



MIKE HARMON
AUDITOR OF PUBLIC ACCOUNTS

May 18, 2022

Layne Wilkerson, Mayor
315 W 2nd Street
P.O. Box 697
Frankfort, KY 40601
Via Email: lwilkerson@frankfort.ky.gov

RE: Summary of Exam Results

Dear Mayor Wilkerson:

The Auditor of Public Accounts (APA) has completed a limited-scope special examination of the City of Frankfort (City). This special examination was initiated after our office received concerns of improper operating practices within the City. The purpose of this special examination was not to provide an opinion on the City's financial statements, but to review specific matters brought to our attention and make recommendations to ensure the City's operating activities are consistent, transparent, and follow policies.

To address the concerns expressed, the APA reviewed certain information related to the City, including: the City's Personnel Policies and Procedures, Title III of the City's Code of Ordinances related to Administration, Position Descriptions, and the City's Procurement Policies and Procedures. The APA made inquiries with various City personnel and performed examination procedures requesting additional supporting documentation for certain hiring and contracting decisions, as well as payment detail. Unless otherwise indicated, the examination period of this engagement was July 1, 2020 to August 9, 2021.

Findings

Two findings and one observation emerged from the examination and are presented in this letter, along with corresponding recommendations. The APA requests a written response from the City on the implementation status of the recommendations within 60 days of the receipt of this letter.

Finding 1: The City did not follow its applicant certification process as outlined in its policies.

The City advertised for the position of Pretreatment Coordinator/Chemist from September 16, 2020 through October 16, 2020, and received 38 applications for the position. After interviewing five candidates for the position in November 2020, the City offered the position to an individual that did not meet the educational requirements, as written in the position description and as presented in the job posting. At the time, the educational requirements posted for the position



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stated, “Bachelor’s degree in Chemistry, or a Bachelor’s degree in a closely related field that includes a minimum of fifteen (15) semester hours of Chemistry course/lab work” and the chosen applicant did not meet this requirement. The City noted that the selection panel “unwittingly deviated” from the posted educational requirements and did not become “aware of the educational requirement being posted without a substitution clause” until the selection was announced.

The City elected to move forward with the chosen candidate on an interim basis rather than to amend the position description and repost the job listing with a more flexible educational requirement included. This is a violation of City Policy Section 2.1(B)(2), as it relates to the application for position, which states “[n]o person may be appointed to an established position unless verified information on an official Employment Application Form indicates that the person meets the qualifications for the position as set forth in the position description.”

While City Policy Section 2.1(F)(3) notes one of the roles of the Personnel Director is to “determine that the person considered meets all qualifications as prescribed in the class specification to which the appointment will be made,” the actual practice of the City is for the Human Resources Department to forward all applicants to the department director conducting the search rather than initially certifying that all required qualifications are met prior to forwarding the applications.

Although the City regrets that a substitution clause was not included in the job posting, the City “believes the greater error would have been rigidly adhering to criteria that would not allow for consideration of direct and relevant work experience.” As further support for their decision, the City references Frankfort Code of Ordinances (FCO) 37.07, which states that the city “shall make every effort to assure that the most qualified, most suitable candidate is selected to fill city job vacancies.” However, the City’s job posting contained a specific education requirement that could have prevented other applicants from responding because they did not meet this requirement. These applicants may have even been more qualified or suitable for the position than the individual hired.

While the City stated “[i]t is not a common practice of the City to deviate from advertised requirements,” it would have been a better practice to re-post the position with revised criteria after the City determined that certain requirements were preferred and not required. Moving forward, the City has already amended the position description for Pretreatment Coordinator/Chemist on January 11, 2021 to include the word “preferred” in both the education and work experience requirements.

We recommend the City review all position descriptions on a periodic basis, as well as whenever an opening occurs, in order to most fully and clearly reflect the desired qualifications for the position and the requirements of the job. We also recommend that the City follow their established policy requiring the HR Director to certify that the applicants for a position meet all the required qualifications before forwarding the applicants to the selection panel.

Finding 2: The City did not abide by its Ordinance, FCO 38.02, regarding local preference in non-competitive negotiations for the services of a licensed professional.

Despite a local ordinance requiring such action, the City did not inquire about the availability of local businesses providing environmental consulting services prior to engaging Hardin & Associates, a foreign limited liability company with a principal office in Carrollton, Texas. The City considered this to be a professional services contract that was noncompetitive, so the local preference criteria was not applied. However, this appears to be a violation of City ordinance, as FCO 38.02 clearly states that “[r]egardless of which procurement procedure is used to obtain supplies and services for the city, preferences shall be given to local businesses, as provided in this section.”

