

CITY AUDITOR'S OFFICE



Audit of Professional Services Contract No. 080146-DC Hill-Clark & Associates

Report No. CAO 3100-0910-06

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Audit of Professional Services Contract No. 080146-DC Hill-Clark & Associates CAO 3100-0910-06

BACKGROUND

The City Auditor's Office has completed an audit of the Professional Services Contract No. 080146-DC (Contract) with Hill-Clark & Associates (Contractor) and the City of Las Vegas (City). This contract was approved on the Consent Agenda at the January 16, 2008 meeting of the City Council. This is a single project design and management consulting contract. This contract was conducted during the contract term.

The Desert Nature Preserve Project is designed to create a trail park on Hualapai Way north of Alta Drive. The project is being funded by Southern Nevada Public Land Management Act (SNPLMA), which is Bureau of Land Management funding, and the consulting fee is fixed at \$284,900, including a \$25,900 contingency fund. Hill-Clark & Associates is to design the park, assist in obtaining contractor bids, and assist in the management of construction.

OBJECTIVES

The objectives of our review were to:

- Determine the Basis of Contract Award
- Review the Contract Preparation
- Review Contract Compliance
- Review Payments to Contractor
- Review Modifications and Change Orders
- Identify controls utilized in administration of this contract,
- Review adequacy and effectiveness of Contract Administration Controls,

SCOPE AND METHODOLOGY

The scope of the audit was limited to the Professional Services Contract # 080146-DC with Hill-Clark & Associates.

The scope of our work on internal control was limited to the controls within the context of the audit objectives and the scope of the audit. Our last fieldwork date was July 08, 2009.

Our audit methodology included:

- Review of applicable policies and procedures,
- Examination of selected records,
- Review of selected transactions, and
- Interviews with selected employees.

We conducted this performance audit in accordance with generally accepted government auditing standards except for the requirement for an external peer review every three years. 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.

The exception to full compliance is because the City Auditor's Office has not yet undergone an external peer review. However, this exception has no affect on the audit or the assurances provided.

CONCLUSIONS, FINDINGS AND RECOMMENDATIONS

The following conclusions were noted:

- ***Basis of Contract Award*** – NRS 332.115 allows an exemption from the competitive bidding requirement for Professional Services Contracts. This contract was not competitively bid. Requirements of Professional Services Policy FN609.1 were appropriately followed.
- ***Contract Preparation (Finding 1)*** – The contract was prepared in compliance with Professional Services Policy FN609.1 and R-48-2006. However, FN608 was not followed because a Right to Audit clause was not included.
- ***Contract Compliance (Finding 2)*** – The following non-compliance was noted:
 - o Proper state licensing for an architectural firm could not be verified.
 - o The contractor's state business license is in default as of November 1, 2008.
 - o The contractor's liability and workers compensation insurance had expired on September 9, 2008 and May 1, 2008, respectively.
 - o Required insurance could not be verified.
- ***Payments to Contractor*** – Invoices and payments were for proper amounts and had sufficient authorization.
- ***Modifications and Change Orders (Finding 3)*** – A material modification was observed and properly approved by the department, but was not reviewed by Purchasing and Contracts.

- ***Adequacy and Effectiveness of Contract Administration Control*** – The following was noted.
 - o A comprehensive, written Contract Monitoring Policy and Procedure did not exist. **(Finding 4)**
 - o Management control exceptions were noted in the following areas **(Finding 5)**:
 - No documented analyses of the Contractor's performance were prepared.
 - A checklist was not utilized in the project management file.
 - Limited access was only because of the location of records and access was not documented.

Further information is contained in the following sections.

1. Contract Preparation

Criteria

FN608 states, "All City contracts and agreements shall include a standard audit clause to allow oversight of contracted activities."

Condition

The contract does not contain a right to audit clause.

Cause

A right to audit clause was not included in the contract.

Effect

The City has not preserved its right to audit the records of the Contractor thereby diminishing its ability to monitor the Contract.

Recommendation

Purchasing and Contracts and Public Works Management should provide assurances that all future contracts contain a right to audit clause in compliance with FN 608.

2. Contract Compliance

Criteria

The Contract should be performed in compliance with the specified terms and conditions to give assurance that the authorized performance is completed so as to give the City value for performance.

