Washington State Auditor's Office

Accountability Audit Report

City of Seattle King County

Report Date **May 10, 2010**

Report No. 1003732

Issue Date June 8, 2010





Washington State Auditor Brian Sonntag

June 8, 2010

Mayor and City Council City of Seattle Seattle, Washington

Report on Accountability

We appreciate the opportunity to work in cooperation with your City to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role to advocate for government accountability and transparency and to promote positive change.

Please find attached our report on the City of Seattle's accountability and compliance with state laws and regulations and its own policies and procedures. Thank you for working with us to ensure the efficient and effective use of public resources.

Sincerely,

BRIAN SONNTAG, CGFM STATE AUDITOR

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Audit Summary

City of Seattle King County May 10, 2010

ABOUT THE AUDIT

This report contains the results of our independent accountability audit of the City of Seattle for the period from July 1, 2008, through June 30, 2009.

We evaluated internal controls and performed audit procedures on the activities of the City. We also determined whether the City complied with state laws and regulations and its own policies and procedures.

In keeping with general auditing practices, we do not examine every transaction, activity or area. Instead, the areas examined were those representing the highest risk of noncompliance, misappropriation or misuse.

We focused much of our audit work on the City's procedures related to the use of restricted funds, safeguarding of public assets and controls over contracts. We made recommendations aimed at improving the City's internal controls.

We also addressed a City Council request to evaluate the Seattle Department of Transportation's responsibilities regarding the South Lake Union Streetcar. Our recommendations to improve internal controls over reporting of capital costs are included in this report.

RESULTS

In most areas, the City complied with state laws and regulations and its own policies and procedures.

However, we identified conditions significant enough to report as findings:

- The City has inadequate controls over how it determines the space rental rate, resulting in shifting resources from one fund to another. This issue is discussed in Finding 1. The City should improve internal controls to ensure users pay for the space that they use.
- The City lacks adequate procedures to ensure contracts are used for purposes consistent with the request for proposals used to procure the contract. This issue is discussed in Finding 2. The City should improve internal controls over compliance with public works procurement requirements.

We also noted certain matters that we communicated to City management in a management letter:

- The Seattle Fire Department allows its employees to accumulate much higher compensatory time costs than all other City departments. The City should improve internal controls over the accumulation and payout of accumulated compensatory time.
- City employees often perform work that appears to exceed the City's authority. The City should ensure its employees comply with limitations on public works projects.
- Utilities are subsidizing art used by other departments. The City should ensure that utilities receive market rental value from departments using utility owned art.

Other less significant results and recommendations are described in the audit conference agenda for May 10, 2010. While we do not believe the significance of those recommendations warrants their inclusion in the audit report, we reassess significance during our follow-up procedures in subsequent audits. We encourage the Mayor and City Council to communicate these issues to Departments and to encourage resolution of the issues before they become more significant.

We appreciate the City's continued commitment to resolving these matters.

ADDITIONAL RESULTS AND DISCLOSURES

Contract Monitoring

We reviewed City's monitoring of the Spokane Street viaduct widening/Fourth Avenue ramp construction and King Street Station remodeling projects. We also reviewed three projects at Fire Station 17 and Fire Station 28 and the Charles Street Asset Preservation and projects at Freeway Park, the Rainier Beach Community Center and Magnuson Park.

We noted that project managers are adequately involved in these projects with the help of consulting contractors, which are used when their specific expertise is necessary (engineers, architects, construction managers and general contractors). The project managers maintain appropriate documentation, evaluate change orders and ensure work is performed prior to payments to contractors.

We found no indication departments are making payments before ensuring work is done, thus we consider the condition reported in our 2008 single audit to be resolved.

However, we also noted documentation of independent evaluation of change orders could be improved. The contracts we looked at have significant number of change orders. Change orders often are necessary, but represent a higher risk for inappropriate payments and noncompliance with procurement requirements. Our future audits will focus on change orders.

