

# **CITY AUDITOR'S OFFICE**



## **Audit of Professional Services Contract No. 060266 - Ostrovsky & Associates**

**Report No. CAO 3100-0809-08**

**May 14, 2009**

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CITY AUDITOR**

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# **Audit of Professional Services Contract No. 060266 - Ostrovsky & Associates CAO 3100-0809-08**

## **BACKGROUND**

The City Auditor's Office has completed an audit of the Professional Services Contract No. 060266 (Contract) with Ostrovsky & Associates (Contractor). The Contract was approved on the Consent Agenda at the June 21, 2006 meeting of the City Council and subsequently modified on January 9, 2008 to increase the performance period. A second modification was also added on April 28, 2008 to change the language concerning the conflict of interest clause. The Contract was originally an 18 month firm-fixed price contract, extended by 24 months through Modification 1, for a total of 42 months. This audit was conducted during the Contract term.

Ostrovsky & Associates provides the City of Las Vegas (City) with technical assistance and legislative advocacy for State legislative matters. The total cost of the contract, including the two Modifications, is \$469,500 for service from July 1, 2006 to December 31, 2009. This contract is administered by the Director of Administrative Services (Contract Manager).

## **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
- Review adequacy and effectiveness of Contract Administration Controls

## **SCOPE AND METHODOLOGY**

The scope of the audit was limited to the Professional Services Contract # 060266 with Ostrovsky & 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 February 12, 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 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. The Administrative Services Director appropriately provided input on the preparation of this contract.
- ***Contract Compliance (Finding 1)*** – The following non-compliance was noted:
  - Not all invoices included sufficient supporting data for “Other Expenses”.
  - Invoices were sent and payment was requested for services not yet performed.
  - Status reports were not provided by the Contractor.
  - Required insurance could not be verified.
- ***Payments to Contractor*** – Except for the prepayment exception noted in the Review Contract Compliance section above, no exceptions were noted.
- ***Modifications and Change Orders*** – Two modifications and no change orders were observed. Both Modifications were appropriately authorized and justified.
- ***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.
  - Because of limited personnel, concerns exist with the adequacy of segregation of duties and incompatible functions.
  - No status reports were provided by the Contractor or requested by the Project Manager.
  - Procedures and responsibilities were not documented.
  - Performance and contract monitoring activities were not periodically and independently reviewed.

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:

- **Not all invoices included sufficient supporting documentation for "Other Expenses".** Section B-4(b) states "...Other expenses specifically excluded from reimbursement are:...routine meals...not solely for the benefit of the City of Las Vegas..." Supporting documentation for some meals was insufficient to provide evidence that the expenses were not "routine meals" and were "for the benefit of the City". Certain supporting documentation did not clearly identify who participated and the purpose of the meeting.
- **Invoices were sent and payment was requested for services not yet performed.** Section B-6(a) states the Contractor should "...submit invoices to the City by the twentieth (20th) of each month for the previous month's charges for services provided to the City..." Invoices were sent for the month prior to completion of services. The effect is the City was billed in advance.
- **Status Reports were not provided by the Contractor.** Section B-6 (d) states "...the Company shall submit a status report with the monthly invoice to the

Project Manager to inform the City on the Company's activities related to this Contract..." The Project Manager stated no reports had been provided.

- **Required insurance could not be verified.** Section E-5 (d) "...Certificates indicating that such insurance is in effect shall be delivered to the City within ten (10) days after the award date...The company shall maintain coverage for the duration of this Contract..." A Certificate of Insurance for the Contractor could not be located. No evidence could be found as to whether or not the Contractor had the insurance prescribed by the Contract. Subsequent to our review of the contract folder on February 3, 2009, insurance documents were sent to Purchasing and Contracts to document liability and workers compensation insurance. However, considering the effective date, the liability insurance is effective as of February 12, 2009 and no prior insurance documents were located, it appears the required insurance was not in effect.

### **Cause**

Some specific terms of the Contract were not enforced by the Project Manager.

### **Effect**

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

### **Recommendation**

The Administrative Services should:

1. Require expenses billed under the "Other Expenses" category include sufficient supporting documentation for verification that the expenditures are not "routine meals" and are "for the benefit of the City". This supporting documentation should identify the participants and more fully explain the nature of the meeting.
2. Require invoices be sent and payment be requested after service is performed.
3. Require a status report be submitted with the monthly bill recapping the Contractor's activities related to the Contract. The status report should be detailed enough to allow the Project Manager to determine the relative value of the Contractor performance.
4. Require noted insurance be in force at all times during the contract and a copy of the Certificate(s) of Insurance be provided to the City.

## 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 procedures are followed, contract performance will meet the objectives and authorizations of management.

