

DATE: June 30, 2017

TO: Distribution list

FROM: Cathy Criswell, City Auditor *Cathy Criswell*

SUBJECT: SPECIAL PROJECT:
USE OF PURCHASE ORDERS AND CONTRACTS BY CITY PURCHASING
DEPARTMENT

Attached is the final report for Phase I of the subject project. This project was performed at the request of Finance, Human Resources and Legal Department management. As indicated in our November 30, 2016 engagement letter, the scope of this phase includes:

1. A review of criteria and rationale used by the Purchasing department to determine the circumstances when Purchase Orders (P.O.s) and Contracts are used.
2. A review of Purchasing transaction data to determine facts regarding the consistency with which contracts are used for supply, service and information technology transactions exceeding \$100,000 (as stated by requirements in Tulsa Revised Ordinance Code Title 6, Chapter 4, Section 407 A-C).
3. Providing information from a. and b., above to the Legal, Finance and Human Resources departments to assist them with their determination of the City's compliance with TRO Title 6, Chapter 4, Section 407 A.-C. and exposure in any instances in which Purchase Orders were used when contracts appear to have been required.

SUMMARY CONCLUSIONS:

1. Purchasing Department personnel have used P.O.s to form vendor agreements for a variety of purchases with the bidding vendors selected. These purchase agreements and transactions were furnished for approval to the Mayor's Office through a Request for Action (RFA). **This method was used to streamline workload, and was interpreted by Purchasing to be permissible under the provisions of TRO Title 6, Section 407 A-C,** which specified Purchase Orders could be used in lieu of contracts when 'the best interest of the City will be served' AND 'the City's objectives would be met'. Contracts were used in situations when the Purchasing department deemed the 'best interest' and 'objectives' of the City would be served via a contract.
2. The Legal Department issued an opinion at the City Auditor's request, dated May 3, 2017, which opines:
 - Purchasing's use of P.O.s in lieu of contracts as described above at item 1., above, violates requirements of **Article XII, Section 14** of City Charter to execute 'formal written contracts' at a specific dollar amount; AND
 - violates Charter requirements of **Article III Section 4 H** for City Attorney review and approval and Mayoral approval of all contracts.
 - **This opinion concludes that TRO Title 6, Section 407 A (2) regarding use of P.O.s in lieu of contracts when the 'best interests' of the City would be served is void.**

SUMMARY CONCLUSIONS, continued...

3. Internal Auditing reviewed Purchasing transaction data for purchases over \$100,000 via :
 - software extraction and analysis of Purchase Orders over \$100,000 for the period 1/1/13 – 9/30/16 in the INFOR system,
 - setting automated software criteria to identify which of these extracted P.O.s potentially lacked associated contracts
 - discussion and interview with Purchasing and Engineering Services personnel, to determine the contract documentation used for various types of identified purchases, and
 - verification of the actual documentation underlying a sample of these P.O.s without apparent contracts

4. The procedures outlined at 3., above identified **78 P.O.s issued in lieu of contracts for 80 department purchases, totaling \$20.8 million.** This report provides detail information on the nature, type, volume and amount these P.O.s over \$100,000 without contracts in the **ANALYSIS** section of the following report. This analysis highlights these key points:
 - **Streets/Stormwater and Water/Sewer** purchases made up roughly **60% of the P.O.s** > \$100,000 without written contracts. Both departments represented **53.8%** of the purchased dollar amount. Additionally, although **Police** items were **11% of the purchases**, they comprised **23.2% of the purchased dollar amount.**
 - **This P.O. activity over \$100,000 was concentrated at lower dollar levels.** 57.5% of the P.O.s without contracts were under \$200,000, and 90% of the P.O.s used for these purchases were <\$500,000.
 - **44%** of these purchases were made for **licensed vehicles and miscellaneous equipment.** Multiple purchases were also noted for software licenses, offroad vehicles, and water treatment equipment.
 - If multiple levels of the Purchasing, Legal and Mayor’s Office departments are needed to draft, review and approve these additional contract agreements over \$100,000, the personnel cost is approximately **\$400/hour, could cost \$250,000 annually if a contract needed 30 hours to finalize, and could add over 600 hours of work annually across these departments. Both a higher volume of contracts AND longer, more complex contracts requiring more hours could be needed; these are estimates for management to begin to assess the magnitude of workload and costs which may occur.**

5. Ongoing controls and procedures used for Purchase Orders and contracts will be examined in detail by in Phase II of this project, planned for completion in Fiscal Year 2018.

