### MANAGEMENT AUDIT REPORT

**OF** 

# ON-CALL CONTRACTORS DEPARTMENT OF MUNICIPAL DEVELOPMENT

**REPORT NO. 11-104** 



City of Albuquerque Office of Internal Audit

### On-Call Contractors – Department of Municipal Development Report No. 11-104 Executive Summary

The Office of Internal Audit (OIA) conducted a management audit of on-call contracts issued and managed by the Department of Municipal Development (DMD). This audit was included in the fiscal year (FY) 11 approved audit plan.

The on-call contract process at the City of Albuquerque (City) is a contracting methodology used by departments to procure goods and construction or design services from vendors on an "as-needed basis". According to the DMD Project Management Guidelines - dated February 2009, § 3.05 On-Call Contracts, an on-call consultant is retained to provide specific types of technical/professional services at the direction of the City.

DMD issued on-call contracts for construction and design services totaling almost \$34 million during FY10 and FY11.

How is the on-call contracting process governed? How does DMD determine when on-call contracting is the preferred contract arrangement and determine when specific vendors are used?

DMD does not have written policies and procedures documenting how the determination is made to issue contracts as an on-call and how work will be distributed to vendors with on-call contracts.

Does DMD's on-call contracting process adhere to the competitive sealed bid process? Do the on-call contracts contain language that safeguards the City's interests?

OIA examined 29 on-call contracts, consisting of 16 design service and 13 construction projects, and tested for the following: liability/insurance safeguards, audit clause, local resident business participation or preference, adequate public notice of solicitation and City Council and CAO approval before enactment.

#### OIA identified the following:

- DMD paid four design service professionals and two construction contractors, but did not verify if
  insurance coverage was in effect. Neither DMD nor the Department of Finance and Administrative
  Services Risk Management Division had certificates of insurance on file for one or more types of
  insurance coverage for the vendors when payments of over \$3 million were made.
- An on-call design professional submitted an insurance certificate that did not name the City as an additional insured on the commercial general liability insurance policy.
- A design services contract that was greater than \$25,000 did not follow the Selection Advisory Committee process.
- A design services contract in which the Aviation Director approved an increase in the contract amount from \$300,000 to \$410,340 instead of the DMD Director.

Recommendations and management responses are included in the audit report.



## City of Albuquerque

Office of Internal Audit P.O. BOX 1293 ALBUQUERQUE, NEW MEXICO 87103

February 29, 2012

Accountability in Government Oversight Committee City of Albuquerque Albuquerque, New Mexico

Audit: Management Audit

**On-Call Contractors** 

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#### **FINAL**

#### **INTRODUCTION**

The Office of Internal Audit (OIA) conducted a management audit of on-call contracts issued and managed by the Department of Municipal Development (DMD). This audit was included in the fiscal year (FY) 11 approved audit plan.

The on-call contract process at the City of Albuquerque (City) is a contracting methodology used by departments to procure goods and construction or design services from vendors on an "as-needed basis". According to the DMD Project Management Guidelines - dated February 2009, § 3.05 On-Call Contracts, an on-call consultant is retained to provide specific types of technical/professional services at the direction of the City.

DMD management provided the following information regarding on-call contracts:

On-call contracting allows closer work with and evaluation of contractors. It permits the City to cease issuing work orders to a contractor if performance is unsatisfactory. On-call contracting is useful when dealing with small or urgent projects that need to be done soon or are too small to effectively bid.

*Construction:* Contracts for on-call construction are procured through a sealed low bid process. These contracts are bid with unit prices or R.S. Means pricing. Pricing and availability are requested from the contractor who is awarded the contract. Work is assigned if the contractor is available and the pricing is acceptable. Otherwise

<sup>1 -</sup> R.S. Means is a supplier of construction cost information that helps owners, developers, architects, engineers, contractors and others to project and control the cost of both new building construction and renovation projects.

pricing and availability are requested from another contractor who performs the same type of services. If the pricing and schedule are acceptable, a work order is issued and the contractor performs the work.

Design Services: Design services include firms or persons that provide architectural, engineering, landscape architectural, and other related professional services. Contracts that cost \$25,000 or more for on-call design services are procured through the Selection Advisory Committee (SAC) process. Work orders for on-call design services are typically based on availability and expertise. If the design service professional is available, and the pricing is acceptable, the work is assigned through a work order. Otherwise the work is assigned to a different design service professional that has similar expertise or a request for proposals through the SAC process is issued, or the work is not done at that time.

