



***Performance Audit***

***Follow –Up Audit of Contract Monitoring Procedures***

***Durham County Internal Audit Department***

***June 15, 2015***



Richard Edwards  
Internal Audit Director  
[rcedwards@dconc.gov](mailto:rcedwards@dconc.gov)

Internal Audit Department  
200 E. Main Street, 4<sup>th</sup> Floor  
Durham, NC 27701  
(919) 560-0042  
FAX: (919)560-0057

Audit Committee:  
Harrison Shannon  
Brenda Howerton  
Michael Page  
Manuel Rojas  
Arnold Gordon

June 15, 2014

Mr. Wendell Davis,  
County Manager

Dear Mr. Davis:

The Internal Audit Department has completed its follow-up audit of the County's contract monitoring processes. The follow-up focused contract monitoring procedures in eight departments to determine if (1) departmental representatives have systems in place to monitor its contracts, (2) contract monitoring processes are in line with best practices, and (3) improvements can be made to improve monitoring effectiveness.

Internal audit identified improvements, that if implemented, would provide greater assurance that "we get what we pay for" with our contracting partners. The improvements are recommendations to comply more fully with best practices already identified by the County. The recommendations are:

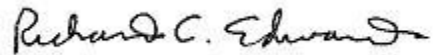
1. Re-institute a contract administration and monitoring training program.
2. Add contract language that more specifically address dispute resolution processes.
3. Implement and document processes to assure that vendors are not paid without assurance that services or products are satisfactory.
4. Implement and document closeout procedures that ensure vendor worthiness to receive follow-on contracts.

Generally Accepted Government Auditing Standards require that reports be issued to those responsible for governance or those that can correct identified weaknesses. Because of the decentralized structure of contracting processes within the County, internal audit addresses the report to you to assign responsibility as you see fit. In the past, the County Manager addressed the issue of contract monitoring by holding himself responsible and working with Department heads and the County Attorney's Office to implement contract monitoring procedures.

This draft report has been shared with Deputy County Attorney Willie Darby. He agrees in principle to the findings and recommendations in the report and has held discussions regarding contract monitoring with the Purchasing Division, especially around contract administrator training. I have

also discussed this report with the manager of the Purchasing Division who expressed desires that contract monitoring efforts be enhanced. The two entities have expressed a willingness to work together to facilitate a quality monitoring program that reduces financial risks to the County and ensures that services are satisfactory.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Edwards". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping underline.

Richard Edwards,  
Internal Audit Director

CC: Audit Oversight Committee  
Board of County Commissioner

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## INTRODUCTION

The Audit Oversight Committee approved this performance audit in the fiscal year 2015 Annual Audit Plan. The audit followed up on efforts to improve contract monitoring processes that began in May 2012. At that time, the County Attorney's Office developed policies and procedures for monitoring contractor performance, provided training, and issued a contractor monitoring guide.

The audit addresses improvements or enhancements that can be achieved in the County's efforts to monitor contractor performance. The improvements we recommend are not due to legal or regulatory non-compliance but more related to non-adherence to industry best practices. Best practices in regards to contract administration and monitoring are to ensure that the contracting agency obtains quality goods and services and protects against the risk of claims in court and other costly contracting procedures.

## AUDIT OBJECTIVES

Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.<sup>1</sup>

We conducted this audit in accordance with generally accepted government auditing standards. The standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. I believe the evidence obtained provides a reasonable basis for the findings and conclusions based upon the audit objectives.

The audit objectives were to answer three specific questions. The questions were:

1. Do departmental representatives have systems in place to monitor its contracts?
2. Are contract monitoring processes in line with best practices for contract monitoring?
3. What improvements can be made to improve monitoring effectiveness?

## SCOPE AND METHODOLOGY

The scope of the audit was a review of contract monitoring practices, policies, and procedures in departments that administer service contracts requiring on-going service commitments with on-going payments. An example of such a service contract is the

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<sup>1</sup> Comptroller General of the United States, *Government Auditing Standards*, Washington D.C.: U.S. Governmental Accountability Office, 2011, pp.

janitorial services contract in which services are required on a daily basis and payments are provided to the contractor monthly.

Specific audit steps included:

1. Reviewing contracts to identify language or clauses that address performance monitoring.
2. Administering a survey to eleven departments in regards to their contract administration and monitoring procedures.
3. Interviewing representatives and reviewing monitoring documentation in eight departments to follow-up on their survey responses.<sup>2</sup>
4. Obtaining and reviewing best practices for contract administration and monitoring.