The City Auditor’s Office would like to thank the Finance, Human Resources and Legal Department for their assistance and participation with this project. Please let us know if you have questions or comments.

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Special Project Report – PHASE I: Use of Purchase Orders and Contracts by the City of Tulsa Purchasing Department

Responsible Officers: Erica Felix-Warwick, Personnel Director
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Auditors: Mary Ann Vassar, CPA, CRMA – Internal Audit Manager
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AUDIT SCOPE:

As agreed upon in our November 30, 2016 Engagement letter memo, Internal Auditing is providing consulting to the Legal, Finance and Human Resources departments to plan and complete two phases of this review. Phase I of this engagement includes:

- a. A review of criteria and rationale used by the Purchasing department to determine the circumstances when Purchase Orders and Contracts are used.
- b. A review of Purchasing transaction data to determine facts regarding the consistency with which contracts are used for supply, service and information technology transactions exceeding \$100,000 (as stated by requirements in Tulsa Revised Ordinance Code Title 6, Chapter 4, Section 407 A.-C.)
- c. Providing information from a. and b., above, to the Legal, Finance and Human Resources departments to assist them with their determination of the City’s compliance with TRO Title 6, Chapter 4, Section 407 A.-C. and exposure in any instances in which Purchase Orders were used when contracts appear to have been required.

BACKGROUND:

The specific focus area requested by the above responsible officers was when and whether contracts were executed for purchase orders (P.O.s) over \$100,000 in conjunction with the provisions of TRO Title 6, Chapter 4, Section 407 A.-C. (referred to as Section 406).

This ordinance was enacted in 2011, and created the authority to purchase supplies, services and information technology systems by formal written contract when the cost is either over OR under \$100,000, AND the best interests of the City and City objectives will be met. These interests and objectives are discussed as requiring contractual provisions to address critical issues including (but not limited to):

- performance, insurance, bonding or warranty requirements;
- indemnity obligations;
- compliance with law;
- contract renewal options;
- primary and secondary suppliers;
- price escalation;
- audit rights and,
- termination

When the above types of issues DO NOT need to be addressed, the ordinance allowed a purchase of any amount to be made using a purchase order *only*. **For full text of TRO Title 6, Chapter 4, Section 407 A.-C., see Appendix I.**

AUDIT PROCESS AND METHODOLOGY:

Due to INFOR system limitations, contracts associated with purchase orders cannot be readily determined. To attempt identification of contracts related to P.O.s for our review, Internal Auditing used audit software, manual data inspection and confirmation with the Engineering Services department to identify 171 P.O.s over \$100,000 totaling \$49 million for the period 1/1/2013 through 9/30/2016 which:

- were originated by the Purchasing department,
- lacked apparent corresponding contract header information in the INFOR system, **indicating the likely potential for no contract**, and
- were purchase types within the scope of TRO Title 6, Chapter 4.

AUDIT RESULTS:

