

5. REPORTS TO BE RECEIVED FOR FILING:

- a. Division of Inspector General, Audit Services, Clerk of the Circuit Court and Comptroller, Report No. 2014-14 dated May 13, 2014 – Follow-Up Audit of Non-Engineering Consulting Contracts.
- b. Housing Finance Authority Resolution No. 2014-04 adopting and approving an amended Fiscal Year 2014 Operating Budget.
- c. City of Belleair Beach Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2013.
- d. City of Tarpon Springs Comprehensive Annual Financial Report for the Fiscal Year ended September 30, 2013, together with Schedules of Revenues and Expenditures of the Fire and EMS Departments.
- e. Dock Fee Report for the month of April 2014.



## **DIVISION OF INSPECTOR GENERAL**

**KEN BURKE, CPA**

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

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



**An Accredited Office of  
Inspectors General**

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**MAY 13, 2014**  
**REPORT NO. 2014-14**



## Ken Burke, CPA

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May 13, 2014

The Honorable Chairman and Members of the Board of County Commissioners

We have conducted a Follow-Up Audit of Non-Engineering Consulting Contracts. The objectives of our review were to determine the implementation status of our previous recommendations.

Of the five recommendations contained in the audit report, we determined that two have been implemented, two have been partially implemented, and one has not been implemented. The status of each recommendation is presented in this follow-up review.

We appreciate the cooperation shown by the staff of the BCC Purchasing Department during the course of this review. We commend management for implementation of some of our recommendations and continue to encourage management to fully implement the remaining recommendations.

Respectfully Submitted,



Hector Collazo Jr.  
Inspector General/Chief Audit Executive

Approved:



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

\*Regulated by the State of Florida



# TABLE OF CONTENTS

	<b>Page</b>
<b>Introduction</b>	<b>4</b>
<b>Status of Action Plan</b>	<b>5</b>
<b>Status of Recommendations</b>	<b>9</b>
1. There Are No Right To Audit Clauses For Subcontractors.	
2. Pinellas County Code Should Be Clarified Related To Purchasing.	
3. Conflict Of Interest Clause Does Not Address Gifts.	
4. No Clause For Vendor Reporting Of Unethical Practices.	



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# INTRODUCTION

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## ***Scope and Methodology***

We conducted a follow-up audit of Non-Engineering Consulting Contracts. The purpose of our follow-up review is to determine the status of previous recommendations for improvement.

The purpose of the original audit was to:

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

To determine the current status of our previous recommendations, we surveyed and/or interviewed management to determine the actual actions taken to implement recommendations for improvement. We performed limited testing to verify the process of the recommendations for improvement.

Our follow-up 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. Our follow-up testing was performed during the month of April. The original audit period was October 1, 2009 through February 29, 2012. However, transactions and processes reviewed were not limited by the audit period.

## ***Overall Conclusion***

Of the five recommendations in the report, we determined that two were implemented, two were partially implemented, and one was not implemented. We commend management for implementation of some of our recommendations and continue to encourage management to fully implement the remaining recommendations.

## Status

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
1	<b><i>There Are No Right To Audit Clauses For Subcontractors.</i></b>					
	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.				✓	
2	<b><i>Pinellas County Code Should Be Clarified Related To Purchasing.</i></b>					
	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.			✓		
3	<b><i>Conflict Of Interest Clause Does Not Address Gifts.</i></b>					
	Purchasing management work with the County Attorney's Office to include a statement in the Request	✓				

## Follow – Up Audit of Non-Engineering Consulting Contracts

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
	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.					
4	<b><i>No Clause For Vendor Reporting Of Unethical Practices.</i></b>					
	<p>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.</p> <p>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.</p>	✓				



## ***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.

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# STATUS OF RECOMMENDATIONS

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This section reports our follow-up on actions taken by management on the Recommendations for Improvement in our original audit of Non-Engineering Consulting Contracts. The recommendations contained herein are those of the original audit, followed by the current status of the recommendations.

## ***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 Recommended** 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.



**Status:**

**Not Implemented.** Management stated that after discussion with their Departmental Attorney, they do not concur with the recommendation. Management stated that it is beneficial to solely have a contractual relationship with prime contractors, and they wish to maintain this long standing practice. Management stated that establishing relationships with subcontractors may cause contractual issues and magnify the potential for risk.

We continue to encourage management to implement our recommendation.

## ***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 Recommended 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.

**Status:**

- 1) and 2). **Partially Implemented.** Management discussed this issue with the recently retired Chief Assistant County Attorney. Management, in coordination with the Office of the County Attorney and County Administration, is still in the process of evaluating this language. Management stated that based upon further discussion with the recently retired Chief Assistant County Attorney, it was decided to maintain the current language as written in order to provide an alternate means for determining non-competitive requests separate from Section 2-180 of County Code. In addition, management stated that Staff will continue to work with County Administration and the Office of County Attorney to determine language best suited to provide flexibility and proper scrutiny of non-competitive purchases as provided under Section 2-178(m). Management stated the intent will be to ensure Section 2-178(m) is not misinterpreted or misused.

### **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 Recommended** 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.

**Status:**

**Implemented.** Management has included the recommended language in the standard Request for Proposal and Invitation to Bid contract documents stating the vendor shall not offer gifts or gratuities to County employees. It also states employees are not permitted to accept gifts or gratuities. In addition, the contract documents contain language that the vendor signature on the contract document represents an acknowledgement that no gifts or gratuities have been offered to county employees or anyone else involved in the competitive bid/proposal process.

#### ***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 Recommended** 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.

**Status:**

**Implemented.** Management has included contact information of the Division of Inspector General in standard contract documents to allow proposers/bidders to directly report any perceived potential unethical or fraudulent practices.





# DIVISION OF INSPECTOR GENERAL

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