



COMMISSIONERS COURT
COMMUNICATION

REFERENCE NUMBER

PAGE 1 OF

12

DATE: 11/23/2010

SUBJECT: **RECEIVE AND FILE THE AUDITOR'S REPORT OF THE INFORMATION TECHNOLOGY DEPARTMENT CONTROLS OVER THE DEVELOPMENT OF THE ELECTRONIC CASE FILING SYSTEM**

COMMISSIONERS COURT ACTION REQUESTED:

It is requested that the Commissioners Court receive and file the Auditor's Report of the Information Technology Department Controls over the Development of the Electronic Case Filing System.

BACKGROUND:

In accordance with the Local Government Code, Subchapter A, Sections 115.001, Examination of Records, and 115.002, Examination of Books and Reports, the Auditor's Office reviewed the controls established by the Information Technology Department (IT) over the development of the District Attorney Electronic Case Filing System (ECFS) as of October 31, 2010. This project was later called the Criminal Court Case Management System and is part of the Integrated Justice Information System project.

FISCAL IMPACT:

There is no direct fiscal impact associated with this action.

SUBMITTED BY: Auditor

PREPARED BY: S. Renee Tidwell
APPROVED BY:



TARRANT COUNTY

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October 31, 2010

Mr. G.K. Maenius, County Administrator
Mr. Steve Smith, Chief Information Officer
The Honorable District Judges
The Honorable Commissioners Court
Tarrant County, Texas

RE: Auditor's Report – Information Technology Department, Controls over the Development of the Electronic Case Filing System

SUMMARY

In accordance with Local Government Code, Subchapter A, Sections 115.001 *Examination of Records* and 115.002 *Examination of Books and Reports*, we reviewed the controls established by the Information Technology Department (IT) over the development of the District Attorney Electronic Case Filing System (ECFS) as of October 31, 2010. This project was later called the Criminal Court Case Management System and is part of the Integrated Justice Information System project. Although the contractor provided us with access to their financial data, we were unable to verify the completeness and accuracy of the data. For example, we observed payments recorded in the financial data made to a particular payee, but the cancelled check indicated a different payee. We also noted checks that cleared the bank that were not recorded in the financial data. *Therefore, we express no opinion regarding the completeness and accuracy of the contractor's financial data. Furthermore, the incompleteness of the data does not allow us to express an opinion on whether inappropriate payments were made to County employees.* As a result of our review, we found the following issues requiring management's immediate attention:

Observation 1 Management oversight and segregation of duties was not adequate.

Observation 2 The County's total investment related to the ECFS project could not be determined.

Observation 3 The scope of work was not always clearly defined in the fixed fee lump sum contracts.

Observation 4 IT staff did not comply with County policies regarding the procurement of contracts.

Observation 5 County policy should be clarified related to food, lodging, transportation, entertainment, and any other benefit provided by a vendor to certain employees.

We discussed these observations and recommendations with the Chief Information Officer (CIO) and the County Administrator during the week of November 8, 2010.

BACKGROUND

In November 2004, the County contracted with Sierra Systems Group, Inc. (RFO#2005-014) to develop and implement the ECFS for the District Attorney's Office. The budget for the ECFS project was \$441,620 in fiscal year 2005. In July 2005, IT requested that the Commissioners Court approve a change order to Sierra's contract for enhancements that would allow secured access to ECFS by the Tarrant County Criminal Defense Lawyers Association for conducting electronic discovery of criminal court cases. The enhancements also enabled functionality and integration between the ECFS, Indigent Defense Online (IDOL), and the Differentiated Felony Case Management (DFCM) systems, resulting in a more seamless magistration and attorney-appointment process. This change request totaled \$108,080, funded by an IDOL system grant for \$25,000 and the general fund.

The District Attorney's Office continues to use the original ECFS platform developed by Sierra. In FY2006, XPedient Technologies (a.k.a. John Bergman) began modifications and provided system support and maintenance of ECFS under various contracts approved by Commissioners Court through FY2008. In February 2008, the Commissioner's Court approved the award of the Application Development and Support of the ECFS contract (RFP 2008-020) to XPedient in an amount not-to-exceed \$1,256,976. The contract provided an option to renew the contract five additional twelve-month periods. As of October 31, 2010, Tarrant County has exercised the option to renew XPedient's contract three times. Three purchase orders were also authorized for XPedient to bill services related to ECFS through Vignon Corporation.

