

OFFICE OF INSPECTOR GENERAL
CITY OF NEW ORLEANS



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INSPECTOR GENERAL

March 2, 2016

Mr. Andrew Kopplin
Chief Administrative Officer
City of New Orleans
1300 Perdido Street, 9th Floor
New Orleans, LA 70112

Ms. Rebecca Dietz
City Attorney
City of New Orleans
1300 Perdido Street, 5th Floor
New Orleans, LA 70112

Re: Law Department Procurement of Outside Counsel

Dear Mr. Kopplin and Ms. Dietz:

The OIG recently completed an in-depth examination of Law Department funding. During the course of performing the review, evaluators identified opportunities for improvement in the procurement of outside counsel. From 2008 through 2013 the Law Department averaged \$900,000 per year in spending on legal professional services and other professional services.¹ The majority of these services were for outside counsel related to the New Orleans Police Department (NOPD) and Orleans Parish Sheriff's Office (OPSO) consent decrees.

The Law Department spent nearly \$900,000 on professional services in 2013, the most recent year in the review scope of the Law Department funding review. The largest recipients of these funds were four law firms: Phelps Dunbar, LLP; Sher Garner Cahill Richter Klein & Hilbert, LLC; LeBlanc Butler, LLC; and Capitelli and Wicker.² See Figure 1 for the amount the Law Department paid each of these firms in 2013.

¹ This figure does not include outside counsel hired by the New Orleans City Council or firms hired on a contingency basis.

² The City paid these four firms significantly more money than other providers of professional services in 2013. The contractor paid the next highest amount was Middleberg Riddle & Gianna at \$6,209.

Figure 1: Recipients of the Largest Total Professional Services Payments from the Law Department in 2013

Law Firm	Paid in 2013
Phelps Dunbar, LLP	\$334,988
Sher Garner Cahill Richter Klein & Hilbert, LLC	\$269,278
LeBlanc Butler, LLC	\$155,328
Capitelli and Wicker	\$123,775

In 2001 the Bureau of Governmental Research (BGR) evaluated legal services contracting in local municipalities to identify areas for improvement. BGR reported on five standard controls employed to control cost for outside counsel: 1) conducting an analysis that demonstrates the need to use outside counsel rather than in-house staff; 2) conducting a competitive procurement process; 3) having a formal written contract in place; 4) having billing standards in place and approving invoices; and 5) documenting yearly evaluations of contractors.³

Evaluators requested documents related to the procurement, payment, and evaluation of the four law firms listed in Figure 1 to evaluate the Law Department’s outside counsel cost control strategies.

DECISION TO USE OUTSIDE COUNSEL

The first opportunity to control costs for outside counsel occurs when the City makes a decision whether to use outside counsel or in-house staff. The City emphasizes the importance of this initial decision in Executive Order MJL 10-05 by requiring the Chief Procurement Officer to develop a procedure that requires “a demonstration of the need to use outside contractors instead of in-house staff.” In-house attorneys are less expensive than outside counsel. The most expensive attorney in the Law Department (the City Attorney) costs approximately \$110 per hour.⁴ In 2013 the City contracted for costs of up to \$325 per hour for outside counsel.

Other organizations also support documenting the decision to use outside counsel. In its 2001 report, BGR listed factors to consider when making the decision to use outside counsel including the volume of work available, the consistency of work, and the need for specialized expertise. The report notes that agencies should consider employing attorneys with specialized expertise full time if there is consistent need in a specialized area.⁵ In a 2004 audit the Office of

³ Bureau of Governmental Research, *Legal Services Contracting at the Local Level* (New Orleans, LA: Bureau of Governmental Research, 2001), accessed January 27, 2015 <http://www.bgr.org/files/reports/LegalServices.pdf>.

⁴ The calculation is based on a 35-hour work week and includes fringe benefits.

⁵ BGR, *Legal Services Contracting at the Local Level*, 4-5. The OIG made a similar recommendation to the City Council to reduce its reliance on outside counsel for routine regulatory functions by building in-house capacity.

the City Auditor in Austin, TX also recommended that its City Attorney document the reason for selecting outside counsel to explain why costs were higher than other cities in Texas.⁶

Evaluators requested written justification for the Law Department's decision to use outside counsel, but the Law Department did not provide any justification for why it decided to use outside counsel in these cases. It stated in response that the requests were approved by the Chief Procurement Officer.

PUBLIC PROCUREMENT PROCESS

Public procurement processes are essential to ensure that the City gets the best service for the lowest price. Executive Order MJL 10-05 requires City agencies to conduct public competitive procurements for professional service contracts above \$15,000 so that the selection process is "open, honest, fair, transparent, just, and inclusive." The order requires City agencies to advertise procurements, develop comprehensive requests that include a clear description of the scope of services and selection criteria, and hold public meetings to evaluate applicants. Selection committee members must document their evaluations of applicants in writing and the evaluations must be preserved.

