

*The
City
of
West Palm Beach*



"The Capital City of the Palm Beaches"

AUDIT COMMITTEE

"A Committee of the City Commission"

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TO: Honorable Mayor
and
Members of the City Commission

FROM: Commissioner Kimberly Mitchell, Audit Committee Chairperson

DATE: July 21, 2004

**SUBJECT: Transmittal of Internal Audit Report No. 2004-001
AUDIT OF PROCUREMENT**

Attached is the report on **AUDIT OF PROCUREMENT** approved by the Audit Committee at its special meeting held today.

The audit found that overall, the Procurement Code and Procedures provide an effective, efficient, and fair method of obtaining goods, services, and construction for the City but that there were also instances where competition was circumvented for convenience or expediency.

The report includes several recommendations for increased productivity and performance through defining and streamlining processes and better utilizing automation capabilities.

Kimberly Mitchell, Commissioner, Audit Committee Chairperson

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"The Capital City of the Palm Beaches"

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TO: Lois J. Frankel, Mayor

FROM: Imogene Isaacs, CIA, CGFM, Internal Auditor

DATE: July 21, 2004

SUBJECT: REPORT NO. 2004-01
AUDIT OF PROCUREMENT

INTRODUCTION

As approved in our fiscal year 2002/03 Audit Plan, we have performed an Audit of Procurement. The purpose of this audit was to evaluate City practices over carrying out the provisions of the Procurement Code.

Specific audit objectives were to determine that City procurements were made consistent with the Procurement Code and Procurement Procedures and to determine that the system of controls over the procurement process from initiation through administration and monitoring were effective. The audit covered procurements City-wide with the exception of Procurement Card purchases.

CONCLUSIONS AND SUMMARY OF FINDINGS

Overall, the Procurement Code and Procurement Procedures provide an effective, efficient, and fair method of obtaining goods, services, and construction for the City. The process is comprehensive and, for the most part, followed. Practices were consistent with authorized budgets.

The Procurement Division is the focal point for City purchases. The Procurement Division has a dedicated, highly qualified staff and carefully ensures that the competitive bid and request for proposal processes are fair and that all participants receive the same information; openings were well documented. Our test results indicated that delays in procurements were not attributable to the Procurement Division.

We commend the Finance Department for strengthening controls over the proper use of City Form 121 (direct pay for items not requiring competition and not requiring a purchase order) and reducing the number of inappropriate occurrences. This was particularly noteworthy since that had been a weak area noted in the past.

At the City-wide level, adherence to some provisions of the Code and of procurement related Florida Statutes was not consistent. There were instances where competition was circumvented for convenience or expediency. Additionally, there are needs for improvement in some of our procedures and processes.

More specifically, areas identified as needing attention are presented under Findings, Recommendations, and Responses and are summarized below.

Opportunities for increased productivity and performance are discussed in **Finding No. 1: Better utilization of automation capabilities of the Oracle Financial System would maximize efficiency and strengthen controls.**

We recommend the use of electronic requisitions throughout the City and revisions to the purchase order format. We also recommend improvements over entry and changes to vendors and responsibility for receiving into Oracle.

Delays are wasteful of both human and financial resources and improved efficiencies and operating controls can be gained by defining and streamlining the contracting process. This is discussed in **Finding No. 2: Contracting process improvements are needed for maximizing efficiency and strengthening controls.**

We recommend written procedures to include a routing sheet and that contracts be included in all invitations to bid and a contract shell included with all requests for proposals. We also recommend development of procedures for executing and retaining contracts for official document control.

Finding No. 3: Greater effort should be made to pay vendors timely as provided by Florida Statutes illustrates the potential interest liability on late payments for water and sewer capital projects as well as services.

We recommend all invoices be sent directly to accounts payable and then distributed to the respective departments for approval to pay. Additionally, we recommend that the

number of interest payments as well as the total amount of interest paid be reported to the City Commission in December of each year as required by Florida Statute 218.78.

Finding No. 4: More definitive Code language and specific procedures are needed to preclude abuses in the use of “Emergency” procurement provisions notes that use of the term “emergency” is common in justification documents (to Procurement or in Commission Cover Letters) regardless of a formal emergency determination by the Mayor. It illustrates how, in order to meet “time constraints,” the City elected to go without competition for the sake of expediency – not an emergency – even though it is questionable that time savings were generated.

We recommend revision to the Procurement Code to clearly define an emergency as an **immediate** need. We also recommend the Procurement Official be included in the process and the requestor provide supporting information to justify the immediate need.

Finding No. 5: Competitive selection should not be avoided by continuing contracts and continuation of contracts shows how long term relationships with selected vendors limit opportunities for others to do business with the City. Continuing agreements for engineering services executed after selection on a competitive basis provided scopes of services so broadly stated that there was seldom subsequent competition. The City tended to continue dealing with a satisfactory vendor rather than go through a new selection process.

We recommend terminating existing engineering service contracts that are not project specific and ensuring services are advertised and vendors selected pursuant to Florida Statutes. We also recommend revision to the Procurement Code calling for a maximum 5-year contract period on contracts other than construction projects.

In fiscal year 2001/02, several purchases were made without going through the Procurement Division. Therefore, a purchase order only acted as a confirmation for a prior committed transaction as pointed out in **Finding No. 6: Employees other than Procurement should not be allowed to perform procurement functions and obligate the City.**

We recommend revision to the Procurement Procedures to clearly preclude employees from obligating the City without Procurement Division review and issuance of a purchase order and from obtaining quotes except for estimating purposes or at the direction of the Procurement Division. We recommend the Procurement Official formally notify the City Administrator when the process is being abused. We also recommend the Procurement Official remind City staff of the authority given the Procurement Official by the City Code to require compliance with Procurement Procedures.

For the most part, management agreed with our recommendations. Responses provided by Tom Harris, Finance Director, follow each recommendation. His entire written response is included at the end of this report.

Following the Findings, Recommendations, and Responses under **Clarifications, Revisions, and Corrections to the Procurement Code Needed** are our suggestions for fine tuning the Code. We believe the changes will make our procurement process more workable and assist the Procurement Official in carrying out the Code provisions.

Also included in this report as **Other Matters** were conditions noted that were presented to the Finance Director and Procurement Official for action and either corrected during the audit or not considered as findings requiring Internal Audit follow-up.

During the audit, several areas in the Public Utilities Department were identified for further audit work. Some of our concerns included engineering and construction management processes primarily in the areas of cost estimate accuracy, basis of engineering fees, inspection and observation records, overly optimistic time estimates, utilization of City engineering staff, and the methods currently used to contract construction projects. A separate audit is planned to address these concerns.

We thank Nora Lauder milk, Procurement Official, Jonathan Ash, Public Utilities Capital and Bond Fund Manager, Theresse duBouchet, City Clerk, Claudia McKenna, City Attorney, and the many City staff that assisted us during this audit.

This audit was conducted by Scott Craig, CIA, Senior Assistant Internal Auditor; Suzie Hetherington, Assistant Internal Auditor; and Ken Nielson, CPA, CIA, CISA, Senior Assistant Internal Auditor. Dennis Prewitt, CCP, CCSA, SPHR, Management Analyst, assisted with departmental interviews.

SCOPE AND METHODOLOGY

The scope of the audit was all procurements, other than those made by procurement card, made during fiscal year 2001/02. A random sample of 153 checks and 359 purchase orders were selected for detail testing. Additional purchase orders were selected for review where specific types of transactions were not in our sample. The audit also included review of certain procurement system controls and user practices.

This audit was performed in accordance with generally accepted government auditing standards. In performing this audit, we:

- obtained and reviewed Florida Statutes, City Charter, Procurement Code, City Administrative Policies, Procurement Procedures, and department policies and procedures;
- examined invoice packages with checks for approvals to pay;
- reviewed requisitions and purchase orders for supporting documentation;
- reviewed invitation to bid responses, request for proposal responses, documentation of single source and emergency designations;
- reviewed other agency contracts that we used, called “piggybacking,” and verified the City had a contract referencing the other agency contract;
- verified timely payment and calculated potential late payment interest liability;
- reviewed files of legal services and consultant contracts;
- reviewed employees coded as vendors on the accounts payable system;
- reviewed computer access and authority levels;
- reviewed engineering and construction contracts and project files;
- interviewed primary users of the procurement system; and
- performed such other tests of procedures, practices, and records as deemed necessary.

BACKGROUND AND PERTINENT INFORMATION

The City of West Palm Beach Procurement Code, adopted in February 1999, provides the authority for procurement of goods, services, and construction by the City. The purposes of the Procurement Code are to:

- provide a uniform system for procurement;
- ensure a system of quality and integrity in procurement;
- simplify, clarify, and modernize methods governing procurement;
- maximize open competition;
- maximize the purchasing value of public funds;

- provide for public confidence in procedures followed in public procurement;
- promote fair treatment to all suppliers of goods, services, and construction; and
- encourage participation by local businesses.

The Procurement Division of the Finance Department procures goods, services, and construction, and, for the most part, has sole authority to administer the Procurement Code. Under the Procurement Code, the Procurement Official is responsible for establishing operating procedures to carry out the provisions.

Procurement Procedures covering the 1999 Procurement Code were issued in February 2000. After implementing the new procedures, the Procurement Division was recognized by the Florida Association of Public Purchasing Officers in 2000 with an award for Best Practices, specifically “Special Recognition for Redesigning Purchasing.”

During the audit, the Procurement Division was awarded the 8th Annual Excellence in Procurement Award by the National Purchasing Institute, Inc. The award is designed to recognize organizational excellence in public procurement and is earned by those organizations, public or non-profit, that obtain a high score on criteria designed to measure innovation, professionalism, productivity, and leadership attributes of the procurement organization. The City of West Palm Beach Procurement Division was one of only 100 organizations that achieved this national award for 2003.

The Procurement Division is responsible for obtaining sufficient competition to ensure that the goods, services, or construction being procured are the highest quality at the most reasonable cost. During fiscal year 2000/01, \$72,006,542 was encumbered by Purchase Orders; \$93,232,605 in fiscal year 2001/02; and \$108,001,132 in fiscal year 2002/03.