Condition

- **Proper state licensing for an architectural firm could not be verified.** In the recitals section of the contract the statement is made “whereas, the Consultant hereby represents to the City that the Consultant is properly licensed pursuant to Chapter 623, 623A, or 625 as required for the Project, of the Nevada Revised Statutes...” NRS 623.349 states that control and 2/3 ownership of a firm must be held by a registered individual in order for the firm to perform, promote, or advertise the services of a registrant or licensee. The Consultant’s City Business License indicates that the firm is not 2/3 owned by a Registered Landscape Architect in accordance with NRS 623.349.
- **The Contractor does not have a current Nevada State Business License.** Section 10.14.2 of the contract states, “Consultant represents and holds a license, permit, or other special license to perform the services included in this Agreement, as required by law...” The LLC license for Hill-Clark & Associates with the state of Nevada is in default as of November 1, 2008. NRS 86.274 (2) reads, “On the first day of the first anniversary of the month following the month in which the filing was required, the charter of the company is revoked and its right to transact business is forfeited.” *On July 8, 2009 the Project Manager provided audit with a current, active Nevada State Business License.*
- **Liability Insurance and Worker’s Compensation Insurance expired on September 9, 2008.** Section 10.6 of the contract states, “The Consultant shall provide, and shall maintain in full force and effect, at all times during the period in which this Agreement is in effect, and for one year after completion of the Project, the following insurance coverages...”
 - o Professional liability insurance in an Errors and Omissions coverage in an amount of not less than \$1,000,000
 - o Workman’s Compensation: Statutory
 - o Professional Liability Insurance: \$1,000,000
 - o Comprehensive General Liability – Bodily Injury and Property Damage: \$1,000,000 combined single limit

- o Comprehensive Automobile Liability – Bodily Injury and Property Damage: \$1,000,000 combined single limit.

On July 8, 2009, the Project Manager provided a current copy of the Contractor's insurance policy.

- **Required insurance could not be verified.** The contract folder retained by Purchasing and Contracts and the Project Manager's folder did not contain documentation of the Contractor's liability insurance for Errors and Omissions insurance as required by Section 10.6.1.

Cause

Some specific terms of the Contract were not enforced by the Project Manager or Purchasing and Contracts.

Effect

Relative assurance did not exist that the Contract was performed in compliance with all terms.

Recommendation

The Project Manager should do the following:

- Obtain a copy of the certificate of registration for Hill-Clark & Associates or a variance signed by the Nevada State Board of Landscape Architecture explaining the non-compliance with NRS 623.349.
- Provide assurances that any future State Business License deficiencies will be remedied in an appropriate amount of time.
- Provide assurances that current certificates of insurance will be maintained in the contract folder.
- Obtain proof of the existence of Errors and Omissions insurance from the beginning of the Contract (January 16, 2008) until the present and include a current certificate of insurance in the Contract folder.

3. Modifications and Change Orders

Criteria

Changes in scope to professional service contracts through the use of modifications should be reviewed and approved by Purchasing and Contracts so as to prevent confusion and provide consistency.

Condition

A modification to the contract, dated September 25, 2008, was approved by Public Works but Purchasing and Contracts was not included in the review and approval process.

Cause

A policy is not in place that provides guidance for the submittal of modifications of professional service contracts to Purchasing and Contracts.

Effect

The contract folder maintained by Purchasing and Contracts is incomplete.

Recommendation

Purchasing and Contracts should do the following:

A policy should be established that provides guidelines as to which modifications should be submitted to Purchasing and Contracts for review and approval. These modifications should be included in the contract folder maintained by Purchasing and Contracts. This should be included in the Contract Monitoring Policy and Procedure currently being written by Purchasing and Contracts.

4. Contract Monitoring Policy and Procedures

Criteria

Management controls over Professional Services activities should be communicated to all employees performing functions related to the acquisition and performance of the Professional Services contract. The policy and procedures should be written to give relative assurance to management that if the policy and procedure are followed; performance of the contract will meet the objectives and authorizations of management.

Condition

A comprehensive, written Contract Monitoring Policy and Procedure did not exist.

