

**Procurement – Sole Source/Proprietary Purchases**

**October 10, 2007**

**Report #647**

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**OFFICE OF THE COUNCIL AUDITOR**  
Suite 200, St. James Building



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Honorable Members of the City Council  
City of Jacksonville

**INTRODUCTION**

Pursuant to Section 5.10 of the Charter of the City of Jacksonville and Chapter 102 of the Jacksonville Municipal Code, we examined the Sole Source and Proprietary Purchases approved by the Procurement Division from March 1, 2006 through February 28, 2007.

The Procurement Division is a centralized purchasing function that is responsible for procuring and contracting for all supplies, services, professional design services, professional services and capital improvements required by using agencies. The Procurement Division operates under the authority of the Procurement Code, which is Chapter 126 of the Municipal Code. The Chief of Procurement must prepare and maintain a manual that contains detailed regulations and procedures for implementation of the Procurement Code, which is commonly known as the Administrative Code.

This audit specifically pertains to the sole source and proprietary purchases awarded by the Procurement Division. A sole source purchase, according to Section XII of the Administrative Code, is a purchase that can only be made from one justifiable source, such as patented and manufactured products and services offered for sale in a noncompetitive market or sold only by a manufacturer's authorized dealer. A proprietary purchase is for follow-up goods or services, such as, but not limited to, replacement parts, required maintenance services for products and equipment previously purchased by the City, that may be efficiently and effectively provided from only one justifiable source. The sole source and proprietary purchases are divided into two categories, informal and formal. The informal sole source and proprietary purchases are \$50,000 and under and formal sole source or proprietary purchases are \$50,001 and above.

For formal purchases there are two committees, the Professional Design Services Evaluation Committee (PSEC) and the General Government Awards Committee (GGAC). The PSEC reviews and awards all professional services and professional design services requests. The GGAC reviews and awards all other requests that are over the threshold amount of \$50,000. Informal purchases go through an approval process within the Procurement Division based on the dollar amount of the purchase.

## **STATEMENT OF OBJECTIVE**

The objective of the audit is to determine if the City's sole source and proprietary purchases are awarded in compliance with the Procurement Code and the Administrative Code.

## **STATEMENT OF SCOPE AND METHODOLOGY**

The scope of the audit was all sole source and proprietary purchases awarded from March 1, 2006 through February 28, 2007.

For the informal sole source and proprietary purchases we selected our sample of 65 out of a universe of 441 using the Stats v1.1 program after combining three sources of data for our population. The three sources of data were the Professional Services Log, sole source and proprietary purchases from the JAX2K system from March 1, 2006 through September 30, 2006, and sole source and proprietary purchases from JaxPro from October 1, 2006 through February 28, 2007. For our sample selection of 65 we reviewed the procurement documents to determine if the purchases were awarded in compliance with the Procurement Code and the Administrative Code.

For the formal sole source and proprietary purchases we selected our sample of 44 out of a universe of 109 using the Stats v1.1 program from the Professional Services Log and the Formal Bids Awarded report. For our sample selection of 44 we reviewed the procurement documents to determine if the purchases were awarded in compliance with the Procurement Code and the Administrative Code.

## **STATEMENT OF AUDITING STANDARDS**

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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **AUDITEE RESPONSES**

Responses from the auditee have been inserted, *in italics*, after the respective finding and recommendation. We received these responses from Procurement Division, via Michael Clapsaddle, Chief of Procurement in a memorandum dated April 21, 2008.

## **AUDIT CONCLUSIONS**

1. The formal sole source and proprietary purchases are not consistently advertised for seven calendar days on the Procurement Division's website due to the wrong dates being input into the database or no dates are input into the database for the formal sole source and proprietary purchases.

