



**Program Evaluation and Audit**

**Metropolitan Council**  
*Professional Services Contracts Review*

August 15, 2011

# INTRODUCTION

## Background

Program Evaluation and Audit (Audit) recently conducted a review of information technology and support services contracting through the Metropolitan Council's (Council) Information Services (IS) Department. Numerous recommendations for improvement resulted from that review (see audit report *Contracting for Information Services*, January 26, 2011). As a result, it was determined that the Council could be at risk for non-compliance not only with IS contracts but with possibly any professional services consulting contracts. Therefore, the current review was conducted to determine the level of risk to which the Council may be exposed in its procurement of professional services throughout the Council.

## Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and the U. S. Government Accountability Office's *Government Auditing Standards*.

## Purpose

The purpose of this audit is to ensure that professional services contracting risks have been identified and minimized. In addition, contract language regarding the goods and services provided by Professional Services Consultants (Consultant) was reviewed to ensure adherence to Council policies, processes and procedures, as well as to any applicable state and/or federal regulations.

## Scope

The audit reviewed a judgmental sample of contracts initiated during the period 2007 through 2010. Payments to Consultants whose contracts were subsequently selected were also reviewed. Audit Report, *Contracting for Information Services*, January 26, 2011, included a detailed review of Consultant contracting through the State of Minnesota ASAP-IT master contract. Therefore, the review of ASAP-IT contracts included in the current audit is limited.

## **Methodology**

To gain an understanding of and compliance with Council Consultant procurement policies and practices, the following methods of inquiry were used:

- Consultant payment records were analyzed.
- Contracts & Procurement Department personnel were queried.
- Council policies and procedures were reviewed.
- Council and ASAP-IT contract clauses were studied.
- FTA regulations were reviewed.

Audit also reviewed the contract files of professional services and “other” contracts listed in the Procurement Contract Log Database that were initiated during calendar years 2007 through 2010. Twenty-eight professional services contracts were identified after eliminating those that could be identified as:

- Contracts under \$30,000
- Contracts previously reviewed by Audit
- Procurement contracts for goods
- Construction and maintenance contracts which are obtained by bid from the lowest responsive, responsible bidder
- Contracts for repetitive services
- Engineering design contracts which are reviewed periodically by Audit
- Assistance agreements and rental contracts
- Firm fixed priced and lump sum contracts
- Purchased software and license maintenance agreements

# OBSERVATIONS

## *Contract Characteristics*

Nine of the 28 contracts reviewed were sole source procurements, each with its required justification memorandum. The remaining 19 competitive procurement awards were each supported by the appropriate final evaluation document.

A summary of the contracts reviewed by Audit is as follows:

<u>Description</u>	<u>#</u>
Sole Source	9
Lump Sum/License Fee not Sole Source	2
MN ASAP-IT	7
< 100k and not ASAP-IT	6
< 100k but Total Procurement > 100k	2
Other > 100k	<u>2</u>
<b>Total Sample</b>	<b>28</b>

The services procured by these contracts are summarized as follows:

<u>Description</u>	<u>#</u>
Software license/maintenance agreement	8
IS Project management	8
Project Mgmt. hourly invoiced services	5
Graphic arts hourly invoiced services	3
Software upgrade services	2
Multi-year systems tech support	1
Council benefits consultation	<u>1</u>
<b>Total</b>	<b>28</b>

Although the scope of this review includes professional services procurements throughout the council, it is evident from the above information that all but four (graphic arts and Council benefits) are IS related. Many of the other professional services contracts, primarily engineering and design services, were not included in the judgmental sample. They are periodically reviewed by Audit.

Thirteen of the contracts were used to obtain Council-wide services, 12 benefited Metro Transit, two assisted Metro Transportation Services and one was requested by Environmental Services. In addition, 17 contracts contained Council standard professional services terms and conditions, seven contained the ASAP-IT master contract terms and four were executed using the vendor's software license agreement plus FTA clauses, when required.

## ***Proposal Evaluation Panels***

A formal evaluation panel is required of procurements exceeding \$100,000 (Council Policy 2-1C). Of the 19 competitive awards, five exceeded \$100,000 and required a formal evaluation panel. Two additional contracts, both less than \$100,000 and not requiring an evaluation panel, nevertheless employed this process.