Related Reports

City of Seattle King County May 10, 2010

PERFORMANCE AUDITS

Initiative 900, approved by voters in 2005, gives the State Auditor's Office the authority to conduct independent performance audits of state and local government entities. Performance audits may include objective analysis on ways to improve program performance and operations, reduce costs and identify best practices.

We issued a performance audit report for Seattle City Light in March 2010 and we issued the performance audit report for the Seattle Public Utilities in September 2009. Both reports are available on our Web site, www.sao.wa.gov.

OTHER REPORTS

South Lake Union Streetcar and other capital projects:

During our regular audit of the City of Seattle, the City Council asked us to examine whether the Seattle Department of Transportation exceeded the contracting authority delegated to it by the Council with regard to installation of the South Lake Union Streetcar.

In October 2005, the Council ordered "the construction of a modern streetcar line serving downtown Seattle, Denny Triangle and South Lake Union." The project, identified in the City's Capital Improvement Program as the South Lake Union Streetcar project, was completed and began operation in late 2007. The Council approved spending a total of \$53.3 million on the project. The Department did not exceed that amount.

We did find; however, an additional \$13.6 million in City expenditures on capital improvements that were coordinated with the Streetcar construction for associated work such as paving, installation or improvements to sidewalks and traffic signals (\$2.5 million), relocation of Seattle Public Utilities facilities (\$2 million), and expediting the timing of other improvements, such as renovations to Seattle City Light's facilities (\$9 million). City departments regularly coordinate improvements in support of the Utility Cuts and/or Complete Streets ordinances. It is common for Seattle Department of Transportation project while the street is open. The Seattle Department of programs to enhance improvements at a specific location.

We found these extra expenditures were included in departmental budgets, but were not highlighted in the overall Streetcar project budget or in Streetcar progress reports. Therefore, the extent of the work completed in coordination with the South Lake Union Streetcar Project was not clearly communicated to the Council or the public.

As it prepares to begin other major capital projects, we recommend the Council adopt policies that will give it more effective oversight of capital costs, including who should monitor to ensure departments submit complete information to the Council. When approving capital improvements, the Council should ensure it considers all known costs associated with projects before taking action. The Council should require complete, periodic reports on capital projects, including detailed expenditures by individual departments.

Description of the City

City of Seattle King County May 10, 2010

ABOUT THE CITY

The City of Seattle is the largest city in King County and the state, with a population of approximately 586,200 citizens. The City has a mayor-council form of government with nine elected Council Members, an elected Mayor and an elected City Attorney. The City's budget for 2009 was about \$3.6 billion, including \$913 million for the General Fund. It has approximately 11,000 employees and provides a full range of services including water, drainage and wastewater, solid waste, electric power, police, municipal court, fire, emergency medical, parks and recreation (including four golf courses), planning and economic development, and municipal libraries.

ELECTED OFFICIALS

These officials served during the audit period:

Mayor Council: Greg Nickels Richard Conlin Tim Burgess Sally J. Clark Jan Drago Jean Godden Bruce Harrell Nick Licata Richard J. Mclver Tom Rasmussen Thomas A. Carr

City Attorney

APPOINTED OFFICIALS

Director of Finance

Dwight Dively

CITY CONTACT INFORMATION

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Phone: (206) 684-2489

Web site: www.seattle.gov

AUDIT HISTORY

In addition to the annual accountability audit, we perform annual audits of the City's financial statements and compliance with federal grant requirements. We reported four accountability audit findings since our 2004 audit and 14 findings in our audits of financial statements and federal compliance in the same period. A wide range of issues were reported with the areas of compliance with public works requirements and compliance with federal grant requirements appearing more often. The City thoroughly considers our recommendations and takes action to correct reported concerns. We look forward to working with the City to achieve accountability and compliance in all relevant areas.

Schedule of Audit Findings and Responses

City of Seattle King County May 10, 2010

1. The City's internal controls are insufficient to ensure users pay for the space that they use, resulting in a shift of general government costs to restricted funds.

