



March 8, 2021

Joe Simmons
Program Manager
Office of the Washington State Auditor
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Dear Mr. Simmons,

Thank you for speaking with us about the Washington State Auditor's Accountability audit of the City currently under way. As we discussed, this appropriation and contract were done by the Legislative Branch, after overriding the Mayor's veto. While the Department of Finance and Administrative Services (FAS) shared contracting guidelines with the legislative branch we were not directly involved in the decisions and execution relating to the contract and we are prepared to assist you in any way you need. You already have "office space" at the City, but if we can provide any additional physical, logistical or technical support please let us know.

Some of the issues you examine may have implications for the policies, procedures and practices of the City as a whole. If there are lessons to be learned, we want to ensure they are incorporated into our standard financial practices.

Your teams are well familiar with the City's standard financial practices, as we have undergone any range of audits over the years and your teams have brought great expertise and assistance to the City. However, if you have any questions about those practices, we are prepared to assist. Similarly, if you flag any issue that could reflect on regular practices the City should address, we would appreciate the opportunity to be briefed and to respond.

The Executive has received feedback and questions from the public and media/press on this particular contract. We appreciate that your audit is rightfully independent. However, if within the scope of your review, it would be helpful to have the Auditor's assessment of the following issues that affect broader City contracting and structural issues:

1. Independent Auditor — Is it best practice or common for an Auditor to be "in" one branch of government, instead of being independent and would the City benefit from an independent Auditor?

Our City Auditor is a Charter created position. City Charter Art. VIII, Sec. 2 states that the Auditor shall have a term of four years and is hired and fired by a majority of Council, which has evolved to the Auditor is generally viewed by that office and by Council as being "part of" the Legislative Branch reporting only to Council. Indeed, as we understand it, the Auditor here concluded it had a conflict in reviewing this contract because of that relationship and because the Auditor is said to have advised Council on constructing the contract. As you know, and as our Auditor would undoubtedly agree, having an independent auditing function is critical to public trust, accountability, and transparency in government. Is it common for an Auditor to be "in" one branch, instead of being independent and would the City benefit from an independent Auditor? What would be the best practice and structure for the City to ensure adequate independence?

2. Use of Non-Profits to avoid competitive bids — Was the use of the statutory "non-profit" exemption an appropriate mechanism to avoid both City Charter requirements and contracting rules that require competitive bids for a non-roster consultant contract over \$55,000 or a roster consultant contract over \$328,000 to be a publicly advertised competition?

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Obviously, the consultant and services contracting rules impact hundreds of contracts, worth millions of dollars, awarded by the City every year. FAS shares guidelines regarding consultant contracts leaving the departments to implement their own consultant contracts and comply with applicable rules. The rules are adopted in SMC Ch. 20.50 and unless an exemption is followed, require that consultant contracts follow monetary thresholds updated annually for selection set by FAS as follows:

Contracts above \$55,000 require competitive selection or selection from the City Consultant Roster. A department can directly contract with a consultant on the Consultant Roster without competitive bid if the contract is under \$328,000, including amendments may not exceed a total of \$409,000 for the life of the contract.

In addition, the City Charter, Art. VII Sec. 2 requires all contracts over an amount set by ordinance to be in writing and it requires the contracts to be advertised and let by competitive bid. The Charter does not have any exception for contracts with non-profits.

Here a high-dollar contract was awarded without competition to a non-profit, who promised to award (and did award) the funds to another entity by an agreement attached to the contract, because reportedly the entity was not itself eligible under the non-profit exception.


Given the high volume of contracts the City has it would be helpful to know the best practices and flexibility for contracts with non-profits using this non-profit exemption to award contracts to an eligible non-profit, knowing and intending for it to just be a "pass through" or "fiscal agent" for a non-eligible entity.

3. Appropriating Funds for a Specific Entity — the City Charter Art. IV, Sec 18 explicitly provides: "The City Council shall make no appropriation in aid of any corporation, person or society, unless expressly authorized by this Charter or the laws of the state." - Do laws of the state expressly authorize direct earmarked appropriations for specific entities, and if so, in what circumstances?

As noted, earmarked appropriations by Council are prohibited by our Charter, unless expressly authorized by the Charter or state law. In this case, the original legislative documents (since revised and removed from the web), public statements by Councilmember and other records demonstrate that the \$3 million dollar appropriation was for the benefit and intended to go to a specific entity. It appears that once it was determined that the contract could not go sole source to that entity, and that it did not qualify for the so-called "non-profit exception", a contract was executed that ensured the funding would go to that entity via essentially a pass-through mechanism.

Again, the Executive has not been directly involved in the award of or implementation of the contract, as it was wholly in Council's purview. However, Council has regularly appropriated funding for a specific contractor or provider, and in this case the contract is structured as a pass-through for an entity that was not qualified for the non-profit exemption. It would be helpful to know whether this type of "pass-through" contracting is a proper use of the non-profit exemption and whether the Executive can award contracts based on "earmarks" by Council or whether doing so would run afoul of the Charter, state law or generally accepted best practices.

Sincerely,


Calvin W. Goings
Department Director


Glen Lee
City Finance Director