The Law Department used a two-step process to select firms for outside counsel: it first issued a blanket request for qualifications (RFQ) to identify firms across a variety of specializations and then conducted "mini" request for proposals (RFP) in which Law Department staff emailed requests for proposals to firms deemed qualified to provide specialized services through the RFQ. The City received proposals and evaluated firms at a public meeting for the initial RFQ process, but the Law Department evaluated and made selections of firms in the mini-RFP process without a public process. Evaluators commented on the RFQ and mini-RFP process in a January 2015 report and observed that the process did not meet the requirements in Executive Order MJL 10-05.⁷

Evaluators requested RFQs and RFPs related to services provided by the four firms listed in Figure 1. The City provided two relevant RFQs but could not provide the scoring sheets

Office of Inspector General City of New Orleans, *New Orleans Utilities Regulation* (New Orleans, LA: Office of Inspector General City of New Orleans, 2015), 58, accessed January 8, 2016, http://nolaoig.gov/uploads/File/All/OIG_Utilities_Regulation_Final_Report_150617.pdf.

⁶ Office of the City Auditor Austin, Texas, *Law Department Service Delivery* (Austin, TX: Office of the City Auditor Austin, Texas, 2004), 25, accessed January 27, 2015, <http://www.austintexas.gov/sites/default/files/files/Auditor/au03315.pdf>.

⁷ Office of Inspector General City of New Orleans, *Review of the City's Procurement Documents, 2013-2014* (New Orleans, LA: Office of Inspector General City of New Orleans, 2015), 8, accessed January 27, 2015, <http://www.nolaoig.gov/uploads/File/OIG%20Final%20Report-Review%20of%20City%27s%20Procurement%20Documents%20150114.pdf>.

documenting the City's evaluation of respondents. The Law Department provided e-mails sent to all qualified firms for the more specific RFPs but did not publicly announce the request or hold public meetings to evaluate respondents.

When the City responded to the OIG's January 2015 report, it committed to ensuring that "in future RFQs issued by the City, both the selection of qualified vendors and the assignment of work among those selected will both occur in public meetings."⁸ The scope of this evaluation period (2008-2013) was before the City made this commitment to public selection meetings and evaluators have not followed up on the commitment. But evaluators acknowledge the change in policy.

DETAILED CONTRACTS

Detailed contracts improve transparency by documenting the terms and conditions by which outside counsel and the City must abide. Contracts also establish criteria for evaluating contractor performance. CAO Policy Memorandum 8(R) requires a contract for all professional services. It also states that "the description of the contractor's obligations should include as much detail as possible regarding the scope of work, tasks, deliverables, reporting requirements, and performance measures as appropriate."

Evaluators noted improvement since 2001 when BGR observed a "routine failure of many local governments to use formal written contracts to retain local counsel."⁹ The Law Department provided contracts for all cases handled in 2013 by the firms listed in Figure 1.¹⁰

However, the contracts did not include any details about work, tasks, deliverables, reporting requirements, or performance measures other than the nature of the case. Evaluators acknowledge that it can be difficult to create performance measures for professional services, but such standards set requirements for contractor performance and provide criteria for City employees actively overseeing and managing contractors. Evaluators commented on performance expectations and penalties in the January 2015 procurement report and recommended that the City incorporate specific performance standards and penalties or incentives tailored to specific projects.¹¹

⁸ OIG, *Review of the City's Procurement Documents, 2013-2014*, 15.

⁹ BGR, *Legal Services Contracting at the Local Level*, 9.

¹⁰ There were 24 contracts and amendments related to ten cases.

¹¹ OIG, *Review of the City's Procurement Documents, 2013-2014*, 7.

INVOICES AND BILLING GUIDELINES

Billing guidelines and invoice review are vital components of contractor oversight. Without these steps, contractors could bill the City for services they did not provide. Evaluators reviewed all 101 invoices from outside counsel received by the Law Department in 2013.

The Law Department adopted detailed billing guidelines to control outside counsel costs, and evaluators found evidence that the Law Department held contractors to those standards. The guidelines included requirements such as detailed descriptions of tasks, limitations on the number of attorneys authorized to attend meetings, and restrictions on billing for clerical support or training. The guidelines stated: “Attorney and paralegal time and disbursements that are not necessary for the cost-effective handling of the legal matter should be deleted.” The guidelines also include what kinds of activities the City will and will not pay for and recommended and prohibited task descriptions. Evaluators reviewed 25 randomly selected invoices from the 101 provided and noted that firms generally submitted invoices in compliance with the guidelines. Evaluators observed instances where the Law Department actively amended invoices to exclude entries not in compliance with its guidelines.

