



## Memorandum

TO: Eric Anderson, City Attorney  
THRU: Bill Greene, City Auditor (X8982)  
FROM: Angela Hill, Internal Auditor (X8866)  
CC: Rosa Inchausti, City Manager  
Tom Duensing, Chief Deputy City Manager  
Keith Burke, Deputy City Manager  
Greg Ruiz, Interim Deputy City Manager  
Clarence Matherson Jr, Deputy City Attorney  
DATE: May 15, 2024  
SUBJECT: FINAL REPORT: Outside Legal Contracts

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Attached is our final report on the subject audit. Copies of this report will be distributed to the mayor and council and posted to the Internal Audit Office website.

Thank you and your staff for your cooperation during this project.

# Outside Legal Contracts

May 15, 2024

## Project Team:

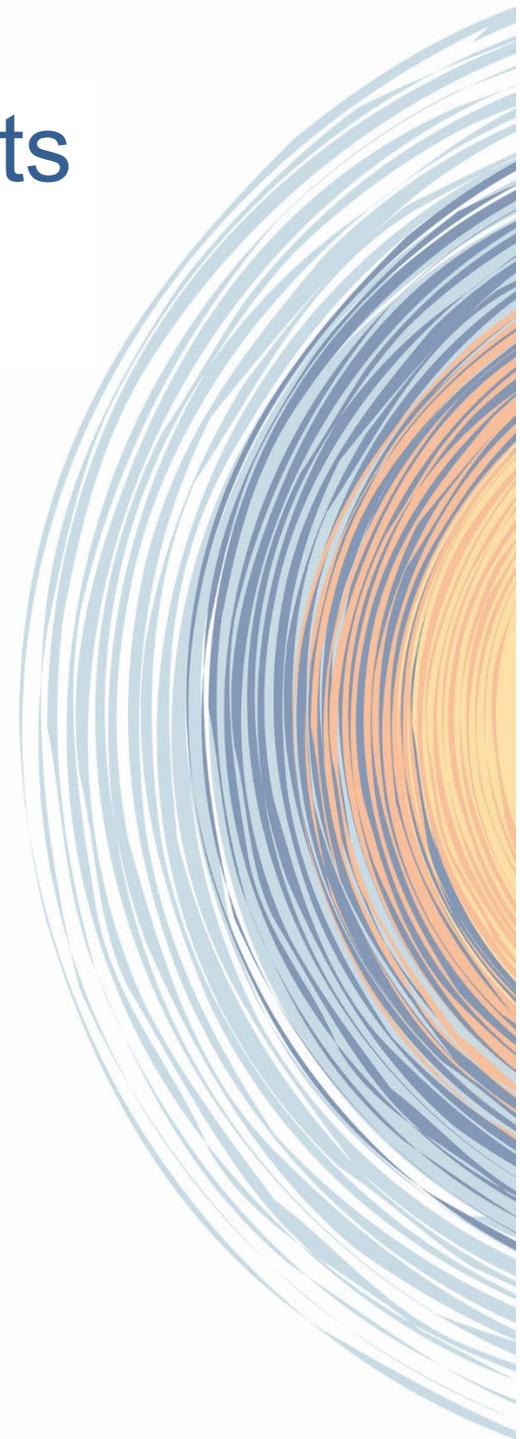
Bill Greene, City Auditor  
Angela Hill, Sr. Auditor

## Mission Statement

To enhance and protect organizational value by providing high-quality, objective, risk-based audit and consulting services to assist the City in accomplishing strategic priorities, goals, and objectives.



20 E. 6th Street, 2nd Floor | Tempe, AZ 85281 | 480-350-8982



## **Executive Summary**

### **Purpose**

We evaluated the management controls for the administration of outside legal service contracts to determine if the City of Tempe (City) was billed in accordance with contract terms and conditions.

### **Background**

The City Attorney's Office provides expert legal services to the Office of Mayor and Council, City departments, boards and commissions, and represents the City in litigation and other legal proceedings. External legal contracts are used in situations where expertise is lacking internally, in cases of conflicts of interest, upon client requests, for external legal opinions, and when utilizing department resources would prove burdensome for the office. The City spent about \$430,000 annually on outside legal contracts over the past two fiscal years.

### **Results in Brief**

#### **City Attorney's Office secured contracts for outside legal services in accordance with the City's Procurement Code.**

The City Attorney's Office conducts a formal solicitation for legal services in cooperation with Procurement. During this process, City Attorney and Procurement staff issue a Request for Proposal (RFP), identify potential vendors, and evaluate price, qualifications, and business needs to develop a list of subject matter vendors. There are currently 16 approved contracts for outside legal services. We reviewed procurement documentation for each contract to ensure they were acquired in accordance with Procurement code. Overall, the contract files and supporting documentation demonstrated compliance with Procurement Code requirements.