2. The Procurement Division often provides no indication of sufficient justification for sole source and proprietary purchases.
  3. The Procurement Division's website is not designed to provide sufficient information for a vendor.
  4. The database systems used to manage professional service and formal bids purchases are outdated and lack vital controls.
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## **AUDIT OBJECTIVE**

**To determine if the City's sole source and proprietary purchases are being awarded in compliance with the Procurement Code and the Administrative Code.**

### **Finding 1 – Misclassification of Sole Source and Proprietary Purchases**

The distinction between a sole source and proprietary purchase as defined in the Administrative Code was not clear. There were five out of 44 or 11% of the formal purchases that were misclassified and 15 out of 65 or 23% of the informal purchase misclassified. The purchases were either misclassified by the using agency or by the Procurement Division. The misclassification of the purchases has no effect on the level of review performed by the Procurement Division, but it does cause confusion for the agency requesting a purchase.

### **Recommendation to Finding 1**

We recommend that the Procurement Division eliminate the sole source and proprietary terminology and have one type of purchase called "single source" to mirror the Florida State Statutes under Chapter 287.057(5)(c).

### **Auditee Response to Finding 1**

*Procurement agrees with this finding. Based on the recommendation presented, Procurement will consider a "single source" defined designation in the next revision of Chapter 126.*

### **Finding 2 – Dates are not input into the Database**

The advertise date, which is the first day of advertisement on Procurement's website, and/or the open date, which is the last day of advertisement, were not input into the database for a number of the formal purchases. Due to the fact that the advertise and/or the open dates were not input into the database we were unable to determine whether or not 14 out of 44 or 32% of the purchases were advertised on Procurement's website for seven calendar days. As a result 30 purchases were left for testing purposes. It should be standard operating procedure to input all dates into the database. This will ensure that the sole source or proprietary purchases will be properly advertised for seven days.

## **Recommendation to Finding 2**

We recommend that the database be enhanced to make the advertise date and open date “required fields” for formal purchases to ensure that they are advertised for seven calendar days.

### **Auditee Response to Finding 2**

*Procurement agrees with this finding. Procurement will engage ITD to address the possibility of making the referenced fields required/mandatory for relative awards, such as sole source/proprietary, with parameters that systematically require , at a minimum, 7 days from the advertise date filed to the open date filed.*

## **Finding 3 – Formal Purchases Awarded before the Open Date**

There were three out of the 30 formal purchases that could be tested or 10% that were awarded before the open date, which is the last day of advertisement on the Procurement Division’s website. The sole source or proprietary award must be advertised for seven days per §126.206 and §126.312 of the Procurement Code. Within the Microsoft Access database the advertisement stops displaying automatically on the open date. If the purchase is awarded before the open date it is unfair to other potential vendors due to the purchase being advertised for less than seven calendar days, which limits the time to contest the sole source or proprietary purchase.

## **Recommendation to Finding 3**

We recommend that all formal purchases be advertised for the full seven calendar days as required by the Procurement Code, and that all formal sole source or proprietary purchases are not awarded until the open date occurs.

### **Auditee Response to Finding 3**

*Procurement agrees with this finding. Procurement Division Management will address this issue with buying staff to ensure that awards are not submitted for inclusion as an agenda item until such time that the advertisement requirement has been fully met.*

## **Finding 4 – Formal Purchases not Advertised for 7 Days**

There were four out of the 30 formal purchases that could be tested or 13% that were not advertised on the Procurement Division’s website for seven days. These four formal purchases contained the necessary information input into the database but it appears as though the wrong dates for the open date, the last day of advertisement, were entered. Section XII of the Administrative Code states, “*the GGAC or PSEC may approve the purchase in accordance with the Procurement Code and the procedures set forth herein without competition or advertisement, but only after posting prior notice of said purchase on Procurement’s website for no less than 7 calendar days.*”

#### **Recommendation to Finding 4**

We recommend that formal purchases be advertised for a minimum of seven calendar days per Section XII of the Administrative Code.