The Procurement Division staff is:

Nora Laudermilk, CPPB, Procurement Official;
Donna Levengood, CPPB, Assistant Purchasing Manager;
JC Chandler, Contracts Officer;
Jerry Jefferson, Warehouse Supervisor;
Joseph Prince and Henry Dean, Stores Clerks;
Darlene Wilkinson, Dino DeRostaing, and Jim Bowman, Buyers;
Diana Williams, Contract Specialist; and
Jeannie Bailey, Secretary.

Authority to Procure

No contract for goods, services, or construction, as well as contract amendments or change orders, may be approved or executed unless sufficient funds are available in the annual budget approved by the City Commission or an F-Resolution amending the budget

approved by the City Commission. If any procurement is in excess of \$10,000, it must be detailed in the budget or amendment to the budget. The user department director is responsible for verifying availability of funds.

Contracting Procedures

Contract means any type of legally enforceable written agreement, regardless of its name, for the procurement of goods, services, or construction. A written contract is required for all construction procured by the City and for all services procured by the City for which a purchase order alone is not appropriate.

A purchase order is required for all goods procured by the City. A purchase order may be used for the rental of goods, for services that accompany the procurement of goods, and for repair or maintenance services that do not require execution of a contract between the City and the vendor where the terms and conditions can be adequately expressed on the purchase order. A purchase order is also used to encumber funds for goods, services, and construction under written contracts.

All procurement contracts and contract amendments must be (1) approved by the user department director, (2) approved by the City Attorney as to form and legal sufficiency, and (3) signed by the Mayor or the Mayor's designee. A duplicate original of all executed contracts and any contract amendments are to be provided to the City Clerk and a duplicate copy maintained by the Procurement Official.

All purchase orders are signed by the Procurement Official and duplicate copies of all executed purchase orders are maintained by the Procurement Official.

The Mayor's designee may sign procurement contracts and contract amendments in the Mayor's absence. Such designees are limited to the City Administrator and Assistant City Administrators. Such designations must be in writing with a copy provided to the City Clerk and the Procurement Official.

The following category of contracts require the approval of the City Commission prior to execution by the Mayor:

- Contracts for construction of buildings and structures;
- Contracts for insurance, including property, damage, liability, health, workers' compensation, or any other insurance;
- Contracts for legal services that exceed \$25,000;
- Contracts where the requirements of the Procurement Code have not been fulfilled;
- Contracts where approval of the City Commission has been requested in writing to the Mayor by any member of the City Commission; or

- Contracts which require such approval pursuant to Florida Statutes.

Procurement Methods and Process

If the nature of the purchase is specifically described in the budget along with the estimated amount of the goods, services, or construction and does not involve above-ground changes to the “face of the City,” then Procurement may go ahead and purchase it through an approved method. Any above-ground changes to the “face of the City” require City Commission approval. Procurements are categorized by dollar amounts and methods of obtaining competition are identified for each category as follows:

Purchases of \$.01 to \$50.00: Purchases in this category are made with the procurement card (Visa) or petty cash.

Purchases of \$50.01 to \$2,500: Purchases in this category are made through procurement cards (Visa) or purchase orders. Quotes are not required for these purchases; however, competition should be sought when practicable. Where the City procures large volumes of small items such as office supplies, the Procurement Division issues invitations to bid and the City enters into a contract, usually acquiring the items at a discounted amount. Although employees use their procurement cards to acquire the items, they are expected to procure from the pre-selected vendors.

Purchases of \$2,501 to \$25,000: Purchases in this category are made on purchase orders and a minimum of three formal quotes is required.

Purchases over \$25,000: Purchases in this category require Invitations to Bid or Requests for Proposals as discussed below:

Invitation to Bid: Invitation to Bid contains precise specifications of the City’s needed product, service, or construction along with proposed contractual terms, conditions, and other applicable requirements. The bidders must meet specifications in order to qualify. The selection is based on the bidder offering the best price as well as being in the City’s best interest. There is no negotiation once the bidder has been selected.

Request for Proposals: If the Procurement Official determines that a Bid is neither applicable nor practicable, goods, services, or construction may be procured by competitive sealed proposals – Request for Proposals (RFPs). With a RFP, the City may not provide precise specifications but rather a need or problem description for which proposed solutions are sought. The RFP encourages the proposal of alternative specifications, scope of services, and contractual terms and conditions. With a RFP, the selection is based on the qualifications, skills, and

experience of the proposer and, of course, the solution proposed rather than the price. Negotiation is commenced after the selection.

While the above represent the normal procurement, the following address unique circumstances or special requirements.

Single Source: The Procurement Official may select a single source without competition if, after conducting a search for available sources, determines in writing that only a single source is practicable or in the City's best interest.

Professional Services: Florida Statutes Chapter 287.055, the Consultants Competitive Negotiation Act (CCNA), deals specifically with acquisition of professional architectural, engineering, landscape architectural, and surveying and mapping services for projects with estimated construction costs in excess of \$250,000 or professional service study fees in excess of \$25,000. Selection factors are based on capabilities, adequacy of personnel, past record, professional designations, and expertise and experience of the firm and its individual professionals. The City has a program in place to pre-qualify firms or individuals. Only qualified professionals may respond to RFPs, thus if not pre-qualified, responders must qualify during the response period.

Legal Services: The City Attorney may select a lawyer on the basis of expertise and skill without competitive selection. However, a contract for legal services that exceeds \$25,000 requires City Commission's approval.

Lobbying Services: The Mayor, the City Commission, or the City Attorney may select a person to provide lobbying services without competitive selection.

Other Agencies: The Procurement Official may utilize other government contracts which are made available to the City. Other government contracts include contracts of the state, general services administration (Federal), and other governmental agencies within the state. If such other government contract is utilized, a contract is executed between the City and the particular provider.

Emergency Procurement: The Mayor may authorize the Procurement Official to make emergency procurements when a threat to public health, safety, or welfare exists; such emergency procurements are to be made competitive when practicable under the circumstances.

Procurement Procedures

The sequence of events in a procurement (1) begins with a requisition, (2) involves competition at the appropriate level for whichever of the above approved methods is used, (3) leads to selection of the vendor, and (4) culminates with the creation of a

purchase order by the Procurement Official. The requesting department is responsible for accepting deliverables and approving payment.

The user department describes in detail the procurement and may suggest a supplier on the requisition; however, it is up to Procurement staff to determine the appropriate supplier. Currently, requisitions are prepared manually by the user departments except for the Warehouse and Fleet, who use Oracle automated requisitions. For small items, the user department may obtain their own quotes, but these quotes are subject to verification by the Procurement staff and additional quotes may be obtained. Invitations to Bid and Requests for Proposals are handled through the Procurement Division. A purchase order is issued by Procurement after review of the quotes, invitations to bid, or requests for proposals, and recommendations by the user department. Procurement creates the purchase orders which encumber the funds.

All procurements of the City are accomplished by purchase orders except for the procurement card (Visa) and the 121 forms. A Form 121 describes the item being purchased and is signed by the authorizing department director. It is then forwarded to Finance, reviewed by the Assistant Finance Director, and paid by check without a purchase order being generated. Form 121 procurements include items such as dues, subscriptions, and memberships in trade or professional organizations, copyrighted materials not available from multiple sources, and water, sewer, electrical, telephone, and other utility services where competition is not available. Procurements with the procurement card (Visa) are set at different dollar levels for different employees based on need, usually not to exceed \$500 per transaction. There are also daily and monthly limits. Use of the card is limited to approved categories of commodities and services.

Oracle Financial System

The City uses the Oracle Financial System that has various computer applications and modules (including accounts payable and purchasing). Users are set up on access profiles by the system administrator.

FINDINGS, RECOMMENDATIONS, AND RESPONSES

Finding No. 1: Better utilization of automation capabilities of the Oracle Financial System would maximize efficiency and strengthen controls

Under utilization of automated systems results in inefficient and ineffective use of manpower and in weakened internal controls. The Oracle Financial System has features

that would enhance the City's procurement process if they were utilized – both in efficiency and in strengthened controls. The following are changes needed.

Electronic Requisitions

Use of electronic purchasing requisitions needs to be implemented citywide. The City's financial software allows users to create and submit purchasing requisitions on-line.

The Procurement Division needs to initiate implementation of electronic requisitions City-wide. Electronic requisitions provide automatic funds checking when data is entered and puts a hold on funds for future encumbrance which precludes budget overruns. Electronic requisitions can be routed for on-line approval. Data entered on electronic requisitions can be automatically transferred to purchase orders when processed. With on-line tracking of electronic purchase requisitions, the originator can shepherd the procurement of goods and services.

During our audit, we noted some duplicate use of purchasing requisition numbers that resulted with manually prepared requisitions. Use of electronic requisitions would preclude numbers from being duplicated on different purchasing requisitions.

The Procurement Official visited the Palm Beach County Sheriff's Office that uses electronic requisitions in Oracle and they reported operating problems. Their system routes requisitions to specific buyers dependent on the commodity code for each line item and each requisition may have to be handled by several buyers. Based on their experience, the Procurement Official designed an alternative to aid in completion of a standard requisition form and the Management Information Systems (MIS) Division, Support Services Department, has been working to create this alternative that will use drop down menus.

The Internal Auditor contacted the Central Services Director and Purchasing Manager at the City of Lakeland where electronic requisitions on Oracle are also used. They reported that the system works real well and recommended it highly. They set up their system so that all requisitions go to the Purchasing Manager who routes the requisition to the appropriate buyer for completion of the procurement. All signatures and approvals are automated and the obligation of funds seems to be working very well.

It appears that the set up of the routing process during system implementation makes or breaks the system. Electronic requisitions add control and efficiency to the procurement process. This financial systems enhancement needs to be made available City-wide without further delay.

Receiving into Oracle

Accounts Payable made the Oracle receiving entry for all invoices except those for the warehouse and fleet based on the payment approval stamp from the department. This was inefficient and a weakness in proper segregation of duties. If departments received into Oracle when approving payment and returning the invoice to Accounts Payable to cut the check it would streamline the process and improve controls.

The Finance Department eliminated the Oracle receiving entry and went to a two step match instead of the three step for payment. This eliminated a control built into Oracle.

The City of Lakeland decentralized receiving to the department level and all receiving is entered into Oracle at that level. Accounts Payable processes invoices and only those for work or products received are paid.

