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REPORT TO THE CITY COUNCIL BY THE CITY INTERNAL AUDITOR

AUDIT OF THE
CITY ATTORNEY'S OFFICE
INTERNAL AUDIT REPORT
(IAR) 020015-03

July 16, 2015

Report Highlights	Page
• Competitive procurement is not used to acquire legal services.	3
• Contract Attorneys are not formally evaluated.	5



The Council
City of Shreveport

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July 16, 2015

Councilman Jeff Everson
Chairman, Shreveport City Council

Dear Councilman Everson:

Subject: IAR 020015-03 – Audit of the City Attorney's Office

Attached please find the report mentioned above. Management comments are included in the report.

Sincerely,

Leanis L. Steward, CPA, CIA
City Internal Auditor

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EXECUTIVE SUMMARY
AUDIT OF THE CITY ATTORNEY'S OFFICE
INTERNAL AUDIT REPORT (IAR) 020015-03

The purpose of the executive summary is to convey in capsule form the significant issues of the audit report. The executive summary is a vehicle for reviewing the report and should only be used in conjunction with the entire report.

INTRODUCTION

The City Attorney's Office provides legal advice to the Mayor, City Council and all departments, agencies, boards and commissions of City government. It handles all legal instruments to which the City is a party or in which it has an interest and represents the City in all litigation. It also prosecutes violators in City Court. Activities are handled by a combination of full-time and part-time staff and outside attorneys. Most litigation is handled by private law firms. During the time of the audit the City Attorney's Office consisted of 17 employees.

RECOMMENDATION EVALUATION RISK CRITERIA

The chart below summarizes the recommendations outlined in the report and our evaluation of risk for the recommendations. The risk levels were determined based on the possible results for the entity if the recommendation is not implemented. This report contains 7 findings with 9 recommendations.

<i>Risk Levels</i>	<i>Recommendations</i>
<p style="text-align: center;">High Risk</p> <p>Possibility of fraud, waste, and abuse of City assets; Interrupted and/or disrupted operations; Entity's mission not being met; Adverse publicity.</p>	<ul style="list-style-type: none"> • Advertise a Request for Qualifications or availability of legal services contracts. (Finding 1) • The selection of contract attorneys should be based on pre-determined documented criteria made known in advance to proposers in the Request for Qualifications. (Finding 1)
<p style="text-align: center;">Medium Risk</p> <p>Possibility of continuing, significant operating inefficiencies and high-level non-compliance issues.</p>	<ul style="list-style-type: none"> • A formal documented performance-based evaluation of the outside attorneys should be done at least on an annual basis to hold the attorneys accountable for their performance. (Finding 2) • Consider using a "Performance Based Holdback" fee structure along with the hourly billing to provide incentives to legal counsel to more efficiently close claims and potentially reduce legal expenses. (Finding 2) • Include in all retainer agreements with legal counsel (1) billing guidelines, (2) right to audit clause, (3) term for representation and a renewal period, (4) a statement emphasizing ownership of work products, and (5) a statement establishing authority and methodology for negotiating and settling claims. (Finding 3) • Establish and track performance measures. (Finding 4) • Make an effort to clear discrepancies and update and enter missing data to make the litigation system more accurate and reliable. (Finding 5) • Develop and implement a policies and procedures manual which addresses key operations and activities of the office. (Finding 6) • Develop job descriptions for all employees of the City Attorney's Office. (Finding 7)
<p style="text-align: center;">Low Risk</p> <p>Possibility of continuing operating inefficiencies and some low-level non-compliance issues.</p>	None

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FINDINGS

	<u>Risk</u>	
	<u>Factor</u>	
1. Selection of Contract Attorneys	High	3
2. Evaluation of Performance of Contract Attorneys	Medium	5
3. Retainer Agreements	Medium	6
4. Performance Measures.....	Medium	7
5. Litigation Management	Medium	8
6. Policy and Procedure Manual	Medium	9
7. Job Descriptions	Medium	10

**AUDIT OF THE
CITY ATTORNEY'S OFFICE
INTERNAL AUDIT REPORT (IAR) 020015-03**

OBJECTIVES

We have completed an audit of the City Attorney's Office. The objective of this audit was to determine the effectiveness, economy and efficiency of operations of the City Attorney's Office regarding performance measures, litigation management, selection and evaluation of contract attorneys, compliance with contract attorneys' retainer agreements and applicable City ordinances.