Background

The City's Fleets and Facilities Department manages City property and rents it to other City departments.

The City owns approximately 3.1 million square feet of space. Approximately 1.4 million feet is in three downtown buildings – City Hall, the Seattle Municipal Tower and the Justice Center – known as the Seattle Civic Center. Under City policy, departments pay a set per-square-foot charge for the cost of maintaining the space. The City uses two rates for building space: \$35 per square foot for the Center (Schedule 1 space) and \$7 per square foot for other City buildings (Schedule 2 space). In 2008, the City charged approximately \$55.8 million in building space rent to its departments: \$47 million for the Civic Center and \$7.8 million for other City facilities.

In turn, these departments include rent costs in charges to programs, projects, grants (state and federal) and levy funds.

Condition

We found the City's internal controls are inadequate to ensure the accuracy of these calculations. Specifically:

- The City bases rent on estimates rather than on actual square footage and maintenance costs. When calculating rent, the City combines all expected building-related expenses including debt repayment, operating costs and a portion of the Fleet and Facilities Department's administrative costs. This figure is then attributed to Civic Center buildings (Schedule 1 space) and to the remainder of City space (Schedule 2 space). The City uses an estimate to determine this distribution. The estimate is not adequately documented or supported by sufficient accounting records. Estimated costs are not consistently compared to actual costs, which can result in inappropriate shifting of costs to Seattle's utilities and other restricted funds.
- Renters pay more than their individual costs for space. The City charges rent for most of the space in the Justice Center and the Seattle Municipal Tower. It charges no rent for a significant amount of the City Hall space and no rent is charged for the City Hall Plaza. The City has determined it will not charge rent for the latter two because the space is used by multiple departments. Excluding

this space from the total billed square footage results in higher rent charged to other tenants and inappropriately shifting general government costs to restricted sources such as utilities.

- The City does not consider costs unique to each building when it determines rent. The City charges one rate -- \$35 per square foot for all three Civic Center buildings. It does not take into consideration the different characteristics and costs of each building. For example:
 - **Debt.** More than \$20 million of debt is paid annually on the three Civic Center buildings. The average square foot cost of debt for City Hall is approximately \$29; the cost of debt for the Justice Center is \$20 and the cost of debt is \$9 per square foot at the Seattle Municipal Tower.
 - **Utilities.** City Hall and the Justice Center are newer buildings with energy efficient heating, cooling and water systems. The Seattle Municipal Tower has traditional office building features. This difference is not considered during the determination of space rental rate.

Cause of Condition

The Department states it has building-specific cost information, but has decided to rely on its cost estimates.

It also has determined that the "ceremonial space" space in the City Hall and City Hall Plaza is used by all City departments and has excluded it from rent.

The approach to develop Schedule 1 rate for the three buildings of the Civic Center is a legacy of past policy decisions that predate the construction of the City Hall and Justice Center, and predate the purchase of the Seattle Municipal Tower.

Effect of Condition

Inaccurate and unsupported rent charged to state, federal or private grants and programs could mean those charges are inappropriate use of those funds.

Failure to consider the different characteristics and costs of each building of the Civic Center may result in an inequitable distribution of costs to tenants.

Because the City does not charge rent for some City Hall and all City Hall Plaza space the cost of this space is shifted to other Civic Center tenants and other departments that do not directly benefit from the space. At least 27,750 square feet are left out of the calculation, resulting in the shift of approximately \$850,000 per year to non-City Hall tenants. Of that amount, about \$280,000 is shifted annually to Seattle City Light and Seattle Public Utilities.

Recommendation

The City should improve internal controls to ensure tenants pay the proper rent. Specifically:

- It should maintain adequate support for rent charged, including building- specific debt, utilities, improvements and other costs. For labor, timesheets or time studies should be used. For all indirect costs, adequate support should be maintained. Estimates should be consistently compared to actual expenditures.
- It should ensure all City Hall and Plaza space charged to specific departments that use it and open space be attributed to general government.
- The City should develop procedures to compare costs of Civic Center buildings and develop a cost allocation system that ensures actual space costs are borne by tenants.

