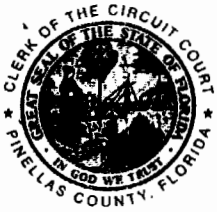


2. REPORTS TO BE RECEIVED FOR FILING

- a. Division of Inspector General, Audit Services, Clerk of the Circuit Court and Comptroller, Report No. 2013-06 dated February 28, 2013 – Audit of Non-Engineering Consulting Contracts.
- b. Juvenile Welfare Board of Pinellas County Financial and Compliance Reports for the year ended September 30, 2012.



## Ken Burke, CPA


CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
PINELLAS COUNTY, FLORIDA

Clerk of the County Court  
Recorder of Deeds  
Clerk and Accountant of the Board of County Commissioners  
Custodian of County Funds  
County Auditor

### Division of Inspector General

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TO: The Honorable Chairman and Members  
of the Board of County Commissioners

FROM:  Ken Burke, CPA  
Clerk of the Circuit Court and Comptroller  
Ex Officio County Auditor

SUBJECT: Audit of Non-Engineering Consulting Contracts

DATE: February 28, 2013

For your review and filing in the Official Records, I am enclosing a copy of the report dated February 28, 2013 on the above-referenced audit.

I hope you find this report helpful in ensuring Pinellas County government provides the best possible service to our citizens.

cc: Robert S. LaSala, County Administrator  
Mark Woodard, Assistant County Administrator  
Joe Lauro, Director, Purchasing  
Candis Mancuso, Assistant Director, Purchasing  
Jim Bennett, County Attorney  
Claretha N. Harris, Chief Deputy Director, Finance Division  
Ernst & Young



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Inspectors General



## **DIVISION OF INSPECTOR GENERAL**

**KEN BURKE, CPA**

**CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
PINELLAS COUNTY, FLORIDA**

## **AUDIT OF NON-ENGINEERING CONSULTING CONTRACTS**



**1983 — 2013**



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Inspectors General**

**Hector Collazo, Jr., Director  
Inspector General/Chief Audit Executive**

**Audit Team  
Ken Green, CIGA – Senior Inspector General Auditor  
Greg McCullough, CPA, CIA, CFE, CIGA – Inspector General Auditor II**

**FEBRUARY 28, 2013  
REPORT NO. 2013-06**



## Ken Burke, CPA

CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
PINELLAS COUNTY, FLORIDA

Clerk of the County Court  
Recorder of Deeds  
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February 28, 2013

The Honorable Chairman and Members  
of the Board of County Commissioners

We have conducted an audit of Non-Engineering Consulting Contracts. Our audit objectives were to:

- Determine the compliance with laws, rules, and Board of County Commissioners (BCC) Purchasing policies and procedures for awarding and approving non-engineering consulting contracts.
- Determine adequacy of internal controls over the selection of non-engineering consultants.

We conclude that the Board of County Commissioners (BCC) Purchasing complies with laws, rules, and the Purchasing policies and procedures for awarding and approving non-engineering consulting contracts.

Internal controls over the selection of non-engineering consultants are adequate. However, controls could be improved by revising contract documents, including the addition of the right to audit clause to audit subcontractors. Also, the County Code for Section 2-178(m) should be clarified regarding "other professional services" to provide assurance that the Purchasing Department processes are followed.

Opportunities for Improvement are presented in this report.

We appreciate the cooperation shown by the staff of the BCC Purchasing Department during the course of this review. We commend management for their responses to our recommendations.

Respectfully Submitted,

Hector Collazo, Jr., Director  
Division of Inspector General

Approved:

Ken Burke, CPA\*  
Clerk of the Circuit Court and Comptroller  
Ex Officio County Auditor  
\*Regulated by the State of Florida





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# INTRODUCTION

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## ***Synopsis***

The Board of County Commissioners (BCC) Purchasing complies with laws, rules, and Purchasing policies and procedures for awarding and approving non-engineering consulting contracts (consulting contracts). In addition, internal controls over the selection of non-engineering consultants (consultants) are adequate. However, controls could be improved by revising contract documents, including the addition of the right to audit clause for subcontractors. Also, the County Code Section 2-178(m) should be clarified regarding "other professional services" to provide assurance that the Purchasing Department process is followed so that all agreements contain appropriate safeguards and clauses.

## ***Scope and Methodology***

We conducted an audit of the process used by BCC Purchasing to award non-engineering consulting contracts. Our scope included an evaluation of internal controls over this process.