- 1. 78 Purchase Orders used to make 80 separate departmental purchases for the period 1/1/13 – 9/30/16 did not use full ‘written’, long form contracts.** This translates to **46%** of 171 P.Os reviewed and **42%** of the \$49 million P.O. purchases made without written contracts.
- 2. Use of long form contract agreements as specified by TRO Title 6, Chapter 4, Section 407 A.-C. has been assessed by the Purchasing department using the ‘best interests’ of the City criteria contained in the ordinance – i.e., whatever purchase document which was deemed needed to serve the best interests of the City has been utilized. A City Legal department opinion issued on May 3, 2017 opines that the ‘best interests’ criteria in Section 407 A conflicts with City Charter Article XII Section 14 provisions requiring supplies, materials, equipment or services over \$7,500 to be made ‘upon written contract’ and therefore TRO Tile 6, Chapter 4, Section 407 (A) is void.**
- 3. Data and patterns of the purchases determined to be over \$100,000 lacking contracts from 1/1/13 – 9/30/16 is included in the following ANALYSIS section.** This information is intended to assist Purchasing and Legal personnel in assessing the volume of contract development, review and approval needed if purchases over \$100,000 now use full, ‘written’ contracts. Additionally, some workload time and cost analysis has been included for management informational purposes.

ANALYSIS:

I. P.O.s > \$100,000 WITHOUT CONTRACTS – PATTERNS AND TRENDS (1/1/13 – 9/30/16)

- **Streets/Stormwater and Water/Sewer** purchases made up roughly **60% of the P.O.s** > \$100,000 without written contracts.
- **Streets/Stormwater and Water/Sewer** represented **53.8%** of the > \$100,000 purchase dollar amount. **Police** items were **11% of the purchases**, but comprised **23.2% of the purchased dollar amount**.
- **This P.O. activity under \$100,000 was concentrated at lower dollar levels.** **60.1%** of the P.O.s were under \$200,000; 90% of the P.O.s used for these purchases were <\$500,000.

SOFTWARE-IDENTIFIED P.O.s > \$100K W/O MATCHING CONTRACTS SELECTION METHODS BY DEPARTMENT					SOFTWARE-IDENTIFIED P.O.S > \$100K W/O MATCHING CONTRACTS AMOUNTS BY DEPARTMENT		
DEPT	IFB	CSP	BW	EMERGCY	DEPT	\$ AMT	%
POLICE		5	0	3	1		
ASSET MGMT		1	0	1	0	\$319,350.00	1.5%
STREETS/STRMWTR		16	0	2	0	\$566,338.34	2.7%
ENGIN SVCS		1	0	0	0	\$239,090.22	1.1%
PLANNING		0	0	0	0	\$385,303.78	1.8%
WATER/SWR		23	0	7	0	\$956,075.25	4.6%
FIRE		3	0	1	0	\$127,330.96	0.6%
IT		1	1	6	0	\$1,613,478.18	7.7%
CITY COUNCIL		1	0	0	0	\$580,457.00	2.8%
HUMAN RIGHTS		0	0	1	0	\$-	0.0%
PARK		4	0	0	0	\$4,843,710.80	23.2%
FINANCE		0	0	2	0	\$4,183,128.75	20.0%
WKG IN NGHBR		0	0	0	0	\$7,053,199.51	33.8%
TOTAL		55	1	23	1	\$20,867,462.79	100.0%

SOFTWARE-IDENTIFIED PURCHASES > \$100,000 WITHOUT CONTRACTS - PURCHASE VOLUME PATTERNS/DISTRIBUTION 1/1/13-9/30/16									TOTAL	
AMOUNT TIER	Purchase Agreement Type								#	%
	Inv for Bid		Bid Waiver		Emergency Supplier		Comp Sealed Prop			
	#	%	#	%	#	%	#	%		
>\$100K - \$199K	32	40.0%	14	17.5%	0	0.0%	0	0.0%	46	57.5%
\$200K - \$499K	17	21.3%	7	8.8%	1	1.3%	1	1.3%	26	32.5%
\$500K-\$749K	3	3.8%	2	2.5%	0	0.0%	0	0.0%	5	6.3%
\$750K-\$999K	1	1.3%	0	0.0%	0	0.0%	0	0.0%	1	1.3%
\$1 MIL - \$1.9MIL	1	1.3%	0	0.0%	0	0.0%	0	0.0%	1	1.3%
\$2 MIL AND OVER	1	1.3%	0	0.0%	0	0.0%	0	0.0%	1	1.3%
TOTAL	55	68.8%	23.00	28.8%	1	1.3%	1	1.3%	80	100.0%

- I. **P.O.s > \$100,000 WITHOUT CONTRACTS – PATTERNS AND TRENDS (1/1/13 – 9/30/16)**
continued.....
- **44%** of these purchases were made for **licensed vehicles and miscellaneous equipment**. Multiple purchases were also made for **software licenses, offroad vehicles, and water treatment equipment**.

