



AUDIT OF PAYMENTS TO LAW FIRMS

Exit Conference Date: August 14, 2007

Release Date: September 26, 2007

Report No. 07-20

CITY OF ORLANDO

OFFICE OF AUDIT SERVICES AND MANAGEMENT SUPPORT

Beryl H Davis, CPA, CGFM
Director

Mona S. Mellon, CPA
Audit Program Manager

TABLE OF CONTENTS

Memorandum	1
Executive Summary	3
Background	6
Summary of Recommendations and Responses	7
Issues and Recommendations	9
Clarify OLA’s and the Departments’ Roles through Procedures for Procurement and Use of Law Firm Services.....	10
Establish Requirements for Agreements, Key Terms, and a Central File of Agreements	12
Establish a Policy and Method to Ensure that Written Agreements Are in Force when Services Are Performed.....	14
Establish Responsibility to Ensure Totals Paid Are within Maximum Contract Limits.....	15
Establish Review Procedures for Law Firm Invoices.....	17



CITY OF ORLANDO

MEMORANDUM

To: Mayanne Downs, City Attorney

From: Beryl H. Davis, CPA, CGFM, Director
Office of Audit Services and Management Support

Date: Exit Conference: August 14, 2007 Release: September 26, 2007

Subject: Audit of Payments to Law Firms
(Report No. 07-20)

In accordance with our annual operations plan, the Office of Audit Services and Management Support has performed an audit of payments to law firms. Our objective was to determine that the controls over these payments are adequate.

Our audit was conducted in accordance with generally accepted government auditing standards, except that we did not perform tests of data gathered from computer-based resources. We reviewed controls regarding oversight and payment of law firm invoices and performed such other auditing procedures as we considered necessary in the circumstances. We tested a selection of payments to law firms from October 2005 to mid-March 2007. Our scope did not include a review of the Risk Management section's payments for law firm services, as the payments for this section are made through a separate bank account and entered into the City's general ledger by summary journal entry.

We determined based upon our tests and inquiries that, on the whole, law firm invoices to the City are detailed and describe the services rendered; and the practices utilized by City personnel to review and pay the invoices for these services are adequate and effective. Although we found a few exceptions, we have no evidence that the City was detrimentally affected in such instances. The recommendations in this report are intended to enhance internal controls currently in place.

While the Office of Legal Affairs (OLA) engages, utilizes and pays for a large portion of services the City receives from law firms, the majority of the hiring of law firms is driven by individual engagements serving City departments' needs, with payment from their respective budgets. OLA has worked cooperatively with and provided assistance to these departments in the procurement of the services and payment of invoices. The fact that responsibilities regarding outside law firms are widely dispersed leads us to recommend that the City create an overarching, cohesive policy regarding the procurement, use and monitoring of services by outside law firms, and the allocation of responsibilities among units within the City. Although input from all departments is needed, we believe OLA is

most naturally suited to take the lead in establishing these policies. Such policies could codify existing processes and best practices to clarify responsibilities and govern the use of and payments to law firms.

We would like to express our appreciation to the personnel of the Office of Legal Affairs (OLA) and City departments for their courtesy and cooperation during this audit.

BHD/am

- c: Honorable Buddy Dyer, Mayor
- Byron W. Brooks, Chief Administrative Officer
- Joseph M. Robinson, Chief of Staff
- Jody M. Litchford, Deputy City Attorney
- Rebecca W. Sutton, Chief Financial Officer
- Alan R. Oyler, Public Works Department Director
- Frank Billingsley, Economic Development Director
- Kevin J. Edmonds, General Administration Department Director
- Donnie R. Jones, Treasurer
- David S. Sloan, Environmental Services Division Director
- Conrad C. Cross, Chief Information Officer
- Mike Rhodes, Code Enforcement Division Manager
- Jon D. Mead, C.P.M., Director of Purchasing and Materials Management

EXECUTIVE SUMMARY

Objectives, Scope, Methodology and Conclusions

Page 9

The objective of our audit of payments to law firms was to determine that the controls over these payments are adequate.

