



Metropolitan Council

Program Evaluation and Audit

Contracting for Information Services

January 26, 2011

INTRODUCTION

Background

As in most organizations, technology is a major part of the Metropolitan Council's infrastructure. As new technologies emerge, a wide range of expertise is needed to implement and maintain the various systems and devices in use around the Council. To meet this need, the Council has contracted for various information technology and support services. These contracts include services in a number of areas such as project management, system implementation, software upgrades, data center services as well as software and system maintenance. Recently, contracting for these services has been centralized in the Information Services Department (IS). Given the importance of information technology (IT) to Council operations and the new consolidation of contracts within IS, information technology outsourcing and co-sourcing contracts were included as a project in the 2010 Audit Plan.

Purpose

The purpose of this audit is to ensure that major information systems and operational risks have been identified and mitigated in the procurement phase and are reflected in the resulting contract. In addition, the contract language regarding the goods and services provided by the suppliers must adhere to the Council's IT policies, processes and standards, as well as any applicable state and/or federal standards.

Scope

The audit reviewed a judgmental sample of contracts that were open during the calendar year 2009 and 2010. A sample of payments to vendors not tied to a contract was also reviewed for that same time period.

Methodology

Data Collection

Interviews were conducted with:

- IS supervisors
- Procurement staff
- Project Managers

The following documents were reviewed:

- IS governance documents
- IS policies and procedures
- IS contracts
- Procurement policies
- IS payments to vendors for calendar years 2009 and 2010
- IS system access practices for vendors and consultants.

Program Evaluation and Audit identified 28 contracts that were open and from those selected 13 contracts for review based on risk level, location of services, project manager and type of contract. An evaluation was done of those contracts to determine if the contracts contained the following clauses where appropriate:

- Acceptable service levels.
- Specifications on the quality of goods or services delivered as well as remedies when quality standards were not met
- Right to audit clause.
- Third party audit language requiring the contractor to provide copies of third party audits including remediation plans for significant audit findings.
- Conformance to Council information security policies.
- Protection and use of sensitive information.
- Conformance to laws and regulations.
- Incident notification.
- Source code escrow.
- Liability and insurance.
- Termination terms.

An analysis of the non-contractual IS payments was also performed to determine if any of those purchases should have been procured through contracts, according to Council procurement policies and procedures.

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*.

OBSERVATIONS

Adherence to Procurement Processes

Purchase orders versus contracts.

All payments to IT vendors from January 1, 2009 through June 25, 2010 were reviewed to determine if there were any purchase orders that should have been contractual agreements. Audit found 3,669 payments that were made to vendors utilized by IS. Approximately 1600 of the payments were not related to Information Technology (IT) services. The remaining payments represented approximately 430 purchase orders and 31 contracts. Of the 430 purchase orders, approximately 17% were IT maintenance and support agreements or consulting services.

Purchase order forms state they are for the purchases of “goods” not services. The consulting and the maintenance and support agreements in many instances were what could be considered “micro purchases,” where the amount of the purchase is \$2,500 or less. While the dollar amounts were often small, the level of risk to the Council was sometimes significant. With the use of the purchase order for procurement of IT services, there is no contractual language defining service expectation, timelines, liability for professional errors or omissions, confidentiality and use of Council information, ownership of developed information, potential theft of data, access and use of Council equipment and facilities and there are no defined remedies for failure to perform the services as specified. There are standard forms that are completed by the consultant regarding use of Council equipment but these do not address liability or other issues.

Audit found, in some instances, that there was a “statement of work” completed by an IS employee that defined the work to be performed. This was generally viewed, by IS management, to cover the scope of the work to be completed. According to the Delegation of Authority for IS, the employee who completed the “statement of work” form did not have signature authority to commit the Council to any work plan.

Discussion with General Counsel revealed that there currently isn't a simple process to handle small procurements, that may require a contract, while protecting the Council contractually, although a boilerplate contract could be developed by Procurement and the Office of General Counsel for this type of procurement, which would enable an efficient procurement process that would still include the protection of contract language between the Council and the vendor in the end.

RFP Evaluation Process

Audit reviewed the procurement files for 13 contracts to determine whether:

- Award was a sole source award,
- IS was represented on the evaluation team,

- Evaluation team signed evaluation panel forms,
- RFP evaluation criteria was clear,
- Evaluation criteria was the basis of the award,
- There was adequate documentation to support the award decision.

