

City of
Gainesville

Inter-Office Communication

March 20, 2006

TO: Audit and Finance Committee
Mayor Pegeen Hanrahan, Chair
Mayor-Commissioner Pro Tem Chuck Chestnut, Member

FROM: Brent Godshalk, City Auditor

SUBJECT: Review of the General Government Purchasing Process

Recommendation

The Audit and Finance Committee recommend that the City Commission:

- 1) Accept the City Auditor's report and the City Manager's response; and
- 2) Instruct the City Auditor to conduct a follow-up review on recommendations made and report the results to the Audit and Finance Committee.

Explanation

In accordance with our Fiscal Year 2006 Annual Audit Plan, we have completed a review of the General Government Purchasing Process. Our report and the City Manager's response are attached for your review.

We request that the Committee recommend the City Commission accept our report and the City Manager's response. Also, in accordance with City Commission Resolution 970187, Section 10, Responsibilities for Follow-up on Audits, we request that the Committee recommend the City Commission instruct the City Auditor to conduct a follow-up review on recommendations made and report the results to the Audit and Finance Committee.

City of
Gainesville

Inter-Office Communication

February 9, 2006

TO: Russ Blackburn, City Manager
FROM: Brent Godshalk, City Auditor
SUBJECT: Review of the General Government Purchasing Process

On November 28, 2005, the City Commission approved the City Auditor's Annual Audit Plan, which included a review of the General Government Purchasing Process. During our review, we conducted interviews with key personnel, reviewed operating and financial information and tested management controls. We have completed our review and the attached draft report indicates where further efforts are needed to strengthen management controls.

In accordance with Commission Resolution 970187, Section 9, please submit your written response to the recommendations presented in the attached report within 30 days and indicate an actual or expected date of implementation. Our final report, which will include your written response, will then be submitted to the City Commission's Audit and Finance Committee for review and approval.

We would like to thank Purchasing Manager Aleta Cozart and her staff for the courteous and cooperative treatment afforded us during our review. Our recommendations for improving procedures and controls have been reviewed with Aleta and with Finance Director Mark Benton.

Please let me know if you would like to meet to discuss further the details of this report or if you have any comments or questions that will facilitate your response.

cc: Aleta Cozart, Purchasing Manager
Mark Benton, Finance Director
Becky Rountree, Administrative Service Director

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OBJECTIVES, SCOPE AND METHODOLOGY

In accordance with our Fiscal Year 2006 Annual Audit Plan, the City Auditor's Office has completed an audit of the General Government Purchasing Process. The primary focus of this review was to provide the City Commission with reasonable assurance on the adequacy of the system of management control in effect over the purchasing processes used in General Government. Management controls include the processes for planning, organizing, directing and controlling program operations, including systems for measuring, reporting and monitoring program performance. Management is responsible for establishing and maintaining effective controls that, in general, include the plan of organization, methods and procedures to ensure that goals are met. Specific audit objectives included evaluating the policies, procedures and internal controls related to the General Government Purchasing Process and determining whether purchases were proper and in compliance with City policies and procedures.

Our review was conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States and accordingly included such tests of records and other auditing procedures as we considered necessary under the circumstances. Our procedures included interviewing staff, reviewing management controls and testing selected samples of purchasing transactions and related supporting documentation to assess compliance with City policies and procedures. The scope of our testing was generally for the period October 2004 through September 2005. As part of our review, we also evaluated the accuracy of operating and financial data supporting performance measures related to the purchasing process.

Based on the results of our review, we prepared specific issues and recommendations for improvement that were discussed with management. These recommendations, as well as management's written response, can be found in the following sections of this report.

BACKGROUND INFORMATION

During FY 2005, General Government operating departments purchased nearly \$44 million in goods and services. City purchases, both within General Government and GRU, are generally governed through Purchasing Policies established by Resolution 951467, approved by the City Commission in April 1996. Purchasing Policies indicate that the Purchasing Divisions of General Government and GRU shall:

- Assist all departments and divisions, including Charter Officers, in making purchases and sales of supplies, materials, equipment and services in accordance with the policies established by the City Commission and the procedures established by the City Manager and General Manager for Utilities;
- Provide support to enable all purchases to be made at prices which are the most cost effective and through the application of sound business practices;
- Maintain records which document that purchases have been made in accordance with City Commission policy and established procedures;
- Manage the purchase, receipt and delivery of materials, equipment and services;
- Identify qualified suppliers of materials, equipment and services;
- Develop and maintain bid lists of quality suppliers;
- Add and delete vendors and contractors from the list of qualified suppliers in order to maintain performance standards;
- Develop and maintain fair and impartial business relationships with vendors that ensure quality, cost-effective products and services are provided for the benefit of tax and rate payers;
- Conduct quality control and performance checks as needed to ensure vendors fulfill contractual requirements; and
- Supervise the disposition of supplies, materials and equipment by approved processes.