Cause

A contract monitoring policy or procedure had not been written.

Effect

Without a comprehensive, written policy and procedures:

- Specific responsibilities of employees may not be known.
- Standards of performance by the contractor may not be followed.

Recommendation

The City Manager should establish a comprehensive Contract Monitoring Policy and Procedure for the administration of personal services contracts to apply to all departments utilizing these contracts. The policies, procedures, and responsibilities should address at a minimum the following:

1. **Segregation of Duties or Incompatible Functions** – Duties related to the administration of the contract should be appropriately segregated.
2. **Qualified, Trained Personnel** – Personnel should be qualified and adequately trained to monitor the contract.
3. **Authorization** – All transactions are approved by an appropriate member of management.
4. **Records** – Records regarding the administration of this contract should be required and documented. These records should be sufficient, competent, relevant, and timely.
5. **Reporting** – Reports should be prepared on an appropriate basis so as to document the performance of the contract. There should be statement of opinion if the vendor is performing as originally intended.
6. **Control over Assets and Records** – Specific responsibilities and procedures regarding custody of assets (information) and records should be enumerated and followed.
7. **Independent Review** – Provision for a periodically independent review of performance of the contract and monitoring of the administration of the contract should be performed by an independent individual or group.
8. **Limited Access** – Access to information and records should be maintained and monitored.

AUDITOR’S NOTE: (This is the same recommendation previously made to the City Managers Office. The Purchasing and Contracts staff is currently working on this Procedure. Estimated Date of Completion is December 31, 2009.)

5. Management Control Exceptions

Criteria

Management controls over the administration of the contract should address all phases of procurement and administration over Professional Services contracts. Controls should be complete enough to give relative assurance that management's responsibilities to effectively administer the contract are being met.

Condition

We noted the following internal control exceptions that in our opinion would or could limit management's ability to effectively administer this contract.

- No documented analyses of the Contractor's performance were prepared.
- A checklist was not included within the Project File to document in a summary fashion the contents of the file.

Cause

Internal controls did not exist to address these deficiencies.

Effect

Controls may not be adequate to protect the city.

Recommendation

Public Works management should correct the following control exceptions:

- Prepare reports on an appropriate basis so as to document the Contractor's performance. Key accountability reports should inform management of any deficiencies so as to allow timely correction.
- Include a checklist within the Project File to document in a summary fashion the contents of the file.

Management Response

1. Contract Preparation

Recommendation:

Purchasing and Contracts and Public Works Management should provide assurances that all future contracts contain a right to audit clause in compliance with FN 608.

Management Action Plan:

Public Works: We have reviewed our current boilerplate contracts and the latest versions on our website do include a right to audit clause. We will issue a new policy and procedure to be located on our intranet website to let staff know that they are not to use old contracts as a starting point for new contracts, but instead to use the new boilerplate contract. Also, we will develop a checklist that the project managers must sign off on ensuring that this clause is in all future contracts.

Purchasing and Contracts: Public Works Management has responded to this audit finding with corrective action due to a finding that an old boilerplate document was erroneously used in the preparation of this contract. P&C staff will work with Public Works to verify the use of current boilerplate professional services boilerplates effective immediately. Any forthcoming contract modifications will incorporate an audit clause if the original contract does not include it.

Estimated Date of Completion:

December 31, 2009

2. Contract Compliance

Recommendation:

The Project Manager should do the following:

- Verify in all future contracts that contractors meet all requirements of the pertaining to State Law (i.e. requirements for RLAs).
- Require the Contractor to correct all deficiencies with State Licensing and submit proof of proper Licensing.
- Correct all deficiencies in required insurance and provide required Insurance Certificates for Liability Insurance and Worker's Compensation Insurance.

Management Action Plan:

Public Works: For this project, the City will contact the Landscape Architect Board to see if they can provide a variance of the requirement to have a firm that has 2/3 ownership by a registered Architect or request that owner provide proof of 2/3 ownership as required. We may need to work with the City Attorney's office as well to help resolve this issue. In the future, the City will add language into the SOQ process which will verify compliance with NRS 623, 623A and 625. In addition, similar language to our proposed language in the SOQ documents will be added to the boiler plate of contracts in the Capital Project Management section.