To meet the objectives of the audit, we interviewed BCC Purchasing management and reviewed supporting documentation to obtain an understanding of the process and the related policies and procedures. We evaluated the adequacy of these policies and procedures, as well as the internal controls. We tested, on a sample basis, supporting documentation in files regarding the selection and award of the consulting contracts.

The objectives of the audit were to:

1. Determine the compliance with laws, rules, and BCC Purchasing policies and procedures for awarding and approving consulting contracts.
2. Determine adequacy of internal controls over the selection of consultants.

Our audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and the *Principles and Standards for Offices of Inspector General*, and accordingly, included such tests of records and other auditing procedures, as we considered necessary in the circumstances. The audit period was October 1, 2009 through February 29, 2012. However, transactions and processes reviewed were not limited by the audit period.

## ***Overall Conclusion***

We conclude that BCC Purchasing complies with laws, rules, and Purchasing policies and procedures for awarding and approving consulting contracts. Internal controls over the selection of consultants are adequate. However, controls could be improved by revising contract documents, including the addition of the right to audit clause for subcontractors, and by clarifying County Code Section 2-178(m) regarding the purchase of "other professional services".



## Action Plan

FINDING NO.	FINDING (CAPTION) RECOMMENDATIONS	MANAGEMENT RESPONSES			IMPLEMENTATION STATUS	
		Concur	Partially Concur	Do Not Concur	In Progress	Planned
1	<b><i>There Are No Right To Audit Clauses For Subcontractors.</i></b>					
	<p>We recommend Purchasing management:</p> <p>Update the right to audit clause in all contract documents and purchase order terms and conditions to include the right to audit clause for subcontractors.</p>			✓		
2	<b><i>Pinellas County Code Should Be Clarified Related To Purchasing.</i></b>					
	<p>We recommend Purchasing management:</p> <p>1) Work with the Office of the County Attorney to clarify the County Code Section 2-178(m) to be more specific to include:</p> <p style="margin-left: 40px;">a. The specific types of services included.</p> <p style="margin-left: 40px;">b. What purpose it is used for (giving examples).</p> <p style="margin-left: 40px;">c. Who should have authority.</p> <p>2) Update Purchasing Department procedures as necessary.</p>	✓			✓	



FINDING NO.	FINDING (CAPTION) RECOMMENDATIONS	MANAGEMENT RESPONSES			IMPLEMENTATION STATUS	
		Concur	Partially Concur	Do Not Concur	In Progress	Planned
<b>3</b>	<b><i>Conflict Of Interest Clause Does Not Address Gifts.</i></b>					
	We recommend Purchasing management work with the County Attorney's office to include a statement in the Request for Proposal contract document addressing the vendor's responsibility regarding gifts. It should state that the vendor is prohibited from offering gifts or gratuities to county employees or others involved in the competitive selection process, and that by signing the proposal, the vendor will agree to abide by this policy.	✓			✓	
<b>4</b>	<b><i>No Clause For Vendor Reporting Of Unethical Practices.</i></b>					
	We recommend Purchasing management include in contract documents and purchase order terms and conditions a contact to be used by proposers/vendors to report potential perceived unethical or fraudulent practices.  As the Division of Inspector General (IG), which conducts independent audits and investigations of county functions, we further recommend that the IG be the official contact.	✓			✓	

## ***Background***

The Board of County Commissioners (BCC) Purchasing Department procures all goods, services, and CIP construction requirements for all departments under the Board of County Commissioners (BCC) and is available to serve the procurement needs of the Constitutional Officers. The department participates in the Pinellas County Purchasing Cooperative (Cooperative), which includes all other political entities in the county and some in surrounding counties. The Cooperative enhances cost effectiveness by combining requirements for economy of scale and reducing the administrative burden of smaller agencies that participate. The Purchasing Department also manages the Pinellas County Purchasing Card Program and Construction Vendor Pre-qualification Program.

The mission of the BCC Purchasing Department is to provide dedicated efficient and effective professional services to internal and external customers in the procurement of quality products and services with optimum value for the taxpayer.

Pinellas County is governed by a Board of County Commissioners (BCC) consisting of seven publicly elected officials. Within the governing body, there is a chairman and a vice chairman chosen by the majority of the commission. Certain authorities and responsibilities have been delegated by the BCC to the County Administrator who manages the day-to-day county business and reports directly to the BCC.