Decentralized Purchasing System

General Government's overall purchasing function is decentralized for purchases up to \$50,000. Decentralization was implemented by the City Manager in 2002 in an effort to improve and streamline the purchasing process. Decentralizing is not designed to reduce the integrity of the purchasing process, but shifts more responsibility onto the operating departments. The program raised approval limits for direct reports and department heads and provided departments more flexibility of purchasing goods and services in the field without direct involvement by the Purchasing Division. Decentralization is voluntary and means that individual City departments and divisions can make procurement and purchasing decisions up to \$50,000 without assistance from the Purchasing Division. Many departments still choose to have the Purchasing Division handle all or some of their procurement needs under the \$50,000 threshold. Formal bids in excess of \$50,000 are to be conducted by the Purchasing Division.

Competitive and Non-competitive Procurement Process

Purchasing Policies indicate that if an item of goods or services costs \$2,000 or less, no competitive bidding is required. Operating departments or the Purchasing Division are required to obtain and document a minimum of two written quotes if an item of goods or services is expected to exceed \$2,000. Purchases with an anticipated cost in excess of \$50,000 require formal bids submitted through the Purchasing Division.

In addition to purchases of \$2,000 or less, Purchasing Policies allow purchases to be made without competitive quotes or bids in the following situations:

- Materials, equipment or services purchased under state or federal contracts or other public agencies cooperative purchasing opportunities;
- Utility services when the subject utility is the only available source of such service;
- Contractual services of a professional nature whose cost does not exceed \$25,000;
- Emergency purchases, at the discretion of the Manager, where the circumstances of the emergency do not permit sufficient time to obtain competitive quotes; and
- Non-competitive situations.

Approval Process

Purchasing Policies generally authorize Charter Officers to approve purchases up to \$25,000 without obtaining specific City Commission approval. Exceptions to this policy include purchases of fuels, repair and maintenance of system-wide computer software and hardware, used lease vehicles and purchases for maintenance of fleet equipment, items under state, federal or other public agency contracts, emergency purchases and changes orders under 10% of approved amount. However, reports are required to be made to the City Commission of any purchase of materials, equipment or services greater than \$25,000 for which prior approval was not obtained. The City Manager delegates signing authority for purchases to direct reports and department heads. Generally, direct reports can authorize expenditures up to \$10,000 and department heads expenditures up to \$5,000.

ISSUE #1

Modifications to Purchasing Policies Regarding Bid Protests and Communications Between Vendors and City Officials

Discussion

City Purchasing Policies are approved by the City Commission and implemented by detailed procedures established by the City Manager and General Manager for Utilities. For General Government purchases, the City Manager has established a Financial Services Procedures Manual with a chapter dedicated to purchasing issues. The Financial Services Procedures Manual is modified periodically by management without review or approval by the City Commission. As part of our review, we compared City of Gainesville Purchasing Policies and Procedures to those of other local governments and noted the following areas where improvements should be made:

Communications Between Vendors and City Officials

City Purchasing Policies do not specifically address communications between vendors and City officials during the bidding process. General Government purchasing procedures indicate that the City's designated contact person for prospective vendors is responsible for coordinating all bid solicitation information. Effective June 1, 2005, management modified General Government purchasing procedures to include notations indicating:

To ensure fair consideration for all proposers, the City of Gainesville prohibits communication to or with any department, employee, elected official, or anyone evaluating or considering the proposals during the submission process, except as provided in the bid document. Additionally, the City prohibits communications initiated by a proposer to any department, employee, elected official, or anyone evaluating or considering the proposals prior to the time an award decision has been made.

Any communication between proposer and the City will be either 1) initiated by the requesting department or City's Purchasing Division in order to obtain information or clarification needed to develop a proper, accurate evaluation of the proposal; or 2) initiated by a proposer and addressed to the requesting department representative or Purchasing Manager. Contact between a vendor with any other City employee may be grounds for disqualifying the offending proposer from consideration of award of the proposal being evaluated and/or any future proposals.

