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# OFFICE OF THE CITY AUDITOR

## AUDIT OF ADMINISTRATIVE ACTIONS

**Thomas M. Taylor, CPA  
City Auditor**

**Prepared by:**

Joe R. Saucedo, Jr., CPA, CFE  
Audit Manager

Jing Xiao, CPA  
Auditor

**January 31, 2003  
Report No. 378**

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## Memorandum



January 31, 2003

Honorable Mayor and Members of the City Council  
City of Dallas

We have conducted an audit of Administrative Actions (AAs) for the nine-month period ending December 31, 2001. This audit was conducted under the authority of Chapter IX, Section 2 of the Dallas Charter and in accordance with the Annual Audit Plan approved by the City Council.

AA preparation, authorization, and review generally met the requirements set by applicable guidelines and policies. There are some areas that, in our opinion, can be enhanced. The Opportunities for Improvement section of this report note these areas. We also noted certain immaterial instances of noncompliance, which we have reported to the Director of the Office of Financial Services in a separate letter dated July 8, 2002. We raised questions regarding the procurement of professional services to the City Attorney in a separate letter dated November 26, 2002.

We appreciate the cooperation of staff during our examination.

Thomas M. Taylor, CPA  
City Auditor

c: Teodoro J. Benavides, City Manager

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## AUDIT OF ADMINISTRATIVE ACTIONS

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## EXECUTIVE SUMMARY

We have conducted an audit of Administrative Actions (AAs) for the period April 1, 2001 through December 31, 2001. Our audit objectives were to determine whether:

- The processed AAs complied with the applicable criteria and guidelines.
- All processed AAs were accounted for.
- AAs were used to bypass the competitive bid process and/or City Council approval.
- The recommendations made by the previous audit have been implemented.

AA preparation, authorization, and review generally met the requirements set by applicable guidelines and policies. We noted immaterial instances of noncompliance, which were reported to the Director of the Office of Financial Services in a separate letter, dated July 8, 2002. We also raised questions regarding the procurement of professional services to the City Attorney in a separate letter dated November 26, 2002. Management's corrective action to the previous audit was to revise and update AD 4-5, Contracting for Goods and Services. This revision is in progress and the pending changes (if implemented) should correct prior audit findings.

Our audit revealed four instances in which multiple AAs were awarded to the same vendor for the same service. These AAs exceeded authorized limits established by the City Code and AD 4-5. These AAs appear to have by-passed the bid process and City Council approval. Our coordination with Business Development and Procurement Services confirmed that the multiple AAs should be considered as a single procurement. A single procurement may have provided a better price to the City, based on volume or on best available price resulting from an advertised procurement.

We also noted that four vendors were awarded a second twelve-month contract for the same services. The second contract overlapped the first contract by seven to nine months. The second contract (i.e. AA) established a continuous contract period ranging from 15 to 17 months and the encumbrances (of the AAs) exceeded the maximum allowable amount and would result in payments in excess of AA limits.

Management's position is that the AAs were separate and distinct contracts. Our emphasis is not on the instrumentality of contracts, but on procurement (i.e. the purchase of goods/services). The aggregate of the AAs should have been considered in determining whether advertised bids and Council approval were required. The multiple AAs to the same vendor within a short period of time also gives the appearance of possible bid splitting.

These AAs are addressed in the audit report and are included as exhibits.

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## INTRODUCTION

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### Authorization

We have conducted an audit of Administrative Actions (AAs) for the nine-month period ended December 31, 2001. This audit was conducted under the authority of Chapter IX, Section 2 of the Dallas Charter and in accordance with the Annual Audit Plan approved by the City Council.

### Scope and Methodology

Our audit was conducted in accordance with generally accepted government auditing standards and, accordingly, included inquiries, tests of the accounting and related records, and other procedures that we considered necessary in the circumstances.

Our audit objectives were to determine whether:

- The processed AAs complied with the applicable criteria and guidelines.
- All processed AAs were accounted for.
- AAs were used to bypass the bid process and/or City Council approval.
- The recommendations made by the previous audit have been implemented.

