



C R I T L U A L L E N
A U D I T O R O F P U B L I C A C C O U N T S

April 3, 2009

Honorable Van Elliott Newberry
McCracken County Judge-Executive
301 South Sixth Street
Paducah, KY 42001

Dear Judge Newberry:

Attached please find the review by the State Auditor's Office of questionable purchases related to the 2009 Ice Storm in McCracken County.

It is clear from our review that following the ice storm the County took immediate steps to address questions that had been raised and take corrective actions. As part of this review by the Auditor's Office, we are offering several recommendations, which if implemented, can prevent questionable spending in future emergencies.

We have appreciated your cooperation and that of other County personnel as we have conducted this review. If you have any questions or would like to discuss this report further, please contact Sally Hamilton, Director of Financial Audits, or me.

Sincerely,

A handwritten signature in cursive script that reads "Crit Luallen".

Crit Luallen
Auditor of Public Accounts



April 3, 2009

Auditor of Public Accounts
Report on Questionable Purchases Related to 2009 Ice Storm
in McCracken County

The Office of the Auditor of Public Accounts has been actively involved in the process of auditing the books and records of the McCracken County Fiscal Court for the year ended June 30, 2008. This audit is being performed as part of our normal audit process of fiscal courts in Kentucky. During the course of the FY 2008 audit, our office became aware of allegations of questionable expenditures of public funds resulting from the January 2009 Ice Storm in McCracken County.

We were made aware of these allegations through calls from concerned citizens and reports in local media. We asked our field auditors to begin immediate review of these FY 2009 concerns in conjunction with their FY 2008 audit work. The allegations questioned purchases of generators – some of which were put to personal use – four wheelers (ATVs), a 2009 Coachman camper/trailer, and TVs and computers.

Auditors began by interviewing the County Judge-Executive, Van Newberry, the Deputy County Judge, Doug Harnice, the County Treasurer, Angie Brown, the Emergency Management (EM) Director, Bob McGowan, the Reidland-Farley Fire Chief, Richard Tapp, and the volunteer who coordinated the efforts at the Reidland-Farley Emergency Operations Center (EOC), Justin Adams.

The County Judge-Executive advised auditors that he was conducting an internal investigation of the allegations and would issue a report as a result of this investigation. Our auditors reviewed the report to determine the events that had taken place and the County Judge-Executive's response to those events.

The report detailed the chronology of the storm and the County's responses to the emergency situation beginning with the weather forecast on January 23, 2009, and ending with the first day that no storm-related work was required on February 15, 2009.

The County Judge-Executive's report dealt with five areas of expenditures, which include the four items listed in paragraph two, along with fuel purchases.

The Auditor's report reviews each of the items noted above as well as our discussions with the officials about fuel. It also reviews what the County Judge-Executive reported, what we found in our discussions with each of the County or Fire District representatives interviewed, and recommendations for procurements in future emergency circumstances.

According to the County's procurement policy, procurements should be made by one of the following methods:

- A. Small Purchases – Purchases of supplies, equipment, and services, which cost between \$200 and \$10,000, require written estimates but no legal advertisement. The County will solicit written responses from at least three vendors. Purchases that cost between \$50 and \$200 require three over-the-telephone quotations of rate, price, etc. For purchases of less than \$50, efforts will be made to get the lowest and best price.
- B. Competitive Sealed Bids – When the cost of a contract, lease, or other agreement for materials, supplies, equipment, or contractual services other than those personal or professional exceeds \$10,000, an Invitation For Bids (IFB) notice will generally be prepared.
- C. Competitive Negotiations – The County will utilize competitive negotiations, regardless of contract amount, upon a written determination that: (a) specifications cannot be made specific enough to permit the award of a bid on the basis of either the lowest bid price or the lowest evaluated bid price, (b) the services to be procured are professional or personal in nature.
- D. Non-competitive Negotiations – Non-competitive negotiations may be used for procurements in excess of \$10,000 when bidding or competitive negotiations are not feasible. The County may purchase goods and services through non-competitive negotiations when it is determined in writing by the Judge Executive that competitive negotiation or bidding is not feasible and that: (a) an emergency exists, which will cause the public harm as a result of the delay caused by following competitive purchasing procedures; (b) the product or service can be obtained only from one source; (c) the contract is for the purchase of perishable items purchased on a weekly or more frequent basis; (d) only one satisfactory proposal is received through competitive negotiations; or (e) the State has authorized the particular type of non-competitive negotiation.

Generators

A number of generators were either purchased or rented during the period of time after the storm when citizens were without power. Deputy Judge-Executive Doug Harnice authorized the acquisition of these generators. The purpose of the generators was to

provide power to emergency services, to people with severe medical conditions, and for other services considered vital for the continuation of safety in the County. The number of generators purchased was reported in the County Judge-Executive's report to be 40, but it was reported to auditors by the Deputy Judge and by the Emergency Management (EM) Director that the correct number was 44. Auditors were able to confirm this number to the invoice provided by the Treasurer. Our auditors performed an inventory of the generators on hand at the Emergency Operations Center (EOC) building and found 43 generators on hand with one unaccounted for.