The seven formally evaluated solicitations drew a total of 39 proposals evaluated by a total of 36 evaluators, all of whom signed certificates indicating they had no conflict of interest regarding the proposing consultants. With the assistance of the Council's Contracts and Procurement Department, Audit located 192 of the 198 individual evaluations that should have been completed. The six missing evaluations were from the same procurement. Of these 192 evaluations, 120 appeared to be complete, including narrative comments, signatures and dates; 68 were missing narrative comments and four were not signed.

## ***Sole Source Contracts***

Nine of the contracts were awarded to sole source providers; six of which were software license or maintenance agreements and three of which were firm fixed priced procurements. In each instance, the appropriate sole source documentation was included in the procurement file.

Audit reviewed sole source procurements for compliance with Federal Transit Administration (FTA) contract requirements. All seven of the FTA funded contracts contained the Council's standard FTA required contract clauses. Audit also evaluated the contracts to determine if they were sole source or single bid procurements, the latter needing FTA notification.

FTA Circular 4220.1F describes four circumstances in which noncompetitive proposals may be used:

- The item is of a unique/innovative concept
- The item is protected by patent or data rights restrictions
- Procurement of the item would result in substantial duplication of costs
- Procurement of the item would result in an unacceptable delay in performance

All seven sole source FTA procurements fell within one of these determinations. Five were protected by patent and data rights and two would have incurred substantial duplicate costs. In one instance it was initially unclear if the procurement was sole source or single bid. An in depth review of the procurement preceded the determination of the Acting Director, Contracts and Procurement that "after solicitation of a number of sources, competition is determined to be inadequate, and this procurement must proceed as a sole source."

## ***Minnesota State ASAP-IT Contracts***

In 2009, the Minnesota Department of Administration established a master IT services contract. Twenty-one firms are currently incorporated within this contract to provide a variety of IT services. The contract allows Minnesota State agencies and other approved governmental agencies quick access to services requiring skills which may not be available within their own IS departments. Consultant resumes are requested from contracted firms, candidates interviewed and usually someone can be working within the week. Work under ASAP-IT contracts is limited to one year. The Council's IS Department has utilized this master contract since early 2010.

The seven ASAP-IT contracts are also hourly rate contracts, five of which are closed. Four of the five contained a notice on the last invoice that it was the final one. All four of these occurred subsequent to the Council's IS Department being notified during the previous audit that the absence of such a notation was a concern.

Review of the seven ASAP-IT contract files disclosed that individual evaluator notes regarding interviewed candidates were not included. Only a single document, prepared by the Contracts and Procurement Department, summarizing the evaluation process and choice of Consultant was included. There is no requirement in the State Master ASAP-IT contract for maintaining individual evaluations. However, Audit Report, *Contracting for Information Services*, January 26, 2011, recommended that for future ASAP-IT Consultant contracts, "procurement should take steps to ensure that all evaluation forms are completed and filed in the contract folder." That recommendation is too recent to have affected the seven ASAP-IT contracts reviewed herein. Finally, all work performed under these contracts was completed within the contract period which in every case was less than one year.

## ***Hourly Rate Contracts***

Eleven contracts were awarded based upon evaluations of the individuals that would accomplish the work. Such evaluations took into account how well the prospective Consultant could perform the required tasks as well as the Consultant's hourly rate. Four of the 11 contracted Consultants proposed the lowest hourly rates, four proposed a middle rate and in one instance each, the second lowest and the second highest rates were proposed. Finally, one Consultant that proposed the highest rate was initially selected; however, that Consultant obtained work elsewhere and the next highest ranked Consultant was selected.

Three contracts are in progress. None of the eight completed contracts was overrun, compiling a 7.90% positive variance. In addition, all completed contract work began and ended within the contracted time frame and in every instance the invoiced hourly rate was identical to the contracted rate.

