



# City of Chattanooga

INTERNAL AUDIT

City Hall

Chattanooga, Tennessee 37402

Stan Sewell  
Director

Ron Littlefield  
Mayor

November 21, 2008

Honorable Ron Littlefield  
Mayor, City of Chattanooga  
City Hall  
Chattanooga, TN 37402

RE: Post Audit Review of Waste Resources Division Filter Press Contract, 07-01

Dear Mayor Littlefield:

On December 21, 2007, the Internal Audit Division released an audit on the Waste Resources Division Filter Press Contract at Moccasin Bend. We performed certain procedures, as enumerated below, with respect to activities of the Public Works Department in order to render a conclusion on the status of the recommendations made as a result of that audit.

This Post Audit Review consisted principally of inquiries of City personnel and examinations of various supporting documentation. It was substantially less in scope than an audit in accordance with generally accepted government auditing standards.

The evidence obtained provided a reasonable basis for our conclusions; however, had an audit been performed, other matters might have come to our attention that would have been reported to you and our conclusions may have been modified.

The conclusions of Audit 07-01 were that:

1. The contractor has not complied with the terms of the contract;
2. Payments were being made contrary to the terms of the contract;
3. The bid procedure for contract 28K (EP-4) was followed, per City code; However, it appears that the process may have been skewed toward the winner, USFilter.

The audit contained 14 recommendations that addressed the audit's findings. Based on the review performed, we concluded that recommendations 1 through 8 and 11 through 14 were fully implemented, recommendation 10 was partially implemented, and recommendation 9 was not implemented.

### **Recommendations Fully Implemented**

We recommended (**Recommendation 1**) that originals of all executed contracts be forwarded to the office of the City Finance Officer, and kept at least seven years post completion.

The department concurred. As of this date, executed contracts are forwarded to the Finance Office and all departments have been reminded of the requirement to forward all contracts to the Finance Office.

We recommended (**Recommendation 2**) that the Finance Department insure that all Federal (SRL) monies expended during the year be included in the Schedule of Federal Awards reported to the external auditors.

The department concurred. The last CAFR available (FY07) does include the SRL monies in the "single audit" section of the report.

We recommended (**Recommendation 3**) that the City seek legal counsel regarding the remedies afforded it under the terms of the contract and demand repayment of, at a minimum, all monies paid to the supplier, along with the cost of installation, interest paid on the loan that financed the project, liquidated damages for failure to meet the timelines set forth in the contract, and request the removal of the equipment from the City's facility. The City should also seek legal counsel regarding whether any claims should be assessed against the Project Engineer.

The department concurred and an independent attorney has been retained by the City. He is currently in negotiations with the Vendor to get a working system on site, at their costs. Damages and other issues related to this project are being negotiated at this time.

We recommended (**Recommendation 4**) management should make no deviations to the terms of a contract specifically approved by the City Council without subsequent approval from the Council. No payments should be made on a contract contrary to the terms of the contract. No payments should be made before the stated products and/or services have been provided and/or rendered. Administration should take appropriate disciplinary action. Furthermore, Administration should seek legal advice regarding legal actions available to recoup any losses from CTI/AGM.

The department concurred. They have put in place a process to track any requests for changes to a contract prior to implementation. The City Engineer or his designate reviews all payment requests to insure the terms for payment have been met. An independent attorney has been retained to address any potential recovery of damages.

We recommended (**Recommendation 5**) management should make certain that all items required to be delivered under a contract are provided prior to approving payments for those items. Administration should take appropriate disciplinary action. Furthermore, Administration should seek legal advice regarding all legal actions available to recoup any losses from CTI/AGM.

The department concurred. Manuals previously due to be submitted are being held and reworked to incorporate the refitting being done by the vendor so as to be up to date with the new press system.

We recommended (**Recommendation 6**) that Management should not make any payments on a contract contrary to the terms of the contract. No payments should be made before the stated products or services have been provided. Management should assess liquidated damages whenever available. This will serve as an incentive to contractors, as well as offset costs of the City that are incurred due to the delays. The City should pursue any and all remedies available to it from all parties for the failure of the contractor to meet the required deadlines of the contract. Administration should take appropriate disciplinary action.

The department concurred. The vendor has a new timeline in place due to negotiations. The department also is meeting every two weeks to get an update on where the refit project is. An independent attorney has been retained to address any potential recovery of damages and /or facilitate negotiations.

We recommended (**Recommendation 7**) that the Public Works Department not fund a contractor's Research and Development costs. Management should exercise the remedy options afforded under the terms of the contract. Administration should take appropriate disciplinary action.

