



***Performance Audit: Contract Solicitation and Award Process***

***Finance Department***

***Durham County Internal Audit Department***

***November 14, 2012***



**COUNTY OF DURHAM**

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November 14, 2012

Michael M. Ruffin, County Manager:

Internal Audit has completed its audit of internal controls related to competitive contract solicitation and awards. Audit results showed that additional control enhancements are needed to make the program more efficient.

Our recommendations call for (1) completing the development of policies and procedures and disseminating them for County-wide use (2) more attention to record keeping and accuracy of evaluation documents, and (3) design of an evaluation quality control process. These recommendations are in line with best practices and assumptions throughout North Carolina State Statutes regarding competitive purchasing practices.

The Finance Department was provided a copy of the draft report. The Director expresses agreement with all recommendations and describes actions the department is taking to implement them. The Director's comments are included in the report as Appendix 1 on page 7.

I appreciate the courtesy and cooperation provided by Finance Department during this audit. Brian Welch, auditor, contributed to this audit.

Richard Edwards, CIA, CGAP  
Internal Audit Director

XC: George Quick, Director, Finance Department  
Jacqueline Boyce, Purchasing Division Manager  
Audit Oversight Advisory Committee

November 14, 2012

## HIGHLIGHTS

### Internal Audit report to the County Manager

#### Why we did this audit

We conducted this audit because contract solicitation and award process controls had not been audited in the recent past. The Audit Oversight Committee approved this audit engagement based upon the July 2012, Annual Audit Plan assessment of potential risks.

Our objectives were to determine if internal controls are sufficient to assure:

1. Solicitation and contract awards are conducted in a fair manner.
2. Solicitations and contract awards are conducted in accordance with State and County laws, regulations, policies and best practices.

We recommend:

1. The Division design and implement a quality control process to provide reasonable assurance that results of the process are reliable.
2. Solicitation and awards records be processed and maintained for all competitive solicitations.
3. Finance Department complete development of the solicitation and award policy to include instructions regarding (1) selecting and vetting evaluation panel members, (2) appropriate evaluation behavior for panelist, and (3) quality control measures for the solicitation process.



For more information, please contact Richard Edwards, Internal Audit Director, by phone at 919-560-0042 or by email at [rcedwards@dconnc.gov](mailto:rcedwards@dconnc.gov).

## SOLICITATION AND AWARD PROCESS – FINANCE DEPARTMENT

### What We Found

The solicitation and awards process operates in compliance with State and County requirements. However, we believe the process would be better served if written policies and procedures were in place to guide operational departments in their procurement activity. We found examples of activity that needs improvement to make the process better. For example, we identified:

- One case in which a bidder did not provide RFP submittal copies in the number required by the RFP but was allowed to remain in the participant pool because the information was provided in an alternative format,
- Four cases in which bids were tabulated incorrectly however, neither error affected the solicitation outcome, and
- Solicitations and awards records are not always kept on file.

The County's process has worked without significant bidder dissatisfaction in regards to the process. The County has experienced only one bid protest in the past ten years, according to the Division Manager. That protest was settled in favor of the County. The Manager believes if a protest was lodged as a result of the above incidents, the County would prevail. However, the outcomes of bid protests are not predictable. Therefore, we believe it is best to follow practices that mitigate the risk to the lowest level feasible considering the costs in time, expenditures of funds, and goodwill associated with risk control activities versus the negative effects of a protest.

### SUMMARY OF AUDIT RESULTS

**County guidelines and processes for competitive purchases have not been fully developed.** The Purchasing Division does not have comprehensive written policies and procedures for executing its competitive procurements although a draft policy manual is currently in the development process. Written policies and procedures would provide a basis of orderly processes within the Division and the operating departments where much of the purchasing activity is conducted.

The lack of written procedures is frequently named as a primary or contributing cause in product recalls, allegations of unfair federal regulations, inadequate training programs and negative findings in government program audits. It is also often determinative in court decisions in favor of employees who file grievances and lawsuits, according to an article in the May 21, 2009, issue of Practical Compliance, a trade industry publication.

## Introduction

We conducted this Performance Audit in accordance with Generally Accepted Government Auditing Standards. 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Scope and Methodology

We judgmentally selected and reviewed 20 of the 55 requests for proposals (RFPs) and requests for quotes (RFQs) contract awards granted by the County in fiscal years 2011 and 2012. This included 49 RFPs and six RFQs. The value of our selections was approximately \$7.3M of the \$14.5M competitive contracts awarded by the County in those years. We did not review bids based upon competitive prices only.

Our review steps consisted of:

1. Interviewing purchasing staff to gain an understanding of the County's solicitation and award process,
2. Reviewing RFPs, bid folders, and files to identify the processes followed during the solicitation,
3. Identifying industry best practices and comparing them to Durham County practices,
4. Reviewing NC statutes to identify solicitation and award requirements for local governments and comparing them to Durham County Practices,
5. Discussing bid procedures with a UNC School of government representative, and
6. Discussing bid procedures with the Engineering and General Services Departments

There are four basic reasons organizations should develop procedures to document important processes. They are:

- Compliance
- Operational Needs
- Manage Risks
- Continuous Improvement

As previously stated, the Division Manager recognizes the need for policies guiding the solicitation process and has developed a draft. We believe the Finance Department should place added priority to the task of developing the policy and procedures. The procedures should include as a minimum, instructions regarding (1) selecting and vetting evaluation panel members, (2) separating the various evaluation processes to make the process more transparent, (3) appropriate behavior for panelists, and (4) quality control measures.