Soon after this amendment to the purchasing procedures, an issue arose regarding requests by a prospective vendor to discuss the selection process for insurance broker services with the Mayor and individual City Commissioners prior to the award of the contract. The City Attorney's Office researched the issue and advised that such contact with elected officials should be discouraged, but could not be prohibited by City management since no City Commission ordinance or policy prohibited such contact. Additionally, the contract awarded was ultimately a pending legislative matter before the City Commission. As a result, management again modified the purchasing procedures effective August 11, 2005 to remove the above noted references to elected officials, while maintaining the prohibition regarding communications with City staff during a bid process.

We reviewed the purchasing policies of other Florida local government agencies and noted that most of those reviewed have specific language prohibiting bidders from lobbying or communicating with elected officials during a purchasing process. However, all of the prohibitions noted were adopted by the legislative body through ordinance, resolution or policy, not through management-implemented procedures.

Bid Protests

City Purchasing Policies state:

Any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract shall comply with the administrative procedures published by the Purchasing Divisions established for bid protest.

The General Government purchasing procedures require protests to be submitted to the Purchasing Manager and provide detailed deadlines for the bid protest process. Procedures also specify a format for submitting protests and require submission of a protest bond equal to 1% of the solicitation, but not less than \$500 or greater than \$5,000. The procedures indicate that if the requirements are met for protest submittals, the Purchasing Manager or designee shall make a determination as to whether or not a further review is warranted.

If the Purchasing Manager determines that further review is warranted and the purchase award does not require City Commission approval, the protest is heard by the Finance Director or designee, whose decision shall be final. For purchases requiring City Commission approval, protests are heard by the department head involved or a designee and a written recommendation is made to the City Manager, who provides a final decision. Procedures do not provide for a formal appeal process in the event a protest is denied at any stage of the process.

We reviewed the purchasing policies of other Florida local government agencies and noted that most have a formal appeal process, culminating at the elected body level, for protests that are denied by staff.

Conclusion

We believe that the City's Purchasing Policies should be amended to address communications between vendors and City officials during the bidding process and to clarify the bid protest process, including providing avenues for appealing protest denials.

Recommendation

We recommend management further evaluate the purchasing policy documents of other local government agencies and present to the City Commission recommended revisions to existing City Purchasing Policies that will, at a minimum:

- a) Address issues related to communications between vendors and elected officials during the bidding and award process, and
- b) Provide a constructive and controlled appeal process for vendors that desire to protest a bid process, including an opportunity to present their protest to the City Commission after all other avenues of appeal are exhausted.

Management's Response

- a) Management agrees with the conclusion and recommendation that policies should be amended to address communications between vendors and City officials during the bidding process.

In August 2005 management surveyed the following agencies to determine if they had policies or procedures prohibiting lobbying staff and elected officials by bidders:

City of Clearwater
Pinellas County
City of Tallahassee
City of West Palm Beach
Jacksonville Electrical Authority (JEA)
City of Port St. Lucie

Orlando Utility Commission
City of Lakeland
Martin County
Marion County
City of Ocala
Alachua County

All of the agencies prohibited lobbying during the bidding process. Some of the agencies included lobbying language in ordinances, others in procedures while others included language prohibiting lobbying within their bidding documents. Management concurs with the above recommendation and will provide recommended amendatory language to the Purchasing Policy related to communication between vendors and elected officials during the bidding and award process.

- b) In August 2005 staff received responses from the above agencies regarding their Bid Protest Procedures. About half provided for final appeal to the Chief Executive Office and half to their Commissions. Management will revise Purchasing Procedures to provide vendors a forum for a final appeal to the City Commission after other bid protest avenues have been explored.

ISSUE #2

Improved Compliance with Purchasing Policies and Procedures

Discussion

During our review, we completed audit tests of purchasing transactions in order to evaluate the effectiveness of management controls. The results of our testing indicate the following areas where management controls over decentralized purchasing transactions should be improved:

Competitive Bidding Requirements

To ensure the greatest economic benefit to the City, Purchasing Policies require competitive bidding to be used whenever appropriate. City Purchasing Policies generally require written quotations for all purchases greater than \$2,000, with formal bids required for purchases with an anticipated cost in excess of \$50,000. During our review, we noted instances where decentralized purchases were not conducted in accordance with competitive bidding requirements. For example, we noted an instance where a large operational department in General Government placed an order for employee shirts totaling approximately \$7,100 without first obtaining competitive quotations. Upon delivery of the shirts, the department's administrative staff discovered the error and obtained a comparative quotation from another vendor approximately two months after placement of the initial order. The comparative quotation obtained was not adequately documented to provide information necessary to determine that the vendor used was actually the lowest responsive bidder.