The prior audit covered October 1, 1999, through March 31, 2001; therefore, this audit covered April 01, 2001, through December 31, 2001. However, we reviewed and tested certain transactions occurring before that period to the extent that those matters pertained to the audit objective.

We developed a database for all AAs that were listed on the monthly AA Reports, prepared by the Office of Financial Services (OFS), for the period April 1, 2001, to December 31, 2001. This database was compared to the records maintained in the City Secretary's Office for verification. There were 736 AAs (excluding 112 zero amount AAs) processed during our audit period, and these AAs authorized expenditures in the amount of \$5,917,985. The maximum amount for AAs is limited per City Code and Administrative Directive (AD) based on type of procurement. Therefore, we stratified our database and defined our population as AAs equal to or greater than \$7,500. This definition yielded a population of 286 AAs, and accounted for 83% of expenditures.

We used statistical sampling techniques to test compliance. Sample parameters of 95% confidence level, error rate of 1% ±

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## INTRODUCTION

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3%, yielded a sample size of 37. The sample was selected using a random numbers table.

We used judgmental sampling to test whether AAs by-passed the competitive bid process and/or City Council approval. We reviewed 24 vendors that were awarded a total of 54 AAs.

To develop an understanding of the policies and procedures relating to AAs, we:

- Reviewed AD 4-5, Contracting Goods and Services, dated May 10, 1999, and the proposed changes to the AD currently undergoing revision.
- Interviewed City and departmental management and staff.
- Examined records, supporting documents, and related transactions.
- Considered the relevant findings and recommendations of prior audit reports.

### Overall Conclusion

AA preparation, authorization, and review generally met the requirements set by applicable guidelines and policies. There are some areas that, in our opinion, can be enhanced. The Opportunities for Improvement section of this report noted these areas. We also noted certain immaterial instances of noncompliance, which we have reported to the Director of the OFS in a separate letter dated July 8, 2002. We raised questions regarding the procurement of professional services to the City Attorney in a separate letter dated November 26, 2002.

### Background

AAs are contracting actions that the City Council delegates to the City Manager. Chapter 2 of the Dallas City Code describes the types of contracting actions that the City Manager, or his designee, can approve by AA without further City Council approval. AD 4-5, Contracting for Goods and Services, establishes the general guidelines and procedures for contracting, including specific procedures applicable for authorizing a transaction by AA. AAs may be used to authorize the following types of transactions:

## INTRODUCTION

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- Professional/Personal/Planning Service Contracts of \$15,000 or less.
- Low bid construction, alteration, repair, or service contracts exceeding \$15,000 but not exceeding \$50,000.
- Change orders for low bid contracts: \$25,000 or less, but the cumulative total of change orders may not exceed 25% of original contract price.
- Amendments to non-bid contracts involving any decrease or increase of \$15,000 or less. The change may not cause the original (under \$15,000) contract to exceed \$15,000. If the original contract price exceeds \$15,000, the cumulative amendments may not exceed 25% of the original contract price.
- WRR-FM expenditures of \$50,000 or less for purposes listed in Section 2- 79 (c) of the Dallas City Code.
- A sale of surplus personal property that generates \$20,000 or less.
- Other actions for which administrative approval authority is expressly delegated by the City Charter or ordinance.

The requesting department is responsible for preparing the AA form. After the department director's approval and signature, the AA form, along with the supporting document(s), is routed to:

- The OFS (reviews fund availability)
- The Office of Minority Business Opportunity
- The City Controller's Office (reviews and inputs encumbrance account)
- The City Manager's Office (Assistant City Manager approves)
- The City Attorney's Office (approves as to the form)
- The City Secretary's Office (reviews for completeness and assigns AA number)

Currently the OFS and Purchasing Department are in the process of revising AD 4-5 as the previous audit recommended. Some amount limits and document routing and approval procedures for AAs will be affected by the revision.