Five of the 13 contracts reviewed were sole source procurement. One of the five, a contract amendment, violated the Council's Procurement Policy Procedures requiring a new sole source procurement process every five years. Procurement is in the process of developing a new contract with this vendor.

One evaluation team for a contract outside of IS did not include a representative from IS on the evaluation team. This contract has since been moved under the oversight of IS. Historically, IS was often not included in the decision making process for various software and computing solutions in all of the divisions across the Council. In the last year two years the role of IS in those decisions has increased. IS involvement in these processes helps to ensure that there are adequate resources to support new IS ventures both from an infrastructure perspective and a human resource perspective. It helps to create better project management for IS and for the Council Division using the contract.

The Procurement Department is responsible for ensuring that contract files are complete. Two of the eight files did not have evaluation member forms completed properly. There is a form that states that the evaluator has read the proposals, in two cases the form was signed but the evaluator did not check off that they had read the proposals. Evaluation criteria were included in each RFP and were used as the framework for the justification of the awards in all cases.

The Council's Contract process was not followed for award of \$75,000 contract.

The Council's contract award process begins with a Contract Initiation Memo (CIM). The CIM includes the following:

Project Information

- Funding Information
- Solicitation and selection process
- Diversity approval
- Authorization to initiate the process

Documentation of a \$75,000 contract found that the CIM was completed after the request for proposals had been issued and the proposals received. In this case a CIM was completed on December 16, 2009. The memo was signed by the project manager on December 8, 2009. The request for proposal for the contract was dated December 1, 2009 and vendors were required to submit proposals no later than December 3, 2009.

Review of the Proposal Evaluation Memorandum found that the vendor that "could be considered a second choice" cost \$1,000 less than the vendor selected. The IS Department has the right to make the business decision to select the higher cost option.

However, the individual evaluators' reasons for the selection should be included in the file. The file did not include individual evaluation notes of the evaluation panel members.

This contract was for project management of four specific projects. At the completion of the contract only one project had been completed. Given that the terms of the contract specified that all four would be completed and that there were no scope amendments, it would be expected that all projects would be completed before final payment was made. However, that was not the case here.

New ASAP-IT contract process offers solutions for short term needs.

The State of Minnesota Department of Administration established a master contract for IT services in 2009. They currently have contracts with 21 vendors to provide a variety of IT services. The contract has defined descriptions for each of the types of services. The purpose of the contract is to allow State agencies and other governmental units who are Cooperative Purchasing Venture(CPV) members to contract for services that require specific skill sets which may not be available within their IS departments and are needed quickly. Utilization of this contract allows members to request vendors to provide resumes of consultants, interview candidates and have someone on board usually within the week. The contracts are limited to one year. The intent is to fill an immediate need quickly and with a quality individual, but not to have a long-lasting relationship, especially since one might cause a blurring of the lines between an employee and a contractor, which could create tax problems.

IS has utilized this master contract since early 2010.

Review of an ASAP-IT work order file folder found that individual evaluators notes regarding interviewed candidates were not included in the file. A summary sheet was included which was prepared by the procurement department. The notes were not included because this was an informal process and there isn't a requirement for the notes in the State Master Contract. However, since the process is similar to hiring an employee, it would be a best practice to include all evaluator's notes in the file. These contracts can exceed \$200,000 and the award process should be fully documented.

RFP evaluator's notes indicate that factors other than stated criteria may have been used in ranking project proposals.

In reviewing evaluator's notes for one contract award Audit found some evaluator statements that indicate factors other than the established criteria may play into award decisions. The request for proposal did not include company location as a criteria to be used in awarding the bid yet evaluation notes included statement concerning local preference. The notes also included statements concerning the ability of the vendor to provide services at the proposed price. The evaluators made assumptions from facts not in evidence in the proposals and these assertions affected the award without being validated in any way.

Contract Management

IT contracts, in most cases, utilize Council Authorized Representatives(CAR) who are managers within the IS department. The following are issues identified concerning contract management:

Contract payments were not consistently in alignment with contract terms.

When contracting for consulting services the standard contract language used by the Council states that the vendor shall bill the Council by the 20th of the month following services. Audit found payments for two contracts were being made biweekly and payments for a third contract were being made weekly. In these instances the consultant submits a timesheet to the CAR and the CAR reviews and approves the time submitted. Once approved the timesheets are sent to the vendor who then prepares an invoice. IS then submits the invoice for payment against the contract.