**Accepting bidder information in an alternative format could be perceived as unfair.** We identified a bidder that did not provide the copies that were required in the RFP. The RFP required an original and six copies of the proposal. Instead, the evaluation team retrieved the copies from a CD provided with the bid submission. The bid was evaluated along with the submissions of other bidders.

The Manager did not reject the bid because the required copies were available as scheduled albeit in an alternative media. The Manager said she did not believe accepting this bid provided an advantage to the bidder or put other bidders at a disadvantage. Also, the Manager pointed out that decisions of this sort have to be made throughout the process and the decisions have to be weighed against what is best for the County, giving consideration to costs of goods and services and the desire for fairness and equity as well as the principles of competition.

We recognize management decisions have to be made to make the process work. However, risks are associated with some decisions and the Division should be mindful of those risks. A bidder that made copies as required could conceivably believe acceptance of a bid without the required copies was unfair. A possible result is that bidders could file protests as well as lose confidence in the process, thus making it more difficult for the County to conduct its business.

The files were clear and well documented about the decision in this case and no questions were raised by other bidders. We encourage the division to continue documenting and recording such decisions and remain mindful of the associated risks.

Note: A contract was not awarded for this solicitation after consultations with the state. Consultations resulted in deciding that the existing third party contractor provided a better option to provide the required services.

## Background

At the end of fiscal year 2012, Durham County had 1,423 contracts in place valued at \$81.2M. This includes 55 competitively awarded contracts valued at approximately \$20M. Twenty-five State or Federal Government entity competitive procurements valued at approximately \$12.2M are included in these totals.

Durham County's award processes were conducted using the three primary provisions allowed by state statute; (1) formal bidding, (2) informal bidding, and (3) choice of competitive or non-competitive processes. (See the exhibit below for bidding criteria).

### Exhibit 1 Bidding Criteria

Formal Bid Requirement	Estimated cost of contract
Construction or repair contract	\$500,000 or above
Apparatus, supplies, materials, and equipment	\$90,000 and above
Informal Bid Requirement	
Construction or repair contract	\$30,000 up to formal limit
Apparatus, supplies, materials, and equipment	\$30,000 up to formal limit
Competition Not Required	
Construction or repair contract	Below \$30,000
Apparatus, supplies, materials, and equipment	Below \$30,000

Source: Excerpts from "County and Municipal Governments in North Carolina" the UNC School of Government, chapter 20.

The primary difference between formal and informal bidding requirements is that the statute does not require advertising nor specify a minimum number of bids for informal processes. Additionally, informal bids can be obtained in the form of telephone quotes, faxes, and other electronic or written bids. Formal bids require advertising and they must be in the same form and cannot be opened until the specified date.

**Some bid evaluations were tabulated incorrectly.** Four proposals contained simple mathematical errors in tabulating the scores. None of the errors affected the outcome of the solicitation. In manual calculations, the risk of making mathematical errors exists. Acknowledgment of this risk requires a control activity to mitigate the risk. This would be in the form of a process to check for errors. Because these records are open for public inspection, we recommend that the Division design and implement a quality control process to provide reasonable assurance the process is reliable.

**Solicitations and awards records are not always kept on file.** During the course of the audit, we found several instances in which solicitation records were incomplete or not in the files. Those were files and records regarding (a) makeup of the evaluation panel, (b) evaluation method, (c) scoring sheets, or (d) selection justification. State Statute 143-131 requires the County to maintain a record of informal bids received and specifies that such records are subject to public inspection after the contract is awarded.

By statute, some of the contract types or contract dollar amounts identified with the above circumstances, did not require a competitive process for selecting a contractor. These were service and other technical contracts that do not fall under competitive statutes. However, because a competitive process was used, good business practices dictate that complete records be maintained in the files and available for review.

We take that position because the School of Government recognizes that counties are encouraged to use competitive processes other than when it is required. When a county uses a competitive process the School of Government encourages adherence to reasonable standards and the statutes. Therefore, we believe that because a competitive process was used, it is appropriate to follow the Statute that requires complete sets of records be maintained in the spirit of demonstrating that the process is fair, one of the underlying premises of the competitive solicitation process. We recommend that records of solicitation and awards be processed and maintained for all competitive solicitations without regards to whether the solicitation amount falls within the State's definition of formal or informal bidding requirements or contract type.

## **Background (Continued)**

State statutes encourage competitive processes to provide a level playing field for businesses that want to participate in business partnerships with the government. This process is designed to prevent collusion and favoritism in the award of contracts and to generate favorable pricing to conserve public funds. State statutes requires competitive bidding for certain types of contracts but the laws do not always require contracts to be awarded to the lowest bidder. It is expected that the bidding requirements be considered a prudent investment of public dollars. That means that quality and value can be as important as initial price in evaluating products and contractors in competitively bid contract awards.