As of the date of our report, none of the ECFS applications developed by XPedient is in production. Rather, the District Attorney's Office continues to use the system provided by Sierra and modified by XPedient. The contract between the County and XPedient, awarded in February 2008, also includes maintenance and support of Sierra's ECFS.

The following table summarizes the County's contracts and purchases orders relative to the ECFS project between Sierra, John Bergman/XPedient, and Vignon and the respective amounts paid by the County.

<i>Contractor</i>	<i>Contract Amount(s)</i>	<i>Total Amount Paid</i>
Sierra	\$549,700	\$549,643.10
John Bergman/XPedient	\$5,398,328	\$4,139,033.87
Vignon	\$740,795	\$544,214.56
TOTALS	\$6,688,823	\$5,232,891.53

The Sierra and Vignon contracts were related to the development of ECFS. The County paid John Bergman/XPedient \$898,240 for maintenance and support of the ECFS developed by Sierra, \$200,000 for the User Experience Model, and \$91,500 for Break/Fix Support. The remaining amount paid, about \$2,949,294, related to development services. As indicated in Observation 2, we do not have a way of identifying other payments made to contractors for services related to the ECFS project.

OBSERVATIONS AND RECOMMENDATIONS

Observation 1 – Management oversight and segregation of duties was not adequate.

During our review, we found that management's oversight of the ECFS project was not adequate. Specifically:

1. On August 13, 2010, the Auditor's Office received 15 Travel Reimbursement Requests totaling \$9,923.66 for travel dating back to August 2008 by the IT Project Manager. The travel was primarily for trips to the Council of Urban Counties (CUC) in Austin. Of this amount, \$2,173.78 was for stays at a timeshare resort located in Canyon Lake, Texas, about 52 miles from the CUC. We found that the IT Project Manager's wife owned the timeshare at this resort, yet the Project Manager requested reimbursement from the County for lodging at the resort ranging from \$210 per night to \$270 per night. Authorized senior management had approved the Requests for Reimbursement. As of the date of this report, the Auditor's Office has not paid these Travel Reimbursement Requests.

However, the Auditor's Office had previously reimbursed the Project Manager \$2,940.55 for stays between August 2005 and April 2008 at this same timeshare property. Authorized senior management had signed the Requests for Reimbursement.

2. Tarrant County issued Request for Proposal (RFP) #2008-020 for Application Development and Support of the District Attorney ECFS. On November 13, 2007, the County held a mandatory pre-proposal conference. Ten companies attended the conference; however, only three companies submitted a proposal ranging in amounts from \$515,500 to \$2,080,000. According to Purchasing Department staff, they specifically evaluated the financial components of the proposal and IT staff evaluated the technical components. Per our discussions with IT staff, we found that a committee of three individuals, including the Project Manager, evaluated the proposals. IT staff could not provide documentation of the technical evaluation of the RFPs, including individual reviewer's score sheets. Rather, IT staff indicated that the review committee collaboratively evaluated the proposals to determine the scores.
3. The IT Project Manager made decisions outside the terms of the contract with regard to system specifications, such as the type of system platform required, without consulting with executive management or initiating a change order to the contract. This decision required additional work by the vendor and therefore increased the cost of the project.

4. We also noted that no one in IT had an understanding of the ECFS project with regard to the deliverables received and total funds spent on the project except for the Project Manager. Since the system is not in production, little documentation exists supporting the receipt of the deliverables. Neither the vendor nor IT could provide documentation supporting the work plan or acceptance of several deliverables. However, a new XPedient employee was hired in September 2008 and project documentation improved.

Furthermore, one individual, the IT Project Manager, was engaged in the following activities related to contracting and project management:

- Defining the scope of work included in Request for Proposals
- Evaluating proposals
- Selecting the winning vendor
- Negotiating the contract with the selected vendor
- Approving vendor invoices for payment
- Recommending the option to renew the vendor's contract
- Approving and accepting work plans and deliverables
- General oversight and decision-making with regards to the project

In our opinion, one person should not be involved in all of the above functions, especially without significant management oversight. Rather, these functions should be segregated among different individuals, including executive management, when possible.

Due to the lack of oversight and segregation of duties, the County could be vulnerable to fraud, collusion, and errors. This creates a situation where a person could commit fraud (such as accepting a bribe in exchange for an inflated contract price) or commit an error that may not be detected. This also creates an opportunity for one person to make decisions that may not be in the best interest of the County.