City's Response

The Auditor's first recommendation states that the City should maintain adequate support for rent charged. This recommendation links to a condition statement asserting that the City does not adequately document the estimates used to attribute operating expenses to Civic Center space (Schedule 1) versus all other City-owned space (Schedule 2). We agree that additional documentation, such as written time studies, would help substantiate the validity of the distribution percentages.

Also, the first recommendation and companion condition statement state that estimates should be consistently compared to actual expenditures to prevent inappropriate shifting of costs to Seattle's utilities and other restricted funds. We disagree with the assertion that existing practices have resulted in any material shifting of general government costs to the utilities or subsidies to private tenants. Current practice already includes periodic analysis of revenues compared to costs; any accumulation of excess revenues is refunded to City departments in direct proportion to their rent payments. Refunds were made in 2004 and 2009 amounting to approximately \$1.3 million and \$5.0 million respectively.

The Auditor's second recommendation states that City Hall and Plaza space should be charged to specific departments that use it and that open space should be attributed to general government. We disagree with the recommendation. As the seat of government, City Hall, including the Plaza, is available for citywide use, including use by (and benefit to) the City's functions funded by ratepayers or other sources outside of the General Fund.

The Auditor's third recommendation states that the City should develop procedures to compare the costs of Civic Center buildings and develop a cost allocation that ensures that actual space costs are borne by tenants; this recommendation links to a condition statement asserting that the City does not consider the different characteristics and costs of each building when setting rates. This recommendation is counter to current City financial policy, which applies common per-square foot office space rate throughout the entire civic center campus, rather than differential rates for individual buildings. This practice has been followed for decades, including during an era when a large portion of

our general government occupancy was in leased space of substantially lower quality. With the City assigning individual departments' locations in the Civic Center on the basis of citywide operational requirements and business needs, there would be little value to price-discriminating on the basis of any one building's unique characteristics and operating costs. The campus-based approach is commonly used by other public and private sector organizations that occupy campus facilities. It is the City's position that the current methodology of using a composite rate for office space in the Civic Center is fair to all departments.

Despite our disagreement with the recommendation as noted above, we will factor the auditor's concerns into our regular review of rate-setting methodology.

Auditor's Remarks

We thank the City for its response and reaffirm our findings.

Applicable Laws and Regulations

Budget Accounting and Reporting System (BARS) Manual, Part 3, Accounting, Chapter 1, Accounting Principles and General Procedures, Section C, Internal Control, states in part:

Internal control is a process – affected by those charged with governance, management and other personnel designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

Management and the governing body are responsible for the government's performance, compliance and financial reporting. Therefore, the adequacy of internal control to provide reasonable assurance of achieving these objectives is also the responsibility of management and the governing body. The governing body has *ultimate* responsibility for ensuring adequate controls to achieve objectives, even though *primary* responsibility has been delegated to management. Since management and the governing body are assumed to work in harmony, both parties are collectively referred to as "management" throughout the rest of this section.

Internal control should be viewed as an integral or inherent part of the policies, systems and procedures management uses to operate and oversee the organization. This is not to say effective control will never require additional or incremental effort. Rather, controls exist to provide reasonable assurance about the achievement of objectives and so should be integrated into all the organization's fundamental business processes. Controls are normally most effective when built into the government's infrastructure rather than being treated as supplemental or separate processes. In the same way, implementation and monitoring of internal controls should not be viewed as a singular event, but rather a continuous or iterative process.

The following is provided for reference and should be considered in the design and implementation of internal controls.

The state Supreme Court decision in Okeson v. City of Seattle, 150 Wn.2d 540(2003) held that Seattle City Light utility rate revenue may not support the City's general government functions.