Seven of the hourly rate contracts were ASAP-IT contracts. The other four, three of which are complete, all incorporated the standard Council terms and conditions. Section III.c. of those terms states in part,

*“The final invoice must include the following certification, signed by an authorized representative of the CONSULTANT:*

*“The undersigned represents that payment of this request for payment constitutes completion of the services agreed upon and acknowledges that the undersigned shall reimburse the COUNCIL for any payments due the COUNCIL as the result of an audit and any amount due the COUNCIL resulting from Contract adjustments.”*

None of the three final invoices contained the above statement.

The hourly rate contracts were also reviewed for time card completeness (signed by both the Consultant and the Council Project Manager and dated). Nine of 11 were complete. For one contract, seven of 39 time cards were signed by the Council Project Manager and 37 of 39 were signed by the Consultant. The Consultant’s time card did not contain a line for the supervisor’s signature. The final Consultant did not use paper time cards. Hours were recorded electronically by the Consultant and by the Project Manager separately. The Council’s Project Manager accomplished this daily, including a note regarding the work performed by the Consultant. Once a week, the Consultant and Project Manager verified their data one to the other and the Project Manager used his file to verify invoiced hours upon receipt of the Consultant’s invoice.

### ***Consultant Payments***

Audit reviewed payments under each of the 28 sampled contracts to determine if any were made to the Consultant outside the contract. For example, the Audit Report, *Contracting for Information Services*, January 26, 2011, disclosed that a purchase order had been used to continue work once a contract ceiling had been met. In no instance did Audit find such payments. In addition, none of the 21 closed contracts was overrun, nor are any of the remaining seven open contracts in an overrun status.

### ***Sales Tax and Late Fee Payments***

Audit reviewed the invoices submitted by the five Consultants whose contract payments exceeded their contract amounts. In four instances, the additional amounts totaling \$15,546 represented applicable sales tax. In the other instance the Council paid a \$2,688 late fee for paying an invoice three months after it was due. An additional \$3,188 in sales tax was charged that had already been included in the contract amount and was not applicable to the custom software implementation services to which it was applied. The invoice also contained a hand written "taxable ?" notation next to a circled sales tax amount indicating that Metro Transit personnel had initially questioned the tax. Audit forwarded this information to the Metro Transit Accounting Department, the personnel of which subsequently verified that the sales tax should not have been paid. Council accounting personnel then made an adjustment to the monthly sales tax report submitted to the Minnesota Department of Revenue.



***Closed Contracts***

Twenty-one of the 28 contracts reviewed, valued at \$2,472,537, have been completed. The total cost incurred for these contracts was \$113,264 (4.58%) less than their contracted value. Adjusting for sales tax and late fees, this positive variance increases to \$134,684 (5.45%). After these adjustments, the cost incurred (\$780,344) under nine contracts was exactly the same as the contract ceiling. None of the other 12 closed contracts was likewise overrun.

# CONCLUSIONS

1. *Procurement evaluation panel results are appropriately summarized and maintained. However, individual panel member evaluations are generally not adequately completed.*

The procurement decisions regarding the nineteen procurements formally evaluated by Council staff were appropriately documented. However, 72 (37.5%) of 192 individual evaluations were missing some required documentation and six evaluations could not be located.

2. *All payments to Consultants for the work completed was assigned to the appropriate agreement and in no instance (except for sales tax – see Conclusion 4, below) were additional funds used.*

Audit Report, *Contracting for Information Services*, January 26, 2011, disclosed that a purchase order had been used to continue work once a contract ceiling had been met. In no instance did Audit find such payments. None of the contracts was overrun. The 21 closed contracts experienced a \$134,684 (5.45%) positive variance, with nine incurring their appropriate fixed dollar amounts.

3. *All sole source procurements were conducted in compliance with Council and/or FTA requirements.*

Nine sole source contracts were awarded, seven of which were FTA funded, and appropriate sole source documentation was included in each procurement file. In addition, all seven FTA funded contracts contained the Council's standard FTA required contract clauses.

4. *Insufficient care was taken when reviewing a Consultant invoice*

Non-applicable sales tax of \$3,188 was invoiced by a Consultant and paid by the Council in an instance in which no sales tax was owed. In addition, the Council paid a three month late fee of \$2,688.