Our methodology included: determining which City departments and offices use the services of law firms and what controls are in place to ensure law firm invoices are detailed and describe the services rendered; reviewing the practices used to oversee payments made to law firms; and such other auditing procedures as we considered necessary in the circumstances.

We tested data regarding payments to law firms obtained from the City's general ledger, JDEdwards (JDE), for the period from October 2005 to mid-March 2007, and the associated agreements. Our tests excluded legal-related expenses paid to parties other than law firms. We did not test the accuracy of data gathered from computer-based resources but, rather, utilized the information to obtain an understanding of which City departments and offices pay for law firm services, and to select payments for testing. Our scope did not include a review of the Risk Management section's payments for law firm services, as this section utilizes a separate process for paying its invoices, followed by their summary entry into the City's general ledger.

We determined based upon our tests and inquiries that, on the whole, law firm invoices to the City are detailed and describe the services rendered; and the practices utilized by City personnel to review and pay the invoices for these services are generally adequate.

We made several recommendations for improvement of related policies and processes, as follows.

**Clarify OLA's
and the
Departments'
Roles through
Procedures for
Procurement and
Use of Law Firm
Services**

Page 10

Law firm services are acquired for and paid by various City departments and offices. City Policy and Procedure does not describe OLA's responsibilities to assist in, review, or monitor the engagements. Such policies could include a systematic method for departments to work with OLA to obtain or monitor law firm services.

Certain City services including legal services are not procured by the Office of Purchasing and Materials Management (Purchasing), but are procured, wherever applicable, in accordance with the requirements of City Code. The City Council has delegated to the Office of Legal Affairs (OLA) the ability to engage legal services up to a maximum of \$25,000 per engagement, or up to \$50,000 for Community Venues engagements, with greater amounts requiring City Council approval.

We recommend that OLA consult with City departments and take the lead in developing an overarching policy in City Policies and Procedures regarding OLA's and the departments' respective roles in engaging, utilizing and monitoring law firms, any steps required to meet the provisions of City Code, and the related methods of control.

**Establish
Requirements for
Agreements, Key
Terms, and a
Central File of
Agreements**

Page 12

It is important to have written agreements for each engagement of a law firm that include certain key provisions. We found that existing agreements have varying terms and few standard provisions, and they are not centrally located. We recommend that written agreements be required under the overarching policies, certain standard provisions be established, and material changes in agreement terms, such as rate increases, be documented by an addendum to the original agreement. We also recommend the original agreements with all law firms (copies of those approved by City Council) be collected in a central location in OLA, and copies provided to the personnel who approve the related invoices.

**Establish a Policy
and Method to
Ensure that
Written
Agreements Are in
Force when
Services Are
Performed**
Page 14

We noted four instances in which departments used the services of law firms when written agreements were not in force. In these instances, either an agreement was being negotiated but was not finalized, an extension requirement was not met, or preparation of an agreement was overlooked. We have no evidence that the City was detrimentally affected in such instances. However, we recommend that OLA work with the operating departments to establish in the overarching policies a method to ensure that written agreements for law firm services are in force before the services begin, and whether any exceptions to this policy are appropriate.

**Establish
Responsibility to
Ensure Totals Paid
Are within
Maximum
Contract Limits**
Page 15

We found two instances in which the authorized maximum amounts to be paid to law firms were exceeded. The methods used by a number of City staff to monitor and limit the total amounts paid to law firms are varied and not automated. We recommend that OLA work with the operating departments to establish each area's responsibility to ensure that the amounts paid to law firms are within the maximum limits authorized.

**Establish
Review
Procedures for
Law Firm Invoices**
Page 17

When OLA's attorneys review law firm invoices, they generally initial them to indicate they may be paid, but this is not always a consistent practice. Personnel in the sections that pay the invoices rely on the attorneys' reviews, but also must review certain aspects of the invoices themselves. As a service to its clients, we recommend that OLA establish procedures outlining the review and approval responsibilities, and explain how they are divided between OLA attorneys and client personnel.