State law (RCW 43.09.210) prohibits a department from benefiting financially at the expense of another department within the same agency. It states in part:

All service rendered by, or property transferred from, one department, public improvement, undertaking, institution, or public service industry to another, shall be paid for at its true and full value by the department, public improvement, undertaking, institution, or public service industry receiving the same, and no department, public improvement, undertaking, institution, or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another.

The City receives federal grants and charges rent related costs to those grants. Grant money must be spent in accordance with federal guidelines outlined in the Office of Management and Budget's (OMB) Circular A-87, Attachment A, states in part:

Section F1 - Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Section C3(a) - A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

Attachment B, section 23(a) states in part:

The general costs of government are unallowable. These include:

... Salaries and other expenses of State legislature, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction.

Attachment C - section A1, also states in part:

... All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

Attachment C - section G4, also states:

A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs.

Schedule of Audit Findings and Responses

City of Seattle King County May 10, 2010

2. The City of Seattle's internal controls over appropriate usage of existing contracts were inadequate.

Condition

In 2009, the City used four blanket contracts procured in 2004 through a single request for proposals for design and installation of a security system. In 2009, five City departments used these contracts for \$2.2 million of work and in 2008 the City used them for more than \$4.4 million of work. Controls over departmental use of contracts are inadequate to ensure they are used only for allowable work.

The City did not comply with state law when departments procured public works using blanket contracts established before the specific public works projects were planned and designed. Specifically, we reviewed seven out of more than 60 work orders and identified two fences that were built by Seattle City Light at a cost of \$1 million without adequate procurement. The Department of Executive Administration lacks monitoring controls to prevent or detect inappropriate use of existing contracts.

Cause of Condition

The City believed a 2004 waiver of competitive purchase requirements for the security system was sufficient to waive competitive procurement for all subsequent related work.

Further, the City believed that establishing a pool of contractors in 2004 was a sufficiently competitive process for similar subsequent security-related work. The 2004 request for proposals did not describe the project in detail, resulting in a lack of clear direction on how the City departments were to use the blanket contracts.

The Department of Executive Administration's Contracting Division is not able to effectively monitor use of contracts because the departments do not consistently indicate the relevant contract number for all vendor payments.

Effect of Condition

The City cannot effectively determine whether a contractor will have sufficient knowledge and/or experience to perform work added to the contract in the future. For example, the fences were not included in the original request for proposals and the City could not accurately evaluate whether the contractor was qualified to perform this work and could not ensure it got the lowest price.

Recommendation

We recommend the City establish adequate monitoring to ensure compliance with state law. Monitoring should be designed to prevent and detect inappropriate use of existing contracts. Departments should be required to use the relevant contract number when making vendor payments.

City Response

The City is continuing emphasis on both the priority for, and development of, available controls that can ensure department purchases are compliant with the scope of City contracts.

The responsibility to ensure all acquisitions are compliant with competitive bid and associated state law, is, within each department before an acquisition is placed. We note that some substantial new controls have been implemented both centrally and within certain departments, after the originating date for the contracts that prompted this finding. Most significantly, on April 13, 2009, Seattle City Light instituted a comprehensive purchasing control process; this alone provides advanced new controls for nearly 25% of total City spend. In addition, City Purchasing and Contracting Services have both implemented rigorous change policies that restrict department authority to change or expand the scope of purchase orders or contracts.

We also note that there are several additional controls that DEA will pursue which will provide some enforcement tools for repetitive violations. First, DEA will pursue contract language that expressly places a responsibility on vendors to perform work or sell products only as permitted within the contract scope. Second, DEA will amend policies and procedures to more explicitly educate departments about the requirement to comply with contract scope. Third, we will pursue technology tools that require the department to identify a Blanket Contract number with each blanket purchase. Finally, we expect to require every department to enter each of their consultant contracts in our financial system to facilitate review and monitoring.

Auditor's Remarks

We thank the City for its response and will continue to review the City's processes.

