/A - Not included in this follow-up report. We tested this item in our follow-up audit of the Construction Project Change Orders report.

#6 – Documented Approval for Renewal of Existing Contracts

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

Partially implemented

In performing our follow-up testing of 17 purchase orders, there were 7 contracts that were eligible for renewal and the time period of the initial contract period had expired. We noted the following regarding User Department approval of the renewal:

- For purposes of notifying departments on contracts which are eligible for renewal, Purchasing maintains Excel spreadsheets (with contract expiration dates) for most of the types of contracts; however, at the onset of our audit, they did not have a spreadsheet for professional services contracts. When we brought this to their attention, they created such a spreadsheet. (Note: One of the spreadsheets Purchasing was maintaining did not have the contract expiration dates on it; this was also corrected as a result of the audit.)
- One annual contract did not have a renewal letter on file. Purchasing informed us that the County now “piggybacks” off the State for this contract and this is the reason why there is not a renewal letter. However, we believe Purchasing should have evidence in the file to indicate the County verified that the State renewed the contract.
- If a department decides to renew a contract with a vendor, the Chief of Administrative Services sends a letter to the vendor stating “We (NCC) have been pleased with the service your firm has provided. Thank you for your continued interest in doing business with New Castle County.” In two of the vendor files, we noted that the County had experienced issues with the vendor, yet Purchasing still sent the standard letter stating the County was pleased with the vendor’s service. We believe this sends a conflicting message to the vendor and could impair the County’s case if it decides to later terminate the vendor due to another issue(s). We also believe that departments should be required to complete a vendor evaluation form prior to making the decision on whether to extend a contract. (Perhaps if they are required to complete an evaluation form, more thought would be given to any issues the County has had with the vendor.)

Recommendations

We recommend that Purchasing management:

- If and when a team is formed to investigate a new County financial system, inform this team that one of Purchasing’s requirements would be the ability to track, and receive notifications of, expiring contracts.
- Identify all vendors in which the County is “piggy backing” off of a State contract, obtain the applicable State contract, have the Law Department review and approve the contract, and provide the contract to the individual responsible for managing the contract.
- Obtain evidence/verification of the renewal of contracts in which the County “piggybacks” off the State and place it in the file.
- Consider having departments complete a Vendor Evaluation Form before renewing a contract (at least for those over a certain dollar amount).
- Adjust the standard vendor letter, sent upon renewal of a contract, when there have been issues with the particular vendor.

Management Response – Purchasing

Purchasing will establish an annual file of “piggy back” contracts the County is utilizing and also provide the using agency with a copy or link where the contract is available. In addition, we will monitor the contract renewals and attach a copy of the renewal to the contract.

After discussion with the attorney that represents Purchasing, it is not necessary to review State Contracts. The State and County are subject to the same restrictions of the Code and include appropriate indemnification and choice of law provisions.

The Purchasing Office annually reviews contracts with the various departments and requires written approval from the contract administrator and the Department General Manager to offer an extension. However, we will work on the development of a Vendor Evaluation Form for future use.

#7 – Authorized Specifications for RFP

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

Implemented - Testing of non-Special Services items revealed that bid folders included the emails showing the area was contacted and that the GM sent back his/her approval of the specifications for the RFP. This approval is needed before the RFP can be listed.

For Special Services, the request to advertise the RFP includes the signatures from the area approving.

#8 – Standard Checklist

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

Partially implemented - In our 2007 audit report, we recommended “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.” Purchasing does now have a standard checklist.

The standard checklist is not always being completed to ensure that all major steps during the procurement process are performed as intended. In performing our follow-up testing of 17 purchase orders, we noted that Purchasing is utilizing the checklist but is not always completing the following steps:

- Purchasing is not always completing the checklist step “PA (Purchasing Agent) received Certificate of Insurance and Business License.” See Other Reportable Item #2 on page 6 of this report.

- The checklist steps “PA review & approval” and “Email GM” (the Purchasing Agent is supposed to contact the Department General Manager for final approval of the bid specifications) are not always being completed. For the most part, though, we did see other evidence that the GM was contacted.

Recommendations

See Other Reportable Item #2 on page 6 for our recommendation concerning insurance.

We recommend that Purchasing management instruct the Purchasing Agents to complete all steps on the checklist.