Receiving into the Oracle system needs to be set up again so the complete transaction history is maintained. The user department should enter the receiving data to maintain proper separation of duties and preclude payment for goods, services, and construction not yet received.

Authority to Add or Change Vendors

Twenty-three Oracle users were granted rights that allow them to add and change vendors. This compromises the City's security over its approved vendor list, can lead to approved vendors being duplicated on the list, and opens the door for possible abuses or improprieties. Furthermore, vendors can be added, deleted, and changed without proper approval.

There were several users from the same work groups with rights to add vendors or change vendor information on the approved vendor list. One of the users shown on the list having rights to modify the vendor list was a software consultant used during the Oracle upgrade. Another user shown was a temporary person in the Small Business Division. Several users had rights to add and change vendors by access from two or more modules.

Rights to add vendors or change vendor information on the approved vendor list should be restricted to one user and a backup user. This will establish control over and accountability for approved vendors.

Purchase Order Design and Content

Changes in the design and content of purchase orders printed on Oracle will eliminate many manual fixes performed by staff and will make the purchase order more

informative. On July 28, 1999, the Procurement Official requested that Support Services make changes to the purchase order format and printing set-up capabilities as follows:

- Print the account number on the purchase order. Staff has to input the account number on the purchase order. The account number is already in the data but it does not appear on the printed purchase order.
- Print the requisition number on the purchase order. Staff has to input the requisition number for cross-referencing and tracking and filing.
- Print the department and division on the purchase order. This is particularly needed for the warehouse and other receivers to know who is to get the items.
- Provide ability to print sales representative on purchase order.
- Force comments to the end of a purchase order rather than the beginning for better readability.
- Eliminate column for delivery date and substitute one field at the top of purchase order. This is a waste of space needed for other purposes.
- Print with multi-part, carbonless paper to eliminate copying separately on different colored paper and having to sign each copy.
- Adjust print setup to utilize entire purchase order form – currently only about 60% of the form is utilized requiring multiple pages.

These changes would increase the utility of purchase orders and free up staff time for other duties. The Support Services Director told us that the Procurement Official's request was still on hand. At the time of the request, all staff were actively engaged in Y2K upgrades and new program installations have continued with such major projects as a new Customer Information System and Oracle upgrades. All these projects kept bumping this project. Also printing and form company problems and eventually acquisition of new printing software programs hindered revisions to the form. Recently, beginning last fall, MIS started to address this request; however, the Procurement Division and MIS need to work together to finalize the changes.

Improved efficiencies as well as internal controls can be achieved through better use of automated systems.

Recommendations and Responses (*responses are in italics*):

We recommend that:

1. the Procurement Official take immediate action to permit and promote use of electronic requisitions on Oracle throughout the City. Training should be provided to all users of purchasing requisitions.

We agree in concept with electronic requisitioning. However, several local governments in Florida have implemented Oracle's online requisitioning with mixed results. We will revisit this topic within the next 60 days and make a determination about whether to implement online requisitioning. If we determine that it is beneficial and feasible, we will establish an implementation timetable.

2. the Finance Director set up the receiving function in Oracle and remove receiving responsibility for input from Accounts Payable and distribute it to departments actually receiving goods, services, and construction.

We agree in concept with electronic receiving. However, several local governments in Florida have implemented Oracle's online receiving with mixed results. We will revisit this topic within the next 60 days and choose a department to do a test run. If we determine that it is beneficial and feasible, we will implement by June 30, 2005.

3. the Finance Director establish improved controls over the vendor input and changes by restricting the number of users with rights to modify vendor data to one user with a backup user, both in the Procurement Division.

We have completed the necessary changes to vendor access. Vendor access is now restricted to one user and two backups in Purchasing and one user and a backup in Accounting. Those persons who enter invoices will be precluded from vendor setup and changes.

4. the Finance Director and Procurement Official work with the Support Services Director to achieve the needed changes to the purchase order system as soon as is practical.

We are committed to improving the purchase order and will diligently pursue funding for such. Once funding is appropriated for the new PO form, it would be approximately 3-4 months to complete the changes. We anticipate that this enhancement will be approximately \$23,000. Currently, next year's budget does not provide funding for this enhancement. If carry forward is available for next year, we will request that this improvement be included in the allocation of such one time money.

Finding No. 2: Contracting process improvements are needed for maximizing efficiency and strengthening controls

Improved efficiencies and operating controls can be gained by defining and streamlining the contracting process. Delays in executing contracts are wasteful of both human and

financial resources.

Procedures for Contract Development

Written procedures need to be established to control the process of contracting for services and construction. These procedures should define orderly steps in the procurement process relating to contracts and a normal time frame for completing critical steps. These procedures should culminate with contracts in the Requests for Bids and Proposals where variable information, such as amounts, completion time, and alternate work accepted would be added to the contract for a bid and amounts, completion time, and scope of work would be added to the contract for a RFP. Currently, the Procurement Procedures are basically silent on contracting. Under the current methods, too much time lapses between selection of a vendor and execution of a contract.

The following examples are illustrative of the current process:

RFP #00/01-105, Consulting Services for Selection of a Customer Information and Billing System, was advertised December 10, 2000; proposals were opened January 4, 2001; and the contractor selected January 23, 2001. However, the contract was not executed until November 9, 2001. The time between contractor selection and execution of the contract was eight and a half months. We asked the project manager why the contracting phase took so long and were told that this resulted from changes in attorneys assigned to the contract and delays in the Office of the City Attorney. We noted the draft review process between the project manager and Office of the City Attorney took approximately three months.

RFP #00/01-114, Traffic Engineering Consulting and FDOT Project Monitoring Services, was advertised April 1, 2001; proposals were opened April 25, 2001; and the primary and secondary consultants were selected on May 17, 2001. However, the contract for the primary consultant, Kimley-Horn and Associates, was not signed until April 4, 2003, more than 22 months after the selection process was completed. The contract with the secondary consultant, Reynolds Smith and Hills, was signed on February 14, 2003, nearly 21 months after the selection was made.

In the interim between selecting the consultants and finalizing the contracts, a number of purchase orders were issued to the consultants for services defined in the RFP and some with reference to the RFP in lieu of a written contract. Purchase orders to Kimley-Horn and Associates for work performed prior to finalizing the contract under RFP #00/01-114 totaled \$154,773.48. Additionally, purchase orders to Reynolds Smith and Hills for work performed prior to finalizing a contract under RFP #00/01-114 totaled \$20,465.74.

Referencing a RFP in lieu of a written contract represents a serious weakness in the procurement process since terms and conditions are not adequately spelled out.

RFP #01/02-130, Design/Build of Vehicle Wash System Facility, was advertised July 21, 2002; proposals were opened September 12, 2002; and Request for Legal Services submitted November 25, 2002; yet, the contract did not go to the City Commission for approval until May 27, 2003. Due to the extensive delay in completing the contract, the contractor negotiated a \$22,840 price increase above the proposed amount of \$373,000.

The project manager attributed the delay to the Office of the City Attorney; we noted that a draft agreement was given to Public Utilities February 19, 2003 for review and comment. The Office of the City Attorney completed a revised draft and resubmitted it to Public Utilities on March 11, 2003. Also, this project reportedly experienced several internal communication and coordination problems such as inadequate planning for City Commission approval.

Bid #01/02-04, Fire Station No. 2, was advertised on October 30, 2001; bids were opened on December 12, 2001; and the contract awarded on February 18, 2002. Notwithstanding, a contract was not executed until April 5, 2002, about one and one-half months later. In this case, a Notice to Proceed was issued on February 28, 2002, about a month before a contract was in place. Risks both for the contractor and the City are increased when work begins prior to contract execution; for example, contractor might not get paid, insurance may not be in effect.

As stated above, delays are wasteful of both human and financial resources. The City needs to streamline its contracting process. Improved controls over the contracting activities can expedite the process. Establishing formal written procedures that contain a required routing sheet for tracking purposes and include contracts in Bid and RFP packages will improve the efficiency and effectiveness of the process.

Procedures for executing and retaining contracts

Executed contracts were difficult to locate and were found at various locations, if at all. Some were at the City Clerk's Office, some at the Office of the City Attorney, and others at the Public Utilities Department. This probably stems from instructions or Bid/RFP language directing the vendor to return executed contracts to the Office of the City Attorney or to the engineer managing a project. Furthermore, City attorneys, in an effort to expedite matters, often walk a contract to the Mayor for signature. The City Clerk would not be aware of the existence of contracts unless it was approved by the City Commission or the City Clerk handled the contract execution by the Mayor.

The City Clerk is the official record keeper for the City and, as such, should have custody of all original contracts and contract amendments including work authorizations. Of forty-seven (47) contracts in our sample that should have been located at the City Clerk's

Office, only thirteen (13) (a little over one-fourth) were recorded as having been there. Five (5) of the thirteen (13) were already at records retention even though they were still being used for current work.

For the past two years, the external auditors have communicated in their Management Letter comments that the City was unable to locate important contracts. In the September 30, 2001 audit, the auditors recommended assigning the responsibility for cataloging and maintaining a database of contracts to a centralized department to ensure the City's records are complete and signed versions are retained for future reference. The City concurred with the recommendation and planned implementation by September 30, 2002.

The goal was not achieved and this comment was repeated in the September 30, 2002 audit. The City responded that a flowchart was prepared detailing the procedure to be followed and that the City Clerk and affected departments were reviewing and commenting on the flowchart provisions. It was anticipated that the procedure would be formalized before September 30, 2003. This was not achieved as the procedures were not completed.

City Code, Sec. 2-134 (c)(1), includes in the Clerk's duties, "To have custody of...all official City documents, and to retain all records in accordance with applicable law regarding records retention guidelines." To this end, the Procurement Code, City Code Sec. 66-96, requires that "a duplicate original of all executed contracts and any contract amendments shall be provided to the City Clerk and a duplicate copy maintained by the Procurement Official." While the City Clerk has always been designated as the responsible party, formal procedures outlining how contracts and contract amendments are provided to the City Clerk have not yet been adopted.

Unless all official documents are in the custody of the City Clerk until they are inactive and can be sent to records retention, there will continue to be important records that cannot be located or at least not located timely. The City would be at a disadvantage when trying to enforce contract provisions if we were unable to produce a contract either from the current files or records retention.