5. *Contract Administration over ASAP-IT contracts has improved since the results of Audit Report, Contracting for Information Services, January 26, 2011 were made known to Council IS personnel.*

All four ASAP-IT contracts completed in 2011 have the required language on the final invoice. In addition, all work performed under the seven ASAP-IT contracts was completed within the appropriate contract period which in every case was less than one year. Finally, although none of the ASAP-IT contracts was evaluated in 2011 and

individual evaluator notes were not maintained, all contained a final evaluation summary document.

6. *Hourly rate Consultant contracts were generally managed in accordance with contract requirements. However, improvement can occur regarding final invoice notation and time card preparation and approval.*

Eleven hourly rate contracts were awarded, eight of which are complete. None of the eight was overrun, the work on each began and finished within the contracted term and the invoiced hourly rate for each was identical to the contracted rate.

Seven were ASAP-IT contracts (see *Conclusion #5*, above). The other four contracts, three of which are complete, included standard Council terms and conditions Section III.c., that requires a final invoice notation. None of the three final invoices complied with this requirement. In addition, the time cards submitted by one Consultant did not have a line for Council approval, 32 of 39 were not signed by the Council's project manager and two were not signed by the Consultant. One other Consultant-Council Project Manager team used an electronic format for approving, submitting and reviewing Consultant invoiced hours. The procedures used by this team adequately safeguarded Council funds.

# RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk of the finding (conditions) they are designed to resolve. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council’s Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council’s Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

**1. (Essential) Council Contract and Procurement personnel should renew efforts to ensure that evaluation panel member evaluations are appropriately documented.**

The forms used by evaluation panel members to document their assessment of individual Consultant proposals are essential to support the final contract award decision. Such documentation can be requested by parties who may protest an award, and incomplete or missing documentation reduces the credibility of the Council’s decision process. In addition, FTA regulations and Council procedures require that the award be adequately documented.

**Management Response:** *It has been the goal of the Council Contract and Procurement staff to do their due diligence on evaluation forms. Staff will again remind, train, and explain to staff the importance of collection of these documents. Staff will also look at redesigning said documents to clarify the role of “expert” panel members and what they are required to fill out while making it clear to future readers what their role was and whether or not it was fulfilled.*

**Staff Responsible:** *Acting Director, Council Contracts and Procurement*

**Timetable:** *Training will begin immediately, new document by October 1, 2011.*

**2. (Essential) The Council should enact controls to ensure that Consultants comply with all contract provisions and that time cards are reviewed and signed by Council project management personnel.**

Three of four final invoices did not contain the required final invoice language. In addition, under one contract, only 7 of 39 time cards were signed by the Council's project manager and two were unsigned by the Consultant. The final invoice notation and time card signatures by both parties are essential controls to assure that proper contract payments are made. The project manager is the primary Council representative responsible for such assurance and the absence of an approval signature can lead to Consultant overpayments.

**Management Response:** - *For all contracts where an hourly rate is given, the project manager will review submitted invoices against actual hours worked, verify contracted rates, ensure consultant/vendor certification, ensure final invoice notation, and approve before processing the invoice.*

**Staff Responsible:** *Council Information Services, Divisional Project Management, and Council Contracts representatives*

**Timetable:** *Verbally communicated – Immediately  
Incorporated in divisional policies/procedures - February 29, 2012*

**3. (Significant) The Council should review its procedures and enact appropriate changes to ensure that Consultant invoices are paid on time and include only applicable contract costs.**

One of the Consultants overcharged the Council for inapplicable sales tax. The Council paid a second invoice three months late and incurred a substantial late fee. The invoice approval and payment process is the Council's primary control over paying Consultants in accordance with contract terms and conditions. A timely and knowledgeable review of invoices assists in this process and gives the Council assurance that Council and funding partner appropriations are spent as required.

**Management Response:** *Finance staff and E&F staff will review and modify its Work Instructions to clarify: 1) when an invoice is received; 2) when the "30-day" period begins; and 3) the procedures to assure invoices are reviewed and paid in a timely manner to avoid excessive late payment expenses and that the taxes paid are correct.*

**Staff Responsible:** *Finance and Engineering & Facilities personnel*

**Timetable:** *September 1, 2011*