Management Response – Purchasing

The files are being audited for compliance. Going forward, the checklist will be completed prior to filing the bid.

#9 – Master File Policy and Procedures

Develop policies and procedures for keeping master vendor file current.

N/A - Not included in follow-up.

#2 – Special Services – Pre-construction Bid Meeting Minutes

Maintain minutes of all pre-construction meetings.

Implemented

New Comments and Recommendations

Listed below are new comments and recommendations as a result of our follow-up audit.

General Comments

Comment I.

The Purchasing Division is primarily responsible for handling the procurement process through the point where a vendor is selected and a contract is signed. It is generally the responsibility of the department to which the contract relates to monitor the contract to ensure both the vendor and the County are in compliance with the contract terms.

Over the past couple of years, we have seen situations where the County was not adequately monitoring a contract, either because a contract “owner” was never assigned or because a contract “owner” was assigned and then left the County (and another “owner” was never assigned).

We will be addressing this issue in a separate memorandum to the County Executive’s Office and the Law Department.

Management Response

None required.

Comment II.

New Castle County Code Chapter 2, Article 5, §2.05.502 deals with the purchasing of supplies and contractual services. “Contractual services” are defined as “all services acquired by written purchase order or contract required by the County except professional services as defined in subsection B of this Section and contract construction of a ‘public building project’ or of a ‘highway and heavy project’ as defined in [Section 2.05.303](#).”

New Castle County Code Chapter 2, Article 5, §2.05.303 deals with the purchasing of contract construction. “Contract construction” is defined as “the construction, reconstruction, alteration or repair, pursuant to a special services contract, of any public building project or of any highway and heavy project, the cost of which is paid for with public funds, except that work performed under a vocational rehabilitation program shall not be contract construction.”

We are not aware of the history as to why there is one section of the Code dealing with purchasing supplies and contractual services and one section dealing with purchasing contract construction. However, we did note the following:

- The definition of “emergency” differs between the two sections. As noted in our comment titled “Emergencies” (page 17 of this report), it might be practical to have a common definition.
- Vendor performance is addressed in the section on supplies and contractual services but not in the section on contract construction. We do not know why vendor performance would not be addressed in both sections.

Recommendation

We recommend that Purchasing, Special Services, and Law evaluate both purchasing sections of the Code and:

- Determine whether each section contains all elements necessary to ensure the procurement process is handled in accordance with State Code and with best practices.
- Evaluate whether it still makes sense to have one section for supplies and contractual services and one for contract construction.

Management Response – Purchasing

Purchasing is working collaboratively with Special Services and Law to review both the County Code and State Code and make recommendations on standardization/consolidation where applicable.

Management Response – Law

The provisions of the Delaware Code relative to the County’s ability to procure goods and services have been the foundation upon which the procurement sections of the County Code have been crafted and each time the County Code has been amended, the underlying requirements of the State Code have been considered. Having said that, the County Code is, in many instances, more restrictive and exacting in its provisions than the State Code requires it to be.

With respect to the inquiry regarding whether it makes sense to have one section for supplies and contractual services and one for contract construction, it does make sense. The State of Delaware, in its Procurement provisions of the Delaware Code found at Chapter 69 of Title 29, actually breaks its procurement duties into three separate sections: one for material and non-professional services, one for public works contracting and one for professional services. Having said that it does make sense to break the procurement function into separate sections, the County is in the process of evaluating whether it might make sense to centralize responsibility for the different sections in one department. Any such change will likely require legislation to amend the County Code.

Management Response – Special Services

Special Services will meet with Law and Purchasing to evaluate both purchasing sections of the Code pursuant to the recommendations. While a thorough legal review will be necessary, it should be noted that the State Code also separates the purchasing of supplies and contractual services from contract construction. The requirements for elements such as construction specifications, bonding and the certified responsible contractor provisions for construction contracts may make it tough to completely merge the two types of contracts, but amending the Code to ensure greater consistency would be beneficial. Special Services worked on major revisions to the Code for construction contracts a couple years ago, making the County Code conform more to the State Code and clarifying certain provisions. While these proposed revisions have not moved forward, they will provide a good starting point for evaluation with the supplies and contractual services provisions of the County Code.