Since the Procurement Code already requires that duplicate original executed contracts be provided to the City Clerk, operating procedures need to specify that the City Clerk be responsible for obtaining the Mayor's signature. If the City Attorney needs to discuss the contract with the Mayor before the Mayor signs the contract, the City Clerk could accompany them to take custody of the executed contract or the discussion could take place without having the Mayor execute the document. This way, all original contracts will be located at the City Clerk's Office in compliance with the City Code requirements. Additionally, operating procedures need to describe the method that departments notify the City Clerk upon completion of a project and receipt of deliverables closing the contract so the contract may be scheduled for transfer to records retention.

It should be noted that duplicate copies of contracts were not provided to the Procurement Official as required by the Procurement Code; however, during the audit, the Procurement Official decided that Notices to Proceed would no longer be signed unless the Procurement Division received a copy of the executed contract. The practice should be that no purchase order would be issued without a copy of executed contract. This practice will be effective if it is (1) included in written procedures, (2) communicated to users, and (3) enforced.

Procedures governing the contracting process from initiation to completion need to be developed and implemented.

Recommendations and Responses (*responses are in italics*):

We recommend that the Procurement Official revise the Procurement Procedures to include:

1. a contracts processing procedure and a routing sheet to control the contracting process from start to finish,

We will ensure that the procedures for contracts processing are documented within the next six months, so that they can be more effectively and efficiently followed. In the context of writing those procedures we will address the need for a routing sheet.

2. a provision that the City Clerk obtains the Mayor's signature on all contracts and contract amendments including work authorizations,

We do agree that the City Clerk's Office should obtain an original of all contracts and amendments. The Procurement Procedures will include procedures to ensure that originals of all documents signed by the Mayor are sent directly to the City Clerk's office. These procedures will be issued within six months.

It should be noted that the practices currently in place have changed since the time of the audit and provide a mechanism for the City Clerk to know when a contract has been executed without the City Clerk actually obtaining the Mayor's signature. When the documents arrive at the Mayor's office, they are logged in a database documenting their arrival. The Mayor does not sign any contract or contract amendment without signoff by the City Attorney's Office; the document is also accompanied by the user department's explanation of the purpose of the contract, including compliance with the budget requirements of the procurement code. After signature, a notation in the database is made to show that the document has been signed. This procedure provides the City Clerk the ability at anytime to know the status of any document sent to the Mayor for signature.

3. a method to notify the City Clerk upon contract completion, and

We concur and will issue procedures within six months to ensure that the City Clerk's office is notified when the contract has been completed and all work performed.

4. a clear understanding that a purchase order will not be issued unless a copy of the executed contract is provided the Procurement Division.

We agree with this finding and procurement staff (buyers) were informed eight months ago to implement this procedure. We will include this procedure in the revised Procurement Policies and Procedures and include this topic in procurement training to be conducted within six months.

Finding No. 3: Greater effort should be made to pay vendors timely as provided by Florida Statutes

The City has from time to time been accused of being habitually slow paying its bills. Our tests showed that untimely payments to vendors continue to occur. The State legislature passed the Florida Prompt Payment Act, Florida Statutes 218.70, to provide time frames for payment of bills and interest to vendors when payments are late. Finance Department staff told us that the City rarely paid interest on late payments and, if paid, a log of interest paid was not kept.

The Florida Prompt Payment Act sets the payment due date for a local government entity for the purchase of goods or services for non-construction services at 45 days and for construction services at 25 business days from receipt of an invoice. All payments due and not made within those time periods bear interest at the rate of one (1) percent per month and unpaid interest is compounded monthly. Additionally, the number of interest payments made and the amount of interest paid is to be reported in December of each year to the local government's governing body.

Florida Statutes require the vendor to invoice the City for any accrued interest in order to receive the interest. The reason why vendors do not invoice the City for interest due is uncertain. Fear of loss of future business with the City may cause the vendor to hesitate to invoice the City for interest on late payments.

Our sample included 579 invoices related to water, sewer, and stormwater capital projects paid in FY 2001/02, which totaled \$21,519,442. Of these invoices, 85 were paid late; both construction and non-construction type in the total dollar value of \$1,614,481. We calculated the interest that would have been owed by the City to the vendors if the vendors had invoiced the City for accrued interest on late payments. The compound

interest for non-construction type invoices was calculated based on days past the payment due date of 45 days. On the other hand, the compound interest for construction type invoices was calculated based on days past the payment due date of 25 business days. The due dates were established by the date the invoice was stamped by the City as received. Interest liability on late payments totaled \$35,294, of which \$2,548 was for non-construction type invoices and \$32,746 was for construction type invoices.

The above potential liability figures are much lower both in number and amount than they actually should be since our tests showed numerous invoices stamped as received by the City several months after the invoice date or a series of consecutive monthly invoices all stamped as received the same date. In one case, three months went by until the vendor followed up on payment status and faxed a copy of the unpaid invoice. Examples are:

- Metcalf & Eddy invoiced the City in the amount of \$34,481.95 on June 4, 2002, but was paid against a fax duplicate received September 5, 2002.
- MWI Corporation invoiced the City in the amount of \$43,310.30 on January 23, 2002, but the invoice was not shown as received until June 13, 2002.
- Ardaman & Associates submitted eleven (11) invoices to the City from February 2 to August 29, 2002; all invoices were shown as received on September 11, 2002.

It was not clear whether the vendors were told when to submit payment requests or if the invoices were held for payment at Public Utilities and stamped as received when staff actually processed the invoices. Public Utilities recently instituted a new procedure to centrally stamp all mail received prior to distribution to project managers or others. This procedure should eliminate the seemingly erroneous received dates.

In addition to those payments reviewed above, our test of five purchase orders for legal services showed only 20 of 40 invoices were paid within the 45 days, 14 were paid between 60 and 100 days, and six were paid greater than 100 days. At June 2, 2003, Whelan et al. was owed \$36,826.58 (the oldest invoice was almost a year old and dated June 21, 2002). Of the amount owed, \$33,899.34 was greater than the 45 days allowed by the Florida Prompt Payment Act. Finance had no knowledge of these unpaid invoices that were sent directly to the Office of the City Attorney.

In another instance, copies of invoices for Suncom Network charges were submitted with a requisition to initiate a purchase order on October 6, 2001. Invoices were for the months of May 2000 and June, July, and August 2001. The June and July bills were late but the August bill was just becoming due. Notwithstanding, the May 2000 bill was well over a year over due. We noted that none of the copies of the invoices were stamped with a date received and three of the invoices were sent to the Police Department rather than Accounts Payable, Finance Department.

When invoices are received at Accounts Payable, they are entered into Oracle, tracked, and controlled to assist with timely payment. Notwithstanding, some vendors have been instructed to submit invoices elsewhere. Contracts for construction or engineering services specify that invoices be sent to the project manager and contracts for legal services direct invoices to the Office of the City Attorney. Procurement Procedures, Section I, provide that invoices are to be made out to the City and mailed to the Finance Department; however, the language in various provisions (Section E 3, How Paid; Section I 3, Processing Procedure B 2) implies that it is okay that invoices be received by departments.

To assure that the City complies with the Florida Prompt Payment Act, the City needs to begin with proper notice to the vendor. Reference to the Act and how to invoice for any accrued interest should be in all contracts and on all purchase orders. We were told that some contracts already include a brief statement. Also, to accurately track timely payment, all invoices should be sent directly to Accounts Payable, Finance Department, and then distributed to the respective department for approval to pay. Additionally, Finance needs to have a method to determine and track interest liability and to ensure that the number of interest payments as well as the amount of interest paid is reported to the City Commission in December of each year as required by Florida Statute 218.78.

Recommendations and Responses (*responses are in italics*):

We recommend that:

1. the Procurement Official, working with the City Attorney, review and revise the Procurement Procedures to include language about invoices and late payments to be included in contracts and on purchase orders that (a) requires invoices to be mailed to Accounts Payable, Finance Department, and (b) references the Florida Prompt Payment Act, the City's intent to comply with it, and the method for the vendor to invoice for interest due;

We agree and will include in the procedures (and contracts, purchase orders, bids and RFPs) language as advised by the City Attorney's Office regarding the Florida Prompt Payment Act. Contracts currently include language regarding the Florida Prompt Payment Act and in preliminary discussions with the City Attorney's Office, it is their belief that the current language is appropriate.

We agree and will require vendors to submit invoices centrally to Accounts Payable.

2. the Procurement Official review and revise the Procurement Procedures to include a provision for stamping invoices received when delivered to the City and to clarify that original invoices, if received in the department, must be sent

immediately to Accounts Payable, Finance Department, for entry into Oracle for tracking; and

We agree with the recommendation and will write procedures within six months.

3. the Finance Director establish a late payment control system to track interest liability and report any interest paid.

We will develop a system for tracking interest paid and report it annually as required by Florida Statute. The first filing date will occur in the winter of 04-05. Our emphasis will be on ensuring that invoices are paid timely. Our ability to track timely payment will be enhanced since all invoices will be submitted to Accounts Payable and entered into Oracle for tracking. Further, State Statutes require the vendor to invoice the City for interest. Accordingly we believe that interest attached to late payments of invoices becomes a liability only when billed and do not agree that we need to track it prior to being billed.

Finding No. 4: More definitive Code language and specific procedures are needed to preclude abuses in the use of “Emergency” procurement provisions

Construction and engineering projects that did not meet the criteria established by the Procurement Code have been declared “emergencies.” The term “emergency” was also used in justification documents regardless of a formal emergency determination. Public Utilities and the former Mayor categorized rush jobs as “emergencies.” Consequently, contractors were given projects without fair and open competition.

City Charter, Sec. 4.04, provides that contracts for the procurement of supplies, services, and construction be made through fair and open competition. The Procurement Code recognizes that on occasion an emergency will occur and that fair and open competition to the extent required under normal procurement methods might delay the mitigation of a threat to public health, safety, or welfare. The Mayor has the sole authority to make an emergency determination.