In instances where competitive procurement is waived, a completed Waiver of Competitive Bidding Form is required to be submitted by the requesting department documenting that the vendor is a sole source, a specified source or an only approved source. During our review, we noted instances where non-competitive situations were not properly approved, documented or justified. For example, expenditures totaling approximately \$14,200 were incurred with a local conference center for food and facilities related to the City's 4th and 5th annual women's health fairs held in October 2004 and July 2005 with no documentation provided if the vendor was a sole source, a specified source or an only approved source.

Supplier Evaluation Reports

General Government purchasing procedures establish a supplier performance program to evaluate the suppliers with which the City does business in order to utilize those suppliers which provide the best pricing, quality, delivery and service. Procedures indicate that ordering departments should evaluate vendors for all purchase orders exceeding \$5,000, for all blanket purchase orders and when vendors are used on a repetitive basis. Supplier Evaluation Report forms are to be used by General Government departments to score vendors on both standardized and specific criteria developed by the ordering department. The evaluation reports are to be maintained by the Purchasing Division and procedures indicate that suppliers' scores may be used in the evaluation of bids. During our review, we noted that Supplier Evaluation Report forms are not being completed as required by purchasing procedures.

Conclusion

Management has generally established an effective foundation for a system of internal control over the General Government purchasing process. However, based on the results of our review and the exceptions noted above, we believe further actions are necessary to improve management controls over decentralized purchasing.

Recommendation

We recommend management take steps necessary to ensure that decentralized operating departments improve efforts to comply with City Purchasing Policies and procedures regarding competitive bidding requirements and supplier evaluation reports.

Management's Response

Management concurs. Finance staff will continue to provide specialized training to operating departments regarding purchasing policies and procedures, including the preparation of supplier evaluation reports. Management will also institute periodic reviews of decentralized purchasing transactions to verify compliance with purchasing policies and procedures.

ISSUE #3

Evaluation of Local Preference Ordinance Number 001261

Discussion

In March 2004, the City Commission adopted Local Preference Ordinance Number 001261 regarding City purchases designed to give a preference to local businesses in the corporate city limits of Gainesville. The Ordinance states that the City Commission or other purchasing authority may give a preference to local businesses in certain City purchases in an amount not to exceed five percent of the local business' total bid price or five percent of the total evaluation points for processes in which factors other than price are taken into account. The Ordinance applies to most City-funded purchases over \$50,000 and eligibility requires the local vendor hold a valid occupational license issued by the City at least six months prior to the bid or proposal opening date.

Exceptions to the Local Preference Ordinance are generally for purchases made using a cooperative purchasing agreement, contracts for professional services subject to the Consultant's Competitive Negotiation Act, purchases funded by a governmental entity where the laws, regulations or policies prohibit applying the preference, emergency or non-competitive situations, and purchases with a cost of \$50,000 or less.

The Ordinance became effective October 1, 2004, and was to be reviewed by the City Commission October 1, 2005, and unless extended by action of the City Commission, shall be deemed repealed effective March 31, 2006. Although an internal document was prepared after the first six months of operation indicating no fiscal impact, management has not provided the City Commission information on the results of the enactment of the Ordinance or a recommendation to either sunset or extend the effective dates of the Ordinance.

Conclusion

The Local Preference Ordinance is scheduled to sunset March 31, 2006 unless further action is taken by the City Commission.

Recommendation

We recommend management provide information to the City Commission regarding the effectiveness of the Local Preference Ordinance, along with a recommendation to either sunset or extend the effective dates of the ordinance.

Management's Response

Management concurs and this process has already been set in motion. The Purchasing Division has monitored and reported to management Local Preference impacts since the effective date of the ordinance. An agenda item was submitted for the February 27 City Commission meeting asking the Commission to authorize the City Attorney to draft and the Clerk to advertise an amendment to the Local Vendor Preference ordinance removing the sunset provision of the ordinance. First reading of the amended ordinance was March 13 with the second reading scheduled for March 27.

ISSUE #4

Improved Performance Measurement Data

Discussion

During FY 2003, the City began participating in the International City/County Management Association (ICMA) Center for Performance Measurement program, which provides comparative data on selected aspects of service performance for cities and counties. The program is designed to help organizations assess the quality and efficiency of service delivery through the collection, analysis and application of standardized performance data. The data must be accurate, fair and reliable for the program to be meaningful.

Although the Purchasing Division made improvements in the amount of information compiled and reported to the ICMA program between FY 2003 and FY 2004, we noted that not all service related categories are reported and utilized by Purchasing. According to management, there are recognized limitations in the ICMA program and staff is exploring other programs, such as the Florida Benchmarking Consortium, that may provide more standardized and comparable benchmarks.