SCOPE AND METHODOLOGY

The scope of the study of internal control was limited to the general controls surrounding our objectives for the operating years of 2012 and 2013. Audit procedures applied included the following: reviewing applicable records and documents, interviewing operating personnel and management, and reviewing policies and procedures.

We conducted this audit in accordance with generally accepted government auditing standards, except that a peer review has not been performed, and included such tests of procedures and controls as considered appropriate. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our audit objectives.

BACKGROUND

The City Attorney's Office provides legal advice to the Mayor, City Council and all departments, agencies, boards and commissions of City government. It handles all legal instruments to which the City is a party or in which it has an interest and represents the City in all litigation. It also prosecutes violators in City Court. Activities are handled by a combination of full-time and part-time staff and outside attorneys. Most litigation is handled by private law firms. During the audit period covered the City Attorney's Office consisted of 17 employees.

CONCLUSIONS/FINDINGS/RECOMMENDATIONS

The Internal Audit Office expresses appreciation to the management and personnel of the City Attorney's Office for their cooperation and assistance. Based on our review, we have offered recommendations that may serve to enhance and improve the operating effectiveness and efficiency of the City Attorney's Office.

1. Selection of Contract Attorneys

Criteria: Best practices suggests there should be competitive procurement for legal services to provide transparency and avoid the appearance of improper favoritism, promote public confidence in the contracting process and to ensure that the City is obtaining cost-effective and quality service.



Condition: Competitive procurement is not used to acquire legal services. There's no documented process nor specific criteria for selecting contract attorneys to recommend to City Council for approval. Law firms and individual attorneys solicit the City Attorney to acquire legal service contracts. The City Attorney obtains a certificate of good standing from the bar association for the attorneys and reviews their qualifications. The City Attorney recommends the attorney(s) to the City Council for approval.



Source: City of Shreveport accounting system - FAMIS

Note: Legal Expenses include January 1, 2012 through December 31, 2014. There were 12 contract attorneys during the audit.

Effect:

- Potential for appearance of favoritism.
- May not receive the most qualified and cost effective services.

Cause: Administrative Procedure 3-8 "Contract Procurement," does not require bidding for legal services.

Recommendation: We recommend:

1. The City Attorney broadly advertise a Request for Qualifications or availability of legal services contracts on websites, in newspapers and through other available media to establish a pool of qualified law firms and attorneys in a variety of practice areas that the City may need in the future.
2. The selection of contract attorneys should be based on pre-determined documented criteria made known in advance to proposers in the Request for Qualifications.

Management Plan of Action: The City Attorney and Deputy City Attorney responsible for litigation management will develop a Request for Qualifications to be utilized in the renewal or procurement of additional contracts for outside legal counsel.

Timetable: The Request for Qualifications will be submitted to the Shreveport Bar Association from dissemination on or before December 1, 2015. The submission



deadline will be January 1, 2016. Final review and selection of outside counsel will occur on or before January 25, 2016.

2. Evaluation of Performance of Contract Attorneys

Criteria: Best practices for monitoring and measuring outside counsel performance suggest a formal performance evaluation to hold attorneys accountable for their performance and to assess the retention of the outside attorneys for future cases.

Condition: A formal evaluation of the outside attorneys is not performed.

Effect:

- No assessment of efficiency and effectiveness of attorneys.
- No assessment of the attorneys' strengths and weaknesses.
- No assessment of the quality of service provided.

Cause: The City Attorney had not considered the benefit of evaluating the performance of the outside attorneys.

Recommendation: We recommend:

1. A formal documented performance-based evaluation of the outside attorneys should be done at least on an annual basis to hold the attorneys accountable for their performance. Performance should be based on understood criteria. Examples of criteria that can be used to evaluate the attorneys include but is not limited to: competency, communication, compliance, number of cases closed, average life span of open cases, trial outcomes, number of dismissals, and number of cases resolved prior to trial.
2. Management should consider using a "Performance Based Holdback" fee structure along with the hourly billing to provide incentives to legal counsel to more efficiently close claims and potentially reduce legal expenses. The holdback can be assessed on the basis of a successful outcome, efficient resolution, effective use of cost-saving measures, or any combination of these or other criteria. The specific holdback percentage would need to be included in the retainer agreement with the contracted attorney and can coincide with the Performance Evaluation of the contract attorneys.

Management Plan of Action: Effective February 10, 2015; the Office of the City Attorney was restructured to include the position of Deputy City Attorney for Litigation Management. This position was created to better manage outside counsel and pending litigation matters.