### Condition

A comprehensive, written contract monitoring policy and procedure does not exist.

### Cause

A contract monitoring policy or procedure has not been written.

### Effect

Without a comprehensive written contract monitoring 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 professional 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. The 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 give relative assurance that management’s responsibilities 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 Contract File to document in a summary fashion the contents of the file.
- Because of limited personnel involved in the oversight of the Contract, concerns exist with the adequacy of segregation of duties and incompatible functions. The Project Manager was solely responsible for authorizing payment and evaluation of contract performance.
- No status reports were provided by the Contractor or requested by the Project Manager.
- Contract performance and contract monitoring activities were not periodically and independently reviewed.

**Cause**

Management controls do not exist to address these deficiencies.

**Effect**

Controls are inadequate to protect the city.

**Recommendation**

Administrative Services management should implement the following control controls:

1. Prepare reports on an appropriate basis to document the Contractor's performance. These reports should timely inform management of any performance deficiencies so as to allow correction.
2. Include a checklist within the Contract File to document in a summary fashion the contents of the file.
3. Devise and document enhanced controls to compensate for weaknesses in segregation of duties and incompatible functions. (e.g. additional reviews by independent parties).
4. Require the Contractor to provide status reports with each monthly billing.
5. Require performance and contract monitoring activities be periodically and independently reviewed. Any discrepancies should be investigated and the investigation should be documented.

## **Management Response**

### **1. Contract Compliance**

#### **Recommendation**

Administrative Services should:

1. Require expenses billed under the "Other Expenses" category include sufficient supporting documentation for verification that the expenditures are not "routine meals" and are "for the benefit of the City". This supporting documentation should identify the participants and more fully explain the nature of the meeting.
2. Require invoices be sent and payment be requested after service is performed.
3. Require a status report be submitted with the monthly bill recapping the Contractor's activities related to the Contract. The status report should be detailed enough to allow the Project Manager to determine the relative value of the Contractor performance.
4. Require noted insurance be in force at all times during the contract and a copy of the Certificate(s) of Insurance be provided to the City.

#### **Management Action Plan:**

1. Prior to payment, all "other or miscellaneous expenses" will be reviewed by the contract manager to ensure that sufficient supporting documentation has been submitted. No payment for these expenses will be authorized without the appropriate documentation.
2. All invoices will be paid after services are rendered.
3. The contractor will be required to provide, with the invoice for payment, a report that contains a list of meetings with: state legislators, state/local agencies, businesses, lobbyists, and others that the contractor worked with on behalf of the CLV including correspondence/meetings with CLV management and personnel.
4. The contract manager will work with the Purchasing and Contracts Division to ensure that all required insurance is received prior to extending or renegotiating the contract.
5. The contract manager will include language in the contract that requires "Any expense other than travel that is expected to exceed \$500 in a reporting period must be requested in writing to the project manager. The invoice for the expense must be accompanied by the written or emailed approval from the project manager in order for reimbursement."

### **Estimated Date of Completion**

The action plan items will be implemented immediately. The contract modification should be complete by July 1,

## **2. Contract Monitoring Policy and Procedures**

### **Recommendation**

The City Manager should establish a comprehensive contract monitoring policy and procedure for the administration of professional 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. The 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<sup>st</sup>, 2009**

### **3. Management Control Exceptions**

#### **Recommendation**

Administrative Services management should implement the following control controls:

1. Prepare reports on an appropriate basis to document the Contractor's performance. These reports should timely inform management of any performance deficiencies so as to allow correction.
2. Include a checklist within the Contract File to document in a summary fashion the contents of the file.
3. Devise and document enhanced controls to compensate for weaknesses in segregation of duties and incompatible functions. (e.g. additional reviews by independent parties).
4. Require the Contractor to provide status reports with each monthly billing.
5. Require performance and contract monitoring activities be periodically and independently reviewed. Any discrepancies should be investigated and the investigation should be documented.

#### **Management Action Plan:**

1. An annual report will be presented to the City Manager on the impact of the contractor.
2. A checklist will be kept within the Contract File to document the contents of the file.
3. The payments will be processed by the Administrative Secretary and reviewed and approved by the Director of Administrative Services in accordance with the policies developed by the Purchasing Division.

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4. The contractor will be required to provide, with the invoice for payment, a report that contains a list of meetings with: state legislators, state/local agencies, businesses, lobbyists, and others that the contractor worked with on behalf of the CLV including correspondence/meetings with CLV management and personnel.
5. Based on reports provided and regular communication by and between the contract manager and the contractor, the contract manager will investigate any actions that are not compliant with the contract and will follow-up with the appropriate actions.

**Estimated Date of Completion**

The action plan items will be implemented immediately.