Pinellas County government is comprised of a number of agencies managed by publicly elected officials. All agencies are at liberty to use the BCC Purchasing Department. However, the agencies shown below also maintain an independent purchasing function:

- Sheriff's Office
- Supervisor of Elections
- Tax Collector
- Property Appraiser
- Clerk of the Circuit Court

The BCC Purchasing Department conducts business in compliance with specific rules and regulations set forth in the Purchasing Ordinance (law) policies and procedures. The Pinellas County Purchasing Ordinance Section 2-157 describes the goal of Purchasing as follows:

“The purpose of this division is to provide for the fair and equitable treatment of all persons involved in public purchasing by the county, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.”



We requested a list from the Purchasing Department of all contracts open during the period October 1, 2009 through February 29, 2012. The totals on the 120 page report we received amounted to 1,100 contracts and a total awarded amount of \$493,112,605. The Division of Inspector General (IG) then requested a listing of just non-engineering consulting contracts open during our audit period from BCC Purchasing that were part of that initial listing received from Purchasing. However, the Director of Purchasing stated that the Purchasing Department does not specifically label contracts as "consultant," and therefore, does not maintain a report that quantifies the total number of contracts, or total dollars awarded for non-engineering type contracts.



# OPPORTUNITIES FOR IMPROVEMENT

Our audit disclosed certain policies, procedures, and practices that could be improved. Our audit was neither designed nor intended to be a detailed study of every relevant system, procedure, or transaction. Accordingly, the Opportunities for Improvement presented in this report may not be all-inclusive of areas where improvement may be needed.

## ***1. There Are No Right To Audit Clauses For Subcontractors.***

A right to audit subcontractor's clause is not included in the language on contract documents (agreements, request for proposals, etc.) and the purchase order form terms and conditions.

We reviewed 15 contract files for non-engineering consultants (consultants) for the presence of a right to audit clause.

- Thirteen contract files had used the agreement and Request for Proposal (RFP) documents, and two contract files used the purchase orders with terms and conditions.
- The 13 files with agreements and RFP documents had the right to audit clauses for the vendor, but did not include the language for the subcontractors.
- The two other files, which used the purchase order terms and conditions, did not have a right to audit clause for the vendor or the subcontractors.
- The purchase order form was updated in the Oracle Project Unified Solution (OPUS) system with the new system implementation, and the terms and conditions form now includes a right to audit clause of the vendor. However, it still does not have language to audit the subcontractors.

Not including the subcontractors in the right to audit clause in county contracts and purchase order documents weakens internal controls over contract billings and compliance. This exclusion eliminates a legal basis for the county to review subcontractor records relating to billings and compliance with the provisions of the county contract providing additional assurance that billings are accurate and in accordance with contract terms.

Good business practice dictates including standard terms, such as a right to audit clause, in contracts and purchase order terms and conditions to protect the county, and should be included language for subcontractors in addition to the vendor.

**We recommend** Purchasing management:

Update the right to audit clause in all contract documents and purchase order terms and conditions to include the right to audit clause for subcontractors.



**Management Response:**

After discussion with our departmental Attorney and our Assistant County Administrator, we do not concur with IG's recommendation. We only have a contractual relationship with prime contractors, and we really want to maintain that relationship. Establishing such a relationship with subcontractors, according to our Attorney, may cause issues on contracts.

## ***2. Pinellas County Code Should Be Clarified Related to Purchasing.***

We noted that the Pinellas County Code Section 2-178(m) related to purchasing appeared vague and should be clarified. This section authorizes non-competitive procurement of contracts for "other professional services" without going through the normal BCC Purchasing procedures prior to commitment. However, the code section paragraph is not specific as to:

- 1) The types of services this would pertain to.
- 2) What purpose it could be used for (giving examples).
- 3) Who should have authority to exercise this exemption from normal purchasing procedures.

Based on the current wording, normal purchasing procedures for seeking competition for other professional services (such as consulting) could inadvertently be circumvented. The Code's Section allows an employee to proceed around the Purchasing Department and negotiate an agreement. The term "other professional services" is a term which is vague and can be misused by approval authorities. The County Code paragraph's wording could allow a commitment to be made to a vendor prior to or without going through the documented Purchasing Department process first, which could prevent incorporating appropriate enforceable safeguards and clauses in the agreement.