#### **The City Attorney's Office exercises control over legal service invoices by having legal staff evaluate the services and hours billed, ensuring alignment with the contracted scope of work. Following our audit findings, additional procedures were implemented to ensure the accuracy of billing rates.**

The Internal Audit Office (IAO) selected a sample of 16 invoices from fiscal years 2022/23 and 2023/24 to determine if invoices were mathematically accurate, complied with contracted scope of work, provided sufficient description of services performed, and were recorded accurately in City financial systems. We identified the following discrepancies:

- 2 invoices with services billed at a higher contract rate (Year 2 vs. Year 1 rates).

- 4 invoices billed at hourly rates inconsistent with the contract.
- 8 invoices billed using staff titles not aligned with contractual categories.

During the audit, the City Attorney engaged with one of the contracted vendors, which had billed the City at a higher rate, resulting in a credit to the City of \$7,453.50 due to billing errors. Additionally, the City Attorney informed audit staff about updated invoice review processes, which now include an examination of contracted rates and staff titles to ensure accuracy and adherence to agreed-upon rates.

## **Recommendations**

City Attorney's Office contact vendors to resolve the billing inaccuracies noted in this audit.

## Department Responses to Recommendations

**Rec. 2.1:** City Attorney's Office contact vendors to resolve the billing inaccuracies noted in this audit.

**Response:** The City Attorney's Office will engage with contracted vendors to rectify billing inaccuracies. Additionally, we will collaborate with the City's Procurement staff to ensure that future Requests for Proposals (RFPs) include contractor billing titles that align more closely with each firm's standard naming and billing conventions.

**Target Date:**  
7/31/2024

**Explanation, Target Date > 90 Days:** N/A

# **1 – Procurement of Outside Legal Contracts**

## **Background**

The City Attorney's Office provides expert legal services to the Office of Mayor and Council, City departments, boards and commissions, and represents the City in litigation and other legal proceedings. The City Attorney's Office uses external legal contracts in situations where expertise is lacking internally, in cases of conflicts of interest, upon client requests, for external legal opinions, and when utilizing department resources would prove burdensome for the office.

## **Approach**

We conducted the following steps to evaluate the administration of contracted legal services to ensure vendors were procured in accordance with City of Tempe Procurement Code and supported department processes.

- Identified City of Tempe Procurement Code relevant to contracted services.
- Interviewed City Attorney's Office personnel to gain an understanding of current processes for obtaining external contracted legal services.
- Reviewed current contracts for outside legal services and supporting documentation to determine if vendors were procured in accordance with City Procurement Code.

## **Results**

### **All current, approved contracts for outside legal services were secured in accordance with the City's Procurement Code.**

We interviewed City Attorney's Office personnel to discuss business processes for acquiring contracted legal services. Staff from the City Attorney's Office indicated that they collaborate with the Procurement Division of the Financial Services Department (Procurement) to secure contracts for legal services. Every 2 to 3 years, the City Attorney's Office conducts a formal solicitation for legal services in cooperation with Procurement. During this process, City Attorney and Procurement staff issue a Request for Proposal (RFP), identify potential vendors, and evaluate price, qualifications, and business needs to develop a list of subject matter vendors.

City of Tempe Procurement Code requires a formal written solicitation process for procurements expected to be \$100,000 and over. In Section 26A-4(c) of the Procurement Code it states,

*“Materials, goods and services, except as otherwise provided herein, when the single requirement or estimated contract value of a term contract shall be equal to or exceeding one hundred thousand dollars (\$100,000.00) shall be procured by formal, written solicitation.”*

*As part of the formal solicitation process, requests for proposals are to be issued with specifications applicable to the procurement and an evaluation process must occur for submissions. Section 26A-8 of Procurement Code states,*

*(b)*

*“Request for proposals. Request for proposals shall be issued and shall include desired specifications, and all contractual terms and conditions applicable to the procurement.”*

*(h)*

*“Evaluation factors. The request for proposals shall state the relative importance of price and other evaluation factors. Specific numerical weighing is not required. Evaluation factors may include but are not limited to categories such as price, quality, experience, expertise, qualifications, method of approach, responsiveness, financial strength, etc.”*

In addition to the formal solicitation process, the City Attorney’s Office also initiates contracts through limited source determination, sole source agreements and “not practical to quote” determinations. These may be executed in the event a vendor with the needed expertise is not identified through a formal solicitation. This is expressly allowed in Procurement Code. Procurement Code states,

*Section 26A-9 (a) Limited Source Determination*

*“A contract for professional services may be awarded by means of competitive sealed proposals, by an invitation for bids or by limited source selection if the director of the using department determines in writing that the nature of the service presents such limited competition that a competitive process cannot reasonably be used [...] The director of the department shall be responsible for making a limited source determination, prepare and sign a written limited source justification for not seeking competition and transmit the justification to the Procurement Office for review.”*

*Section 26A-11(b) Not Practical to Quote*

*“Written quotes shall be received from vendors when the total quote value is over fifteen thousand dollars (\$15,000.00) but under one hundred thousand dollars (\$100,000.00). The procurement officer with the approval of the Procurement Administrator may determine in writing that a purchase under the formal solicitation threshold is not practical to quote. The written determination will document why this determination is made and what circumstances limits the item from being competed.”*

## Current Approved Contracts

There are currently 16 approved contracts for outside legal services. We reviewed procurement documentation for each contract to ensure they were acquired in accordance with Procurement code. The 16 contractors were procured as follows:

- 13 were selected through a formal solicitation
- 2 underwent a limited source determination
- 1 was selected through a competitive not practical to quote

The contract files and supporting documentation demonstrated compliance with Procurement Code requirements.