#### **Auditee Response to Finding 4**

*Procurement agrees with this finding. As mentioned in the response to Finding/Recommendation 2, Procurement will engage ITD to address the possibility of making the referenced fields required/mandatory for relative awards, such as sole source/proprietary, with parameters that systematically require , at a minimum, 7 days from the advertise date filed to the open date filed.*

#### **Finding 5 – Justification Memo was not Adequate for Formal Purchases**

There was one out of 44 or 2% where the justification provided by the agency for the formal proprietary purchase was not adequate. The purchase was for the use of insecticide for the Mosquito Control Division. Within their justification memo they stated that they have used this particular insecticide for 30 years. However, there are two other insecticides that are approved for use in the State of Florida. For a sole source or proprietary purchase the using agency is required to “provide a detailed justification as to why the requested goods/services can only be efficiently and effectively procured through the recommended proprietary or sole source provider” as stated in Section XII of the Administrative Code.

#### **Recommendation to Finding 5**

We recommend that the Procurement Division create a checklist of all necessary items to be included in the file to approve a sole source or proprietary purchase. This is to ensure that the proper procedures and all necessary information was obtained and produces an audit trail. We further recommend that evidence of market testing be provided to support sole source purchases or that the Procurement Division perform market testing and retain the evidence.

#### **Auditee Response to Finding 5**

*Procurement agrees that some sole source/proprietary justifications are stronger than others; however, all formal sole source/proprietary requests are heard and voted on by the General Government Awards Committee (GGAC). During these meetings, the GGAC often questions the requesting using agency on details of the requested award.*

*Procurement Division management will address this issue and the importance of adequate justifications in accordance with the Administrative Code with Buying staff through training and development in this area. Procurement Division management feels that the recommended “checklist” would not benefit in the area of ensuring adequate justifications.*

### **Finding 6 – No Proposal Letter**

Two out of 44 or 5% of the formal purchases did not include proposal letters from the provider with a scope and fee summary. According to Section XII part 4(iii) of the Administrative Code, “a copy of a proposal letter from the proposed proprietary or sole source provider regarding the scope of goods and/or services and other proposed contract terms and conditions, i.e. price, duration etc.” must be provided to the Procurement Division. The purpose of the proposal letter is to provide the necessary cost information to the Procurement Division.

### **Recommendation to Finding 6**

We recommend that the Procurement Division create a checklist of all necessary items to be included in the file to approve a sole source or proprietary purchase. This is to ensure that the proper procedures were followed, all necessary information was obtained, and provides an audit trail.

### **Auditee Response to Finding 6**

*Procurement agrees with this finding. Procurement Division management will address this issue with the appropriate staff to ensure the inclusion of proposals/quotes as outlined in the Administrative Code.*

### **Finding 7 – No Indication of Sufficient Justification**

In 52 out of 65 instances or 80% of the informal purchases reviewed, there was no indication from the Chief of Procurement that the justification was sufficient for the sole source or proprietary purchase. According to Section IV E. of the Administrative Code, “a written justification hereunder must include a sufficient explanation, as determined by the Director, as to why the only proposed proprietary or sole source purchase will only satisfy the needs of the using agency.”

### **Recommendation to Finding 7**

We recommend that the Chief of Procurement follow the Administrative Code and provide justification as to why proprietary or sole source purchases are authorized.

### **Auditee Response to Finding 7**

*The current Administrative Code will be modified to reflect the change to allow for the “...Chief of Procurement **or its designee** has responsibility to make the determination that a purchase can be made from one justifiable source or via a proprietary purchase without competition...”. This modification will align with the original intent of the current language. A similar comparison is that each of the Buying staff acts on behalf of the Chief of Procurement in performing daily buying functions. The signature on each purchase order is that of the Chief of Procurement without the Chief of Procurement actually issuing the purchase order.*

### **Finding 8 – Justification Memo was not Adequate for Informal Purchases**

There were six out of 65 instances or 9% where the justification memo did not appear to be adequate for informal purchases. According to Section IV E. of the Administrative Code, “*Upon an adequate written justification by a using agency, through its Director, that an informal purchase can be made only from one justifiable source or via a proprietary purchase without competition...*” These purchases should not have been approved as a sole source or proprietary purchase.

### **Recommendation to Finding 8**

We recommend that the Procurement Division deny a sole source or proprietary purchase that is not reasonable. We further recommend that the Procurement Division maintain consistency in their implementation of the Procurement Code.