The City will request certificates of insurance from the Architect and verify they have the required insurance. For future projects, the City will provide a section on the pay request that will show that proof of the required insurance has been received and will also include the expiration dates for the insurance. A determination as to what insurances are required will be made with the assistance of the Purchasing Department and the City Attorney's office.

Purchasing and Contracts: Public Works management has responded with corrective action to this audit finding; however, P&C will be implementing an insurance tracking services agreement in the next 2 months which will help resolve deficiencies in monitoring General Liability, Workers Comp, Auto and E&O insurance limits and expiration dates.

Estimated Date of Completion:

12/31/09 for added section in Pay Request for insurance verification
12/31/2011 for resolution of Ownership on this contract as it may involve legislative action, attorney involvement, etc.

3. Modifications and Change Orders

Recommendation:

Purchasing and Contracts should do the following:

A policy should be established that provides guidelines as to which modifications should be submitted to Purchasing and Contracts for review and approval. These modifications should be included in the contract folder maintained by Purchasing and Contracts. This should be included in the Contract Monitoring Policy and Procedure currently being written by Purchasing and Contracts.

Management Action Plan:

Public Works: Purchasing will develop guidelines and will meet with sections and departments for approval of their guidelines.

Purchasing and Contracts: P&C Manager will update the Professional Services Policy FN 609.1 to reflect the requirement for contract modifications to be submitted to P&C for review and approval.

Estimated Date of Completion: December 31, 2009

4. Contract Monitoring Policy and Procedures

Recommendation:

The City Manager should establish a comprehensive Contract Monitoring Policy and Procedure for the administration of personal services contracts to apply to all departments utilizing these contracts. The policies, procedures, and responsibilities should address at a minimum the following:

1. **Segregation of Duties or Incompatible Functions** – Duties related to the administration of the contract should be appropriately segregated.
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4. **Records** – Records regarding the administration of this contract should be required and documented. These records should be sufficient, competent, relevant, and timely.
5. **Reporting** – Reports should be prepared on an appropriate basis so as to document the performance of the contract. There should be statement of opinion if the vendor is performing as originally intended.
6. **Control over Assets and Records** – Specific responsibilities and procedures regarding custody of assets (information) and records should be enumerated and followed.
7. **Independent Review** – Provision for a periodically independent review of performance of the contract and monitoring of the administration of the contract should be performed by an independent individual or group.
8. **Limited Access** – Access to information and records should be maintained and monitored.

AUDITOR'S NOTE: (This is the same recommendation previously made to the City Managers Office. The Purchasing and Contracts staff is currently working on this Procedure. Estimated Date of Completion is December 31, 2009.)

Management Action Plan:

In response to your November 24, 2008, review of "Draft ICR 042, ICR 048 and QRA 3100-001 -- Delphi Research" recommendation number 3 to establish a comprehensive Contract Monitoring Policy and Procedures for administration of personal services contracts to apply to all departments utilizing these contracts. Staff has been assigned to draft policies and procedures that will include, but not be limited to cover, the eight areas outlined in your recommendations. The draft will be forwarded to you for your review and comment prior to forwarding to all Department Directors for feedback and implementation. The development of compensative policy and procedures guidelines requires many steps for proper development. Therefore the City Manager Office has set a target date of December 31, 2009 for development and implementation. There will also be a developed and piloted contract administration class and trained Purchasing & Contracts staff on aspects of the policy that will change purchasing processes and procedures.

Estimated Date of Completion: December 31, 2009

5. Management Control Exceptions

Recommendation:

Public Works management should correct the following control exceptions:

- Prepare reports on an appropriate basis so as to document the Contractor's performance. Key accountability reports should inform management of any deficiencies so as to allow timely correction.
- Include a checklist within the Project File to document in a summary fashion the contents of the file.

Management Action Plan:

Public Works: Consultant evaluations will be provided for Prime Consultant contracts at major milestones within the project timeframe

A checklist for the file folder structure will be created and placed at the beginning of each project file.

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Estimated Date of Completion:

12/31/09 Consultant evaluation form will be developed and put into place

12/31/09 File folder structure will be developed and incorporated. A file folder checklist will be placed at the beginning of each project file.