The County Judge-Executive's report also states that the County rented 27 generators. Auditors were unable to confirm the exact number rented due to the format of the invoices, which showed various serial numbers and rental charges for differing numbers of days and hours.

Approximately \$88,000 was expended for the generators purchased. The County Judge-Executive's report details that seven of the generators were loaned to individuals or businesses for private use. Several of these individuals or businesses have reimbursed the County for their cost of the use of these generators.

Auditors found that the County did not have a written policy stating what types of businesses or individuals should be considered essential or a well-defined approval process for the distribution of County-supplied generators. Because there are no written policies, internal controls over the decision-making process regarding the use of the generators were weak leading to some instances of questionable use.

Four wheelers (ATVs)

Four ATVs were purchased at an estimated cost of \$39,972. According to the County Judge-Executive's report and corroborated by our interview with Justin Adams, EOC volunteer, the ATVs were requested by Jackson Purchase Energy Corporation. It was reported that company workers had to do all of their travel into the brush on foot as there were poor flying conditions, and ordinary motor vehicles could not traverse the terrain to get to the downed power lines. The request was for four vehicles. The County Judge-Executive reported that several people at the EOC attempted to locate and borrow the requested vehicles.

According to Justin Adams, who said he received the call from Jackson Purchase requesting the ATVs the sequence of events was this: Mr. Adams asked EM Director McGowan whether he should start researching the matter, and he was told to do so; he then asked some EOC staff members to call and see what vendors might be open that deal in such vehicles; he was told by staff members that no one could be reached; he then

contacted the owner of the Honda dealership and asked him about renting four of these vehicles; the owner told him he only had these vehicles for sale, not for lease.

When Mr. Adams was unable to contact any County officials to get permission to purchase the vehicles, he asked a state representative who happened to be at the EOC what he should do, and reportedly was told by the representative to “buy them.” He then entered into a contract to purchase the four ATVs on behalf of the County. As stated in the County Judge-Executive’s report, the state representative denied authorizing this purchase, stating that he has no authority to buy anything on behalf of the County.

Since the ice storm, the County disposed of the ATVs by allowing Jackson Purchase Energy to purchase one and the other three to be purchased by the Reidland-Farley Fire District. None of the ATVs will be liabilities to or become assets of the County.

According to the Reidland-Farley Fire Chief, the Fire District will file a claim with FEMA for a reasonable rental value for the ATVs for their use during the aftermath of the ice storm. He then plans to offer two of them for sale to other fire districts.

The County Judge-Executive states in his report that the County did not approve the purchase of these machines and is not liable for their purchase. While the County might not, in the end, become liable for the ATVs, the individuals who made the purchase had the appearance of having the authority to make other purchases on behalf of the County in this emergency. Therefore, the ATV vendor did not question the individual’s authority for this purchase. The individual involved did not gain appropriate supervisory approval for the purchase. In addition, because the County did not have specific instructions in its disaster recovery plan on how to handle procurements in an emergency, there was no guidance for the purchaser.

2009 Coachman camper/trailer

On Saturday, January 31, five days after the ice storm began, Justin Adams, in anticipation of the arrival of additional cleanup crew members from Cincinnati, asked EOC staff members to contact camper vendors in the area to inquire about rental of a camper for a short time. He was told that there were no campers available for lease. Mr. Adams then consulted Deputy Judge Doug Harnice who reviewed the options that had been compiled and authorized the purchase of a camper/trailer for \$18,000.

After the storm, the County Judge-Executive made a decision not to keep the camper but to return it to the vendor. The County has incurred a restocking fee of approximately \$4,500 and has also incurred a repair bill for the camper of approximately \$1,600 for damages sustained while in service to the County. A reasonable rental fee is expected to

be filed as a claim to FEMA for reimbursement by the County to recoup some of the cost of this camper.

This purchase falls into category D of the County's existing procurement policy as this was an emergency situation, and category D expressly deals with emergency purchases in excess of \$10,000. The policy provides that in an emergency, the need for competitive negotiation or bidding can be suspended if the County Judge-Executive states in writing that such negotiation or bidding would not be feasible.

Had the County Judge-Executive made such a declaration, there would have been no question that the Deputy Judge had the authority to approve this purchase without Court approval.

TVs and computers from Best Buy

The purchase of 12 laptop computers, six flat-screen televisions, two DVD players, and 11 DVDs along with six television stands and cabling for a total of \$25,225.58 (Best Buy purchase) has been the center of a great deal of controversy for several reasons. One reason is the nature of the purchase. Another is the fact that a County check was written for the purchase without apparent prior approval by any person in a position to authorize such an expenditure. A third is the possible violation of the County's procurement policy.

Auditors asked each of the individuals interviewed to describe the events that revolved around the Best Buy purchase, and there were inconsistencies in each story told. The consistent elements of the stories were these: the check was written to Best Buy by the County Treasurer, who was very distressed when she saw the televisions. In addition, the County Treasurer was given a written reprimand by the fiscal court.