### **Auditee Response to Finding 8**

*Procurement agrees with this finding. Procurement Division management will address this issue with the appropriate staff to ensure that justifications are adequate in relation to and in accordance with the Administrative Code. Additionally, the Administrative Code will be modified to read “...through its Director **or Division Chief...**”. This will allow for increased efficiency without jeopardizing the integrity of the process.*

### **Finding 9 – Procurement Website**

The Procurement Division’s website for advertising proposed sole source awards is not designed to include sufficient information for a vendor to determine if it could provide the services the City is requesting. An item number and brief title, and at times, the potential vendor name and amount, are the only information that is included as a proposed sole source award.

### **Recommendation to Finding 9**

We recommend that the Procurement Division expand its website to include additional information that will provide further details to prospective vendors. The State of Florida’s Single Source Procurement webpage could be mirrored as it contains drill-down capabilities and attachments that provide further information, such as, the agency involved, a contact name and number, job requirements or specifications, date posted and last day for receipt of information.

### **Auditee Response to Finding 9**

*Procurement currently advertises for its proposed sole source/proprietary awards consistent with the electronic advertisement for bidding opportunities. This advertisement includes the bid number, the title of what is proposed to be purchased, and in the case of proposed sole source/proprietary purchases, the vendor name and the dollar amount. Procurement Division management is of the opinion that the current information provided through its electronic*

*advertisements is ample to trigger a perspective bidder/vendor to contact Procurement to inquire on additional information pertaining to opportunities.*

### **Council Auditor's Rebuttal to Finding 9 Response**

We disagree with the response to Finding 9. Please see **Attachment 1**.

### **Finding 10 – Procurement Database Systems**

The database systems used to manage 'professional service' and 'formal bids' purchases are outdated and lack vital control features. The databases were constructed in Microsoft Access. Within the system, transaction logs and record history are not kept. Therefore, it is not possible to determine which user or individual made a particular change in the database. We found instances where accounts with administrative privileges (such as the ability to add new users or advertise bids on the Internet) were not protected with a password.

Furthermore, in performing a gap analysis on the data within the databases, we found a number of gaps in the record numbering sequence. There could have been accidental deletions and erroneous numbering. These gaps bring to question the completeness and accuracy of the data contained within the database. Users should not have the capability to delete transactions in such a way as to destroy the audit trail.

In additional testing of the system, we noted 43 records where the bid type selected (Construction, Commodity or Better Jacksonville) did not coincide with the type implied by the record number. This data inconsistency is likely due to a system or database design choice.

### **Recommendation to Finding 10**

Procurement Division has acknowledged that these data systems are outdated. We recommend that the administrative accounts have passwords created.

The other weakness may not be so easily overcome within the limits of the present Microsoft Access database system. Assuming a replacement system is the ultimate goal of the Procurement Division, we recommend that the division management determine if there is any cost effective remediation that can be applied to the current systems. Any replacement system should address the above noted issues.

### **Auditee Response to Finding 10**

*Procurement agrees with this finding. ITD will be engaged to assist with exploring the options of upgrades/enhancements and/or replace of the existing systems (Bids Tracking, PSEC Tracking).*

*Procurement Division management staff will perform a complete review of who currently has administrative rights in the referenced systems, modify that list if needed and implement*

*password restriction for individuals with administrative rights, if the system will support this effort.*

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We appreciate the assistance and cooperation we received from the Procurement Division through the course of this audit.

Respectfully submitted,

Kirk A. Sherman, CPA  
Council Auditor

**Department of Procurement  
Proposed Sole Source Awards**

<b>Item No.</b>	<b>Title</b>	<b>Potential Vendor</b>	<b>Amount</b>
SS-0445-08	STINGRAY AND KINGFISH SYSTEMS TRACKING TECHNOLOGY	HARRIS CORPORATION	197,464.00
SS-0467-08	SAFE BOAT FOR JSO	SAFE BOATS INTERNATIONAL, LLC	199,466.00

**The City of Jacksonville voluntarily notifies potential bidders of current solicitations and is not responsible for notification failures. It is the responsibility of all bidders interested in doing business with the City of Jacksonville to check for solicitations and maintain their information current.**

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