DMD tries to keep multiple on-call contracts with different vendors. This allows DMD to access vendors in urgent or emergency situations where the first choice of vendor is unavailable.

DMD issued on-call contracts for construction and design service projects totaling \$33,998,878 during FY10 and FY11.

#### **AUDIT OBJECTIVES**

The objectives of the audit were to determine:

- How is the on-call contracting process governed?
- Does DMD's on-call contracting process adhere to the competitive sealed bid process? Do the on-call contracts contain language that safeguards the City's interests?
- How does DMD determine when on-call contracting is the preferred contract arrangement and determine when specific vendors are used?

#### **SCOPE**

Our audit did not include an examination of all functions and activities related to on-call contracts. Our scope included on-call contracts issued and managed by DMD during FY10 and FY11.

This report and its conclusions are based on information taken from a sample of transactions and do not intend to represent an examination of all related transactions and activities. The audit report is based on our examination of activities through the completion of fieldwork, January 3, 2012 and does not reflect events or accounting entries after that date.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### **METHODOLOGY**

OIA interviewed DMD, Department of Finance and Administrative Services (DFAS) – Risk Management Division (RMD), DFAS-Purchasing Division and Council Services Department personnel, and surveyed other municipalities. Documents and processes reviewed include the following:

- City Ordinance § 14-7-1 ROA 1994: Professional Services
- City Ordinance § 5-5-11 ROA 1994: Capital Projects
- Regulation Governing The Award and Rejection of Bids/Offers and Debarment of Contractors for Public Works Projects of the City of Albuquerque, effective July 25, 2008 (DMD Award & Reject Regs)
- DMD Project Management Guidelines Draft dated February 2009
- City Construction Contract Boilerplate
- Capital Implementation Program Rules and Regulations Governing the Selection of Firms or Persons to Provide Architectural, Engineering, Landscape Architectural, and Other Related Professional Services (Selection Advisory Committee process)
- Standard Specifications for Public Works Construction 1986 Incorporating Update No. 8 Volume 1 of 2 § 5.2 Insurance, January 2011 (Standard Specs)
- City on-call services agreements for design service professionals

OIA examined 29 on-call contracts initiated during FY10 and FY 11 for the following:

- Liability/insurance safeguards
- Performance & Bid Bonding
- Audit Clause
- Local resident business participation or preference

- Solicitations received adequate public notice
- City Council and CAO approval before enactment

#### **FINDINGS**

The following findings concern areas that we believe could be improved by the implementation of the related recommendations.

## 1. <u>DMD SHOULD DEVELOP COMPREHENSIVE WRITTEN POLICIES & PROCEDURES FOR</u> THE ON-CALL CONTRACT PROCESS.

OIA reviewed City Ordinances, DMD policies and procedures, and DMD regulations to understand how DMD:

- Determines that an on-call contract should be used
- Selects vendors
- Solicits and negotiates services
- Distributes work among selected vendors

DMD does not have written policies and procedures documenting how the determination is made to issue contracts as an on-call and how work will be distributed to vendors with on-call contracts. DMD does have Draft Project Manager Guidelines that discuss purpose, limitations, projects and initiation and approval processes for on-call design services contracts; however, it does not include any information on on-call construction contracts.

According to DMD management, there is no firm set of rules for determining when contracts should go out as an on-call. The ultimate decision is based on cost, urgency and timeliness of when the work is needed.

DMD does have documented rules, regulations and policies for processes other than on-call contracts, such as:

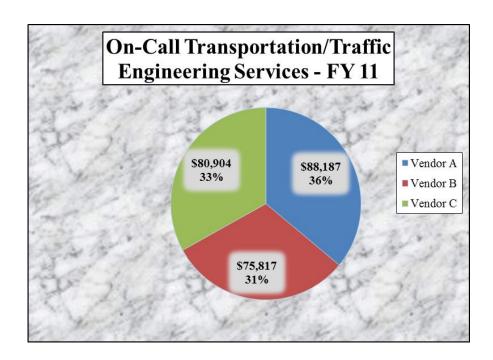
- Award & Reject Regs
- CIP Rules & Regs
- Draft Project Managers Guidelines

OIA surveyed seven municipalities to determine if they use on-call contracts, and if the process is governed by rules and regulations. Of the six municipalities who responded to the survey, four have an on-call contract process governed by rules and regulations:

		Process Governed by
Municipality	Use On-Call Contracts?	Rules and Regulations?
Rio Rancho, New Mexico	Yes	Yes
El Paso, Texas	Yes	Yes
Tucson, Arizona	Yes	Yes
Salt Lake City, Utah	No	N/A
Oklahoma City, Oklahoma	No	N/A
Kansas City, Missouri	No response	N/A
Mesa, Arizona	Yes	Yes

Policies and procedures enhance accountability and consistency. Without written policies and procedures, it is unclear how and why projects are solicited as on-call contracts to construction contractors and design service professionals.

