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State Auditor

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**State of New Mexico**  
**OFFICE OF THE STATE AUDITOR**

October 17, 2016

**Via Email and U.S. Mail**

Mayor Sam Cobb  
City Commissioners  
City of Hobbs  
200 E. Broadway  
Hobbs, New Mexico 88240

Re: City of Hobbs Procurement Practices

Dear Mayor Cobb and Commissioners:

The Office of the State Auditor (OSA) received various concerns regarding the City of Hobbs. This information was routed to the OSA Special Investigations Division (SID) for review.

Specifically, the OSA received information suggesting potential procurement violations related to the following agreements:

- A waste and recycling consulting agreement with the Medico Consulting Group, LLC (\$28,500); and
- A legal services agreement with Zarwin, Baum, Devito, Kaplan, Schaer & Toddy, P.C. (\$24,085).

As part of our fact finding procedures, we discussed the procurements with the City and received supporting documentation related to the agreements mentioned above. As a "home-rule" municipality, the City follows its own purchasing policy (Chapter 3.20 of the Hobbs Municipal Code), which has the stated purpose of enabling the City to "purchase quality materials and services needed at competitive prices." Pursuant to the City's procurement policy related to professional services, expenditures under \$60,000 are procured at the direction of the City Manager "in accordance with professional services procurement regulations promulgated by the department of finance and administration, the general services department or central purchasing office with the authority to issue regulations."

With regard to the recycling agreement, in March 2014, the City issued a Request for Proposal to examine the City's waste and recycling programs and systems. The criteria the City utilized to evaluate the two proposals it received were qualifications (40%), experience (40%), and the capacity and capability of the consultant (20%). However, price was not part of the evaluation criteria for the proposal. Although cost is not the single determining factor in selecting which services will best meet the needs of a city, we believe it is crucial to consider price in the evaluation process to ensure a fair and reasonable price is obtained.

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In November 2014, the City also entered into legal services agreement with Zarwin, Baum, Devito, Kaplan, Schaer & Toddy, P.C. for legal services related to the police department's video surveillance network. The City did not seek any additional proposals or quotes from any other firms. While the City's procurement policy does not require additional quotes for professional service expenditures under \$60,000, state procurement regulations relating to small purchases of professional services (1.4.1.52 NMAC), which are incorporated into the City's procurement policy by reference, encourage agencies to contact at least three businesses for written offers before selecting a contractor. Furthermore, these provisions require an entity to "negotiate a contract for the required services at a fair and reasonable price..." Nothing in the supporting documentation reviewed by OSA indicates the City took any steps to negotiate the law firm's contract, and the lack of other quotes makes it difficult to assess whether the \$475/hour billing rate was reasonable.

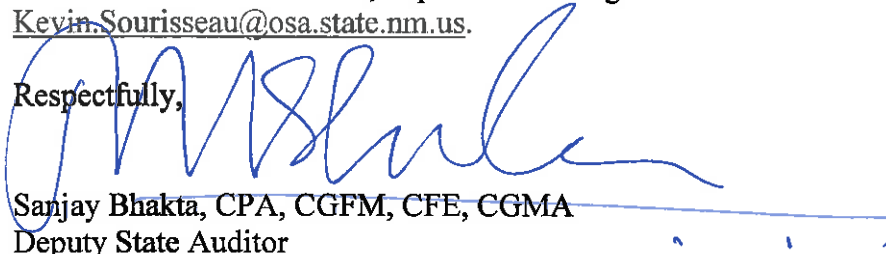
Although both of the professional agreements were under the \$60,000 threshold and were approved by the City Manager, the contracts were handled in a manner that raises significant uncertainty as to whether the City received competitive prices. Additionally, the fact that both firms are from Pennsylvania and have connections to the City Manager's prior employer raises the appearance that the contracts may not have been at arm's length. In such circumstances, obtaining more than one price quote can mitigate concerns that work is being improperly directed to a specific vendor at the expense of taxpayers.

As a "home-rule" city we recognize that Hobbs does not have to follow the state procurement code in these matters, and accordingly that City ordinances, rather than state law, dictate the basis for which this office tests compliance. As a matter of course, however, this office recommends that a "home-rule" entity's procurement code should meet or exceed the basic protections provided for in state law and regulations for ensuring that the costs entities incur are reasonable and that the process is fair. It would be in the best interest of the City to review its procurement code and operating procedures, and make any changes that may be necessary, to avoid these types of situations going forward.

The OSA will continue to monitor the City's procurement practices as part of the normal audit process, and in accordance with standard procedures, should additional information come to light suggesting criminal wrongdoing, our office will notify the local District Attorney's Office.

Thank you for your attention to these matters. If you have any questions, please do not hesitate to contact Kevin Sourisseau, Special Investigations Division Director, at 505-476-3800 or [Kevin.Sourisseau@osa.state.nm.us](mailto:Kevin.Sourisseau@osa.state.nm.us).

Respectfully,

  
Sanjay Bhakta, CPA, CGFM, CFE, CGMA  
Deputy State Auditor

- cc: J.J. Murphy, City Manager
- Toby Spears, CPA, Finance Director
- Rick Lopez, Local Government Division Director, Department of Finance & Administration
- Morgan Browning, RPC CPAs + Consultants, LLP