The City Attorney, along with the Deputy City Attorney for Litigation Management, has developed billing guidelines for outside counsel. The billing guidelines outline what are acceptable charges and methods of billing for the City of Shreveport. The guidelines are comprehensive and monthly bills are scrutinized by both the City Attorney and Deputy City Attorney.



Timetable: These policies and procedures were implemented and effective as of May 1, 2015.

3. Retainer Agreements

Criteria: Basic elements of a contract include the parties to the contract, effective date, scope of services, time of performance, and compensation and method of payment. City Ordinance, section 26-217 "Specifications and requirements on city contracts to include audit clauses", requires all contracts to which the City is a party include audit clauses that give the City or its designated representative permission to audit all its records relative to the contract.

Condition: Our review of retainer agreements the City has with four outside attorneys did not include the following: billing guidelines; right to audit clause; term for representation and renewal period; a statement emphasizing that the files and work products of the lawyers, personnel, and experts are the property of the client, not the lawyers; and a statement setting clear lines of authority and methodology for negotiating and settling claims.

Effect:

- No clear guidelines for billing such as billing frequency, billing format, billing increments (i.e. every 3 mins, 6 mins etc.), billing rates for paralegals/legal assistants.
- City would not have a right to audit all the lawyers' books and records pertaining to client representation.
- No time period of representation and renewal period.
- There could be confusion over who has a right to the files.
- No guidance on how claims should be settled and settlement offers should be communicated to the client.

Cause: Management oversight.

Recommendation: We recommend management include in all retainer agreements with legal counsel (1) billing guidelines, (2) right to audit clause, (3) term for representation and a renewal period, (4) a statement emphasizing that the files and work products of the lawyers, personnel, and experts are the property of the client, not the lawyers and (5) a statement setting clear lines of authority and methodology for negotiating and settling claims.

Management Plan of Action: As of May 1, 2015; the Office of the City Attorney has instituted billing guidelines. The billing guidelines also outline guidance for how claims should be settled and settlement offers should be communicated to the City of Shreveport. Additional language will be added to all future retainer agreements to reflect a time period of representation and renewal period.

Please note that the Rules of Professional Conduct dictate that the Client (City of Shreveport) has the right to review its matters, the books and records pertaining to



client representation, and also has the right to demand the return of its files and any documents or items related thereto.

Timetable: Billing guidelines were implemented on May 1, 2015. Updates to the retainer agreement will occur in all future agreements.

4. Performance Measures

Criteria: In order to measure whether an entity is accomplishing its mission, goals, and objectives, performance measures that closely approximate the organization's work activities should be identified.

Condition: No performance measures had been selected to gauge the effectiveness by which the City Attorney's Office was accomplishing its goals and objectives.

Effect:

- Cannot determine productivity.
- Cannot track progress toward goals.
- No standard to measure one's performance.

Cause: There was no requirement to have performance measures.

Recommendation: We recommend management establish and track performance measures such as number of opinions prepared, number of cases handled by outside and/or in house attorneys, active lawsuits, suits filed by the City, suits filed against the City, lawsuits by cause and/or department, and cases closed, won, or dismissed. These performance measures can be used to do the following:

- Evaluate how attorneys are performing,
- Make assignments to prevent case overload,
- Determine what areas need to be addressed to reduce lawsuits against the city,
- Determine how many total active lawsuits,
- Determine success rate.

Management Plan of Action: As of May 1, 2015 all outside counsel have submitted reports outlining how many active cases their law firm is currently managing, which of those files should be closed, settled, or will abandon for lack of prosecution.

The Office of the City Attorney is also currently tracking success rates of each outside counsel and efficiency in resolving matters currently assigned to their respective law firms.

Timetable: These measures have been instituted.



5. Litigation Management

Criteria: Information and data management systems used by management for decision-making purposes should be reliable and useful.

Condition: The City Attorney's Office uses litigation management software "City Law" to track the assignment, status, litigation expenses of litigation cases and some other non-litigation assignments. The system does not provide accurate and complete information concerning the litigations involving the City. Listed below are the deficiencies found in the database.

Results of Law Suit Not Listed (dismissed, settled, judgment etc.)

9 (37.5%) out of 24 closed cases in 2012 and 2013

Did Not List Attorney Assigned

189 (83%) out of 227 cases for 2012 and 2013

Did Not List Court Case Number or N/A if not applicable

36 (16%) out of 227 in 2012 and 2013

Court Name Not Listed or N/A if not applicable

31 (14%) out of 227 in 2012 and 2013

Duplicate Case Entries

4 (2%) out of 227 are duplicate case entries for 2012 and 2013

Different serve date, incident date, or file date

On City Law Litigation Report, 28 (41%) cases for 2012 and 2013 had a different serve date, incident date, or file date than what the documents show on the Caddo Clerk of Court website.