## **Recommendations**

No Recommendations

## **2 – Outside Legal Contracts Financial Information**

### **Background**

Contract monitoring and oversight are key controls to ensure that contracts are administered in accordance with the terms and conditions. The City spent about \$430,000 annually on outside legal contracts over the past two fiscal years. These contracts are utilized by the City Attorney's Office as well as other City departments.

### **Approach**

We performed the following steps to evaluate contract management controls for outside legal services and determine if the City was billed in accordance with contract terms and conditions. Our testing focused on invoice accuracy and billing compliance rather than the type of services delivered.

- Interviewed City Attorney Office personnel to gain an understating of the invoice review process.
- Evaluated the scope of work, mathematical accuracy and recording of invoices in City systems.
- Reviewed expenditure reports to determine the distribution of expenditures by City cost centers.

### **Results**

**Expenditures for outside legal services are incurred by the City Attorney's Office and other City departments. For fiscal year 2022/23, outside legal services expenditures were approximately \$417,000.**

The City Attorney's Office is billed for outside legal services by contracted vendors. Depending on the nature of the services provided, the office pays for the invoice or reviews and forwards to other City departments responsible for payment. Included below are the primary department codes and a brief description of services for expenditures outside of the City Attorney's Office.

#### **Police Department**

The City Attorney's Office and Police Department have an agreement to share the cost for the provision of legal services consistent with Police Legal Advisor duties. This a vacant position within the City with intent to rehire.

#### **Liabilities Claims/ Risk Management**

Expenditures billed within this category result from various litigation matters. The City Attorney's Office reviews the invoice and completes a Risk Management Claims Payment Request for Risk Management to pay the invoice.

#### **Light Rail Operations/Transit/FIT**

Expenditures within these areas are related to specialized legal representation for aviation, tax law, and debt collection.

**The City Attorney's Office exercises control over legal service invoices by having legal staff evaluate the services and hours billed, ensuring alignment with the contracted scope of work. Findings noted during our invoice review demonstrated a need for additional follow up with contracted vendors to resolve common billing discrepancies.**

IAO met with City Attorney's Office staff to discuss the invoice review process. It was communicated that invoices undergo review by the attorney assigned to the case, followed by review and approval for payment by either the Deputy City Attorney or the City Attorney. If the information provided on the invoice does not substantiate the service performed, the corresponding firm is asked for additional information. In instances where support for hours billed is deemed inadequate, the City Attorney's Office typically requests account credits for an agreed-upon amount.

The Internal Audit Office (IAO) selected a sample of 16 invoices from fiscal years 2022/23 and 2023/24 to determine if invoices were mathematically accurate, complied with contracted scope of work, provided sufficient description of services performed, and were recorded accurately in City financial systems. We identified the following discrepancies and provided the City Attorney with detailed audit results:

#### Invoice Testing Discrepancies:

- Invoices billed at a higher rate - Two invoices were inappropriately billed at a "Contract year two" rate during the first contract year. This resulted in an overbilling of approximately \$5,400.
- Invoices billed outside approved rates - We reviewed four invoices that were billed at a rate that was inconsistent with the approved contract price sheet.
- Invoices with staff titles not aligned with approved billing categories - Eight of the invoices reviewed did not identify staff titles that corresponded with those approved in contracts. As a result, we could not confirm that billing rates complied with contracted hourly pricing rates.

During our audit, the City Attorney contacted the vendor that incorrectly billed at higher Year 2 rates. The firm reviewed processed invoices and provided a credit to the City of \$7,453.50 for billing errors. Additionally, the City Attorney informed audit staff about updated invoice review processes, which now include an examination of contracted rates and staff titles to ensure accuracy and adherence to agreed-upon rates.

## **Recommendations**

2.1 City Attorney's Office contact vendors to resolve the billing inaccuracies noted in this audit.

## **Scope and Methods**

### **Scope**

We reviewed the contract initiation documentation for all current and approved contracts as of February 2024. The invoices selected for evaluation were from contracted vendors with expenditures during fiscal years 2022/23 and 2023/24.

### **Methods**

We used the following methods to complete this audit:

- Identified City of Tempe Procurement Code relevant to contracted services.
- Interviewed City Attorney's Office personnel to gain an understanding of current processes for obtaining external contracted legal services and invoice review process.
- Reviewed current contracts for outside legal services and supporting documentation to determine if vendors were procured in accordance with City Procurement Code.
- Evaluated the scope of work, mathematical accuracy and recording of invoices in City systems.
- Reviewed expenditure reports to determine the distribution of expenditures by City cost centers.

Unless otherwise stated in the report, all sampling in this audit was conducted using a judgmental methodology to maximize efficiency based on auditor knowledge of the population being tested. As such, sample results cannot be extrapolated to the entire population and are limited to a discussion of only those items reviewed.