Contracts Requiring Approval of County Council

Comment

New Castle County Code Chapter 2, Article 2, §2.02.004.C requires that all contracts involving expenditures of funds over \$50,000, which are not competitively bid, need to be approved by resolution of County Council. (Note: Subsequent to the date of our testing, this dollar threshold was changed to \$25,000.)

Our testing of 16 annual contracts which were presented to County Council for approval on June 26, 2012 revealed, per our review of the notes in the Procurement System, that at least four of the contracts had already been signed by the County Executive prior to the Council Meeting.

We obtained copies of these four contracts and also checked the dates in the Activity History on the Contract Tracking System. Based on this, we ascertained that three of the four contracts had been “executed” before the date of the Council Meeting and one was “executed” that same day. (Note: Because the signature page in these contracts did not contain a date, we cannot say for certain whether the County Executive actually signed the contract before the date of the Council Meeting; however, discussion with a Legal Assistant in the Law Department revealed that the execution date is not put in the system until after the County Executive has signed the contract. This may or may not be the date the County Executive signed the contract but it is either the same day or a subsequent day.)

Although the contracts in question are annual contracts for library services and it is unlikely that Council would not approve them, it violates the letter of the law that Council is approving a contract the County Executive has already, through his/her signature, already bound the County to perform. We’d also like to note that we’ve seen other situations over the last year where the County Executive’s Office has executed a contract before obtaining the required approval of County Council.

The Chief Purchasing Agent informed us that the purchase orders for the above contracts were in “No Post” status until Council approved the contracts; therefore, the County would not have expended any funds until County Council approved the contracts. She also informed us that up until recently, contracts were not routed through Purchasing. Now that they are routed through Purchasing before being sent to the County Executive’s Office, Purchasing will not send the unsigned contract to the County Executive’s Office until Council has approved the contract.

Recommendation

We are satisfied with the internal control implemented by Purchasing per the preceding paragraph. Therefore, we would just like management to confirm in writing that this is indeed what they will be doing.

Management Response – Purchasing

To alleviate this issue, Purchasing has been added to the Contract Tracking system. Contracts are held in our office until purchase orders requiring Council review have been approved. Again, purchase orders requiring both a contract and Council approval are held in no post until both approvals are received.

Emergency Purchases

Comment

The following two New Castle County Code sections pertain to emergency purchases:

Purchasing of contract construction: Chapter 2, Article 5, §2.05.303.D.1.a.ii requires construction contracts \$50,000 and over to be competitively bid except “Where the Governor or the County Executive formally declares an unusual emergency exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against and which in the opinion of the County Executive or the Chief Administrative Officer or a County agency requires immediate action for the protection of public health, safety or property.”

Purchasing of supplies and contractual services (except for professional services and contract construction): Chapter 2, Article 5, §2.05.502.A.9 states “When purchases are necessary to avoid serious danger to life, impairment to property or equipment, considerable monetary loss to the County, or when there is insufficient time for competitive bidding, the Chief of Administrative Services or general manager involved may declare an exception. If the probable cost of the purchase order or contract to be made on an emergency basis exceeds twenty-five thousand dollars (\$25,000.00), the County's Chief Administrative Officer must declare that an unusual emergency exists by reason of extraordinary conditions or contingencies that could not reasonably be foreseen and guarded against and which in the opinion of the general manager or head of the agency concerned requires immediate action. A complete

record of the emergency purchase and the situation necessitating the purchase shall be forwarded within twenty-four (24) hours to the Chief of Administrative Services. If the purchase is in excess of twenty-five thousand dollars (\$25,000), a record shall also be sent to the Law Department and the Chief Administrative Officer.”

Also Administrative Services Policy (A.S.P.) #42 states, for emergencies \$25,000 and over, “... notice of the emergency contract will be footnoted on the monthly contract status report submitted to County Council by the Chief of Administrative Services.”