Florida Statutes 287.057(5) (a) for state procurements, as a comparative provision, provides that a state agency must make a written determination “that an immediate danger to the public health, safety, or welfare, or other substantial loss to the state” exists to qualify for an emergency procurement. Sealed bids and sealed RFPs are waived; however, pricing information from two vendors is required unless the time to obtain the pricing information would increase the danger.

We reviewed six procurements totaling \$11,220,900 that were coded by the Procurement Division as “emergencies.” Of the six procurements, three were improperly referenced as emergencies as they were not determined to be “emergencies” by the former Mayor. These procurements totaled \$605,705 and, under the specific circumstances, met procurement requirements.

Three procurements totaling \$10,615,196 were designated “emergencies” by the former Mayor and, consequently, were not subjected to competitive selection methods. Only one of these three actually met the criteria in the City Code and in Florida Statutes that define an “emergency.” This procurement was to repair a collapsed segment of 48th Street with a negotiated price of \$307,361.90.

The remaining two procurements totaling \$10,307,834 were not emergencies even though they were approved as such by the former Mayor.

Engineering services for the Arkona Court project was determined to be an emergency by the former Mayor on November 20, 2000 based on the Public Utilities Director’s advice that *“we have a storm water bond for funding for this project and we may be in arbitrage if the money is not spent in a timely manner, we have received a grant for construction of a storm water filter for this that expires at the end of FY 00/01 if construction does not start before then...”* The director also noted, *“There has been major flooding along this route in the past and it is a critical component of the storm water master plan.”* None of these reasons cited by the Public Utilities Director were reasons for determining an emergency under the Procurement Code.

Furthermore, the Public Utilities Director noted that most projects had been put on hold while the Office of the City Attorney and the Procurement Division were drafting a new model form contract and procedures for employing the services of architects and engineers to comply with Florida Statutes. A Request for Proposals would have satisfied the competitive requirements of Florida Statutes and the Procurement Code.

A bond to fund the storm water pipe replacement on Arkona Court was sold in April 2000 and bond proceeds were budgeted for the project in May 2000, six months prior to the “emergency” declared on November 20, 2000. The emergency procurement was for the engineering services and the project was to be ready for construction by the following summer (June/July 2001, about 6 months).

This “emergency” was certainly not immediate as drawings were not completed until July 2002, a year after the project was to be ready for construction. Consequently, twenty (20) months lapsed before the drawings were reportedly 100% complete and this was more than two years after the bond was issued and the proceeds budgeted. Several amendments including extending the project and increasing engineering services were

made to the contract with the latest amendment dated January 2003. The contract amount increased from \$116,600 to \$183,525.

Additionally, the active grants listing showed the expiration date was May 30, 2003 with construction to be completed by April 30, 2003. As for the storm water bonds, the fact that they had been sold indicates that this was a regular, planned project. None of the reasons for making the engineering services for the project an emergency were apparently important enough to actually get the engineering completed in a manner consistent with the term "emergency."

As reported above, construction on the Arkona project was to have started in the summer of 2001 and the design engineering had previously been determined to be an "emergency." A Request for Proposals (RFP) was advertised in the Palm Beach Post on April 14, 2002, for improvements to 9th Street, Cordova/Sunset, Washington/Monroe and Arkona Court. Four days later, on April 18, 2002, the former Mayor designated the construction projects a public "emergency."

This determination was reached at a City Commission Workshop on the Utility Capital Improvement Plan, held on April 17, 2002, based on the former Mayor's concern regarding progress of infrastructure improvements. The former Mayor stated that he had the impression, based on a conversation among him, the City Administrator, and the Public Utilities Director a couple of weeks previous, that the projects were going to be added on to the Whiting-Turner Dreher Park project. The Public Utilities Director explained that the Office of the City Attorney determined that the projects were too dissimilar to be combined but, with a construction management at risk contract, he anticipated economies of scale and the bid was already announced; he estimated the total work for the projects to be a little over \$7 million. The City Administrator stated that the last project we let this way resulted in 13 bidders and he expected the same on this one but we could go directly to Whiting-Turner if approved by the City Commission as a procurement not conforming with the Procurement Code.

The former Mayor stated that he receives citizen complaints about the roads caving in and we haven't started the process of fixing them. The City Attorney said that what she was hearing was an emergency situation and that it would be appropriate to consider the contractor on Flagler (Whiting-Turner) a sole source whose use would be in the best interest of the City. The former Mayor stated that from his perspective it was an emergency. Commissioners Moss, Zucarro, and Robinson agreed that it could be considered an emergency situation but Commissioner Moss said all streets are like that and he was concerned that with only one bidder the price may escalate. The former Mayor directed a resolution be prepared and stated to the Public Utilities Director that he had received his instructions. No resolution was prepared; in lieu thereof, the former Mayor signed an emergency declaration on April 18, 2002 authorizing the Procurement Official to make emergency procurements.

The RFP was cancelled. On September 13, 2002, Whiting-Turner Construction submitted a proposal and, on October 22, 2002, six months after the emergency declaration, a contract was executed in the amount of \$10,124,309. While an emergency contract could have been appropriate to mitigate the cave-ins, an emergency contract was completely misdirected for these major planned projects. Engineering plans and specifications had to be completed regardless of any emergency determination and, in fact, the contractor's estimated completion dates for the projects ranged from ten months to a year after the start date. A contract of this magnitude should have been open to competition. Since the projects were already advertised, the RFP process could have been readily completed within the same five months it took Whiting-Turner to submit a proposal. Regardless, this emergency determination did nothing except preclude competition thus eliminating other contractors from consideration.

The Procurement Division is not brought into the emergency determination process; however, the Office of the City Attorney approved each of the three emergency determinations signed by the former Mayor as to "form and legal sufficiency." Legal sufficiency did not include a test of compliance with our ordinances, the laws of the City. Since "form and legal sufficiency" criteria is apparently not the same as the criteria for establishing an emergency, this approval adds nothing to an emergency determination nor does it substantiate that a threat to the public health, safety, or welfare actually exists.

The City of Lakeland Purchasing Manual includes a good explanation of emergency, "True emergencies cannot be anticipated. Emergencies may occur due to accidents, equipment or infrastructure failures, inclement weather, sabotage, vandalism, and unforeseen or hidden worksite conditions." It goes on to state that "The nature of the emergency must be so compelling that the goods or services must be *mobilized or delivered* within 1 business day." Consequently, spewing sewage from a broken sewer line would constitute an emergency, but not design or construction of a planned project as the one above.

Both the intent and provisions of the City Charter and the Procurement Code for fair and open competition were nullified by declaring the Arkona Court project as an emergency when a threat to the public health, safety, or welfare was not immediate at the time. Furthermore, determining the construction of four major planned projects as emergencies clearly did not further the Procurement Code purpose of insuring fair and open competition in selecting contractors.

The Procurement Code needs to be strengthened by modifying the definition of an emergency to the existence of an "immediate" danger or threat to the public health, safety, or welfare or to a loss of public or private property, or interruption in the delivery of an essential service and by requiring that the requestor attest to and clearly show evidence of the danger or threat. Furthermore, the Procurement Official should review and recommend the request prior to submission to the Mayor for authorization. The

Procurement Procedures need to be revised to include a standard form for requesting an emergency procurement and identifying the support necessary to document the need for the Mayor's determination.

Recommendations and Responses (*responses are in italics*):

We recommend that the Procurement Official:

1. Support revisions to the Procurement Code that would clearly define an emergency as an immediate danger or threat to the public health, safety, or welfare, or a loss of public or private property, or interruption in the delivery of an essential service, require the recommendation of the Procurement Official, and require the requestor to support the request to the Mayor for an emergency procurement with evidence of the emergency conditions.

We agree and revisions have already been made to the Procurement Code.

2. In cooperation with the Office of the City Attorney, develop a standard form request for an emergency determination and include in the Procurement Procedures that the form must be submitted to the Procurement Official and is required anytime an emergency determination is requested from the Mayor. This standard form request should include the following:
 - a. Designation of the specific type danger or threat constituting the emergency, i.e. public health, safety, or welfare or other substantial loss of property, or interruption of essential service.
 - b. Clear explanation and description of the conditions causing the danger or threat.
 - c. Date the conditions noted above were first identified.
 - d. Recommended corrective action along with a statement that the work proposed is limited to abating the identified threat or danger.
 - e. Risks associated with delaying corrective action.
 - f. Estimated time to complete corrective action.
 - g. Estimated cost along with the basis for the estimate to abate the emergency and funds indicated to cover the cost.
 - h. Recommended contractor to complete corrective action with justification or identified practicable competition in the particular situation.

We agree and a standard form has already been created as a result of this audit and has been distributed to Department Directors and is available on Lotus Notes. (Attachment A) We will ensure that the Procurement Procedures are updated to reflect this within six months.

3. Treat as emergency procurements only those emergencies declared by the Mayor.

We agree to this finding for procurement emergencies other than small procurements as defined by the Procurement Code.

Auditor's note: The Mayor has already initiated a process that will visually alert her that a contract presented for her signature is awaiting emergency determination and requires special handling by her.

Finding No. 5: Competitive selection should not be avoided by continuing contracts and continuation of contracts

Continuing contracts for engineering services are executed after selection on a competitive basis but the scope of services is often so broadly stated that there is seldom subsequent competition. The City has also continued dealing with vendors that gave satisfactory performance rather than go through a selection process.

While long term relationships with vendors provide certain advantages such as trust in services and products delivered; these practices limit opportunities for others to do business with the City and circumvent City Charter and Procurement Code and Florida Statutes provisions for competition.

Article IV, Sec. 4.04 of the City Charter, entitled Procurement, provides that contracts for the procurement of services by the City shall be made through fair and open competition using competitive bids, requests for proposals, and requests for quotations which will result in the award of contracts equitably and economically. The purpose is to maximize open competition and purchasing value with public funds as well as to encourage participation by local businesses.

Florida Statutes 287.055, Consultants' Competitive Negotiation Act (CCNA), covering the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services requires that the City publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project where the basic construction cost is estimated to exceed \$250,000 or for a planning or study activity when the fee for professional services exceeds \$25,000. Notwithstanding, continuing contracts are permitted for projects where the construction

costs do not exceed \$1,000,000 (\$500,000 until 2002), for study activity when the fee does not exceed \$50,000 (\$25,000 until 2002), or for work of a specified nature.