BACKGROUND

The Office of Legal Affairs (OLA) provides the City with legal services regarding any legal proceedings involving the City, and assumes any other duties or responsibilities assigned by the Mayor, the City Council, and/or the Chief Administrative Officer. OLA is directed by the City Attorney, who is appointed by and reports to the Mayor.

OLA's budget for FY 2007 is approximately \$4.2 million, with approximately \$3.3 million allocated to Salaries and Benefits. Currently, OLA has 33 employees, of which 19 are attorneys (15 full-time and 4 part-time). The majority of the remaining operating expenses are budgeted for Contractual Services, which includes outside law firms and other services.

OLA generally oversees law firm services; however, a number of other City departments budget and incur expenses for outside law firms including: the Economic Development, Housing, and Public Works Departments, the Code Enforcement and Risk Management Divisions, and the Community Redevelopment Agency. The Fire and Police employee pension boards have the authority to select and review law firms independently of the City, as they are separate legal entities with their own fiduciary responsibilities.

To perform a test of law firm invoices paid by the City, we obtained data from the City's general ledger. The test period was from October 1, 2005 through mid-March 2007. The total of the invoices identified in the general ledger for that period is \$974,480. Our test excluded legal-related expenses paid to parties other than law firms. Our scope did not include a review of the Risk Management section's payments for law firm services, which are not detailed in the City's general ledger. We were informed that the total paid for these services for the same period was \$1,047,051.

We tested 27 payments to law firms and 2 credits received by the City. Approximately half of the payments were from the OLA budget with the remainder from the budgets of other departments. We made our selection of test items from a listing of payments in the City's general ledger. The selection was made judgmentally to ensure that we had an opportunity to learn the practices of a variety of City departments that have responsibilities regarding payments for law firm services.

For the payments tested, we reviewed whether: written agreements with the law firms existed; City procurement requirements were followed; invoice reviews and approvals were documented; there was evidence of oversight by OLA; the invoices were adequately detailed; hourly rates invoiced conformed to agreed-upon rates; expenses were appropriately charged; and the totals paid to the firms for each engagement did not exceed the amounts authorized.

SUMMARY OF RECOMMENDATIONS AND RESPONSES

RECOMMENDATIONS

RESPONSES

Each recommendation is classified with a “Criticality Factor”, defined as:

- | | |
|--------|---|
| HIGH | represents a control risk or needed improvement requiring immediate attention. |
| MEDIUM | represents a control risk or needed improvement requiring attention in the next year. |
| LOW | represents a process improvement that can be addressed at management’s discretion. |

The Office of Legal Affairs should:

- | | |
|--|--------|
| <p>1. Create an overarching policy in City Policies and Procedures indicating OLA’s and the departments’ roles in engaging, utilizing and monitoring law firms, any steps required to meet the provisions of City Code, and the related methods of control. (MEDIUM)</p> | Concur |
| <p>2. Establish requirements for written agreements for all law firm engagements, providing any standardized key terms for inclusion, and documenting material changes in terms by an addendum to the associated agreement. (MEDIUM)</p> | Concur |
| <p>3. Maintain the original agreements with all law firms (copies of those approved by City Council) in a central location in OLA and provide a copy of the agreements to appropriate users. (MEDIUM)</p> | Concur |
| <p>4. Establish a policy and a method to ensure that written agreements are in force when the services are performed, and state whether any exceptions to this policy are appropriate. (MEDIUM)</p> | Concur |
| <p>5. Establish OLA’s and the departments’ responsibilities for monitoring compliance with amounts paid to law firms within the maximum limits authorized. (MEDIUM)</p> | Concur |

RECOMMENDATIONS

RESPONSES

6. Establish procedures outlining the appropriate steps in the review and approval of law firm invoices, including the responsibilities of client departments. (MEDIUM)

Concur

ISSUES AND RECOMMENDATIONS

Objectives, Scope, Methodology and Conclusions

The objective of our audit of payments to law firms was to determine that the controls over these payments are adequate.

Our methodology included: determining which City departments and offices use the services of law firms and what controls are in place to ensure law firm invoices are detailed and describe the services rendered; reviewing the practices used to oversee payments made to law firms; and such other auditing procedures as we considered necessary in the circumstances.

