

OFFICE OF THE COUNCIL AUDITOR

Suite 200, St. James Building



January 19, 2006

Audit Letter #06-01

Honorable Ronnie Fussell, City Council Member
City of Jacksonville

INTRODUCTION

Pursuant to your request and Section 5.10 of the Charter of the City of Jacksonville and Chapter 102 of the Jacksonville Municipal Code, we reviewed the procurement process as related to the proprietary sole source award to the Jacksonville Chamber Foundation, Inc. (Chamber) to provide a Community Vision Development Plan through a process called “Blueprint for Prosperity.”

BACKGROUND INFORMATION

On April 21, 2005, the Jacksonville Economic Development Commission (JEDC) requested a Proprietary Sole Source Award to the Jacksonville Chamber Foundation, Inc. to provide a Community Vision Development Plan through a process called “Blueprint for Prosperity.” This project began in April 2005 and continues through March 2011 for a total maximum indebtedness to the City of \$900,000. The City Council appropriated \$187,500 for the project in fiscal year 2005/06. The Chamber is also to provide \$900,000 to match the City’s expenditures, for a total project cost of \$1.8 million. Total funding, by fiscal year, for this long term project is as follows:

	<u>City</u>		<u>Chamber</u>	<u>Total</u>
<u>Phase I</u>				
2004/05	\$150,000	Pd 9/6/05	\$150,000	\$ 300,000
2005/06	125,000	Pd \$62,500 12/27/05	125,000	250,000
<u>Phase II</u>				
2005/06	62,500		62,500	125,000
2006/07	125,000		125,000	250,000
2007/08	125,000		125,000	250,000
2008/09	125,000		125,000	250,000
2009/10	125,000		125,000	250,000
2010/11	62,500		62,500	125,000
	\$900,000		\$900,000	\$1,800,000

This is a multi-year contract which may be terminated by the City or Chamber with or without cause by giving at least thirty (30) days prior written notice. The contract also states “the City may terminate this Agreement at any time in the event of loss of funding for any reason by giving Consultant twenty-four (24) hours oral notice with written confirmation following.”

The Chamber will use a subcontractor(s) to perform some of the work. The Chamber has a contract with Luke Planning, Inc. to provide services for a total fee of \$195,500 to be paid as follows:

Phase I		\$160,000
Phase II	Year 1	19,500
	Year 2	4,000
	Year 3	4,000
	Year 4	4,000
	Year 5	<u>4,000</u>
Total		\$195,500

The Blueprint for Prosperity Program has two phases. Phase I (April, 2005 through March, 2006) will basically allow for creation of a plan to identify Jacksonville’s vision and determine the best methods to achieve identified goals. Consultants will conduct extensive focus group interviews to identify priorities and benchmarks for the following six factors: economic development, education, racial harmony and opportunity, quality of life, infrastructure and leadership. Phase II (April 2006 through March 2011) will focus on implementing the plan. Progress toward certain benchmarks will be measured annually.

The City’s Professional Services Evaluation Committee (PSEC) met on May 12, 2005, to review this request. A review of the meeting minutes indicates that there was significant discussion regarding the appropriate type of approval for this item. The PSEC members questioned why it should be approved as a proprietary award when other entities could provide the same service. The statement was made at PSEC that it would obviously be better had this item been submitted as legislation directing us to contract with the Chamber. However, pursuant to the meeting minutes, the item was submitted as a proprietary award because JEDC could not wait for the 6 to 8 week process that legislation requires. PSEC did not get the reason for the urgency on the record and cannot recall now. JEDC now states that the issue was not submitted to PSEC as an urgent matter. The meeting minutes indicate that PSEC approved the request as a proprietary award for the reason that “as far as we know and can tell there is only one entity in this community that is willing to provide this service under these conditions where they are providing 50% of the funding for the project.”

Luke Planning, Inc. was listed as a subcontractor for the Blueprint for Prosperity project at the time it was submitted for approval. This was known at the time of the PSEC meeting and was discussed, per the meeting minutes. The language in the contract that the Chamber signed with the City on August 29, 2005, states that the consultant will provide the City with documentation that all such consulting services were procured through a competitive procurement process.