The Procurement Code and Procurement Procedures were developed to encompass the provisions of both the City Charter and the Florida Statutes.

Continuing Contracts

Our sample included seven engineering services procurements. These services were procured under existing continuing contracts. Although these contracts are referred to as “Master Agreements,” they are not the same as master agreements referenced in the Procurement Code. For purposes of this discussion, these contracts are called continuing contracts. It has been the City’s practice to use agreements for engineering services such as general consulting, planning and design, and construction administration services by issuing a new work authorization (WA), under these continuing contracts, each time such services are needed without using a competitive process.

The WA numbers in our sample were 1, 3, 8, 15, 33, 36, and 40 to six different firms. The WA number usually represents the number of jobs the engineer has obtained under the continuing contract; for example, WA 40 represented the fortieth time a particular engineer did a job for the City since contract execution. We observed, however, that this was not always the case since some WAs used the same number. Most agreements in our test were about five years old although one was almost seven.

Requirements for obtaining engineering services have been discussed for several years. In the summer 2001, a team of employees headed by an Assistant City Attorney worked on procedures and a sample engineering services contract. The Procurement Official in August 2001 issued separate CCNA procedures to be effective immediately. The Public Utilities Department has outstanding WAs using continuing contracts that do not meet the requirements of CCNA. The following contract and associated WAs illustrate how continuing contracts work and how they are inconsistent with CCNA.

The City entered into an agreement with Keshavarz & Associates, Inc., dated July 31, 1995 for professional engineering services for stormwater utility projects. The agreement was for a period of three (3) years with the option of two one-year extensions. The agreement was amended on November 1, 1999 (well over a year after the three year expiration) to terminate on July 30, 2000. Less than two weeks before the agreement expired, Work Authorizations were issued as follows:

- WA 1 - Rosemary Avenue Pipe Replacement

7-19-00	Original PO	\$111,403.00
6-26-02	change order	45,357.50
5-02-03	change order	<u>2,000.00</u>

Total Engineering		\$162,760.50
Construction estimate		\$2,070,000.00
• WA 1 - Monceaux Road Pipe Replacement		
7-19-00	Original PO	\$95,832.00
2-12-01	change order	2,000.00
11-15-01	change order	<u>85,200.00</u>
Total Engineering		\$183,032.00
Construction contract		\$2,212,121.00
• WA 1 - 9 th Street Pipe Replacement		
7-19-00	Original PO	\$45,304.00
6-26-02	change order	<u>138,545.50</u>
Total Engineering		\$183,849.50
Construction contract		\$1,372,811.00

While City Commission approval was obtained for the continuing contract and three initial work authorizations, the Public Utilities Department did not advise the City Commission that this continuing contract and the three work authorizations were inconsistent with the CCNA provisions. City Commission action can not override a Florida Statute. This continuing contract could not meet even one of the CCNA criteria since:

- The estimated construction costs of the projects exceeded \$500,000 (amount when work authorizations were first issued) and exceeded \$1,000,000 (current amount). Estimated construction costs for the three projects totaled over \$5,000,000.
- The estimated engineering cost of the projects exceeded \$25,000 (amount when work authorizations were first issued) and exceeded \$50,000 (current amount). Each of the WAs standing alone exceeded the study cap for continuing contracts even if allowable under this provision.
- The WAs represented three projects of a specified nature – not one. Furthermore, the contract describes the work in such all-encompassing language that the contract itself could not meet the criteria of “work of a specified nature.”

As the Florida Attorney General noted in AGO 96-52 “While nothing in section 287.055, Florida Statutes, purports to regulate the terms of a continuing contract, the continuing contract provision of section 287.055, Florida Statutes, represents an exception to the general competitive bidding provisions of the Act and should be read narrowly and

utilized sparingly in order to avoid an appearance of circumventing the requirements of the statute.”

In the same opinion, he stated the statute “authorizes an exemption from the competitive bidding requirements of the Consultants’ Competitive Negotiation Act for either study activity for a fee of up to \$25,000 or for work of a specified nature with no time limitation. Either of these activities may be the subject of a continuing contract but they may not be combined into one continuing contract.”

The contract with the engineer was for consulting engineering services on stormwater utility projects in the City, specifically “The planning, design, permitting, bidding, construction and consulting services associated with stormwater management projects in the City... These services will include serving as City’s professional engineering representative for different projects, providing professional engineering consultation and advice therefore and furnishing customary civil, engineering, and surveying services incidental thereto.”

As can be seen above, the contracts are intended to cover anything and everything an engineer may do in connection with the stormwater utility. These contracts do not meet the Florida Statutes criteria and are not in keeping with the Advisory Legal Opinion of the Florida Attorney General.

We discussed these continuing contracts with the Public Utilities Director. He told us that he had continued with past practices when he became director but that they were changing to follow the procedures established by the Procurement Office for future work.

We also discussed the situation of continuing contracts in general with the Deputy City Attorney who told us early last year that she thought the City was phasing out continuing contracts. All such contracts not of a specific nature need to be terminated and not used for future projects.

Renewal Without Competition

While not a widespread practice like engineering continuing contracts, occasionally an automatic renewal and even expansion of services was granted when the City was comfortable with a particular vendor and satisfied with the services.

A contract between the City and Michael J. Johns, Inc. for downtown cleaning services was entered into on April 21, 1997. The period of the contract was one year with no renewal clause; however, it is still being used six years later. The contract was awarded as a result of RFP# 96/97-102 and that RFP has been referenced on each yearly renewal. The RFP was also listed as the basis for the award of a \$4,000 purchase order for clean

up of the Meyer Amphitheatre and a \$17,800 purchase order for Clematis by Night clean up in addition to the \$79,000 purchase order for downtown street clean up.

We asked the Procurement Official why the contract was not re-bid and we were told: (1) there are no other companies who can do as good of a job as Michael J. Johns, Inc.; (2) they do an excellent job at cleaning premises after outside events and, most importantly, they are reliable; and (3) they employ good and professional people – they all wear company shirts when working on City premises. The Procurement Official also was concerned that the prices would increase as we were still paying at 1997 rates.

While these statements may be appropriate in describing our experience with the company, they are not appropriate to avoid competition. Competition should be obtained after a reasonable contract period and especially when the services covered by the original announcement change.

In another case, the City's Fleet Management Division ordered nine refuse trucks in less than two years. Bid # 00/01-22, dated February 18, 2001, was referenced as the source for each of the orders; the bid was opened March 6, 2001 and the vendor, Freightliner Trucks of South Florida, was selected March 23, 2001. The trucks were ordered as follows:

Date	Number ordered	Price each	Order amount
03/26/01	2	\$125,801	\$251,602
11/26/01	5	125,801	629,005
12/06/02	2	130,553 (1)	261,106
Total	9		\$1,141,713

(1) increase of \$4,752 per truck due to federally mandated EPA engine compliance.

Bids were advertised in February 2001 for two trucks. In March 2001, the two trucks were ordered. Seven months later in November 2001, an order was placed for five additional refuse trucks using the prior bid price (\$125,801 each). A year later in December 2002, we ordered two more trucks using the same bid as basis.

Whether the price would have been less had the second order of five trucks been bid we do not know but then neither does the Procurement Division or the Fleet Management Division. Furthermore, we do not know whether the price would have been less had the first seven refuse trucks been bid as one allowing for differing delivery dates (across two fiscal years). On the other hand, we may have benefited by avoiding any price increases for subsequent year models.

We discussed the procurement process with the Fleet Management managers and were told that their order was based on their yearly replacement report and their current year

budget. We recognize the limitations of the annual budget; however, vehicle replacement reports can be obtained that show when the various vehicles should be replaced. At the time of procuring the first 2 refuse trucks, Fleet Management was no doubt in the process of identifying capital needs for the next fiscal year and this could have been relayed to the Procurement Division. Better planning, forecasting, and coordinating among Finance, Fleet Management Division, and the Procurement Division is needed for replacing or procuring costly equipment.

In order to promote fair and open competition, encourage participation by local businesses, and maximize the purchasing value of public funds in accordance with Article IV, Sec. 4.04 of the of the City Charter, the City must curtail continuing contracts and cease the practice of repetitively renewing contracts. Furthermore, we believe that contracts should cover a fixed period of time (not more than 5 years) and that the services should be subjected to open competition at the end of the period.

Recommendations and Responses (*responses are in italics*):

We recommend the Procurement Official:

1. Along with the City Attorney, Public Utilities Director, and Finance Director terminate all existing engineering service contracts that are not project specific and make sure future services are advertised and selected pursuant to CCNA. (Note: Some WAs may still be ongoing and contract termination should be scheduled as work is completed.)

We agree and all services have been selected pursuant to CCNA since the 01/02 bid year. We are utilizing competitive selection have ceased the use of a master contract. Any existing work orders under existing continuing contracts are phased out as the work orders are completed.

2. Support revisions to the Procurement Code calling for a maximum 5 year contract period on contracts other than construction which will have their own completion schedule.

The Procurement Code has been revised.

3. Work with the General Services Manager to structure high dollar equipment bids allowing for differing delivery dates over more than one fiscal year based on a better fleet replacement forecast.

We agree that communication needs to improve between Purchasing and Fleet Management to maximize bidding the heavy equipment. The new policies and procedures (auditor's note: promised within six months in other responses) will

emphasize the need for departments forecasting their needs and advising purchasing prior to bidding.

Finding No. 6: Employees other than Procurement should not be allowed to perform procurement functions and obligate the City

Requisitions submitted to the Procurement Division are frequently accompanied by an invoice or bill for goods or services already delivered or performed. This occurs when employees obligate the City by ordering directly from a vendor without going through the Procurement Division. Furthermore, we are concerned that vendors accept work without a purchase order verifying the obligation and referencing when billing. In addition, there were instances where employees who are outside the Procurement Division have performed the duties of the Procurement Division.

City Code Sec. 66-4 lists “to provide a uniform system for procurement consistent with Section 4.04 of the City Charter” among the purposes of the Procurement Code. City Code Sec. 66-32 gives the Procurement Official the authority to administer the procurement of goods, services, and construction required by the City and to establish procurement procedures, including procedures for user departments. Sec. 66-32.(b) states “The procedures established by the procurement official pursuant to this article shall provide for obtaining sufficient price and product quotations to ensure that the goods, services, or construction being procured is the highest quality at the most reasonable cost.”