The County's competitive processes consist of three types of competitive processes. They are RFP, RFQ, and IFB processes. RFPs are used to secure complex services needing technical or professional skills and expertise. The statement of work contains as much detail as possible, or may include only needs, goals, and objectives. Proposers are asked to recommend methods or approaches to meet the need. An RFQ, sometimes called Requests for Quotes, are used to secure goods involving smaller dollar amounts less than the County's formal dollar threshold. If IFBs are used to secure goods or construction and repair work, detailed specifications are made available to the bidder. For more information for the various competitive processes, please see Appendix 2.

Competitive purchasing can be conducted by any of the County's Departments during its acquisition process. The Finance Department's Purchasing Division guides departments through the process. The Division also takes an active role in assuring that State and County requirements are met and generally participates actively in the proposal evaluation process. However, the Division usually handles solicitations estimated at \$30K or more. Additionally, the Division accepts and opens bids in accordance with the established proposal instructions, maintains records of the solicitation and award processes, and maintains records of funds allocated to the contract if it is awarded. Guidance sometimes includes determining the scope of services.


## **What is a Performance Audit?**

A performance audit is an engagement that provides assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

Appendix 1 – Finance Department Comments



DURHAM COUNTY  
Finance

TO: Richard Edwards, Internal Auditor  
FROM: George K. Quick, Finance Director   
RE: Response to Audit of Contract Solicitation and Award Process  
DATE: November 12, 2012

This memo is intended to address the recommendations made by you on November 5, 2012 as a result of the Contract Solicitation and Award Process audit.

Recommendations:

1. The Purchasing Division design and implement a quality control process to provide reasonable assurance that results of the process are reliable.

Response:

We accept this recommendation and expect to complete this process prior to FY 2013 end.

2. Solicitation and award records be processed and maintained for all competitive solicitations.

Response:

Although we currently maintain records of formal and informal solicitation processes that are conducted by the Purchasing Division of the Finance Department, we accept the recommendation that records of solicitation and award are maintained for all competitive solicitations that are conducted even if the solicitation amounts fall less than the State's definition of formal or informal bidding requirements. A memo will be sent out to inform all departments that anytime a competitive process is conducted by departments, a complete copy of the solicitation and award process (to include the evaluation method, who participated on the panel, complete scoring sheets, and a justification for selection) must be submitted to the Purchasing Division and maintained as official records.

3. Finance Department complete the development of the solicitation and award policy to include instructions regarding (1) selecting and vetting evaluation panel members, (2) appropriate evaluation behavior for panelist, and (3) quality control measures for the solicitation process.

Response:

The Purchasing Division of the Finance Department does have a Contracts Control Manual that serves as comprehensive written policies and procedures for County departments and agencies that are faced with the prospect of contracting for goods and services for their department. The

manual enacts a uniform procedure including the formal and informal bidding requirements for processing contracts.

The Division Manager recognized the need to provide departments with more guidance, specifically as it pertains to the solicitation process, and had already developed a draft written policy prior to this audit. Therefore, we accept this recommendation to complete the development of the solicitation and award policy and to include instructions regarding the evaluation and quality control processes stated above. We expect to complete this process prior to FY 2013 end.

cc: Jacqueline Boyce, Purchasing Division Manager



## Types of competitive bids

### 1. Invitation for Bid (IFB)

Usually indicates that a formal sealed bid procedure is being used. Detailed specifications are made available, bids usually consist of a lump sum cost for specified items, bids are received and publicly opened and read at a specified time and location, bids are evaluated for compliance with specifications, and a contract is awarded to the lowest, responsible and responsible bidder. *Note: An IFB solicitation is also used for the construction bid process. However, with informal construction projects, bids are not publicly opened and read.*

### 2. Request for Proposals (RFP)

Typically used for service or other contracts where the development of detailed specifications by the acquiring entity is not practical. An RFP is usually written as a performance specification indicating the results desired and asking responders to propose a method of reaching those results. Often the receipt of proposals is followed by evaluations, interviews and negotiations. The standard by which the contract will be evaluated and awarded should be clearly described in the RFP. An RFP process can also be used for purchasing information technology goods and services. In such cases, proposals may be divided into technical and cost components, with the cost portion opened only if the technical proposal is satisfactory.

### 3. Requests for Quotes (RFQ)

Usually indicates that an informal bid procedure is being used for the contracts involving smaller dollar amounts. Quotes do not have to be sealed and can be received electronically by fax or email.

### 4. Request for Qualifications (RFQ)

Used to announce the requirement for soliciting architectural, engineering, surveying and construction-manager-at-risk (CMR) services. The process provides for the selections of qualified firms based on demonstrated competence and qualifications for the type of professional services required. At the initial stage of the process the County is not concerned with the firm's fee. Unit price information can be requested. After evaluations and interviews, a contract at a fair and reasonable fee can be negotiated with the best qualified firm.