Biweekly or weekly submittal of invoices creates a significant amount of additional work for the accounts payable department. Instead of generating 12 payments a year to the vendor IS is generating between 26 and 52 payments to the vendor.

A Contractor was overpaid \$1,081 due to inadequate review of documentation submitted to the Council.

Review of December 2008 invoice for one company found inadequate documentation to substantiate the invoiced amount. In this instance the contractor billed 28 hours in excess of what the company could document with timesheets. The company also had a spreadsheet that did not match the timesheet information. The overbilling of hours resulted in an overpayment of \$1,081 by the Council.

IS's current process is to include timesheets with the invoice when submitting for payment. This has been the practice since late 2009 and should help to decrease the error rate.

Contractor invoices varied significantly in level of detail provided when identifying services billed.

Review of consulting contract invoices revealed that the amount of detail ranged from the name of a person and a total number of hours for a month to specific date of service, hours per day, consultant name and project worked on. Documentation of payments to contractors should be detailed as to who, what, when and how much so that payment can withstand public scrutiny.

No final request for payment was made for two consulting contracts that appear to be completed.

Review of payments for two consulting contracts that appeared to be complete did not find anything on the invoice to indicate it is a final payment. Standard Council contract language requires the vendor to include language representing that an invoice is a final request for payment and acknowledge that the vendor will repay the Council for any payments due the Council as the result of an audit and any amount due the Council from Contract adjustments. Failure by the vendor to identify final invoice may result in the contract not being closed out. The CAR should be aware of the status of the contract and require the contractor to include the required language.

Records management contract language was lacking in two areas.

A records management contract was issued in 2010. This contract is for the storage of back up computer media. The contract does not have language requiring notification of incidents that may affect Council media. Prompt notification is important as the Council moves forward with systems involving customer information such as credit card information being stored on Council computer systems. There is a significant risk to the Council if the Council is unaware of an incident that results in loss of confidential data.

The second issue concerns the destruction of old data media. There are no identified procedures that include Council staff in the destruction of old media. With the various confidential data that may be on the media the Council needs to have procedures in place to ensure that any media set to be destroyed is destroyed and that there is no risk of the information on the media being intercepted or compromised.

IT Purchase orders and contracts are seldom closed out.

Purchase orders and contracts are for specific goods or services during a specific period of time. When specified goods and services have been received and final payments made the POs and contracts should be closed.

Review of IT purchase orders and contracts found that non-Metro Transit contracts were not being closed. In one case a purchase order was initiated in February 2008 to cover 240 hours for a worker for a specific project until the contract went before the Council February 23, 2008. That same purchase order was used to pay an invoice dated May 29, 2010 for labor and parts for a printer repair. The invoice gave the names of the people performing the labor but did not include date of service.

In another instance two contracts from 1998 were amended in 2003, 2009 and 2010 for additional services with no direct relationship to the original contract. The original contracts were for implementation of a Y2K project and software licensure and support. The 2009 amendment was for training for new ADA service contracts. The amendment in 2010 was the addition of PASS sites and support as well migration of the system to other sites. The contract language has not been updated to reflect current Council

standard contract clauses such as terms of liability and insurance and auditing clauses since the original contract. The amendments also indicate that this is a sole source procurement. Although the amendments were initiated by a department outside of IS the 2010 amendment is managed by IS

The 2009 and 2010 amendments were categorized as sole source amendments. Council Procurement Procedure 10.4.1 states “Ongoing sole source procurement authorizations may be approved for a time period not to exceed five years. At the end of the approved time period, efforts to procure the goods or services competitively should be renewed or a new sole source authorization should be approved.” More than five years elapsed between the 2003 and 2009 amendments. These contracts are legally valid contracts but are in violation of Council Procurement Procedures.

In a third instance a contract was entered into for services of a consultant. Payments were made for the consultant through a date in July 2010. There was a remaining balance of \$525 on the contract. This same consultant began working on other projects immediately. As of November 2010 no final payment has been made for the first contract and it remains open.

Failure to close contracts and purchase orders has resulted in services being paid for without proper, specific authorization in a purchase order or contract.

Technology usage agreements and contractor confidentiality agreements (where appropriate) were missing for 26% of contractors.