In addition, that same FCO expressly includes noncompetitive negotiations in the services to be given a local preference. It reads, “[i]f it is determined that supplies or services are to be purchased by noncompetitive negotiations, as that term is used in KRS 45A.380, and the supplies or services are available locally, the city may enter into noncompetitive negotiations with a local business. A non-local business may be awarded a contract through noncompetitive negotiation only if no agreement can be reached with a local business or if the supplies or comparable services required are not available locally.” KRS 45A.380 establishes when local public agencies may contract or purchase through noncompetitive negotiations and requires written determination that competition is not feasible and that one of twelve listed circumstances is applicable. The City indicated that no such written determination by the Mayor exists.

Although the individual providing the services through Hardin & Associates had previously worked for the City, neither she nor the company met all three requirements to be considered a local business, as outlined in FCO 38.01. Regardless of whether or not the comparable services required were available locally, the City failed to ascertain their existence or document why such an inquiry was unnecessary.

We recommend the City adhere to all established ordinances regarding procurement actions. The City should also consider whether past practices dictate an update to their ordinances regarding the applicability of local preference requirements.

Observation 1: The City paid a consultant \$2,375 for services rendered before a contract was established.

Approximately two months passed between the resignation of the City’s former Pretreatment Coordinator/Chemist at the end of September 2020 and the execution of a contract for similar services with Hardin & Associates on November 25, 2020. Hardin & Associates was to provide similar environmental consulting services until the City could hire and properly train a new Pretreatment Coordinator/Chemist. The City’s former Pretreatment Coordinator/Chemist, a manager at the time of formation for Hardin & Associates, would provide those services to the City through her newly formed company. During the time leading up to the execution of the contract, the City issued two payments to Hardin & Associates for services provided in October and November 2020 totaling \$2,375. These two payments were issued without purchase requests being made by the Department Head. The City Clerk indicated that this was likely because the

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Sewer Director “knew the services would not exceed the \$1,500.00 mark, therefore, he didn’t complete a Purchase Order Requisition.”

The City issued checks coded to the Sewer Department’s Operations & Maintenance Fund in the amounts of \$1,175 for October services and \$1,200 for November services to Hardin & Associates. The City considered these two expenditures small purchases, as they did not individually meet the threshold for requiring a purchase request to be submitted. However, the Sewer Director knew that environmental consulting services would be needed until a new Pretreatment Coordinator was hired, a process that would likely take longer than one month, and should have anticipated the total cost of services provided by the company prior to that time would exceed \$1,500. In addition, the City’s finance policy manual specifically stated that “[n]o purchase should sub-divide a department’s request to avoid preparing a purchase order.”

The Sewer Director indicated that the former Pretreatment Coordinator/Chemist’s resignation was unexpected, so he “immediately started to see what we could do for assistance during the transition period. Since there had been a practice in the City to offer a short-term contract [to departing employees] to help with transitioning I spoke with the City Attorney and City Manager to receive their blessing. Once that was done I spoke to [the now former Pretreatment Coordinator/Chemist] about providing transitional services and she agreed that she would help out. She started providing services [as a part of Hardin & Associates] on October 1st before the contract was completed... [the former Pretreatment Coordinator/Chemist] agreed to work at risk to help transition until a new Pretreatment Coordinator could be named.”

Despite the urgency and necessity of the services, the Sewer Director did not formally suggest, in writing, his desire to contract with Hardin & Associates until he sent the required memo to the Interim City Manager on November 1, 2020. A contract with Hardin & Associates was presented to and approved by the Board of Commissioners at their November 23, 2020 meeting. The Mayor executed the contract on November 25, 2020.

We recommend the City amend their procedure manual to provide guidance as to whether or not the cost of services to be obtained over several months should be considered on a month-by-month basis or in totality when determining if a purchase request is required from Department Heads.

Thank you for your attention to these matters and the City’s cooperation with this limited-scope special examination. If you have any questions regarding this letter, please contact me or Tiffany Welch, Executive Director, at 502-564-5841.

Thanks and God Bless,



Mike Harmon

Auditor of Public Accounts

CC Laura Hagg, City Manager lhagg@frankfort.ky.gov