CLERK & COMPTROLLER
PALM BEACH COUNTY
CLERK CONTRACT COMPLIANCE AUDIT

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Palm Beach County

Division of Inspector General

Audit Services Unit

March 25, 2014

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The Honorable Sharon R. Bock, Esq.
Clerk & Comptroller

We conducted an audit of Clerk contract compliance.

Our objectives were to select key Clerk contracts to verify compliance with contract and procurement policies and pertinent laws and statutes, and ensure payments complied with contract terms. In addition, we followed up on the prior contract audit issued in 2008 to confirm issues were adequately addressed.

Our audit was neither designed nor intended to be a detailed study of every process, procedure, transaction or system in each area. Accordingly, the observations and recommendations included in this report are not all-inclusive.

Our audit of the contracting process and detail testing of select contracts indicated that the Clerk's office has successfully instituted a relatively robust contracting process, with several elements in place that are considered best practices based on available research. Improvement opportunities exist to further standardize, strengthen and document certain elements of the contracting process, including areas such as an overall contract management guide, vendor selection and related templates, vendor proposal evaluation, contract dispute resolution, and contract compliance monitoring.

We appreciated the cooperation of management and staff during the course of this audit.

Respectfully submitted,

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Executive Summary

An audit of Clerk contract compliance was performed by the Clerk & Comptroller's Division of Inspector General. This regularly scheduled audit was included on the annual audit plan.

Contracting responsibilities are dispersed throughout the Clerk's office, with each department responsible for vendor solicitation, vendor proposal evaluation and selection, contract negotiation, contract development, and project management. The Clerk's Legal Counsel supports the contract finalization process, maintains a listing of all executed contracts, and stores the related official documents. The Clerk's Procurement function supports the process by reviewing contracts to ensure compliance with Clerk's policies and to help ensure contracts meet the requirements for competitive pricing.

The objectives were to select contracts for testing, verify compliance with Clerk's contract and procurement policies and pertinent laws and statutes, and ensure payments complied with contract terms. In addition, we followed up on the prior contract audit issued in 2008 to confirm issues were adequately addressed.

Our audit of the contracting process and detail testing of select contracts (including the $2.4 million contract to replace the Official Records system) indicated that the Clerk's office has successfully instituted a relatively robust contracting process, with several elements in place that are considered best practices based on available research. Improvement opportunities exist to further standardize, strengthen and document certain elements of the contracting process, including areas such as an overall contract management guide, vendor selection and related templates, vendor proposal evaluation, contract dispute resolution, and contract compliance monitoring.

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Introduction

Overall Conclusion

Our audit of Clerk contract compliance indicated that the Clerk's office has made significant improvements in the contracting process since we performed an audit of the overall contracting and procurement processes in 2008. Several elements that are considered best practices have been implemented. Improvement opportunities exist to further standardize, strengthen and document other elements of the contracting process to maximize the effectiveness and efficiency of the operations.

Objectives, Scope and Methodology

The Clerk's Audit Services Unit of the Division of Inspector General conducted an audit of contract compliance within the Clerk & Comptroller's Office.

The objectives of the audit were as follows:

- For contracts selected for testing, verify compliance with Clerk's contract and procurement policies and pertinent laws and statutes, and ensure payments comply with contract terms.
- Follow up on the prior contract audit (issued September 18, 2008) to confirm issues were adequately addressed.

In order to meet these objectives, we conducted interviews and reviewed contract and procurement policies and procedures. We obtained a listing of contracts approved from January 1, 2012 through September 30, 2013. Two contracts with perceived higher risk to the organization (based on amount, bidding requirements, complexity and other factors) were selected and tested for compliance with the Clerk's contract and procurement policies and relevant Florida Statutes. The selected contracts were the Tyler Technologies Inc. Official Records system contract (totaling $2.4 million) and the Xerox copier contract (totaling $278,000 per year). A sample of payments was reviewed for the Xerox copier contract to ensure compliance with contract terms; no payments had yet been made to Tyler Technologies at the time of the audit. In addition, a follow-up was performed on the prior contract audit to confirm issues were adequately addressed.