Our testing of a random sample of 17 purchase orders revealed a \$333,850 emergency purchase order for sewers. We have these observations on this item:

- We reviewed the monthly contract status reports and could not find any indication that this particular emergency contract was footnoted on a report. Purchasing management informed us that this was an oversight.
- Special Services informed us that, although they knew about the “emergency situation” in the summer of 2011, they did not engage the vendor until November 2011. Special Services wanted to wait until DELDOT was doing their own work at the location because less asphalt would be needed making the repair. Although we applaud Special Services for wanting to save the County money on this repair, we are concerned that it might not fit the true definition of an emergency per the Code section for contract construction. The emergency reason used on the memorandum from Special Services to the County’s Acting CAO and the General Manager of Administrative Services was “the threat that the extraordinary condition poses to public health and safety.” However, if there was this level of threat to public health and safety in the summer, one must ask the question as to why something wasn’t done about it then. Please note that Special Services did solicit bids from several vendors, so it is not as though Special Services went directly to a single vendor. Also, note that the Chief Purchasing Agent informed us that (1) DELDOT may have originally had their work scheduled at a date closer to the date the emergency was declared and (2) the emergency probably should have been classified as a “monetary loss” emergency as opposed to a “public health and safety” one. (Please note, however, that it is questionable whether a “monetary loss” fits into the definition of emergency in the contract construction section of the Code).
- Special Services maintains a list of vendors to contact in the event of an emergency. At the time of the audit, the engineer handling the emergency situation contacted the vendors, had them send in a bid, and then awarded the contract to the lowest bidder. Sound internal control practices dictate that the same individual should not be involved in all phases of a transaction cycle; therefore, we believe it would be helpful to have a second person involved in this process (perhaps a second person reviewing the bids and making the award).¹ Also, as it looked to us that the vendor list has not been updated in several years, we believe it would be helpful to re-evaluate the vendors on this list (although see below bullet). Special Services should also make sure the vendors have current insurance certificates, Delaware Business licenses, and New Castle County contractor licenses.

¹ Subsequent to our audit, a new staff member is now handling emergency situations and this person is being assisted by a Senior-level staff member.

- There are no written policies and procedures in Special Services for emergency contracts and how to handle them. Thus, if the primary NCC employee responsible for the “emergency contracts” is out of the office and an “emergency” arises, there are no written policies and procedures in place for someone else to handle the situation.
- The County does not have a year-round contract with a vendor to perform emergency repairs for either sewer or paving. (Since the City of Wilmington does have a contract for emergency sewer repairs, we reviewed this contract to determine if this might be an idea for the County to consider. The contract provides unit prices for various aspects of sewer work and labor rates for the people and equipment involved in the work.) The County has considered this idea in the past but would like the capability to award the contract to more than one vendor (to have backup in case one vendor is not available for a particular emergency); such capability does not currently exist in County Code. In July 2010, County Council voted on an ordinance (Substitute 1 to Ordinance No. 10-081) which would have allowed Special Services to “... award a particular contract construction project to two (2) or more firms if the General Manager of the Department of Special Services makes a determination that such an award is in the best interest of the County ...” However, this ordinance was defeated, apparently (from listening to the tape of the Council meeting) because the ordinance also included new language on a different topic – sole source procurement. This ordinance stated in a Whereas clause, “... that New Castle County shall have the same power and authority with respect to sole source procurement and multiple source contracting as that granted to the State of Delaware pursuant to Chapter 69 of Title 29 of the Delaware Code.”

Having a contract for emergency sewer repairs would have these advantages: (1) Providing assurance that situations requiring immediate repairs are quickly addressed, (2) Being able to procure the contract thorough the regular procurement process and (3) Providing assurance of what the rates will be for the various aspects of the work.

Recommendations – Purchasing, Law, and Special Services

We recommend the following:

- Purchasing ensures all emergency contracts are footnoted on the contract status report sent to County Council.
- Purchasing revise A.S.P. #42 to reflect both definitions of “emergency” (but see next recommendation).
- Purchasing and Special Services evaluate the possibility of having a common definition in the Code for all emergencies, both those involving contract construction and those involving supplies and contractual services.
- The Law Department determine whether the “emergency” contract for Special Services was indeed a true emergency according to County Code and, if not, re-evaluate with Special Services the process for identifying emergencies to ensure it is done in accordance with Code.
- Special Services re-evaluate periodically the list of vendors to contact in the event of an emergency (but see next recommendation).

- Special Services consider trying again to introduce legislation to allow multiple source contracting for contract construction projects and, if such legislation passes, issue an RFP for a vendor to perform emergency repairs for sewer. (Please note that we have provided a separate list to Special Services management of our suggestions for enhancing the chances that the legislation would be approved by County Council.)
- Special Services write policies and procedures to handle “emergency situations”.