We tested data regarding payments to law firms obtained from the City's general ledger, JDEdwards (JDE), for the period from October 2005 to mid-March 2007, and the associated agreements. Our tests excluded legal-related expenses paid to parties other than law firms. We did not test the accuracy of data gathered from computer-based resources but, rather, utilized the information to obtain an understanding of which City departments and offices pay for law firm services, and to select payments for testing. Our scope did not include a review of the Risk Management section's payments for law firm services, as this section utilizes a separate process for paying its invoices, followed by their summary entry into the City's general ledger.

We determined based upon our tests and inquiries that, on the whole, law firm invoices to the City are detailed and describe the services rendered; and the practices utilized by City personnel to review and pay the invoices for these services are generally adequate.

We made several recommendations for improvement of related policies and processes, as follows.

**Clarify OLA's
and the
Departments' Roles
through Procedures
for Procurement
and Use of Law
Firm Services**

Law firm services are acquired for and paid by various City departments and offices. City Policy and Procedure does not contain an overarching, cohesive description of OLA's or City departments' responsibilities to engage law firms, prepare or review agreements, and monitor the engagements. If such policies were established they could provide a systematic method for departments to contact OLA whenever a need for law firm services is identified, to submit proposals or contracts to OLA for review before firms are engaged, to have OLA approve the agreements before they are submitted to City Council, or to have OLA monitor the engagements. Depending upon the situation, some departments function rather independently of OLA in monitoring the law firms they utilize. OLA has worked cooperatively with and provided assistance to City departments in the procurement of the services and payment of invoices.

City Code Title II, Section 7.13 provides that certain City services including legal services are not procured by the Office of Purchasing and Materials Management (Purchasing), but are procured, wherever applicable, in accordance with the requirements of City Code. It is up to each City office or department delegated procurement authority to follow City Code. The Code allows negotiated purchases and other methods of procuring services. The Deputy City Attorney noted that, in a large majority of cases, the practice is to select law firms using City Code's provisions for negotiated purchases based upon the specialty and expertise needed to successfully render the legal service.

The City Council has delegated to the Office of Legal Affairs (OLA) the authority to engage law firm and other legal services, up to a maximum of \$25,000 in fees and costs per engagement. Recently, for legal services for the Community Venues effort, the City Council delegated this authority to OLA for up to \$50,000 per engagement. City Council must approve any engagements that exceed these amounts.

According to OLA management, City Council has not delegated authority to any other City office or department to contract for legal services. We found that the \$25,000 maximum authority granted per engagement is not clearly defined in order to be applied to the terms in some agreements. In connection with a matter in which fees were paid by the City and then reimbursed by a third party, we noted that it is not clear whether the authority delegated to OLA to hire a law firm applies to the total expenditure or the net expenditure after reimbursement. Examples in which departments operate with various relationships to OLA are noted in the following pages.

We believe that OLA is most naturally suited to take the lead in developing an overarching policy and best practices and documenting them in City Policies and Procedures, to include the respective roles of OLA and the departments regarding engaging, utilizing and monitoring law firms used by the City. In developing these policies, we recommend that OLA consult with the operating departments that utilize law firm services and establish a systematic method for interacting with them and for approving agreements and/or submitting them to City Council as the case may require. OLA could also use this policy to include a method for documenting that its selection of law firms complies with the City Code requirements for procurement.

Recommendation 1. We recommend that OLA create an overarching policy in City Policies and Procedures indicating OLA's and the departments' roles in engaging, utilizing and monitoring law firms, any steps required to meet the provisions of City Code, and the related methods of control.

Response Concur.

Establish Requirements for Agreements, Key Terms, and a Central File of Agreements

The Deputy City Attorney has indicated that there should be written documentation for each engagement with a law firm. The five key provisions that the Deputy City Attorney indicated should be included in the agreements are: the type of service, the fee arrangement, the requirement to abide by City Policy & Procedure 133.3 (which describes cost reimbursements to contractors), the requirement for City Council approval if the total of the related services exceeds \$25,000, and that the City does not waive future conflicts of interest. Law firm invoices should meet the terms of the related agreements, and those who approve the invoices should either be knowledgeable about the terms of the related agreements or have access to review them.