The department concurred in part. The refit of the system is in process and negotiations are also under way addressing any and all remedies available to the City.

We recommended (**Recommendation 8**) Management insure that all of the terms of a contract be followed, including involving the City personnel required to be involved per the terms of the contract. If the City Engineer is the named City representative in a contract, then the City Engineer should be the party who has final approval over the fulfillment of the contract. The City Engineer should be kept involved in all projects for which supervisory authority has been bestowed. With regard to the contract at issue, at a minimum, the City Engineer should have been notified of delays, liquidated damages available and been provided with the payment requests submitted for review and approval. Administration should take appropriate disciplinary action. We further recommended Administration seek legal counsel with regard to the possibility of recouping losses from the Project Engineer.

The department concurred in part. Contracts that call for going through the City Engineer are being routed through him, or his designee. An independent attorney has been retained to address any potential recovery of damages.

We recommended (**Recommendation 11**) that Management should follow the Purchasing Department's bid process at all times, and every effort should be taken to insure that the City gets the best and lowest bid for goods from the most qualified provider. RFP's should clearly define evaluation criteria and such criteria should be utilized in making recommendations to the City Council. Bids/Proposal evaluations should be handled internally utilizing operations staff's knowledge/experience, purchasing staff's knowledge/experience and where applicable, the knowledge and experience of the City Engineer. To minimize bias (or the appearance of bias), bid evaluations should not be contracted to outside parties.

The department concurred and is currently abiding by the guidelines for bidding and awarding contracts as established by the City.

We recommended (**Recommendation 12**) The City should seek legal counsel regarding any recourse it has to recoup losses from CTI/AGM.

The department concurred in part. An independent attorney has been retained to address any potential recovery of damages.

We recommended (**Recommendation 13**) Management should recognize that changes to a contract which were not approved by the City Council are not binding and enforceable. The City should seek legal advice, as necessary, regarding the effect on payment requirements as a result of any possibility of the elimination of many elements deleted from the "Work Element" schedule (where other contract sections reference them as if they were still present). Also, the City should seek legal advice regarding the liability of CTI/AGM with regard to its apparent failure to properly monitor and oversee any requested changes in the obligations and responsibilities of the City under the contract. Further, the City should seek legal advice regarding the possible assertion by USFilter that the contract supplement is legally binding and otherwise enforceable.

The department concurred. The department has instituted a process for any and all changes requested. All requests for changes must go through the City Engineer. An independent attorney has been retained to address any potential recovery of damages.

We recommended (**Recommendation 14**) that Management should request a detailed written explanation from the Project Engineer (CTI/AGM) regarding the supplement. The City should seek legal advice regarding the liability of the Project Engineer concerning the creation and recommendation of the supplement.

The department concurred. The Project Engineers submitted a written response to the findings in our report. However, the response related to this issue failed to provide any clarity to the noted discrepancies or the rationale for recommending the supplement be executed by the City. An independent attorney has been retained to address any potential recovery of damages.

## **Recommendations Partially Implemented**

We recommended (**Recommendation 10**) that Management should take immediate action to determine what is wrong with the Scrubber system, and get it fixed. Management should also seek reimbursement from the responsible vendor for the excess costs incurred for the natural gas it has had to purchase. Administration should take appropriate disciplinary action due to the unwarranted expenditures incurred by the City, and due to the negligence of management in ignoring the problem for over a year. Furthermore, Administration should look into any and all remedies available from the Project Engineers (CTI/AGM) who were hired to design the system and certified it was working properly.

The piping has been replaced at the City's expense. The supplier is looking at the system and making recommendations to improve the system, and it should be fully functional in six to eight weeks. They have not pursued any reimbursements related to the extra costs incurred for the gas purchased by the City.

## **Recommendations Not Implemented**

We recommended (**Recommendation 9**) that in the future, management should insure that all engineering contracts go through the Purchasing Department, as required by statute, to help insure there are no improprieties or appearances thereof in the awarding of such contracts.

The department concurred. However, per the Purchasing Agent for the City, Public Works is still handling the procurement of professional and construction services. The City Engineer gets the RFQ from the plant, and handles the interview, and then the selection process is handled by the plant.

We thank the personnel in the Public Works Department for their assistance in conducting this review. We will consider this report to be final unless directed to continue our review.

Sincerely,



Stan Sewell, CPA, CGFM  
Director of Internal Audit

cc: Dan Johnson, Chief of Staff  
Steve Leach, Public Works Administrator  
Jerry Stewart, Director, Waste Water Treatment Plant  
Daisy Madison, Chief Financial Officer  
Brian Smart, Manager of Financial Operations