Inaccurate or Incomplete Amounts for Litigation Expenses (attorney fees, settlements, court costs etc.)

A total of 15 exceptions were noted involving omissions or incorrect document number or amount recorded for litigation expenses for 10 (29%) out of the 34 cases selected.

- Total unrecorded invoices/statements - 11.
- Total incorrectly recorded invoices/statements/documents - 4.
- Total amount unrecorded and incorrectly recorded - \$8,519.54.

Inaccurate Status of Cases

One of the 11 cases in 2012 with a status of closed was actually awaiting a bench trial. Therefore this case should have a status of open rather than closed. Out of 24 cases in 2012 and 2013 with a status of open, there were 3 cases in 2012 and 1 case in 2013 that actually had been dismissed. Therefore these cases should have a status of closed rather than open.



Effect:

- Cannot rely on the system because all the information may not be accurate and complete.
- Possible unreliable information may be used for decision-making purposes.

Cause:

- Information has not been entered due to lack of submission.
- Overlooked deficiencies/errors.
- Inadvertently entered incorrect information or omitted information.
- Other time-sensitive tasks were a greater priority.

Recommendation: We recommend management make an effort to clear discrepancies and update and enter missing data to make the litigation system more accurate and reliable.

Management Plan of Action: The City Attorney and Deputy City Attorney for Litigation Management were tasked with the review of all active litigation. A request was made to all outside counsel to provide a report detailing which matters were: (1) in their possession, (2) active, (3) inactive and for what reason, (4) awaiting abandonment, (5) ready to settle, (6) set for trial. All law firms have provided their respective responses and City Law has been updated for accuracy.

Timetable: This task is complete.

6. Policy and Procedure Manual

Criteria: Documented policies and procedures can improve operations of an organization by providing standards for uniformity in practices, establishing clear lines of responsibility, enhancing accountability, and lessening the threat to continuity posed by employee turnover.

Condition: The City Attorney's Office does not have documented policies and procedures regarding duties performed in the office to ensure that daily activities are conducted consistently and effectively.

Effect:

- Inability to determine if operations are being conducted as intended.
- Operations may not be in accordance with mission, goals, and objectives.

Cause: Management had not assessed the benefits of a policies and procedures manual. The office followed the City's Administrative and Executive Procedures.

Recommendation: We recommend that management develop and implement a policies and procedures manual which addresses key operations and activities of the office. This manual should be distributed to employees, along with their written acknowledgment, and would serve as a reference tool for employees seeking guidance on the proper handling of day-to-day transactions and situations. Examples of activities



or transactions that could be addressed include but are not limited to: Office structure (delegation of authority and responsibilities), File Management (procedures for updating manual and electronic files (database), and policy on engagement of outside counsel (selection criteria for outside counsel).

Management Plan of Action: The Office of the City Attorney is currently preparing a detailed policies and procedure manual. Additionally, on or about February 21, 2015 the City Attorney circulated a memorandum that outlined the restructure, updated departmental assignments for the City Attorney, Deputy City Attorneys, and Assistant City Attorneys. The memorandum also set for standing orders for day-to-day activities.

Timetable: The policies and procedure manual will be completed on or before December 1, 2015.

7. Job Descriptions

Criteria: Job (position) descriptions serve as a formal record of major duties and responsibilities assigned to a position. Each employee should have an accurate position description that serves as a basis for recording the responsibility and accountability delegated to an employee and for measuring the employee's performance.

Condition: Formal job descriptions had not been developed for any employees of the City Attorney's Office.

Effect:

- Employees may not be aware of what is expected of them and in what way their performance may be deficient.
- Incomplete basis on which to evaluate employee performance.

Cause: Other responsibilities may have precluded preparing the job descriptions.

Recommendation: We recommend that the City Attorney develop job descriptions for all employees of the City Attorney's Office. These job descriptions would document position responsibilities, as well as provide an objective basis on which to evaluate job performance. Additionally, the City Attorney and all employees should sign and date the respective job descriptions.

Management Plan of Action: Job descriptions have been developed for the City Attorney, Deputy City Attorneys and Assistant City Attorneys. Job descriptions will be developed for all other support staff.

Timetable: All job descriptions will be completed on or before September 1, 2015.



IAR 020015-03
April 13, 2015

Prepared by:

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