Some of the inconsistencies include: whether Best Buy called to offer to donate items to the EOC; who initiated the purchase; who made up the list of items purchased at Best Buy; how the purchase was represented to the County Treasurer; who was at EOC who could have approved the purchase; and how those interviewed believed the purchase of the items would actually be funded.

According to the County Judge-Executive's report, Reidland officials said buying the TVs and computers was a good deal because FEMA would reimburse them for the costs.

According to the County Judge Executive's report, the officials said they could keep the equipment or after a year, sell the surplus and put the money in the fire station accounts. The report said the officials didn't see this action as causing harm to the county taxpayers but was a benefit to the organization they volunteer and work with; however, in the

report, the County Judge-Executive said, in his opinion, this action was unethical, adding that not all this equipment was essential to help the county recovery from the ice storm.

Further, the expectation that a later sale of this equipment would generate dollars to be kept for the fire department is questionable under FEMA guidelines. According to FEMA guidelines, “when an applicant does not have sufficient equipment or supplies to respond effectively to the disaster, FEMA may assist in purchasing the needed equipment and supplies. However, the applicant may be required to compensate FEMA for the fair market value of the cost of the equipment and supplies when the items are no longer needed. The current fair market value is the value of the equipment and supplies determined by selling them in a competitive market. Alternatively, equipment leasing may be a reasonable alternative to purchasing new equipment. Leasing costs must be reasonable and total leasing costs cannot exceed the purchase price.”

The six flat-screen televisions, two DVD players, and 11 DVDs along with six television stands and cabling have now all been returned to Best Buy, with a \$300 restocking fee to the County. The County kept the four computers, which are considered to be useful.

Again, we found no evidence that the County Judge-Executive had declared an emergency in writing as related to this purchase and that the requirements for bids should be suspended; therefore, the County did not follow its own procurement policy. Additionally, as the County did not have specific instructions in its disaster recovery plan on how to handle procurements and fiscal matters in an emergency, there was no guidance for the purchaser to follow.

Fuel

One local gas station was designated during the ice storm for emergency use. This station was used to fill up emergency vehicles, utility crew vehicles, and County vehicles during the storm and during the aftermath of the storm. Additionally, fuel storage tanks at the EOC were filled during this time and were used for the same purpose. All of these fuel bills are to be paid by the County. A question has arisen as to the appropriateness of some fuel expenditures as allegations of personal use have been raised.

The County Judge-Executive’s report stated that he would review records of fuel expenditures to determine their validity. Since that time, recent media reports have noted that the Reidland-Farley Fire District has lost these records and that the fire district’s board would pay \$10,000 for the cost of fuel.

The County did not have a written policy stating what types of businesses or individuals should be considered essential in an emergency for the purpose of receiving County-

supplied fuel and how to account for this use. Without a written policy, internal controls over the decision-making process regarding the use of the fuel were weak, leading to some instances of questionable use.

Internal controls over expenditures

During the course of our regular audit, auditors noted an internal control weakness that they believe contributed to the breakdown in the procurement and expenditure process discussed in this report. Auditors found expenditures that were made without documentation of proper approval or supporting documentation and also noted credit card charges that were paid twice.

Strong internal controls over expenditures are essential to ensure that all expenditures are properly authorized. They also ensure expenditures are accurately reported in the County's financial statements.

Recommendations

Our review found no evidence of criminal wrongdoing; however, the county needs to have clear guidance to improve the procurement process and internal controls for emergency situations to avoid questionable expenditures in the future.

We make the following recommendations:

- The County should follow its procurement policy at all times and should add a section to its disaster recovery plan on how to handle procurements and fiscal matters. Following the procurement process will ensure expenditures receive the appropriate oversight and are essential to the emergency.
- The County should strengthen its written policies to include criteria for determining the types of businesses or individuals who would qualify for County-supplied equipment, such as generators or fuel, in the event of an emergency.
- The County should develop procedures to maintain detailed records during an emergency to identify equipment loaned to businesses or individuals, identify fuel purchases, vehicles fueled, gallons used and the authorizing officer.
- As part of the disaster recovery plan, the County should provide clear guidance as to what recovery procedures fall within the scope of the County's responsibilities and what may fall to outside organizations, such as the utility companies.
- Once policies have been established, the County should clearly communicate them to the appropriate personnel.
- The County should embark on a training program commensurate with the job duties and level of knowledge needed to fulfill its appropriate role in an emergency. Because

FEMA guidelines are so vital in a disaster situation, it is imperative that officials have FEMA training in order to improve the overall experience level of the individuals in positions of authority and positions requiring fiscal expertise.

- The County should strengthen control procedures over routine expenditures. Recommended controls include: documentation of proper approval, proper support for expenditures including detailed receipts, and the cancellation of paid invoices. The implementation of such controls will protect the County against any inappropriate purchases.