Conclusion

Utilization of performance measures can help improve the efficiency and effectiveness of the purchasing process. Efforts are needed to ensure that the benchmarking program is meaningful and data collected is accurate, fair and reliable.

Recommendation

We recommend management continue efforts in determining a performance benchmarking program that is relevant and meaningful to Purchasing and ensure that adequate controls exist over compiling, utilizing and reporting performance measurement data.

Management's Response

The ICMA template was limited in its ability to calculate and report the City's purchasing data. The City is pursuing other benchmarking tools such as the Florida Benchmarking Consortium. Purchasing will review and pursue participating in the Florida Benchmarking Consortium rather than the ICMA program.

ISSUE #5

Other Operational and Procedural Improvements

Discussion

During our review of the purchasing process, we noted the following areas where operational and procedural improvements could be implemented:

Purchasing Policies Regarding Competitive Situations

City Purchasing Policies specify that competitive bidding will generally be used in order to ensure the greatest economic benefit to the City. For purchases with an anticipated cost exceeding \$50,000, formal bids must be submitted through the Purchasing Division. For purchases with an estimated cost of \$50,000 or less, formal bids are not required. However, if a purchase falls between \$2,000 and \$50,000, the Purchasing Division or the originating department must obtain written quotations. Purchases of \$2,000 or less do not require competitive bids or quotes to be obtained.

In 1996, Purchasing Policies were amended and the thresholds for competitive bids/quotes were raised. At the same time, the minimum number of responsive bids/quotes necessary to satisfy competitive requirements was reduced from three to two. Increasing the minimum number of responsive bids/quotes necessary to satisfy the requirement for competitive bidding could increase opportunities for competition and help to ensure the greatest economic benefit to the City.

Purchasing Procedures Regarding Bidder Debarment or Suspension

Both General Government and GRU have documented purchasing procedures regarding the possible suspension or debarment of bidders. Vendors who are suspended or debarred are flagged on the General Government and GRU financial systems to ensure purchase orders and checks are not issued. However, written procedures are not in place to ensure General Government and GRU notify each other regarding debarred or suspended vendors.

Conflict of Interest Disclosure

City Policies and Procedures Number 28, Code of Ethical Standards, has a conflict of interest section which states in part:

No employee shall solicit or accept free or discounted goods, services, prizes, gifts, favors, accommodations, entertainment, discounted loans or anything else of value. This code must be read as proscribing the appearance of impropriety as well as actual conflicts of interest.

City Purchasing Policies Section 4, Ethics in Public Contracting, states:

City employees shall have no interest, financial or otherwise, direct or indirect, nor engage in any business transaction or professional activities nor incur any obligation of any nature which is in conflict with the City's Code of Ethical Standards and Florida Statutes, Chapter 112 as applicable. To this end, City employees are expected to demonstrate the highest standards of personal integrity in public activities and conduct their duties in ways that are free from the inference or perception that favorable treatment was sought, received or given and to avoid any interest or activity which is in conflict with the conduct of official duties.

Management does not have a process in place requiring employees involved in formal solicitations and the bid evaluation process to periodically sign conflict of interest statements stating they have read and abided by the requirements of the City's Code of Ethical Standards and Purchasing Policies.

Recommendation

We recommend management:

- a) Consider increasing from two to three the minimum number of responsive bids/quotes needed to satisfy the requirement for competitive bidding in the Purchasing Policies and ensure that reasonable efforts are taken to search for other available vendors when less than three qualified suppliers are available.
- b) Develop written procedures to ensure that timely and proper communication occurs between General Government and GRU Purchasing Divisions whenever a vendor is debarred or suspended. This will ensure that a vendor found in violation at GRU or GG will not remain eligible to bid or perform services for the other.
- c) Implement a procedure requiring staff involved in evaluating any bidding proposal to sign a conflict of interest statement certifying compliance with City of Gainesville Policies and Procedures Number 28 and Purchasing Policies.

Management's Response

- a) We strive to get as many responses as possible on all our centralized bidding transactions. Buyers obtain from field project managers supplemental lists of vendors to upload to Demandstar our purchasing notification service. Additionally, Demandstar is a National service, which keeps a database of potential vendors throughout the State and Country. Purchasing staff encourages departments when making decentralized purchases to get as many responses as possible. Management disagrees in making three quotes a part of the Purchasing Policy due to the cost of re-bidding and the potential impact of delays on departments in acquiring their goods and services.
- b) Management will amend General Government Purchasing procedures to provide that GRU will be notified of any suspended and/or debarred vendor.
- c) Management will implement a procedure requiring staff involved in evaluating any bidding proposal to sign a conflict of interest statement.