## INTRODUCTION

The OFS is the primary oversight body for the administration of AAs. The OFS is also responsible for preparing the monthly AA Reports for City Council.

Excluding the zero amount AAs, City departments approved \$8,021,393 expenditures via 1,014 AAs in calendar year 2001. We have summarized the top ten user departments in the table below.

| Top Ten AA Users in 2001               |                 |                    |
|--|-----------------|--------------------|
| Department                             | No. of AAs Used | Approved Amount    |
| Park & Recreation                      | 198             | \$1,266,874        |
| Environmental & Health Serv.           | 47              | 996,794            |
| Public Works & Transportation          | 116             | 925,297            |
| Cultural Affairs                       | 183             | 868,400            |
| Code Compliance                        | 56              | 571,950            |
| Housing                                | 23              | 541,875            |
| Event Services                         | 57              | 492,987            |
| City Attorney's Office                 | 37              | 397,125            |
| Dallas Police Department               | 44              | 290,849            |
| Communication and Information Services | 14              | 226,735            |
| <b>Total</b>                           | <b>775</b>      | <b>\$6,578,886</b> |

### Questioned Costs

In our finding we identified "questioned costs". Questioned costs means a cost that is questioned by the auditor:

- Which resulted from a possible violation of a law, regulation, contract, grant, directives, or polices governing the use of funds;
- Where the costs, at the time of the audit, are not supported by adequate documentation; or
- Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

### Follow-up on Prior Audit

An audit report was issued August 17, 2001. Management's corrective action was to revise and update AD 4-5. This revision is in progress. The pending changes (if implemented) should correct prior findings.



## OPPORTUNITIES FOR IMPROVEMENT

We identified certain policies and procedures that could be improved. Our audit was not designed or intended to be a detailed study of every related system, procedure, and transaction. Accordingly, the opportunities presented in this report may not be all-inclusive of areas where improvements may be needed.

### AAs may have by-passed the bid process and/or City Council approval.

The sum of several multiple AAs processed for the same service exceeded the maximum amount authorized, and some contract terms overlapped.

We used judgmental sampling to test whether AAs by-passed the competitive bid process and/or City Council approval. We reviewed all AAs for calendar year 2001 to identify multiple AAs awarded to the same vendors. We identified 24 vendors that were awarded a total of 54 AAs.

Our review of the 54 AAs revealed the following:

Five vendors were awarded multiple AAs for the same services. These AAs exceeded authorized limits established by the City Code (Section 2-31) and AD 4-5. These AAs may have by-passed the bid process (e.g. competitive bid or request for proposal) and City Council approval.

| Number of AAs         | City Department             | Vendor              | Type of Contract      | Contract Periods                     | Sum of AAs | Maximum Amount Allowable | Questioned Costs |
|-----------------------|-----------------------------|---------------------|-----------------------|--------------------------------------|------------|--------------------------|------------------|
| Four AAs <sup>1</sup> | Parks                       | DC Baldwin Inc      | Professional Services | NA per AAs                           | \$37,455   | \$15,000                 | \$22,455         |
| Two AAs <sup>2</sup>  | City Attorney's Office      | DocVersion Inc      | Professional Services | None shown per AAs                   | \$20,000   | \$15,000                 | \$ 5,000         |
| Two AAs               | Code Compliance             | Govt. Data Services | Professional Services | 1/15/01-10/30/01 and 6/19/01-6/18/02 | \$21,500   | \$15,000                 | \$ 6,500         |
| Two AAs <sup>3</sup>  | Convention & Event Services | Lamar Advertising   | WRR Expenditures      | 10/1/00-4/30/01 and 5/1/01-10/30/01  | \$78,720   | \$50,000                 | \$28,720         |
| Two AAs <sup>4</sup>  | EHS                         | Open Arms Inc       | Low bid contract      | 1/1/01-12/31/01                      | \$78,000   | \$50,000                 | \$28,000         |