TYPE OF PURCHASES MADE BY SOFTWARE-IDENTIFIED P.O.s WITHOUT CONTRACTS	
TYPE OF PURCHASE - ACCOUNT DESCRIPTION	# OF P.O.s
ACADEMY EQUIPMENT POLICE	0
AMMUNITION POLICE	2
BUILDING CONSTRUCTION IMPVMT	4
CAPITAL ASSETS PLANNING	0
CHEMICAL, LAB	0
CLOTHING	2
COMPUTER ITEMS/SUPPLIES	0
COMPUTER MAINTENANCE	2
EQUIPMENT MAINT & TESTING	0
HORTICULTURE SUPPLIES	0
INDEPENDENT EMP SERVICES	0
IT EQUIPMENT	3
IT NON-CAP EQUIP & SOFTWARE	0
IT SOFTWARE AND LICENSING	3
LAB EQUIPMENT	2
LICENSED VEHICLES	19
MISC EQUIP	15
MOTOR VEHICLE PARTS & SUPPLY	1
NON-CAPITALIZED EQUIPMENT	1
NON-VEHICULAR MOTOR EQUIPMENT	3
OFFICE FURNITURE & FIXTURES	0
OFF ROAD VEHICLES & EQUIPMENT	5
OTHER OPERATING SUPPLIES	1
OTHER OUTSIDE EQUIP REPAIR	0
OTHER REPAIR PARTS & SUPPLY	0
OTHER SERVICES	3
PLUMBING SUPPLIES	0
POLICE BODY ARMOR	0
PROPANE	0
RADIO & ELECTRONIC SUPPLY	0
SEWAGE TREATMENT FACILITY	2
SOFTWARE LICENSING FEES	5
STREET CONSTRUCTION & IMP	0
STREET LIGHTING	0
TELECOMMUNICATIONS EQUIP	1
VEGETATIVE CONTROL	0
WATER TREATMENT EQUIPMENT	4
TOTAL PURCHASES	78

II. WORKLOAD AND COST ANALYSIS OF ADDING CONTRACTS TO IDENTIFIED P.O.s > \$100,000:

For purchases > \$100,000 which were confirmed to be conducted *without* formal written contracts, personnel time and expertise will be required to generate the additional needed contracts. Although our software-extracted data identified 78 such P.O.s, this is an **approximation only; our method was used due to a lack of system information available to link P.O.s to contracts. More P.O.s > \$100,000 without written contracts may exist – and their precise volume is unknown.**

To help management consider the impact additional contract drafting, review and approval may have on the departments affected, including Mayoral office review/approval, the following analysis is provided:

PURCHASING COST/HR	
Position	COST/HR
Buyer	\$ 22.74
Coordinator	\$ 25.00
Agent	\$ 37.60
TOTAL COST/HR	\$ 85.34
LEGAL COST/HR	
Position	cost \$/hr
Deputy Atty	\$ 72.25
Sr. Contracts Mgr	\$ 53.89
Attorney	\$ 43.27
Paralegal	\$ 28.35
TOTAL COST/HR	\$ 197.76
MAYOR'S OFFICE COST/HR	
Position	cost \$ /hr
Deputy Mayor	\$ 62.50
Mayor	\$ 50.48
TOTAL COST/HR	\$ 112.98

NOTE: Pay rate source: Payroll database information.
Attorney salary avg of \$90,000/yr was used to approximate varying attorney pay levels in the Legal department.