Recommendations

Separation of duties is one of the key concepts of internal control processes for the prevention of fraud and errors. Specifically, functions should be separated so that no one person can perform all of the procurement steps. If appropriate segregation of duties is not possible, management review and oversight is critical. As it relates to IT projects, IT personnel who are responsible for the monitoring and oversight of projects **should not** have the authority to recommend or modify the contract terms without additional review. Rather, the CIO should reserve these tasks for executive management, independent from the project management role.

We also recommend that the CIO implement a process in which management requires documentation supporting all deliverables. The County Administrator should also consider having a project oversight committee consisting of both IT and non-IT staff.

Observation 2 - The County's total investment related to the ECFS project could not be determined.

Background

The District Attorney's Office continues to use the original ECFS platform developed by Sierra and modified by XPedient in fiscal year 2007. XPedient still supports and maintains ECFS. During fiscal year 2008, XPedient began development of a new and expanded ECFS system, but none of the components is in production.

Observation

During our review, we could not determine the County's total costs incurred for the ECFS project. A total budget had not been established for the ECFS project. We found this to be true for IT projects in general. We also noted that the contract between the County and XPedient included services for maintenance and support of the original ECFS platform.

To facilitate the County's GASB reporting requirements, the County uses the SAP internal order system to track capitalized costs. Costs capitalized include relevant costs incurred during the application development stage of the project and any significant upgrades and/or enhancements to an existing system. Other costs, including preliminary work, training, and data conversion costs, are not capitalized and therefore are not recorded in the internal order system. We also noted that it was common for a contract to be executed with a consultant for services related to multiple projects. For example, the XPedient contract authorized by Commissioners Court in April 2007 for \$184,000 was for review, assessment, and functional enhancements to the ECFS, IDOL, and DFCM systems.

The County has not implemented a project tracking system allowing the ability to determine total costs incurred for IT capital projects. Although we identified payments made to Sierra, John Bergman, XPedient, and Vignon in excess of \$5.2 million, we did not have the ability to identify payments made to other contractors for services related to the ECFS project. Also, the ability to determine total cost for capital projects is further hindered when the County initiates a single contract with a vendor for services related to multiple projects or when the contract includes maintenance and support for another system.

Recommendation

The CIO should consider implementing a process to track the total costs of major initiatives. The use of SAP internal orders, currently used to capitalize assets, may be a viable option. At an additional cost, SAP also offers a Portfolio and Project Management application that provides information such as:

- project budgets, actual costs, and forecasts
- allocation of resources, including personnel and management
- schedules and timelines for deliverables and milestones
- approval and acceptance of deliverables

Last, the CIO should ensure that separate contracts are executed for maintenance and support services.

Observation 3 - The scope of work was not always clearly defined in the fixed fee lump sum contracts.

Background

A maximum not-to-exceed (NTE) contract requires a well-defined scope of work. The contract cost is fixed for a specific scope of work and the cost should not be increased to complete that given amount of work. The contractor is responsible for cost overruns, unless the NTE amount is increased via formal change order resulting from additional work requested by the client. Typically, change orders are not used for price overruns, errors, or omissions.

Observation

We observed that the original contract (RFP 2008-020) included a schedule of deliverables and payment schedule. However, the subsequent optional contract renewals for fiscal years 2009, 2010, and 2011 **did not** include a schedule of deliverables and respective payment schedule. As a result, it was impossible to determine whether the County received value for the amount of its investment. Furthermore, the County could not hold the contractor accountable for services received versus what was expected.

Recommendation

The CIO should ensure that **all** contract renewals include a detailed schedule of deliverables and the appropriate payment schedule.

Observation 4 – IT staff did not comply with County policies regarding the procurement of contracts.

Background

Local Government Code, Chapter 262, Subchapter C. Competitive Bidding in General, excludes certain goods and personal or professional services from competitive bidding. According to Purchasing Policies and Procedures, other personal or professional services are those services usually referred to as a professional service, but not specifically defined or covered in the referenced statute. Examples include computer programmers, lawyers, facilitators, etc. Various court opinions have defined these other professional services as services requiring technical skill and expertise, and thus exempt from competitive bidding.

To ensure vendors a fair and equal opportunity to do business with Tarrant County, Purchasing Policies and Procedures also state that professional services, including high technology goods and services, must be procured using the Request for Proposal process, unless the Commissioners Court approves another procedure, such as the use of a State contract or emergency purchase. In 2006, the RFP process was required when the cost of the goods and services were expected to exceed \$25,000. Effective September 1, 2009, the policy increased this amount to \$50,000 as a result of changes to the statute. The RFP solicits proposals from vendors in response to the County's requirements, along with contractual terms and conditions. The formal contract, reviewed by the District Attorney's Office, must be approved by the Commissioners Court.