Non-employees may be given access to the Council’s technology. A process is in place to have the non-employee sign Council technology usage agreements and where appropriate Council confidentiality and disclosure agreements. Audit attempted to obtain a list of all non-employees with access to Council technology systems. After several attempts it was determined that there wasn’t a way to run a report to distinguish contractors from employees. Audit then selected a judgmental sample of 15 non-employees to test for appropriate forms. Audit found that 26% of those tested did not have forms on file. Those who were recently contracted did have effective start and end dates for access to the network and there is a process to obtain supervisor approval to extend the end date. It is a significant internal control weakness to have individuals utilizing Council technology without having agreements in place governing their usage of the technology. It is also a control weakness that IS cannot identify contractors separately from employees in the computer system.

CONCLUSIONS

The centralization of Council IT procurements in the IS Department has allowed for the better alignment of IT resources with Council IT needs. At the same time, as part of the centralization, the IS Leadership Team has taken on contract management responsibilities beyond those they exercised previously. With those responsibilities several needs have evolved. Most IS managers and administrators have limited, if any, experience with the day to day responsibilities of managing contracts prior to this. They were not provided any specific training. Therefore, they need more training on general contract management, specific elements of contracts dealing with IT risks and what language is needed to protect the Council and its systems, appropriate documentation of contractor solicitations, and contract close out procedures.

Many of the issues identified in this report would likely improve if IS contract managers and administrators had more information and stronger tools with which to manage IT contracts on an ongoing basis.

RECOMMENDATIONS

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

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. Procurement should take steps to ensure that all evaluation forms are completed and filed in the contract folder. (Essential)

Signed forms concerning review of proposals and conflict of interest statements should be completed before any evaluation and award is made.

Evaluators’ notes are documentation of the basis for the contract award and should be included in the file in case the award is contested by another bidder. These notes should also be included for ASAP-IT contract awards.

Management Response: *Procurement will ensure that evaluation forms for proposals or bids are kept in the Procurement files as specified in procurement procedures. Procurement staff collects these forms before an evaluation panel meeting is concluded. Procurement staff does not participate in any evaluation step that IS staff performs on ASAP-IT contracts because the process is the selection of a particular consultant is subject to the procedures associated with that State Contract procured by the State. However, Information Services agrees to include their evaluators’ notes in the ASAP-IT contract file for each award.*

Staff Responsible: *Micky Guzman and Dave Hinrichs*

Timetable: *Ongoing*

- 2. Timesheets should be compared to invoices to ensure proper payment. IS should review payments made to the vendor who overcharged the Council to ensure that all time and compensation is properly accounted for and then seek reimbursement for all overpayments. (Essential)**

Comparison of timesheets to actual invoices is a basic internal control to ensure that charges are substantiated. Contract language allows the Council to be reimbursed for any charges that cannot be substantiated.

Management Response: In late 2009, IS changed procedures to ensure each invoice is compared to the contractor's time card. IS will contact the vendor who was overpaid and seek the appropriate reimbursement.

Staff Responsible: Dave Hinrichs

Timetable: February 2011

- 3. All invoices for final payment on a contract should contain final payment language as required in the contract. (Essential)**

This is a contract requirement and it releases the Council from further obligations under the contract.

Management Response: IS agrees with this recommendation and has begun to implement this procedure.

Staff Responsible: Dave Hinrichs

Timetable: Complete

- 4. IS should work with Accounts Payable and Procurement to identify all outstanding open purchase orders and contractors. They should then review them and in cases where they are complete they should be closed. (Essential)**

It is a Council procedure to close purchase orders and contracts when they are completed. Open purchase orders and contracts may allow for goods or services to be paid for that which were not originally intended to be procured or authorized.

Management Response: IS agrees with this recommendation and has begun to implement this procedure.

Staff Responsible: Dave Hinrichs

Timetable: April 2011

5. IS should identify all non-employees who have access to Council IT systems and networks. Once they are identified a documentation review should be completed to ensure that they have signed appropriate usage and where required confidentiality agreements. (Essential)

IS should have documentation for every non-employee who is accessing the Council's network. This is a basic security control that should be monitored by an IS security person. Access credentials should be regularly validated and de-activated once a consultant leaves a Council assignment to prevent any potential external penetrations of the Council's systems.

Management Response: IS has implemented a procedure when creating vendor accounts which distinguishes them apart from employee accounts. This procedure includes the signing of the Council's appropriate usage form and where required, the Council's confidentiality agreement.