There is potential for an agreement for any service or consultant to be negotiated by the approval authority without competition and without following the separate non-competitive code. Not following the established non-competitive purchasing procedures prior to commitment may impair the objectivity of the commitment process. This may bring legal challenges by other potential vendors. Even though a purchase order (with standard terms and conditions) would be issued by Purchasing after the agreement was separately negotiated, the purchase order standard clauses may be in conflict with the separately negotiated agreement, and cause problems with enforcing the standard terms and conditions.

The County Code should be clear to help ensure compliance by the county and increase the ability of the Purchasing Department to accomplish its mission.

**We recommend** Purchasing management:

- 1) Work with the Office of the County Attorney to clarify the County Code Section 2-178(m) to be more specific to include:
  - a. The specific types of services included.
  - b. What purpose it is used for (giving examples).
  - c. Who should have authority.
- 2) Update Purchasing Department procedures as necessary.

**Management Response:**

After discussion with our departmental Attorney and our Assistant County Administrator, we concur with the IG's recommendations.

### ***3. Conflict Of Interest Clause Does Not Address Gifts.***

We noted that the Request for Proposal (RFP) contract document does not specifically state the fact that county employees are not permitted to accept gifts or gratuities from persons they work with, or others they are involved with, in the competitive selection processes. We reviewed the contract documents for a sample of non-engineering consulting contracts. We noted that the RFP contract document includes several clauses to protect the county in several areas. It includes the following, but does not mention gifts and gratuities:

- A clause to protect the county from potential conflicts of interest, which may appear to influence the contractor's judgment or quality of services provided.
- A collusion clause that states the proposer, by signing the proposal, is certifying that its proposal is made without outside control, collusion, fraud, or otherwise illegal action.
- A lobbying clause whose purpose is to protect the integrity of the procurement process by shielding it from undue influences by prohibiting lobbying on all county competitive selection processes until the selection process is concluded.

Purchasing management has not included a statement in the RFP contract document addressing the vendor's responsibility regarding gifts. The effect of the RFP contract documents not specifically stating the fact that county employees are not permitted to accept gifts or gratuities, and that vendors are not required to sign a statement regarding gifts, both reduce internal controls related to conflicts of interest.

Good business practice dictates that county contracts should include protections to ensure the integrity of the procurement process. County contract documents should include the vendor's responsibility regarding the county's policy on gifts.



**We recommend** Purchasing management:

Work with the County Attorney's Office to include a statement in the Request for Proposal contract document addressing the vendor's responsibility regarding gifts. It should state that the vendor is prohibited from offering gifts or gratuities to county employees or others involved in the competitive selection process, and that by signing the proposal, the vendor will agree to abide by this policy.

**Management Response:**

After discussion with our departmental Attorney and our Assistant County Administrator, we concur with the IG's recommendations.

#### ***4. No Clause For Vendor Reporting Of Unethical Practices.***

We noted that the contract documents for non-engineering consultants do not include instructions for vendors regarding where to report potential perceived unethical or fraudulent practices. We noted the Request for Proposal (RFP) contract document includes several clauses to protect the County in several areas. It includes clauses to protect the County from potential conflicts of interest, collusion, and lobbying. We noted two clauses included some requirement of notification, only one by the vendor.

Purchasing management has not included, in contract documents and purchase order terms and conditions, a contact for proposers/vendors to report potential perceived unethical or fraudulent practices.

Not including a clause regarding the reporting of unethical practices with instructions to the proposer/vendor in the RFP contract document and purchase order terms and conditions weakens internal controls by hindering the ability of vendors to directly report any perceived potential unethical or fraudulent practices.

It is good business practice to ensure compliance with the principles of right and wrong which govern the conduct of county employees, vendors, consultants, contractors, and all other outside agencies or parties doing business with Pinellas County. This can be helped by creating an environment in which employees, vendors, and/or citizens are encouraged and given a vehicle for the reporting of potential perceived unethical or fraudulent practices.

**We recommend** Purchasing management:

Include in contract documents and purchase order terms and conditions a contact to be used by proposers/vendors to report potential perceived unethical or fraudulent practices.

As the Division of Inspector General (IG), which conducts independent audits and investigations of county functions, we further recommend that the IG be the official contact.

**Management Response:**

After discussion with our departmental Attorney and our Assistant County Administrator, we concur with the IG's recommendations.



# DIVISION OF INSPECTOR GENERAL

KEN BURKE, CPA

CLERK OF THE CIRCUIT COURT AND COMPTROLLER  
PINELLAS COUNTY, FLORIDA

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