We researched contract management best practices and identified key elements within the International Association for Contract & Commercial Management and Texas Comptroller organizations. We performed other procedures that were deemed necessary under the circumstances.

Background

Contracting responsibilities are dispersed throughout the Clerk's office, with each department responsible for vendor solicitation, vendor proposal evaluation and selection, contract negotiation, contract development, and project management. Each department is responsible for drafting initial contracts and involving subject matter experts (e.g., Information Technology) when necessary. The Clerk's Legal Counsel supports the contract finalization process, maintains a listing of all executed contracts, and stores the related official documents.

The Clerk's Procurement function handles all purchases of goods and services required within the organization. The function supports the Clerk's office and individual departments by reviewing all contracts to ensure compliance with the Clerk's contract and procurement policies and to help ensure contracts meet the requirements for competitive pricing.

The Clerk's contract and procurement policies reference several types of contracts, including professional services agreements, negotiable agreements, and non-negotiable agreements. All contracts must include a maximum amount based on either a maximum "not-to-exceed" or fixed price amount. Reimbursable costs must comply with the Clerk's travel policy and represent items that are normally connected with the course of doing business as outlined in the Clerk's contract policy.

According to the Clerk's contract policy, a Request for Proposal (RFP) is used to request vendor responses to criteria presented by the Clerk's office proposing terms, conditions and pricing for the purchase of goods and/or services. Proposals are evaluated based on pre-determined criteria and contracts are awarded based on the best interests of the office. An Invitation to Negotiate (ITN), similar to an RFP, requests proposals from vendors, which are evaluated based on pre-determined criteria. Vendors are selected for negotiations and a final selection is made following the negotiation process.

The Clerk's procurement policy requires competitive quotes or bids dependent on the dollar amount of the purchases. Purchases costing $35,000 or more require competitive sealed bids or RFPs.

The Clerk's office issued approximately 170 contracts and agreements from January 1, 2012 through September 30, 2013 based on the Excel schedule maintained by Procurement.

Observations & Recommendations

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

1. Opportunities exist to further enhance and standardize key elements of the contracting process.

Contracting responsibilities are dispersed throughout the Clerk's office. Each department is responsible for vendor solicitation, vendor proposal evaluation and selection, contract negotiation, contract development, and project management. Clerk departments currently develop vendor Requests for Proposals (RFPs) and Invitations to Negotiate (ITNs) when needed.

The Clerk's Procurement Unit maintains an Excel-based contract master listing of all contracts, with summary information that includes contract numbers, effective dates, vendor names, and contract descriptions. The Clerk's Legal Counsel reviews contracts for legal sufficiency as well as maintains original executed contract files and electronic copies of all executed contracts.

A. Best Practices Currently in Place

Our review of the policies and procedures and sampled contracts indicated that the Clerk's office has successfully instituted the following contract management elements that are considered best practices (as identified by the International Association for Contract & Commercial Management and Texas Comptroller organizations):

1) A standardized contract policy (revised February 26, 2010) provides guidance relating to contract criteria, development, review, approval, execution, standard terms, and payment approval.
2) A standardized procurement policy (revised August 1, 2012) provides guidance on competitive sealed bid and RFP requirements.
3) A standardized short-form contract template has been developed and is generally used, which management intends to continue to review. Also, a

standardized long-form contract template has been developed but it is not frequently used due to large vendor "reluctance" to accept anything other than their own contract form.

4) Project managers are involved in writing solicitations (e.g., RFPs, ITNs), negotiating contracts, managing contracts, and the contract closeout.
5) The responsible department and/or project manager develops deliverables with input from Legal Counsel, Procurement, and subject matter experts.
6) Key stakeholders (e.g., project manager, Chief Officer, department director) review invoices for compliance with contract terms and deliverables prior to payment approval. The Official Records (OR) system contract included a statement of work with well-defined deliverables, deadlines, and payment amounts.
7) Contracts are reviewed for legal sufficiency by the Clerk's Legal Counsel.