<sup>1</sup> Three AAs (01-0169, 01-0190, 01-0191) effective on the same day (1/17/01) and one AA (01-0640) effective the next month

<sup>2</sup> AAs (01-2132 and 01-2133) effective on the same day, 7/25/01

<sup>3</sup> AAs were for two, six-month periods

<sup>4</sup> Two AAs issued for the same twelve-month period; each AA was for \$39,000

## OPPORTUNITIES FOR IMPROVEMENT

Four vendors were awarded a second twelve-month contract (prior to the expiration of the first contract) for the same services, and overlapped the existing contract by seven to nine months. The award of the second contract may have by-passed the existing bid process and City Council approval.

| Vendor                | Contract | AA No.  | AA Amt.  | Period         | AA No.  | AA Amt.  | Period          | Total Months | Sum of AAs | Maximum Allowable | Questioned Costs |
|-----------------------|----------|---------|----------|----------------|---------|----------|-----------------|--------------|------------|-------------------|------------------|
| RP Neighborhood Assoc | Services | 01-1306 | \$15,000 | 5/1/01-4/30/02 | 01-3507 | \$15,000 | 10/1/01-9/30/02 | 17           | \$30,000   | \$15,000          | \$15,000         |
| RG Neighborhood Assoc | Services | 01-1559 | \$10,000 | 6/1/01-5/30/02 | 01-3504 | \$10,000 | 10/1/01-9/30/02 | 16           | \$20,000   | \$15,000          | \$ 5,000         |
| SC Community Dev Corp | Services | 01-1966 | \$15,000 | 7/1/01-6/30/02 | 01-3508 | \$15,000 | 10/1/01-9/30/02 | 15           | \$30,000   | \$15,000          | \$15,000         |
| VH Community Dev Corp | Services | 01-1965 | \$15,000 | 7/1/01-6/30/02 | 01-3511 | \$15,000 | 10/1/01-9/30/02 | 15           | \$30,000   | \$15,000          | \$15,000         |

The causes for the above findings were:

- Departments viewed these AAs as stand-alone (i.e., individual) contracts and did not consider the aggregate effect of these AAs.
- Subsequent AAs to the same vendor did not disclose that AAs were previously awarded to the vendor in the past 12 months.
- Departments did not comply with the renewal options restrictions specified in AD 4-5.

AD 4-5, Paragraph 4.6 defines “Bid Splitting” as dividing the scope of a contract into smaller sums for the sole purpose of avoiding competitive bidding requirements or proper authorization. Paragraph 6.3.1 states that automatic renewals are prohibited.

In Section 11.2.1.C, AD 4-5 further states, "The initiating department shall also disclose any recent (that is, within the fiscal year) AAs it has processed for the same commodity or the same vendor."

The instructions printed on the top of the AA form stated: "If the total for the current fiscal year exceeds \$15,000, Council approval is required."

Multiple AAs for the same service within a short period of time is an indicator of possible bid splitting. The above multiple awards for the same services appear to be bid splitting.

The second AA awarded to the neighborhood associations and the community development corporations resulted in the following:

- The second contract overlapped the first contract and established a continuous contract period ranging from 15 to 17 months.

## OPPORTUNITIES FOR IMPROVEMENT

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- Encumbrances exceeded the maximum allowable amount and would result in payments beyond AA limits.

Our audit revealed that one of the neighborhood associations was paid the full amount of the first AA and has begun receiving payments on the second AA.

### **We recommend that:**

- The Director of the OFS establish recurring Citywide training to educate personnel in the preparation and proper utilization of AAs.
- Department directors closely review AAs and ensure their personnel comply with the City Code and AD, and that AAs are accompanied by proper supporting documentation.

### **Management's Response:**

Management partially agrees. Revisions to Administrative Directive 4-5 will be finalized soon. At that time, Business Diversity and Procurement Services staff will advise all executive staff of the changes and remind them of the continuing need to review procurement authorization policies and procedures. However, most of the Administrative Actions cited as possible violations are not violations.