At this time, there is nothing in the City’s Procurement Code, Chapter 126 of the Municipal Code, to require City Council approval for any purchase; however, legislation authorizing a purchase is permitted when the department or using agency chooses to proceed in that manner or the Administration determines that it’s in the City’s best interest to award a contract to a specific vendor or professional. Legislation can be written to appropriate funds and name the

vendor/receiving entity at the same time. This legislation usually includes language to waive the purchasing code's bidding or awarding procedures and award the contract to a specific vendor.

Observation #1:

To date, the Chamber reports that in the period beginning April 1, 2005 and ending September 30, 2005, \$306,791.95 was spent on the Blueprint for Prosperity project. The City pays based on the passage of time and the submittal of documentation from the Chamber totaling at least 200% of all previous advances made. The contract states that "the CONSULTANT's professional fees shall be billed.....using invoices and such other documentation, satisfactory to the City to allow and authorize payment." Observations noted in our review of expenditures through September 30, 2005, regarding the Chamber matching funds, are as follows:

- \$13,790.77 was spent on food or food gift certificates for various meetings, including \$2,195.00 for a chocolate fountain and hors d' oeuvres, and \$1,500.00 for gift certificates to Tropical Smoothie Cafe
- \$72,893.31 was included for Chamber employees salaries and benefits
- \$10,263.26 worth of services was traded in Chamber memberships
- \$5,136.00 was spent on the building of an office
- \$2,777.72 was spent on office furniture
- \$5,192.71 was spent on three personal computers
- \$5,993.90 was spent on promotional note pads and pen grips
- \$40,016.34 for Professional fees - a Chamber charge to the project for indirect costs

The Chamber is claiming expenses incurred prior to the August 29, 2005 effective date of the City/Chamber contract (approximately \$131,025, of which \$76,420 was charged to the City and \$54,605 was charged to the Chamber). The contract states "payment by the CITY will be contingent upon receipt of documentation of expenditures by Consultant on or after April 1, 2005," The contract does not include any agreed upon detailed budget information. Therefore, JEDC has no basis to approve or deny any expenditure submitted by the Chamber. The contract does not require accomplishment of deliverables prior to payment by the City.

Recommendation #1:

We recommend that the contract be amended to require a budget for all future project costs, wherein the City and Chamber can mutually agree on specific, justifiable and allowable expenses. The budget should be descriptive enough that there is no question as to the allowance of a particular expense. The food budget should be reflected on a separate line titled food, and not combined with office supplies. Indirect costs should be reflected on a separate budget line for indirect costs, not professional services. This way the City and Chamber can agree on an amount to be included as indirect costs in advance. Currently, there appears to be no basis for the City to disallow expenditures. The expenses should be submitted to JEDC along with the supporting documentation and JEDC would then review and authorize payment for the allowable expenses based on the approved budget. The contract should also require the accomplishment of deliverables before payments would be made by the City.

Observation #2:

The contract between the Jacksonville Regional Chamber of Commerce and Luke Planning, Inc. includes a letter dated April 20, 2005 from Luke Planning, Inc. that indicates his appreciation for being selected to facilitate the Blueprint for Prosperity process. This letter was written before the PSEC meeting took place on May 12, 2005. Also, included in this agreement is a document, signed by the Chamber President, on June 16, 2005, which states that Luke Planning, Inc. was selected without a competitive-bid process, even though the Chamber President also signed a contract with the City, dated August 29, 2005, which stated “Prior to the expenditure of public funds related to consulting services, the CONSULTANT will provide the CITY with documentation that all such consulting services were procured through a competitive procurement process.” Per the City’s Procurement Code, a sole-source award is not competitively bid. A sole-source is used in a noncompetitive market. JEDC did not enforce this portion of the contract to require competitively-bid consulting services.

Recommendation #2:

We recommend that the General Counsel’s Office review this contract provision to determine whether or not the Chamber’s non compliance with the “competitive procurement process” clause in section 8.1 of the City/Chamber contract constitutes a material breach that could render the contract null and void. If it is determined that it is not a material breach, we recommend that all future sub-consultant contracts be competitively bid by the Chamber per the City/Chamber contract or that the contract be amended to require compliance with the City’s Procurement Code.

Respectfully Submitted,

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Council Auditor

Review Performed by:

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cc: Honorable John Peyton, Mayor
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