Management Response – Purchasing

In the future, we will ensure all emergencies requiring Council notification will be footnoted on the Weekly Council Report.

Purchasing has revised the policy regarding emergencies to reflect the two emergency definitions reflected in the County Code. Purchasing is working with Special Services and Law to standardize the emergency definition in both the construction and goods and services sections of the County Code.

Management Response – Law

The Law Department has consulted with both the Departments of Administrative Services and Special Services regarding this situation and it is correct that there was some delay between the declaration of the emergency in the summer of 2011 and the time that the contractor began its work in November 2011. It appears that this delay was, in part, attributable to the schedule of DeIDOT in performing measures in the area. Additionally, it should be noted that even though there was some holdup before the services were performed, the process still occurred on a much swifter basis than it would have if the County was required to develop bid specifications for the project and proceed through the non-emergency bid process for construction contracts.

The Law Department will, of course, continue to work with the Departments of Administrative Services and Special Services to ensure that emergencies are declared and handled in accordance with the County Code.

Management Response – Special Services

Special Services will work with Purchasing and Law to evaluate the possibility of having one definition in the Code for all emergencies. Special Services will provide Law with any information it may need to evaluate the situation and shall work with Law to ensure emergencies are handled in accordance with the Code. It should be noted that even though there was some delay between the emergency in the summer and a contractor beginning in November, this process was still much quicker than it would have

been had the County had to develop specifications and go through the non-emergency bid process for construction contracts. Consequently, the County still addressed an emergency situation more quickly than normal procedures would allow. This situation was also complicated by DeIDOT's schedule.

Special Services wholeheartedly agrees with the recommendation to obtain multiple source contracting for construction projects and is happy to work with Law to reintroduce this legislation, possibly with other changes recommended in this 2014 Audit Report. Special Services appreciates the auditor's suggestions for enhancing the chances that County Council approves such legislation and hopes Council will be much more amenable to its passage in the future.

Special Services has a policy for "emergency situations" located on the Special Services "shared drive" in a file named "Emergency Bidding Procedures and Sample Documents". A copy of the policy is attached. The file also contains sample documents for emergency contracts. Special Services shall review the policy and make appropriate changes, such as requiring an updated contractor list at least annually. Please note that all emergency bids are reviewed and the award thereof discussed thoroughly with the section head overseeing the engineer who handles the emergencies. The award is also vetted through managers up to the General Manager to ensure it was done fairly and conformed as much as possible to the more formal bid/award process for non-emergencies. The policy will be amended to clarify the review/oversight of this bid process.

Sole Source Procurement – Data Management Internationale

Background

In 2004, New Castle County (NCC) issued a Request for Proposal (RFP) for a county-wide document imaging and retrieval system. The RFP stated "This project will use a phase-in approach, that is, we anticipate adding departments and/or document types over a period of time as funds become available. The County's initial award for this RFP will be for a limited number of documents and services. Our desire is to purchase a product that we can grow over time that will provide the County with one software and hardware solution. The County may desire to purchase consulting services, as needed, beyond the initial award."

The contract, executed in December 2005, was awarded to Data Management Internationale (DMI). The initial award was for \$668,617 which primarily covered hardware and software costs. The contract states "Pursuant to the attached Service Agreement Terms and Conditions, at the time that funding becomes available for a project, the customer will purchase from DMI the services under Exhibit A and Exhibit B ..." (which deal with consulting, training, and scanning costs for particular projects, the first of which was to be the Land Use Department).

Sole Source Procurement

NCCo Code, Chapter 2, Article 5, Section 2.05.502.B.7 (“Sole Source Procurement”) states “A contract may be awarded for professional service without competition if the agency head, prior to the procurement, determines in writing that there is only one source for the required professional service. Sole source procurement shall not be used unless there is sufficient evidence that there is only one source for the required professional service and that no other type of professional service will satisfy the requirement of the agency. The Chief of Administrative Services shall examine cost or pricing data prior to an award under this section. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A written determination by the Chief of Administrative Services stating the basis for the sole source procurement shall be included in the contract file ...”