City Administrative Policy 3-1, Section A.2.8. states “It is a violation of the Procurement Code for a city employee to order or obligate the City for any goods, services, or construction, or make any contract other than through the Procurement Division.”

While the requesting department may suggest vendors on their requisition, the procurement procedures clearly maintain that quotes and bids are under the Procurement Division’s control. There are numerous reasons why quotes and bids are under Procurement and not the user department; for example, making sure vendors are made aware of the proposed procurement, making sure all interested vendors receive the same and complete information, preventing premature or improper disclosure of quotes and bids.

There can be no uniform system when employees can order on their own initiative without going through the Procurement Division. In Fiscal Year 2001-02, 511 purchases were recorded as being made without prior Procurement Division awareness. Those purchases transpired because someone obligated the City and a purchase order only acted as a confirmation for a prior committed transaction.

The total dollar values for those purchases amounted to \$685,720; nine of the purchase orders were for purchases above \$10,000 while 502 or 98% of the purchases made without going through Procurement (after-the-fact transactions) were below \$10,000. Some of the purchases may not have required competition and some were misclassified by staff because we know the work had been bid. We did not attempt to separate the data.

Some City divisions have a greater tendency to order and wait until an invoice is received before submitting a requisition than others but the practice is not confined to just a few. Below is a summary of purchases by division for FY 01-02, coded by the Procurement Division as having been made by departments prior to Procurement Division involvement. The table lists divisions that had aggregate purchases of this type above \$10,000 for the year and is ranked by number of occurrences.

Procurement Audit - Summary of Procurement Code 20 (after the fact transactions) > \$10,000 aggregate for FY 01-02

<u>Cost Ctr</u>	<u>User Dept</u>	# Purchase Orders	Total	% of \$ for Code 20
010200	Mayor's Office- Community Events	30	\$42,350	6.18%
066150	Library	30 (3 for books)	\$21,596	3.15%
031320	Police- Community Services	28	\$23,023	3.36%
031201	Police- Building Maintenance	20	\$14,777	2.16%
041090	Public Utilities - Capital Projects	17	\$34,128	4.98%
019500	Support Services - Phone System	15	\$22,255	3.25%
070600	Recreation- Community Recreation	15	\$12,192	1.78%
031200	Police- Support Services	13	\$11,950	1.74%
027100	City Attorney	11	\$14,663	2.14%
010120	Mayor's Office- Code Enforcement	10	\$31,795	4.64%
019300	Support Services – MIS Public Safety	9	\$36,110	5.27%
019290	Support Services – Printing	9	\$10,551	1.54%
019600	Support Services- Telecommunications	9	\$10,524	1.53%
023600	HR- Risk Mgmt	8	\$31,574	4.60%
097230	Public Utilities - Water Dist	6	\$60,128	8.77%
019200	Support Services- Misc. General Services	6	\$33,811	4.93%
031600	Police- Investigative Services	6	\$18,291	2.67%
032300	Fire- Emergency Medical Services	4	\$27,816	4.06%
012400	Community Redevelopment Agency	4	\$11,250	1.64%
018300	Finance- Cash Management	2	\$10,777	1.57%
Subtotal		252	\$479,561.00	69.96%
	All Other Cost Ctrs. less than \$10,000 aggregate	259	206,159.00	30.04%
TOTAL		511	\$685,720.00	100%

The Procurement Procedures generally provide that quotes are not required for procurements that do not exceed \$2,500 but that competition should be sought when practical. These procurements are made either with a procurement card (small amounts) or with a Purchase Order. There is no provision for the department to place an order, when a purchase order is required, with a vendor except through the Procurement

Division. If procedures are not followed, unintended consequences can result and competition where easily available is not considered. The following are examples of two small purchase commitments made without going through the Procurement Division.

- 232 custom t-shirts for Police Weed & Seed at a cost of \$1,567.00. If the purchase had gone through the Procurement Division, the buyer may have placed the order with the recommended vendor or may have located a better value to the City from another of its nine (9) registered t-shirt vendors.
- \$1,112.00 for display furniture for the Library. This was purchased by Library staff on February 1, 2001, shipped to the Library on February 2, 2001, and billed several times before the Procurement Division was made aware of the purchase and issued a Purchase Order so the vendor could finally get paid on June 6, 2002 – a year and four months after the purchase.

The Procurement Procedures provide that three (3) quotes are required for procurements that exceed \$2,500 but do not exceed \$25,000. Departmental staff are permitted to obtain quotes; however, these quotes are subject to verification by the Procurement Division. Also, additional quotes may be obtained after the requisition and submitted quotes are reviewed by the Procurement Division. There is no provision for the department to place an order with a vendor except through the Procurement Division. Again, if procedures are not followed, unintended consequences can result and competition is not documented. The following are examples of two purchase commitments made without Procurement Division involvement.

- \$9,590.00 for electrical equipment and labor at 4th on Flagler for Community Events. Only one estimate was submitted to Procurement and was used by Community Events staff to procure the services; consequently, the competition requirements were not met.
- 150 citizen patrol polo shirts at a cost of \$3,712.50. These were shipped by a vendor that Police had originally solicited but reportedly not ordered from. A different vendor was selected by Procurement after obtaining competitive quotes and was paid \$3,675 for 150 shirts, \$0.25 less per shirt. When the duplicate order arrived, the additional purchase was allowed and processed to maintain a good relationship with the vendor at the request of the Police Department.

In addition to departmental staff obligating the City and not following procedures, we observed the following incident where the Procurement Official allowed departmental staff to obtain written quotes and what happened as a result.

The City needed to renovate the Blackstone Building for office space for City employees. The Procurement Procedures allow “The department may obtain their

own price quotes, particularly if the item or service is highly specialized or on-site examination is required. These quotes are subject to verification by the Procurement Division and additional quotes may be obtained.”

As a result of the exception, Public Utilities Department staff performed functions that should have been completed by the Procurement Division staff, including sending out requests for quotes and receiving the quotes. Public Utilities requested, but did not receive, an approval for an emergency procurement (for time constraints) by the Mayor – after they had allowed more than a month for contractors to submit quotes. Much of the delay making time a factor resulted from actions taken, or not taken, by Public Utilities.

At a pre-construction meeting, the contractor selected by Utilities withdrew his quote due to inconsistencies in the bidding process (incomplete plans via e-mail and pages missing in the package). The next lowest quote was changed upward by \$2,800 to cover “changes in the renovation plans due to the City’s Building Code Permit Requirements.” The renovation plans had not been submitted to the Construction Services Department prior to obtaining quotes and the additional amount covered fire rated ceiling and drywall, emergency lighting, and fire extinguishers.

All of the quotes exceeded the \$25,000 limit for obtaining quotes; consequently, the services should have been bid. However, delays by Utilities resulted in the Procurement Official processing the procurement so the work could be completed rapidly.

A purchase order in the amount of \$31,950 was originally issued. Later, an additional \$38,050 was issued to complete the project (several necessary items were not included in the original request for quotes) for a total project cost of \$70,000. This procurement did not comply with the Procurement Code and the Procurement Procedures.

Had the procurement been completed by the Procurement Division, maybe the deficiencies in the scope of services would have been identified, but most importantly the process would have been properly controlled and completed within a reasonable time frame.

The Procurement Official was given the authority by the City Code to administer the procurement of goods, services, and construction required by the City. Employees should not be allowed to make purchases, except procurement card authorizations, without going through the Procurement Division. Procurement Procedures need to be revised withdrawing authorization to obtain quotes except for estimating purposes and emphasizing that employees are not permitted to obligate the City. The Procurement Official also needs to educate vendors that they need a purchase order to verify the

procurement and to reference when billing. The City Administrator needs to be provided with the names of employees that continue to procure outside of their authority and needs to take corrective action in these situations.

Recommendations and Responses (*responses are in italics*):

We recommend that the Procurement Official:

1. Revise the Procurement Procedures found in Section C, Procurement Methods, to clearly preclude employees (a) from obligating the City without Procurement Division review and issuance of a purchase order except items allowable on a procurement card and (b) from obtaining quotes except for estimating purposes or at the specific direction of the Procurement Division.

We agree and the Policies and Procedures will be revised (auditor's note: promised within six months in other responses).

City staff is allowed to make small purchases on their procurement card up to \$500. Many times they go to a store and the store doesn't accept a credit card so they charge it and then bring the invoice back for processing. It is not cost effective to process purchase orders for small amounts. Through training, we will stress the best practice of utilizing the procurement card and try to minimize this activity. We will insist that purchases of this type are authorized for payment by someone other than the person who picked up the merchandise.

2. Educate vendors and employees that a purchase order is required to obligate the City.

We have a booklet on "How to do Business with the City of West Palm Beach" and it's also on our web site. We will reiterate this in training to be conducted within six months.

3. Prepare a list of purchases, by department, where staff procured goods, services, and construction without going through the Procurement Division and issue the list monthly to the City Administrator, the Finance Director, and the appropriate department director.

A monthly report has been issued to Administration who submitted it to Departments for explanations and found no evidence of wrongdoing.

4. Identify repeat offenders to allow the City Administrator to decide whether to take corrective action against employees for not complying with the Procurement Code and Procurement Procedures.

For now, we will issue the monthly report as discussed in the prior response.

Auditor's Note to responses 3 and 4: We were told by the Procurement Official that Administration does not want further reports. We reviewed the report cited and feel it did not address the pertinent issue. Our point was not that individuals were purchasing inappropriate items but that they were bypassing the procurement office. We will work with the Procurement Official to redesign the report.

Clarifications, Revisions, and Corrections to the Procurement Code Needed

The procurement philosophy and process underwent a complete transformation in February 1999 after much input by City staff and elected officials. What came out of the transformation was a completely new and simplified procurement code. The Procurement Division has received awards both at the state and national levels for new procurement initiatives.

Notwithstanding, as with any new legislation after being put into practice, certain areas need further clarification, revision, or correction. Clarifications usually occur because the provision can be interpreted in different ways or there is not enough in the provision to assure that the desired outcome is realized. Revisions usually are needed because a provision is just not working as intended or the intention needs to change. Corrections can be for the purposes of grammatical changes, word changes, or improvements to language.