Furthermore, current Purchasing Policies and Procedures state that the award of any contract from the State contract shall be in writing and approved and signed by either the Purchasing Agent, if less than \$50,000, or the Commissioners Court, if more than \$50,000. The policy also states that Commissioners Court approval **is not** required for high-technology, computer-related purchases made directly from the State contract through the Department of Information Resources (DIR) regardless of the cost. In addition, the policy states that all emergency purchases considered exempt from the RFP process must be processed through the Purchasing Department. The Purchasing Agent will submit these as an agenda item for Commissioners Court approval.

With the exception of construction contracts, it is the policy of Tarrant County that change orders be processed through the Purchasing Department.

Furthermore, the contract between XPedient and the County states:

Any additions to the maximum compensation for a given year will be subject to a limit of 25% of the maximum compensation for that fiscal year and will require the approval of Tarrant County Commissioners Court prior to commencement of billable activities.

Observation

During our review, we found the following:

1. The RFP process was not used to procure services related to the \$30,000 and \$184,000 contracts with John Bergman although the Commissioners Court approved both contracts (Court #98950 and #100444). IT staff indicated that both contracts were due to “emergency” conditions. However, IT and the Purchasing Department could not provide documentation supporting their assertion. Furthermore, an emergency condition was not described on the Court Communication presented to Commissioners Court.
2. IT staff requisitioned three purchase orders (POs) during fiscal year 2010 to compensate for XPedient services in excess of the contracted amount. The IT Project Manager requisitioned the purchase orders to initiate contracts with Vignon Corporation, a company from the State’s contract catalog. An IT clerical staff initiated the requisitions and each was routed to at least three individuals for approval, including the Director of Strategic Planning. Upon receipt of the approved requisitions, the Purchasing Department issued the purchase orders. Since the purchase requisition did not make reference to the ECFS project, Purchasing Department staff did not realize there was an existing contract for XPedient’s services. Since the additional services were purchased under the State contract, the purchase orders were not presented to Commissioners Court for approval. XPedient billed services in excess of the fiscal year 2010 contracted amount through the Vignon purchase orders. According to XPedient staff, they were instructed to use this billing process by the IT Project Manager. Furthermore, this billing process cost XPedient about 10% of its contracted fee.

As a result, IT staff authorized an additional \$740,795 during fiscal year 2010, or 58.9%, in excess of the contract amount authorized by the Commissioners Court. During fiscal year 2010, the County paid \$541,896.43, or 43.1%, in excess of the XPedient contract amount. This amount is computed by considering the total paid under the purchase orders, less the contract amount remaining on the second option for FY2010 (see the tables below). The purchase requisitions and subsequent purchase orders did not indicate that these services were to be provided by XPedient employees or for the ECFS project. This process does not provide transparency to determine the total cost to date for the ECFS system.

The following tables describe the contracts and purchase orders indicated above.

Contracts Approved by Commissioners Court

<i>Request For Proposal Number</i>	<i>Court Number</i>	<i>Court Approval Date</i>	<i>Contract Amount</i>	<i>Amount Paid</i>	<i>Contract Balance</i>
	98950	9/19/06	\$30,000	\$30,000.00	-0-
	100444	4/24/07	\$184,000	\$184,000.00	-0-
RFP 2008-007	101961	11/13/07	\$200,000	\$200,000.00	-0-
RFP 2008-020	102560	2/19/08	\$1,256,976	\$1,256,976.00	-0-
First Option, FY09	104088	9/30/08	\$1,213,400	\$1,213,400.00	-0-
Second Option, FY10	106403	9/8/09	\$1,256,976	\$1,254,657.87	\$2,318.13
Third Option, FY11	108945	9/28/10	\$1,256,976	-0-	\$1,256,976.00
TOTALS			\$5,398,328	\$4,139,033.87	\$1,259,294.13

Purchase Orders Not Approved by Commissioners Court

<i>Purchase Order Number</i>	<i>Purchase Order Date</i>	<i>Amount of Purchase Order</i>	<i>Amount Paid</i>	<i>Purchase Order Balance</i>
4400004305	3/16/10	\$ 30,166.40	\$30,166.40	-0-
4400004351	5/5/10	\$316,747.20	\$215,689.76	\$101,057.44
4400004393	6/11/10	\$393,881.60	\$298,358.40	\$95,523.20
TOTALS		\$740,795.20	\$544,214.56	\$196,580.64

Furthermore, IT staff is currently holding six additional invoices from Vignon totaling \$140,772.80 for services provided by XPedient staff.

