

CITY AUDITOR'S OFFICE



Audit of Professional Services Contract No. 080173-DK Whirlygig, Inc.

Report No. CAO 3100-0910-02

August 21, 2009

**RADFORD K. SNELDING, CPA, CIA, CFE
CITY AUDITOR**

TABLE OF CONTENTS

BACKGROUND	1
OBJECTIVES	1
SCOPE AND METHODOLOGY	1
CONCLUSIONS, FINDINGS AND RECOMMENDATIONS.....	2
1. Contract Compliance.....	3
2. Contract Monitoring Policy and Procedures	4
3. Management Control Exceptions.....	6
Management Response	7

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BACKGROUND

The City Auditor's Office has completed an audit of the Professional Services Contract No. 080173-DK (Contract) with Whirlygig, Inc. (Contractor). This contract was approved on the Consent Agenda at the May 7, 2008 meeting of the City Council. This review was conducted at the conclusion of the contract term.

Whirlygig, a not-for-profit organization, produces First Friday, an ongoing arts, entertainment, and social event held the first Friday of each month in the Las Vegas Arts District. This contract provides for the payment of certain services necessary for the production of the event (e.g. security, fencing, traffic control) by the City of Las Vegas (City) in return for Whirlygig's continued management of First Friday. The contract was administered by the Office of Cultural Affairs.

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 No. 080173-DK with Whirlygig, Inc.

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 June 10, 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 Award*** – NRS 332.115 allows an exemption from the competitive bidding requirement for Personal Services Contracts. This contract was not competitively bid. Requirements of Professional Services Policy FN609.1 were appropriately followed.
- ***Contract Preparation*** – The contract was prepared in compliance with Professional Services Policy FN609.1 and R-48-2006.
- ***Contract Compliance (Finding 1)*** – The following non-compliance was noted:
 - The contractor did not have proper City business licensing.
 - Deliverables are not prepared in the format prescribed by the contract.
 - No written operational plan addressing the *Report for the City of Las Vegas to Evaluate the Success of First Friday with Recommendations for its Growth* was received by the City.
 - No list of sponsors is delivered to the City prior each First Friday event.
 - Financial records are not prepared or maintained for the First Friday event.
- ***Payments to Contractor*** – Payments were properly administered.
- ***Modifications and Change Orders*** – No modifications or change orders were observed.
- ***Adequacy and Effectiveness of Contract Administration Control*** – The following was noted.
 - A comprehensive, written Contract Monitoring Policy and Procedure did not exist. (**Finding 2**)

- Management control exceptions were noted in the following areas
(**Finding 3**):
 - No documented analyses of the Contractor's performance were prepared.
 - A checklist was not utilized in the project management file.

Further information is contained in the following sections.

1. 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

The following instances were noted as exceptions to compliance with the terms and conditions of the contract.

- **The contractor did not have proper City business licensing.** Section D-4 of the Contract states "the Company shall maintain all federal, state, and local licenses and registrations applicable to the work performed under this Contract." Whirlygig, Inc. does not possess a City of Las Vegas business license which breaches City Municipal Code 6.02.060 which states, "It is unlawful for any person to: (1) commence, institute, advertise, aid, carry on, engage in or continue in the City any business without a valid unexpired license issued pursuant to this Code."
- **Deliverables are not prepared in the format prescribed by the contract.** Attachment 1, Section (e) requires the Contractor to "provide a monthly report consistent with Exhibit B *Whirlygig Monthly Report of First Friday*." The reports received by management did not include material information, such as expenditures and total profit/loss for the event, required by "Exhibit B" of the Contract.
- **No written operational plan addressing the *Report for the City of Las Vegas to Evaluate the Success of First Friday with Recommendations for its Growth* was received by the City.** Management did not receive a written report as required by Attachment 1, Section (f) of the Contract which requires a written operational plan to address the above mentioned report on or before September 30, 2008.
- **No list of sponsors is delivered to the City prior each First Friday event.** Attachment 1, Section (h) requires the contractor to "provide to the City a list of

- all sponsors seven (7) days in advance of each event.” Management did not receive any list of sponsors from the Contractor.
- **Financial records are not prepared or maintained for the First Friday event.** Attachment 1, Section (d) requires the Contractor to “prepare and maintain detailed records of the financial income and expenses related to each Event according to generally accepted accounting procedures.” Management indicated that the Contractor does not keep separate and distinct financial records for First Friday.

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

In the future, the Office of Cultural Affairs management should do the following:

- Verify in all future contracts that contractors are properly licensed pursuant to City Municipal Code 6.02.060.
- Require all deliverables be properly formatted and contain requested data.
- Enforce all terms of the Contract.

2. 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.)

3. 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

For future contracts, Cultural Affairs 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 Compliance

Recommendation:

In the future, Cultural Affairs management should do the following:

- Verify in all future contracts that contractors are properly licensed pursuant to City Municipal Code 6.02.060.
- Require all deliverables be properly formatted and contain requested data.
- Enforce all terms of the Contract.

Management Action Plan:

Project Manager will verify all proper licensing before contract goes forward. Copies of all deliverables will be kept in the contract file and will not be accepted unless in correct format.

Estimated Date of Completion

Immediately July 17, 2009.

2. 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.
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.)

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 31st, 2009

3. Internal Control Exceptions

Recommendation:

Cultural Affairs 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.

Audit of Professional Services Contract No. 080173-DK
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CAO 3100-0910-02
August 21, 2009

- Include a checklist within the Project File to document in a summary fashion the contents of the file.

Management Action Plan:

Pursuant to Recommendation 3, reports will be submitted on a basis reflective of the timelines in each contract. First Friday contracts will require a monthly report as information is submitted for each event. A template will be created for a check list on each contract for the Office of Cultural Affairs which will also include verification of any required business licenses.

Estimated Date of Completion

August 30, 2009.