Work may not be consistently distributed among service providers. For example, three design service professionals were on contract with the City to provide on-call transportation and traffic engineering services during FY10. One vendor conducted all of the work totaling \$13,785. However, during FY11, the work was more equally distributed among the three on-call service providers, as illustrated in the chart:



#### RECOMMENDATION

DMD should develop comprehensive written policies & procedures for the on-call contract process.

#### **RESPONSE FROM DMD**

"On-call contracting is governed by existing City rules and regulations such as the Regulations Governing the Award and Rejection of Bids/Offers and Debarment of Contractors for Public Works Projects of the City of Albuquerque and the Capital Implementation Program Rules and Regulations Governing the Selection of Firms or Persons to Provide Architectural, Engineering, Landscape Architectural, and Other Related Professional Services. Most of the same rules and regulations that govern other capital projects are applicable to on-call contracts as well. DMD will include procedures in the Project Managers Handbook as it is updated to address some of the nuances of on-call contracting. We will focus on setting forth guidelines regarding when and how the on-call contracting will be used."

#### **ESTIMATED COMPLETION DATE**

"6 months"

## 2. <u>DMD SHOULD IMPLEMENT A PROCESS TO ENSURE THAT INSURANCE</u> COVERAGE FOR ALL PROJECTS IS REVIEWED ANNUALLY.

OIA tested 29 on-call contracts initiated during FY10 and FY11 for liability and insurance coverage. Sixteen contracts were for design services and 13 for construction. OIA's test work identified the following:

#### A. Insurance Coverage

DMD paid four design service professionals and two construction contractors, but did not verify if insurance coverage was in effect. Neither DMD nor DFAS – RMD had certificates of insurance on file for one or more types of insurance coverage for the vendors when the following payments were made:

Payments Made Without Documentation of Insurance Coverage <sup>1</sup> January 2010 to June 2011		
Vendor	Amount	
Vendor 1	\$ 108,760	
Vendor 2	565,572	
Vendor 3	113,331	
Vendor 4	45,342	
Vendor 6	469,117	
Vendor 7 <sup>2</sup>	390,053	
Vendor 7	1,363,983	
TOTAL	\$3,056,158	

<sup>1 –</sup> Missing documentation of General Liability, Automotive Liability, Workers Compensation and Employer's Liability, Builder's Risk, Owner's Protective Public Liability, and/or Professional Liability

If insurance coverage is not verified annually, coverage may lapse and the City might be at risk of not having its interests covered in the event of an accident.

**<sup>2</sup>** – Vendor had two separate projects governed by two different contracts.

Article XII of the Design Services Professional contract requires the consultant to furnish the City a certificate showing that it has complied with the requirement prior to commencing the work.

Standard Specifications requires the proper insurance certificates to be filed with the City by the construction contractor prior to work beginning under the contract.

DFAS – RMD personnel stated that when vendors renew their required insurance coverage, the updated certificates of insurance are sent to DFAS – RMD and maintained in its files. According to DMD management, insurance coverage is verified at the beginning of a project, but there is not a process in place to annually review updated certificates of insurance to ensure that coverage is in effect for ongoing multiple year projects.

#### B. Additional Insured

OIA identified an insurance certificate submitted by an on-call design professional that did not name the City as an additional insured on the commercial general liability insurance policy. These policies are required to have liability limits in amounts not less than \$1 million combined single limit liability for bodily injury, including death and property damage, in any one occurrence for each policy.

If the City is not named as an additional insured, it might be liable for claims resulting from accidents caused by on-call design professionals/construction contractors working on City projects.

Article XII Insurance (A) of the Design Services Professional contract requires that the City be named as an additional insured on the commercial general liability insurance policy.

#### **RECOMMENDATION**

DMD should implement a process to ensure that insurance coverage for all projects is reviewed annually.

#### RESPONSE FROM DMD

"DMD does not agree that annual review provides value to the City. Insurance is verified at project inception and at the time of any supplement. Independent of insurance, contractors and consultants are contractually liable for damage and contractually indemnify the City for such damage. No good centralized system exists to verify continued insurance coverage. No losses are known to have occurred in the last 20 years due to lapsed insurance coverage. DMD will continue to review certificates for additional insured status."