Recommendations

The CIO should ensure that County Purchasing Policies and Procedures are followed. Specifically:

1. In the event that an emergency condition arises, IT staff should coordinate with the Purchasing Department to obtain Commissioners Court approval for the emergency expenditure. Documentation should also exist showing the reasons for the emergency purchase or contract.

2. All contract change orders should be processed through the Purchasing Department. Any change orders that result in a contract exceeding \$50,000 in the aggregate must be approved by the Commissioners Court.
3. The County should modify its current policy to require that all purchases in excess of \$50,000 made from State contracts, including high-technology and computer-related purchases, be presented to Commissioners Court for approval.

The CIO should also implement procedures whereby all purchase orders relating to an existing project are clearly identified. For example, the three purchase orders described above should reference the ECFS project. This would also provide the information necessary for the Purchasing Department to determine whether the purchase requisition is appropriate and whether an existing contract exists for the same contracted service. This would also provide transparency and accountability with regard to the overall project.

Regarding the six unpaid Vignon invoices, the County Administrator and the CIO should brief the Commissioners Court for consideration of payment.

Observation 5 – County policy should be clarified related to food, lodging, transportation, entertainment, and any other benefit provided by a vendor to certain employees.

Background

The County's policy related to gifts and other benefits received by employees are outlined in Section 5.02 of the Civil Services Rules. This section provides guidance related to employees accepting gifts from contractors, vendors, or other persons who deal with Tarrant County. This policy provides the same guidance and exceptions as allowed by Sections 36.08 and 36.10 of the Texas Penal Code and covers food, lodging, transportation, and entertainment.

Currently, the County has not adopted a policy requiring financial disclosure. Such a policy is allowed by Section 159.033, Financial Disclosure Reporting Systems, of the Texas Local Government Code that states:

- (a) *The commissioners court of the county may adopt by order a financial disclosure reporting system for county officers, precinct officers, county judicial officers, candidates for those offices, and county employees.*
- (b) *The commissioners court shall prescribe the items required to be reported and the times the report is due.*
- (c) *If reporting is required, the commissioners court may restrict the reporting requirement to a limited part of county employees if all employees with similar jobs are required to report.*

Observation

During our review, we found that County employees participated in certain events that could impair the employees' objectivity and independence. Although these activities may not violate any law or current County policies, we believe they could impair the objectivity and independence with regard to employee-vendor relationships, or the **appearance** of such.

Specifically:

1. XPedient's financial data included expenditures described as "Meals and Entertainment" that referenced certain County employees from IT and the District Attorney's Office. The expenditures were made to various downtown restaurants, bars, and local golf courses totaling approximately \$4,000 during the period of January 2008 through January 2010. Of this amount, we could not determine the amount specific to County employees versus XPedient employees. The financial data did not show any additional expenditures described as Meals and Entertainment after January 2010.
2. The District Attorney's Office and Information Technology hosted a meeting for 33 representatives from nine other counties to consider purchasing a portion of the ECFS in February 2008. Since this presentation was all day, breakfast and lunch was provided to the attendees. The vendor who provided the meals is the IT Project Manager's wife. The IT Project Manager was on the list of attendees attached to the invoice.
3. Two vendors hosted parties on separate occasions for two County employees from IT and the District Attorney's Office. Both County employees have the ability to exercise discretion and recommendations regarding the vendors' contracts or payments.

Recommendations

To help reduce the appearance of a lack of independence between employee-vendor relationships, employees should limit food, lodging, transportation, and entertainment with vendors. The County Administrator should clarify Section 5.02 of the Civil Services Rules to specifically define the appropriate types and frequency of entertainment provided by vendors to County employees. We also recommend that the County Administrator implement procedures whereby this policy is periodically re-emphasized to employees who have ability to commit County resources.

We also recommend that the Commissioners Court consider adopting a policy requiring periodic financial disclosure reports from certain county officers, precinct officers, county judicial officers, candidates for offices, and county employees as allowed by Section 159.033 of the Texas Local Government Code.

CLOSING REMARKS

We thank the staff from the District Attorney's Office, the County Administrator's Office, and Information Technologies, along with staff from XPedient Technologies, for their cooperation in the completion of this project. If you have any questions regarding the contents of this report, please do not hesitate to contact me.

Very truly,



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County Auditor

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