Staff Responsible: Dave Hinrichs

Timetable: Complete

6. IS, Procurement and the General Counsel should work to ensure the risk to the Council in obtaining IT services from outside vendors be identified to utilize the appropriate contractual methodology be it purchase order, contract, et cetera. (Significant)

Procurement of IT services through purchase orders creates a significant risk to the Council. Even though the dollar value of the service may be small the level of risk to the Council is significant and should be addressed in a contract. The most promising option seems to be for Procurement and the Office of General Counsel to develop boilerplate language for a standard IT service contract.

IS should also review the purchase orders that are for a combination of software licensure, maintenance and support to determine if the maintenance and support includes accessing our systems or if it is a standard help line that answers questions. This would help in determining whether or not the purchase order is the appropriate mechanism for the procurement.

Management Response: Procurement will work with IS staff, OGC and Risk Management to ensure that the risk to the Council is identified. Procurement will work with IS staff to find a means to properly document said risk and any mitigation routes taken. Procurement will also ensure that proper steps are taken to protect the Council either by insurance, staff oversight, or legal language.

Staff Responsible: Micky Gutzman

Timetable: July 2011

7. IS and Procurement should work together to ensure that future contract amendments are appropriate and that Council Procurement Procedures are followed. (Significant)

There are many things that change in the IT arena as new technologies are developed that can make older IT contractual agreements obsolete. It is important that when one contract is completed that it be finalized. When project contracts are continually amended to incorporate other initiatives it is difficult to determine overall project costs.

Management Response: Procurement will work with IS, and other departments, to identify old, self-perpetuating contracts and work to have them brought up to date and in compliance with Council policy and with State Statutes.

Staff Responsible: Micky Gutzman

Timetable: Ongoing

8. IS should track the use of individual consultants to ensure that they do not violate the ASAP-IT contract terms or recommended timelines established by the Department of Labor. (Significant)

The ASAP-IT master contract can save a significant amount of time if utilized as intended. The master contract and work order contract are clear as to the length of time a consultant can be used. Since consultants may work for various vendors it is important to not only track the vendor usage but also the individual consultant. The blurring of the line between a contractor and an employee should be avoided.

Management Response: This audit has clarified the requirements on the tracking requirements of individual consultants and IS will track time by consultant not vendor to conform to the Department of Labor guidelines.

Staff Responsible: Dave Hinrichs

Timetable: Complete

9. IS should process invoices in accordance with the contract terms. Standard contract compensation language requiring invoicing no later than the 20th of the month following services should be abided with. (Significant)

The additional time required to process payments more frequently than monthly is an inefficient use of the Council's limited resources. Also, by increasing the number of transactions, the error rate could increase too.

Management Response: We agree with this recommendation and will submit the invoices to Accounts Payable on a monthly basis.

Staff Responsible: Dave Hinrichs

Timetable: Complete

10. IS should require consistency in invoicing by contractors. (Significant)

Payments should be documented as to who, what, when and at what cost in order to withstand public scrutiny.

***Management Response:** In the past, IS has had varied amounts of documentation on the invoices that have not been consistent over time. Over the past two years IS has tightened up this practice and now provides a significant level of detail for services billed.*

***Staff Responsible:** Dave Hinrichs*

***Timetable:** Complete*

11. Records management contract language should address notification of incidents concerning computer media and for destruction of old computer media. (Significant)

There is a significant reputational and financial risk to the Council if computer media containing confidential or private data is misplaced or not destroyed properly. An agreement and process should be in place to deal with incidents that may affect are data and destruction of the data.

***Management Response:** There was no contract language included in the Records Management contract that dealt with incidents affecting data or with the inclusion of Council staff in the destruction of old computer media. We will initiate an amendment to the contract to address these deficiencies and include these topics in the scope of future procurements for the storage of backup computer media.*

***Staff Responsible:** Dave Hinrichs*

***Timetable:** June 2011*

12. The IS leadership team should utilize available contract management training resources in order to more effectively manage IT contracts.(Significant)

There are now training courses available through the Council's Learning & Development Department that address contract management. It is important that everyone assigned to contract procurement and management be trained to effectively manage contracts.

***Management Response:** IS agrees that the leadership team will take advantage of the contract management training recently made available through Learning and Development. Everyone assigned procurement responsibilities will be scheduled for this training at the earliest time available.*

***Staff Responsible:** Dave Hinrichs*

***Timetable:** April 2011*