In total, this means the possible cost per hour to generate a written contract (if all the above roles are involved/needed) could reach nearly **\$400/hour**. Using this cost per hour estimate,

- if the 78 additional contracts identified over the 45 month time span reviewed indicates an average of **20** such contracts per year;
- and if an average of **30** total hours from all of the above departments were needed to draft, review and approve these contracts;
- **additional imputed annual cost would be approximately \$250,000.** These assumptions would also result in **over 600 potential additional hours** annually of work across the Purchasing, Legal and Mayoral departments.

It should be noted the time to generate contracts can vary widely, and can be higher than 30 hours for some purchases.

APPENDIX I
FULL TEXT OF APPLICABLE CHARTER AND ORDINANCE PROVISIONS

TULSA CITY CHARTER:

ARTICLE III, SECTION 4 H.

There is hereby created the office of City Attorney. The City Attorney shall be licensed to practice law in Oklahoma. The City Attorney shall be the chief legal advisor and attorney for the city and all offices, divisions, departments, boards, authorities, commissions, and agencies thereof. The City Attorney shall:

H. Approve as to form all contracts, bonds, and other instruments to which the city is a party or which are required by the city

ARTICLE XII, SECTION 14 (highlights added for ease of reference)

Except as otherwise provided in this amended Charter, all contracts of whatever character pertaining to public improvements or the maintenance of property of the city requiring an expenditure of more than seven thousand five hundred dollars (\$7,500.00), unless such amount is established otherwise by ordinance, shall be based upon specifications approved by the Mayor. An advertisement for the proposed contract inviting competitive bids shall be published in a daily newspaper of general circulation in the city not less than five (5) times. Specifications for the contract shall be filed with the City Clerk for inspection by parties desiring to bid. All bids shall be sealed and be opened publicly at the time and place specified in the notice. All bids shall be open to the public for inspection for at least forty-eight (48) hours before the award of the contract is made. The Mayor shall:

- A. Accept and enter into a contract with the party submitting the lowest secure bid; or
- B. Enter into a contract with a party other than the lowest secure bidder, with the approval of the Council, if the Mayor determines such bid to be the most advantageous bid for the city; or
- C. Reject all bids, if the Mayor determines that none of the bids are satisfactory, in which event the Mayor may readvertise for bids or, with the approval of the Council, enter into a negotiated contract for the performance of the work.

All expenditures for supplies, materials, equipment, or services, other than those of a professional nature, requiring an expenditure of more than seven thousand five hundred dollars (\$7,500.00), unless such amount is established otherwise by ordinance, shall be made upon written contract after such competition prescribed by ordinance. The provisions of this Section may be waived by a majority vote of the entire membership of the Council upon the declaration of an emergency, whereby the immediate award of a contract is determined by the Council to be necessary for the preservation or protection of the public peace, health, safety, or welfare.

TULSA REVISED ORDINANCE CODE:

TITLE 6, CHAPTER 4, SECTION 407 A-C. (highlights added for ease of reference)

A.

Supplies, services, and information technology systems shall be purchased by formal written contract when: 1. the expected cost of the acquisition is greater than One Hundred Thousand Dollars (\$100,000.00); and 2. the best interests of the City will be served and the City's objectives will be met by requiring contractual provisions which address critical issues including, but not limited to: detailed performance requirements; insurance requirements; bonding requirements; warranty requirements; indemnity obligations, compliance with law requirements; contract renewal options; awards to primary and secondary suppliers; price escalation; audit rights; and termination.

B.

Supplies, services, and information technology systems may be purchased by formal written contract when: 1. the expected cost of the acquisition is less than One Hundred Thousand Dollars (\$100,000.00); and 2. the best interests of the City will be served and the City's objectives will be met by requiring contractual provisions which address critical issues including, but not limited to: detailed performance requirements; insurance requirements; bonding requirements; warranty requirements; indemnity obligations, compliance with law requirements; contract renewal options; awards to primary and secondary suppliers; price escalation; audit rights; and termination.

C.

When a contract is not required as detailed herein, a purchase order may be used in lieu of, or in addition to, a formal written contract, when the best interests of the City will be met.