- The two Environmental and Health Services Administrative Actions do not violate AA limits. An error initially indicated the two AAs duplicated the same time period. A memo was submitted to the City Secretary to correct the error and clarify the two AAs are for two different time periods.
- The four Park and Recreation AAs cited do not violate Administrative Action limits. Park and Recreation executive staff indicates that they and the City Attorney's Office consider the contracts to be separate and distinct.
- The two Code Compliance AAs cited do not violate AA limits because they are for two distinctly different services.
- The eight Mow/Clean AAs cited do not violate AA limits. The contracts with neighborhood associations and other non-profit agencies were being modified in order to coincide with the City's October through September fiscal year.
- The two City Attorney AAs cited do not violate AA limits. The City Attorney's Office indicates the two contracts authorized were for separate and distinct services related to two different lawsuits.

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## OPPORTUNITIES FOR IMPROVEMENT

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### Auditor's Response:

We concur with management's response regarding the Environmental and Health Services department. Documentation provided by the department subsequent to our audit inquiry did correct the contract periods.

Our follow-up indicates that management concurs with the audit finding regarding WRR expenditures.

Our coordination with Business Development and Procurement Services confirmed that the multiple AAs described below should have been considered as a single procurement by the departments. A single procurement may have provided a better price to the City based on volume or on best available price resulting from an advertised procurement. The emphasis is on procurement, not on the instrumentality of contracts. The AA form (the form specified in AD 4-5) specifically asks whether AAs have been awarded to the vendor within the past 12 months and states that if the total for the current fiscal year exceeds \$15,000, Council approval is required. The aggregate of the AAs should have been considered in determining whether advertised bids and Council approval were required. The multiple AAs to the same vendor within a short period of time also gives the appearance of bid splitting.

#### Park and Recreation

Each of the AAs specifies: (1) that the procurement is for professional services, and (2) is marked to indicate that there have not been any AAs with the vendor for this service or commodity in the past 12 months. However, as indicated in footnote 1, three AAs were effective on the same date, and one AA effective the next month. The sum of the AAs exceeded \$15,000. See Exhibit 1 for copies of AAs.

#### City Attorney's Office

An AA was used for each lawsuit. The AAs do not indicate that they are for separate and distinct services. The two AAs are to the same vendor for copy services needed to copy and label documents related to two lawsuits. These two AAs are effective on the same date for the same service and their sum exceeds \$15,000. See Exhibit 2 for copies of AAs.

#### Code Compliance

Management considered these AAs as two separate items because (1) it involved two different departmental functions and (2) one AA was for software development (for a database tracking system) and the second AA was for software support (for a database

## **OPPORTUNITIES FOR IMPROVEMENT**

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tracking system developed by the vendor). However, these AAs were not deemed to be for distinctly different services (from the same vendor) since the AAs are utilizing the vendor's software expertise. The second AA (#01-1960 for \$6,500) states that previous AAs have been issued to the same vendor in the last 12 months. The sum of the two AAs exceeded \$15,000. See Exhibit 3 for copies of AAs.

### Mow/Clean AA's

Management stated that the initial AAs had varying expiration dates and this made tracking the AAs difficult and management's intent was to modify the AAs to coincide with the City fiscal year period. However, the department did not modify the initial AAs, but awarded a second contract reflecting the City's fiscal year period. The second contract (AA) awarded to the neighborhood associations and other non-profit agencies overlapped the time frame of the first AA. These overlapping contracts authorized encumbrances ranging from \$20,000 to \$30,000. If the intent was to modify the initial AA to coincide with the City's fiscal year-end, then the second AA's contract term should not have started earlier than the original AA's ending date, and computations verified to ensure that current fiscal year payments should not exceed \$15,000. As noted in the audit finding, one of the neighborhood associations was paid the full amount (\$15,000) from the first AA and had begun receiving payments from the second AA (also authorized for \$15,000). The aggregate of the AAs should have been considered in determining whether advertised bid requests and Council approval were required. See Exhibit 4 for copies of AAs.