Applicable Laws and Regulations

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Management and the governing body are responsible for the government's performance, compliance and financial reporting. Therefore, the adequacy of internal control to provide reasonable

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The following is provided for reference and should be considered in the design and implementation of internal controls.

RCW 39.04.280 provides uniform exemptions to competition requirements. Only subsection (e) (emergencies) applies to public works:

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

- (b) Purchases involving special facilities or market conditions;
- (c) Purchases in the event of an emergency;
- (d) Purchases of insurance or bonds; and
- (e) Public works in the event of an emergency.

Chapter 39.04.290 RCW sets specific requirements for building engineering systems and provides two competitive procurement options for them; section (2)(a) defines "building engineering systems" as

... those systems where contracts for the systems customarily have been awarded with a requirement that the contractor provide final approved specifications, including fire alarm systems, building sprinkler systems, pneumatic tube systems, extensions of heating, ventilation, or air conditioning control systems, chlorination and chemical feed systems, emergency generator systems, building signage systems, pile foundations, and curtain wall systems. "Practical Applications for SAO Audit Findings", http://www.apwawa.org/forums/forums.htm

The statutes envision that a public works project of whatever size has a finite scope. When an agency seeks bid or quotes on a project, the contract documents (advertisement or request for quotes, plans, specifications, general and special provisions, etc.) describe/define work to be accomplished by the lowest responsible bidder for the price(s) shown on the proposal.

MRSC's The Bidding Book, 2006, p.32:

May a city state in its bid specifications that it "reserves the right to make such alterations in the plans or in the quantities of work as may be considered necessary" in case all bids are over its budget? No, because the city would have to negotiate the changes with a contractor to see what the firm would be willing to do for the amount of money the city has to spend. Cities are not allowed to negotiate with bidders. Using the deductible method discussed above is the way to handle budget concerns.

Seattle Department of Executive Administration's Purchasing Manual defines blanket contracts as "a contract awarded by City Purchasing for goods or services, which the City anticipates will be ongoing or repetitive."

DEA Chapter 5: Policy and Procedure Regarding Exemptions from Competitive Bid Requirements establishes criteria for exemptions from public work competitive bid requirements.

Status of Prior Audit Findings

City of Seattle King County May 10, 2010

The status of findings contained in the prior years' audit reports of the City of Seattle is provided below:

1. The City should improve its internal controls over contracting and purchasing compliance.

Report No. 1001738, dated June 22, 2009.

Background

We identified instances of noncompliance with procurement and contracting requirements. We recommended continued purchasing and contracting training and we recommended improvement in monitoring controls to identify contracts that may be bypassing the established procedures. We also recommended that the Library utilize City Contracting procedures.

<u>Status</u>

We continue to see limitations in the ability of City Contracting and Purchasing Divisions to monitor the procurement and usage of public works contracts. We believe the City is committed to improvements in these controls. We further believe that the Accounting Services' "Chartfield Project" will result in increased ability to monitor contracts and purchases and in improved city-wide accountability. We look forward to continued cooperation with the departments to improve the City's internal controls.



ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established in the state's Constitution and is part of the executive branch of state government. The State Auditor is elected by the citizens of Washington and serves four-year terms.

Our mission is to work in cooperation with our audit clients and citizens as an advocate for government accountability. As an elected agency, the State Auditor's Office has the independence necessary to objectively perform audits and investigations. Our audits are designed to comply with professional standards as well as to satisfy the requirements of federal, state, and local laws.

The State Auditor's Office employees are located around the state to deliver our services effectively and efficiently.

Our audits look at financial information and compliance with state, federal and local laws on the part of all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits of state agencies and local governments and fraud, whistleblower and citizen hotline investigations.

The results of our work are widely distributed through a variety of reports, which are available on our Web site and through our free, electronic subscription service. We continue to refine our reporting efforts to ensure the results of our audits are useful and understandable.

We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program.

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