The agreements are, in general, documented in one of three ways: (1) engagement letters presented by the law firms outlining their understanding of the services and terms; (2) brief letters to the firms written by OLA, summarizing the fee and a few terms; or (3) contracts prepared by the City. The agreements vary widely in their provisions.

Changes to material provisions, such as the hourly rate, should be documented as an addendum to the original agreements. We noted one instance in which the most recent hourly rate increase for a law firm was not documented. There was a notation in the file when prior rate increases had occurred. The practice varies among the agreements with law firms as to whether rate increases are allowed to occur. Establishing how notification must be provided to the City and what documentation is needed to justify rate increases could make these practices more uniform.

At present, agreements are located in the offices of departments or OLA staff, without a convenient central location in OLA. To test that the invoices complied with the related agreements, we requested the agreements, and OLA at first located in-house about half of them. We requested the remaining agreements from the user departments. In some of these cases, the user departments referred us back to

individual OLA attorneys for copies. This indicates that a central repository is needed for legal services agreements, and the user departments need copies of appropriate agreements for ready review.

We believe that OLA should have a method to track all the agreements the City has with law firms, in part to act as a clearing house to prevent conflicts of interest by law firms. Maintaining the original agreements in OLA could improve efficiency and facilitate public record requests. This could also aid review by OLA management of the number and types of agreements, the firms being used and departments using them, and the attorneys managing the agreements. It could also lead to the standardization of some agreement terms.

We learned that the Orange County Attorney's Office manages the law firm agreements for the County, which if over \$100,000 must be approved by the Board of County Commissioners. The County RFPs for law firms result in contracts posted on the County's Website, with extensive provisions which are standardized. Orange County is also allowed to use other methods to solicit specialized engagements, and these agreements are generally documented by engagement letters from the firms.

We recommend that OLA require written agreements under the overarching policies, standardization of certain essential terms, and formal acceptance and documentation of changes to agreements, through an addendum to the original. In addition, OLA should devise a method to collect centrally within OLA copies of all law firm agreements approved by City Council (the originals being housed with the City Clerk), as well as the original signed agreements for all other law firms engaged. OLA should provide reference copies to the appropriate departments that pay the invoices.

Recommendation 2. We recommend that OLA establish requirements for written agreements for all law firm engagements, providing any standardized key terms for inclusion, and documenting material changes in terms by an addendum to the associated agreement.

Response Concur.

Recommendation 3. We recommend that OLA maintain the original agreements with all law firms (copies of those approved by City Council) in a central location in OLA and provide a copy of the agreements to appropriate users.

Response Concur.

Establish a Policy and Method to Ensure that Written Agreements Are in Force when Services Are Performed

We noted four instances in which departments used law firm services when written agreements were not in force.

In the first instance, a law firm for a City Board is being utilized under the terms of an agreement which expired over a year earlier. The expiration and need to renew this agreement were apparently overlooked. In the second instance, a department requested approval by the Chief Administrative Officer to pay a law firm invoice. Such approval for payment is needed only if the City Policy is not followed that requires invoices over \$1,000 to have a contract. OLA indicated that it overlooked getting a written agreement until after the invoice was received. In the third instance our review of a payment to a firm for a particular service indicated that the contract for the firm was finalized after this service was performed. In the fourth instance, a City division engaged and continues to utilize the services of a law firm based upon the terms of an expired contract. We were informed that a new contract has not been finalized because the City will not agree to waive future conflicts of interest. OLA believes that the firm is following Florida Bar guidelines and thus does not have conflicts of interest. However, we believe that a written agreement should be

required in order to continue these services.

These examples indicate that there is some confusion about whose responsibility it is to ensure that the agreements are completed or renewed timely. While we understand the urgency on occasion to utilize firms before agreements are formalized, we encourage OLA to establish requirements to finalize or extend written agreements in a timely manner.