Consideration was given to areas brought to our attention by the Procurement Official as well as those we identified in our review. Following are discussions on suggested changes:

- **Under Sec. 66-8. Equal opportunity**, the wording should be made consistent with City Code, Chapter 42, Equal Opportunity. For example, religion, marital status, familial status, and age are not included under procurement but are under equal opportunity.
- **Under Sec. 66-9, Applicability and noncompetitive procurements**, we believe that the language needs to be changed to state that the exception is to competition not all the rules. In other words, exceptions should be for noncompetitive procurements. We also recommend the addition of professional consultants with specialized expertise, knowledge, and experience for a specific project in an amount not to exceed \$25,000 to the list for noncompetitive procurements. Mayors and other key staff are often knowledgeable of persons or firms for addressing or providing expertise on certain issues or problems. Not going out for competitive selection

would allow mayors and key staff to move forward on small dollar contracts to promptly address issues or problems.

- **Under Sec. 11, Authority to Procure**, the requirement for “face of city” design approval needs to have an exception for architectural or engineering design services since to obtain a design in the first place you may need outside architectural or engineering services.

- **Under Sec. 66-65, Professional services**, we recommend that the City limit the contract period for external financial auditors to five (5) continuous years. Over the past years, the scandals involving auditing firms seem to focus causes on too much familiarity between the auditors and the company staff. The Sarbanes-Oxley Act was enacted in 2002 and covers companies registered with the Securities and Exchange Commission. Under Section 203, the Act provides that the lead audit partner and the reviewing partner must rotate off the audit every five years. The Act also under Section 207 requires the Government Accounting Office to perform a study on the potential effects of requiring the mandatory rotation of audit firms. Since our geographic area is represented by a sufficient number of regional and national auditing firms, we believe available competition makes rotation viable. A new look at City financial records and internal controls every five years adds to the reliability of our financial reports and to the creditability of our systems of internal control.

- **Under Sec. 66-68, Emergency procurements**, we recommend strengthening the provisions by adding the word “immediate” and by broadening the areas of coverage to include loss of property and interruption in the delivery of an essential government service. We also recommend that the department requesting an emergency determination be required to provide specifics on the conditions constituting the emergency and that the Procurement Official be brought into the emergency determination process. As reported in Finding No. 4, the provision for emergency procurements has been abused to avoid competitive selection and to expedite projects that were delayed for whatever reason (e.g. inadequate or insufficient planning) and where no real immediate emergency existed.

- **Under Sec. 66-93, Types of contracts and contractual relationships**, we recommend revising the definition of “contract amendment” to refer to a change in the original scope of work and adding a definition of “change order.” We also recommend limiting the contract period. As shown in Finding No. 5, on occasion, we have renewed contracts without competition. In some cases, the scope of work was increased without knowing what other companies might have bid on a larger scope of services. This provision will require us to evaluate our contracts and seek competition thus avoiding long-term commitments without testing the market.

• **Under Sec. 66-94, Contracts which require commission approval,** we recommend that contracts for legal representation not require approval by the City Commission. Under Sec. 66-65, the City Attorney is authorized to select lawyers based on skill and expertise. Once the City Attorney has selected legal counsel, the deal is, for all practical purposes, done. Going to the City Commission after the fact to approve an amount in excess of \$25,000 does absolutely nothing as it would be very rare for the City Commission to change counsel in the middle of a case. Also, our tests showed that approval was not always timely sought in instances where the costs exceed \$25,000. We reviewed five (5) legal service procurements. Two exceeded the \$25,000 and thus required City Commission approval, however, at the time of our audit, neither was submitted to or approved by the City Commission. One was for general advisory services originally estimated at \$25,000 but ending up being about \$29,000 for the year. The other represented a litigation case later split into two cases. The original contract was for an estimated \$20,000; however, at June 3, 2003 invoices totaled \$41,442 (\$34,955 for one and \$6,396 for the other). The City Attorney advised us that this contract approval process often caused delays in payments and interruptions in legal services being provided. We believe it very important for the City Commission to be informed of legal counsel representing the City; however, contract approval seems unnecessary.

We also discussed with the Procurement Official other changes that should be made to correct punctuation and clarify certain provisions when the Procurement Code is revised.

The above changes for clarification, revision, or correction represent those that we believe will make our procurement process more workable and assist the Procurement Official in carrying out the Procurement Code provisions. As you can see, the suggested changes are not dramatic meaning that our Procurement Code is really very good.

Response

The Procurement Code was recently revised and addressed the items listed.

Other Matters

Reports to the City Commission

Section 66-95 of the City Code requires three reports that are submitted to the City Commission – (1) Procurement initiation report, (2) Procurement selection report, and (3) Contract status report. The Procurement Division provides these along with additional information that is of interest or use to City Commissioners.

The Procurement initiation report is a list of current procurement opportunities and is easy to understand. The other two reports, however, need to be fine-tuned to provide useful information.

The Procurement selection report generally provides information needed but should include the basis of the award (bids, RFPs) and, in the case of Work Authorizations, the original RFP and Agreement date.

The Contract status report does not include all information required by the Code and is not consistently completed. Although it is titled Open contract status report, no contract date is provided for several contracts listed. Some entries even have a notice to proceed date but no contract date; many listings are of Bids or RFPs that have been opened but either not awarded or a contract not yet negotiated or executed. Furthermore, purchase orders issued for work authorizations under agreements from old RFPs are not captured and reported.

Required by Code but missing from the Contract status reports are: (1) the current progress of the work, (2) reasons for any delays, and (3) payments made to date.

Progress and reasons for delay are the areas of greatest use or interest to City Commissioners. The Procurement Division should obtain monthly updates from the user departments. Our office uses an e-mail based system to track progress on resolving audit recommendations that we would be glad to demonstrate, the Procurement Official may want to initiate such a system for contract updates.

Response

Reports submitted by Finance will be in compliance with the revised Procurement Code.

Performance measures are not aligned with goals and objectives.

The stated goal of the Procurement Division is to provide quality purchasing services through the use of automation, increased efficiency, professionalism, and good relations with City departments and the business community.

Stated objectives are:

1. To comply with the City's and National Institute of Governmental Purchasing's Code of Ethics.
2. To obtain and purchase all goods and services at the lowest possible total end-use cost, considering the guidelines of price, service, quality, and delivery.
3. To afford all bidders an equal opportunity to quote and compete on equal terms.

4. To abide by the State Statutes governing the hiring of architects, engineers, and surveyors under the Consultants' Competitive Negotiation Act (CCNA).
5. To initiate and maintain effective and professional public, vendor, and agency relationships.
6. To buy from suppliers who maintain adequate financial strength, high ethical standards, a record of adhering to specifications and who will maintain integrity in terms, delivery, and a full measure of service.
7. To question the quality and types of materials requested in order that the best interests of the City may be served.
8. To avoid becoming obligated to any supplier or to engage in any City transaction from which personal benefit may be directly or indirectly derived.

The objectives will assist in goal attainment but results are not measured. Stated performance measures include number of consultants certified through CCNA, decreasing number of bid protests, and customer satisfaction. These measures do not all gauge success in meeting the objectives.

Numbers are more representative of inputs and outputs than performance. For example, if 2,000 requisitions are received to process, that is an input. Performance might be measured by the percent of acceptable requisitions processed within four days, say 95%; thus, a very high level of performance. The percentage could be Procurement's own objective or could be based on industry benchmarks.

Quality and on-time delivery are easily tracked and measurable as is the number of days required to issue a purchase order. There are several ratios available to monitor and gauge efficiency of the warehouse. Measures directly linked to attaining the objectives will focus work efforts.

Dennis Prewitt, Management Analyst, has been trained in performance management. He is available to work with the Procurement Official, if so desired.

Response

We accept the offer of Dennis Prewitt, Management Analyst, to assist in the development of more meaningful performance measures.

Employees coded as vendors

We requested a special exception report from MIS to match employee addresses from the Human Resources application to vendor addresses from the Accounts Payable application to verify that no employees were selling realty, goods, or services to the City in violation of Florida Statutes.

The resulting report listed 197 matches for current employees and 94 matches for ex-employees. The accounts payable system did not accurately indicate vendor type and several (29) employees were incorrectly coded as needing IRS forms 1099 for non-employee compensation – income received as contract labor or self-employment income. We provided the current employee list to the accounts payable supervisor to correct 153 employees listed incorrectly as vendors on the system and they accomplished this during the audit.

One of the purchase orders was to an employee for contractual, on-demand, future consulting after he left employment. The PO was for \$9,999.99 and authorized a \$5,000 advance payment. Services were to be billed at the rate of \$100 per hour. As an employee, his hourly rate was \$32.12.

Because the termination of employment had not been anticipated, the department director estimated it would take a few months to fill the position. The contract was executed a couple of weeks prior to the employee's termination date and he submitted an invoice for the advance the day before he left.

Department management pushed the limits of the system in order to contract with an employee leaving the City. By issuing a purchase order without inquiry or analysis, the Procurement Division abdicated their oversight role and allowed controls to be overridden. City Administrative Policy 3-1 requires Finance Director approval for any prepayment and Florida Statute 112.313 (3) prohibits procuring from an employee.

Other than the above case, in only two minor, isolated instances were employees paid for services to the City but there is a need for a reminder to all employees of the provisions of FS 112.313(3) prohibiting the selling of realty, goods, or services to the City.

Response

The coding issue has been corrected by accounts Payable. The incident cited in the audit was the result of a Department Head's decision and was dealt with by Administration.

Master contracts database

The "Purchasing Master Contracts" database, created in December 1998, on Lotus Notes is not current. The purpose of the database on Notes is "A listing of all master contracts available for all City departments. City departments MUST use these contracts when fulfilling purchasing obligations. Please refer to this listing before purchasing from other sources."

There is only one active contract listed, Warren Uniform Company for rental of pants and laundering of tropical shirts. The inactive contracts list had 66 vendors in 34 categories. Most of those contracts expired in 1999 or 2000. The Purchasing Master Contracts Database should be updated and all staff encouraged to use it.

Response

We will make available an updated master contracts listing to departments.