We saw a note in the Procurement System indicating the vendor was declared sole source in June 2008; therefore, we reviewed the “written determination by the Chief of Administrative Services stating the basis for the sole source procurement.” This determination is reflected in a June 18, 2008 memorandum from the Chief of Administrative Services to the Law Department stating “Attached is a memo from (name removed), Assistant IS Manager, requesting certain vendors be declared sole source for the purchase of renewals of maintenance, software, upgrades, and various technical services of their respective products. I concur with the IS Department’s request.” The attached memorandum from the Assistant IS Manager stated “This is to request a sole source declaration for the following vendors for the purchase of renewals of maintenance, software upgrades, and various technical services of their respective products. All of these products are critical to various operations in New Castle County Government, and which services are offered only by the vendor named.”

The June 18, 2008 memorandum was approved by a First Assistant County Attorney on the same date as the memorandum. Please note that we do not know whether the Chief of Administrative Services or the First Assistant County Attorney performed any research to determine whether such services are indeed “offered only by the vendor named.” However, in the case of DMI, we find it difficult to believe that DMI is the only company that provides scanning services.

Thus, subsequent phases of this project (for amounts exceeding \$50,000) have been awarded to DMI without going through the competitive process outlined in County Code for professional services contracts exceeding \$50,000 (now \$25,000).

Paragraph 14 in the Terms and Conditions section of the DMI contract states “Customer acknowledges that DMI will invest significant time and resources to provide services meeting Customer’s particular requirements. Accordingly, Customer agrees that it will not obtain from any third party any services similar to or competitive to those services contemplated to be provided by DMI hereunder without the prior written consent of DMI with the exception of existing records storage services and existing software installations.” It appears that this contract language effectively made the contract “sole source” for all future projects related to the county-wide document imaging and retrieval system;

however, we do not know whether this clause is the reason why the vendor was actually declared sole source (since there is no indication of this on the June 18, 2008 memorandum).²

As of December 2012, over \$1.7 million had been paid to DMI for the document imaging project. We are concerned, by agreeing to contract language effectively making future phases of this project “sole source”, that the County may not have been able to obtain these services at the best price.

Contract Terms, Capital Project

Paragraph 1 in the Terms and Conditions section of the contract states “The initial term of this Agreement shall be for five (5) years ... Thereafter, this Agreement may be extended for an additional two (2) years, one (1) year at a time, by written mutual agreement and signed by both parties.” The initial contract was signed on December 28, 2005. Per the Purchasing Agent, the contract was not extended because the State now has a contract with DMI and the County is able to piggyback off of the State’s contract.

Since Purchasing did not have a copy of the State’s contract with DMI, we accessed the State’s website and reviewed the award notice, the pricing sheet, and the RFP titled Micrographic Services and Conversion Services.” (We did not see an actual contract on the website.) The pricing sheet and the RFP both addressed imaging services.

Capital Project #100435, “Document Management”, was apparently established to account for the costs of the document imaging and retrieval project. (It is listed as a project in the Capital Program & Budget Book for Fiscal Year 2007-2012.) Administrative Services informed us that the amount originally authorized for this project was \$250,000. Since the costs exceeded this amount, they are now being charged to Project #109918, “Information Systems Expansion.” Document imaging costs are again included in the proposed Fiscal Year 2014 Capital Project budget.

Recommendations

We recommend that Purchasing management:

- Have the Law Department determine whether (1) the County’s contract with DMI for document imaging and retrieval (and all County funds expended on this project) has been, and will continue to be, in compliance with New Castle County Code on sole source procurement, and (2) whether the State contract with DMI encompasses everything the County is procuring from DMI.
- Obtain a copy of the contract between DMI and the State of Delaware to so that the Information Services Division can ensure DMI is abiding by the terms of the contract.
- Determine that DMI has the proper insurance coverages protecting New Castle County.

² Annually, the Chief of Administrative Services sends a memorandum to the Law Department asking for certain information technology vendors to be declared sole source. DMI appears in the June 6, 2013 memorandum, so we presume DMI has been declared sole source every year since it was originally declared so.

Management Response – Purchasing

So noted. Purchasing is currently out to bid for these services. Once the bids have been open and an award is made, the last two bullet items will not be required.

Appendix 1 – Original Audit Report on the Procurement Function

Appendix 2 – Follow-up Recommendations Spreadsheet