#### **ESTIMATED COMPLETION DATE**

"N/A"

#### **AUDITOR COMMENT**

In a subsequent discussion, DMD stated that it would consider implementing a process to ensure that insurance certificate documents would be sent to both DMD and DFAS RMD.

3. <u>DMD SHOULD ENSURE THAT IT FOLLOWS THE SELECTION ADVISORY COMMITTEE (SAC) PROCESS WHEN SELECTING FIRMS OR PERSONS TO PROVIDE DESIGN SERVICES.</u>

OIA identified a design services contract that was greater than \$25,000 in which the selection of the design services professional did not follow the SAC process. The SAC process includes the following:

- Preparing the notice of request for proposals
- Conducting a pre-submittal meeting
- Receiving the proposals
- Reviewing the proposals
- Conducting the SAC meeting
- Interviewing respondents on the short list
- Committee's recommendation
- Mayor's recommendation
- City Council approval

The initial design services contract was in the amount of \$24,900 and expired on February 3, 2011. DMD submitted a request for approval memo to the CAO, on February 17, 2011, to increase the funding of the contract by \$24,999 and extend the term by one year in order for the design services professional to complete the project due to a public safety need. The public

safety need involved a structural design review of bleachers to be used for a major event at the Convention Center. The CAO approved the request on February 22, 2011.

The cost of the bleacher evaluation was \$1,445 and was billed to the City on April 28, 2011. The design services professional also provided other services and was paid the following:

Date	Service	Amount
April 15, 2011	Community Resource Center	\$ 557
April 28, 2011	Solid Waste Department Ceiling	964
May 1, 2011	Civic Plaza Parking Garage	8,511
June 1, 2011	Civic Plaza Parking Garage	1,285
	Total	\$11,317

These services were not included in the approval memo signed by the CAO. DMD management stated that the wording for the request for approval from the CAO could have been better.

Section II – Procurement for Professional Services Costing Less than \$25,000 (F) of the SAC process states, the splitting of services to be performed into increments of less than \$25,000 in order to avoid the Selection Advisory Committee procedures for professional services costing \$25,000 or more is expressly prohibited

#### RECOMMENDATION

#### DMD should:

- Follow the SAC process when selecting firms or persons to provide design services in which the contract amount exceeds \$25,000.
- Ensure justifications match the actual purpose when requests are made to the CAO to increase contract funding.

#### RESPONSE FROM DMD

"DMD agrees and states it followed the SAC process for the initial selection and DMD should have done another selection or an emergency procurement instead of the contract extension."

#### ESTIMATED COMPLETION DATE

"N/A"

#### **AUDITOR COMMENT**

DMD did follow the *less than \$25,000 SAC process* for the initial selection. When the amount of the contract increased to greater than \$25,000, DMD should have followed the *greater than \$25,000 SAC process*, or chosen another vendor, and followed the *less than \$25,000 SAC process*.

### 4. <u>DMD SHOULD ENSURE THAT WRITTEN POLICIES MATCH INTENDED BUSINESS</u> PRACTICES.

OIA identified a design services contract in which the Aviation Director approved an increase in the contract amount from \$300,000 to \$410,340.

The DMD Project Management Guidelines § 3.05 On-Call Contracts states, the duration and/or value of an On-Call contract or task order may be increased with the approval of the Director of the Department of Municipal Development.

According to DMD management, DMD intended for other department directors to be able to approve increases in on-call contract amounts and needs to revise the Project Management Guidelines. DMD is not being consistent with the policy stated in the Guidelines.

#### **RECOMMENDATION**

DMD should ensure that written policies match intended business practices.

#### RESPONSE FROM DMD

"DMD concurs. DMD will change the guidance in the Project Managers Handbook to state "the duration and/or value of an on-call contract or task order may be increased with the approval of the Director of the Department of Municipal Development or the Department Director that recommended the original agreement".

#### ESTIMATED COMPLETION DATE

"6 months"

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### **CONCLUSION**

Based on the findings within this audit, OIA believes that DMD will benefit from our recommendations. This audit will help improve DMD's controls and processes for managing on-call contracts.

We appreciate the assistance and cooperation of DMD personnel during the audit.

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Senior Information Systems Auditor	
REVIEWED:	
Internal Auditor	
APPROVED:	APPROVED FOR PUBLICATION:
Carmen Kavelman, CPA, CISA, CGAP, CFE Director, Office of Internal Audit	Chairperson, Accountability in Government Oversight Committee