B. Additional Best Practices to Consider Implementing

Our review of contract and procurement policies and procedures also identified improvement opportunities to further standardize and strengthen elements of the contracting process by implementing the following elements that are considered best practices.

1) Develop an overall contract management guide for the contracting process.
2) The Clerk's standardized contract management process and related procedures should also include vendor solicitation, proposal evaluation, vendor selection and contract negotiation. As each department is responsible for performing these tasks as contractual needs arise, the failure to develop a documented, repeatable process for these elements may result in unnecessary resource and time requirements and substandard outputs (e.g., RFPs, ITNs and draft contracts). Examples of additional practices that could be standardized include:
    a. Establish a scoring methodology for vendor responses to an ITN prior to receipt of vendor responses to avoid any perception of favoritism toward certain vendors. Procurement management stated that evaluation and scoring are currently included in competitive solicitations processed through the Procurement Department.
    b. Establish requirements for size and composition of the evaluation committee. Procurement management stated that set requirements are not defined at the state level within Florida Statutes or within the Clerk's office. Further, within the Clerk's office, a general rule is that all departments impacted should have a representative involved and

Procurement is generally included to provide guidance and ensure policy and best practice compliance.

c. Require opening of vendor corrective responses to RFPs and ITNs in the presence of a representative of Clerk's Legal Counsel and the evaluation committee. Procurement management stated that responses are opened by the project lead, manager, or director responsible for the solicitation.

3) Develop and utilize formal standardized templates for vendor solicitations (e.g., RFPs, RFQs, ITNs).
4) Develop a repository of "lessons learned" for continuous improvement. Procurement management recommends a follow-up meeting at the end of each solicitation with the evaluation committee and Procurement.
5) Document the basis for awarding a contract to a certain vendor, which sets forth the vendor's deliverables and price as well as an explanation of how it provides the best value to the Clerk's office. Procurement management stated that the basis for awarding the contract is the scoring criteria, with the highest score receiving the first shot at a contract, and best value is determined by the highest score.
6) Develop a standardized contract dispute resolution process. We noted a dispute resolution process was included in the OR ITN for contract negotiations and in the final OR contract.
7) Develop a proactive compliance monitoring process for the contracting process. Examples of practices that could be monitored include: vendor solicitation, vendor evaluation, filing of original executed contracts with Clerk's Legal Counsel, receipt of required insurance certificates and performance bonds, and project management.
8) Ensure relevant training is available to all departments responsible for executing contract management practices.

Recommendation:

A. Enhance and further standardize the Clerk's contract management process by implementing the elements outlined in the observation above to ensure an efficient and effective approach. Document the enhancements in Clerk's policies and procedures. Recognizing that these efforts will require the involvement of multiple groups (e.g., Procurement, Legal Counsel, Project Management Office) over a period of time, we suggest that management provide a general initial response to this report outlining their overall strategy. This will allow time for coordination among the groups. At the end of the 60-90 day timeframe or whatever is deemed reasonable, management can then provide a more detailed action plan with more clearly defined deliverables and target completion dates.

Management Responses:

A. Management will conduct research of best practices in conjunction with the Contract Compliance audit recommendations and the Division of Inspector General's best practice research, and determine additional actions to implement and/or alternatives to those suggested.

   Management will coordinate with Clerk's Procurement, Project Management Office and Legal Counsel in developing a clear contracting process and overall guideline for contracting and competitive solicitations.

   Management will develop an outline methodology of specific tasks and detailed action plans to more clearly define deliverables and target completion dates.
   Target Completion Date: 7/31/14

B. Management will prepare recommended changes to the Clerk's procurement and contract policies by specifically removing the procedural components from the contact policy as these will become part of the contracting process guidelines. These will be presented for approval by Clerk Bock.
   Target Completion Date: 4/30/14