EVALUATIONS

The final step in controlling costs for outside counsel is to evaluate the quality of services provided by contractors and to make the evaluations available to future selection committee members if the same contractor submits a proposal for another project. Executive Order MJL 10-05 requires the Law Department (and all other City departments) to monitor and evaluate contractors such as outside counsel. The Law Department is required to file written progress reports throughout the duration of the contract and again at the conclusion of the contract. The Chief Procurement Officer is required to maintain reports and provide them to selection committee members if the contractor responds to any subsequent RFPs issued by the City. Evaluators commented on post-contract evaluations in an August 2015 report and found that the City’s Chief Procurement Officer had not established a formal system to perform post-contract evaluations.¹²

The Law Department did not provide progress reports and responded to our request for evaluations by writing that “the Department of Law deems the invoices submitted by law firms and approved by the Department of Law to consist of reports related to the contract work.”

¹² Office of Inspector General City of New Orleans, *City Evaluation of Professional Service Contracts* (New Orleans, LA: Office of Inspector General City of New Orleans, 2015), 3, accessed January 8, 2016, http://nolaoig.gov/uploads/File/All/OIG_Final_Report-City_Evaluation_of_Professional_Services_Contracts_150805.pdf.

However, these invoices did not provide an evaluative summary that other City staff could easily use to understand the quality of the work done by these firms; therefore, they did not meet the standard outlined in MJL 10-05. The Law Department provided nearly 2,000 pages of invoices for the four firms in this section alone. It is not reasonable to expect that members of subsequent selection committee meetings would search through hundreds of pages of invoices to evaluate a firm's performance for the City.¹³

In his response to the August 2015 report, the Chief Administrative Officer stated that he personally directed all departments, boards, and commissions to submit outstanding contract evaluations to him by the end of August 2015. The scope of this evaluation period (2008-2013) was before the City made this request to all departments, and evaluators have not followed-up on whether the Law Department submitted evaluations.

CONCLUSION

The Law Department employs some controls to limit the cost of outside counsel, but there is room for improvement. The Law Department should begin by documenting the decision to use outside counsel in each case. Such documentation could consist of a short memo outlining the need for specialized expertise, a short-term need for extra staff, or a conflict of interest in existing staff. It could be even more useful for decision-making if it included a financial analysis including a budget and projected number of hours. The document would assure outside parties that the Law Department considered options before hiring more expensive outside counsel.

The Law Department should also begin to evaluate and select law firms for specific cases in a publicly announced meeting. In response to a 2015 OIG report, the City made a commitment to assign work to vendors selected through an RFQ process in a public meeting. MJL 10-05 allows for an RFQ process, but it does not exempt City staff from conducting a full RFP process after the RFQ. After the Law Department has identified firms qualified through an RFQ and decides to hire firms for a specific case or project, it should conduct a full RFP process with the firms identified through the RFQ that includes a public announcement of the request and evaluation of respondents in a public meeting.¹⁴

¹³ As stated above, the OIG is aware that the Procurement Office had not established a formal system to perform post-contract evaluations. In fact, the OIG was initially not in compliance with the requirement because OIG managers had not been apprised of the existence of an evaluation form; once informed of its existence, the OIG immediately complied. However, Law Department managers told evaluators that they believed invoices submitted by the law firms were sufficient "reports related to contract work." It is the OIG's opinion that invoices do not meet the standard set forth in MJL 10-05.

¹⁴ The only difference between this process and the standard RFP process is that the announcement should state that only firms qualified by the RFQ can submit proposals.

The Law Department should add specific performance standards and incentives to its contracts. Performance standards might include definitions for responsiveness, and incentives for coming in under budget, being efficient, and making accurate predictions.

The Law Department should provide the Procurement Office with evaluations of firms as required by MJL 10-05. Previous performance should be an important factor in the decision of whether or not to hire a firm for a subsequent project. Documented evaluations are the only practical means to provide this information to future selection committee members. Committee members should not have to start from scratch each time a firm responds to a City request for proposals, and it is not reasonable to expect them to review hundreds of pages of invoices to ascertain other staff members' opinion of the firm. Furthermore, simply approving an invoice is not an adequate assessment of performance.

If you have any questions regarding this letter, please contact Nadiene Van Dyke at (504) 681-3202 or by e-mail at nvandyke@nolaoig.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "E.R. Quatrevaux".

E.R. Quatrevaux

cc: Norman Foster, Director of Finance
Mary-Kay Kleinpeter-Zamora, Chief Procurement Officer