We recommend that OLA work with the operating departments and establish through City Policies and Procedures that written law firm agreements are timely put into place or extended, whichever is appropriate. OLA should assist with this requirement by providing a method for the responsible personnel to be aware of what agreements exist and their expiration dates. This method could consist of, for example, use of a master list, or some systematic means of notifying responsible parties when contracts are about to expire. Any exceptions to these requirements should be provided for in City policy.

Recommendation 4. We recommend that OLA establish a policy and a method to ensure that written agreements are in force when the services are performed, and state whether any exceptions to this policy are appropriate.

Response Concur.

**Establish
Responsibility to
Ensure Totals Paid
Are within
Maximum Contract
Limits**

Regular monitoring of the accumulated amounts of fees on law firm engagements is needed. This is because OLA can approve up to a maximum of \$25,000 per engagement, and the City Council agenda items for these engagements indicate maximum amounts authorized to be paid. With the majority of the engagements being invoiced at hourly rates, the maximums could be exceeded if not regularly monitored. We observed that City staff that approve legal services payments have varying practices to monitor or log payments to law firms.

We found two instances in which the amount paid exceeded the authorized maximums for the engagement. For a law firm used for one matter over several years, OLA staff annually obtained City Council approval to extend the original agreement, indicating each year the total cost of the services. For the contract year February 2006 through February 2007, the amount authorized was not to exceed \$80,000; however, the total paid for the contract year was \$80,791.

In the second instance, certain law firm services were engaged in October 2000 through OLA's delegated authority. We were told that these services were supervised by and paid from the budget of an operating division, without OLA oversight. The agreement stated that the total billings for attorneys' fees and expenses "related to the subject matter of this Agreement" should not exceed \$25,000. The agreement does not indicate whether the \$25,000 limit is for the entire agreement or each case under the agreement. The manager thought that the maximum was an annual figure; however, we found that the amounts paid exceeded \$25,000 per year. Specifically, for the 12 months ended September 2006, the total paid was \$25,506, and for the 5 1/2 months ended March 15, 2007, the total paid was \$25,889. The agreement required the law firm to give the City 30 days notice before the total limit was reached, in order to timely obtain City Council approval for an increase; however, this provision did not resolve the above ambiguities.

Our observations indicate that OLA should work with the operating departments to establish in City Policies and Procedures the responsibility for each area that pays law firm invoices to ensure that totals paid to law firms are limited to the maximum authorized amounts.

Recommendation 5. We recommend that OLA establish OLA’s and the departments’ responsibilities for monitoring compliance with amounts paid to law firms within the maximum limits authorized.

Response Concur.

**Establish Review
Procedures for Law
Firm Invoices**

For the majority of engagements, law firm invoices are provided to OLA. The attorney assigned to that engagement reviews the invoice and gives it to the Deputy City Attorney for payment, or to another department from whose budget the invoice is paid. In some cases, department rather than OLA personnel are involved with the firms that render the legal service, so these invoices go to the user departments without review by OLA. On most of the invoices we reviewed, the OLA attorney had indicated a review of the invoice by initialing the invoice. However, we found that there was not a statement that the invoice was acceptable for payment, or what aspects of the invoice had been reviewed.

When we discussed this condition with department personnel associated with review of law firm invoices, we learned that not all were clear about how the responsibility for the invoice reviews was divided between themselves and OLA. Some indicated that they are more comfortable authorizing payments if the reviewing attorneys indicate in writing that they have reviewed the invoices. We were informed by the Orange County Attorney’s Office that it has a procedure for the reviewing attorney to sign and write “OK to pay” on each invoice reviewed before payment.

As a service to its clients, we suggest that OLA establish in policies and procedures a requirement that attorneys who review law firm invoices sign, date and indicate “OK to pay” on the reviewed invoice. It also would be beneficial for OLA to outline what responsibility the OLA staff reviewers are taking with regard to the review of law firm invoices, and include the responsibilities of the City departments in the

review process.

Recommendation 6. We recommend that OLA establish procedures outlining the appropriate steps in the review and approval of law firm invoices, including the responsibilities of client departments.

Response Concur.