The eleven departments that participated in the review were; (1) Tax Administration; (2) Finance; (3) Information Technology; (4) Criminal Justice Resource Center; (5) Fire Marshal; (6) Emergency Medical Services; (7) Health and Human Services; (8) Social Services; (9) Human Resources; (10) Engineering; and (11) General Services. We did not conduct follow-up with IT, Emergency Medical Services, and General Services departments.

We conducted fieldwork for the audit engagement between December 8, 2014, and February 28, 2015.

## BACKGROUND

As of January 2015, Durham County had approximately 856 service contracts in force. Those contracts were valued at approximately \$34.74 M. The County's contracting process is decentralized; each department is responsible for structuring its contracts, with assistance from the Finance Department's Purchasing Division and the County Attorney's Office. Neither the Purchasing Division, whose primary function is to obligate funds, and ensure that the requirements of the County Attorney's office is incorporated into each contract, nor the County Attorney's Office, has oversight over contracts once they have been awarded. Each department is responsible for its contract administration and the degree to which the contract is administered is left to the individual department.

In May 2012, the County Attorney's Office published and distributed guidance to departments in a document titled "*A Guide to Effective Contract Monitoring*." The document provided guidance to departments on managing post as well as pre-award monitoring processes. This effort was in response to the County Manager requiring a formalized contract monitoring process as a result of an internal audit of the Department of Social Service's Family's First program in which the lack of contract monitoring underlined numerous performance deficiencies and ineffective dispute resolution efforts.

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<sup>2</sup> We did not conduct a detailed review of three departments that participated in the survey because we did not see reasons to believe their responses would alter significantly from the eight we reviewed in-depth.

The initial contract monitoring efforts appeared to be moving forward; departmental representatives were trained, forms were developed, and the monitoring program began its first steps. The expectation at the time was that the program would be refined as knowledge and experience was gained. However, since the initial stages of the program, the County Attorney representation primarily responsible for designing the monitoring program resigned her position with the County and training was not continued. Training is an essential element of the monitoring process. According to the guidance mentioned above, training was to take place annually.

Best practices recognize the need for contract monitoring throughout the entire life of a contract from solicitation and award to post award and closeout analysis. The following is an excerpt from an article in "*Contract Management*".<sup>3</sup> In that article, the author, Gregory Garrett stated that:

“U.S., government audits conducted by numerous agencies and watchdog groups have indicated the real and compelling need for improved post-award contract administration by government and industry. In both the public and private business sectors, contract administration is often an afterthought, usually insufficiently staffed in both the quality and quantity of resources (contract manager, project manager, technical managers, property managers, supply-chain/subcontract managers, etc.). Typically, government and industry focus their time, attention, and key resources on soliciting, proposing, negotiating, and forming the contract—simply said, getting the deal. As a result, there are often very limited resources to manage, administer, and close out the deal. While project management and earned value management have received significant focus and attention in recent years for the value-added capabilities they can provide, few organizations have paid much attention to post-award contract administration and closeout activities, which are equally vital to business success.”

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<sup>3</sup> World Class Contracting, 4<sup>th</sup> Edition, Gregory A. Garrett, published by CCH Incorporated, Chicago, IL, 2007

## FINDINGS AND CONCLUSIONS

We found various degrees of monitoring execution across departments and some cases in which departments did not fully adhere to the County's best practices guide. The degree of monitoring extended across an execution range from more structured and documented processes to minimal efforts with little documentation of processes or results. We did not identify situations in which contractors were paid for services or rewarded with follow-on contracts in spite of poor performance. However, practices in several departments did not include documented formal closeout procedures, or documentation showing that contractors adhered to all reporting requirements, making it uncertain that contractors provided services at specified levels. Additionally, on-going training, a major factor in monitoring success, according to the County's guide, was suspended throughout the County. The lack of best practice implementation can leave the County at risk of paying for poor performance and awarding follow-on contracts to contractors that do not produce at optimum levels. It also exposed the county to the risk of court claims.

In addition to the procedures by which departmental representatives are monitor to a lesser or greater degree, a factor that needs consideration is the organization of the County's contracting and contract administration operations. These processes are de-centralized; there is no corporate oversight to assure that departments act responsibly in its contract administration and monitoring processes. The result is that each department literally "does

**Individual departments are responsible for monitoring its contracts. There is no oversight of the processes or the extent of monitoring.**

its own thing" in regards to contract monitoring and makes its own judgments in regards to how effective its processes are.

When the monitoring program began, each department's contract administrators were invited to attend training sessions. The departments generally used its administrative assistants as contract administrators. This

role may not have been feasible for the assistant administrators because contract administrators generally have bachelor degrees in business or related fields. We did not check the education and training of the administrators but we believe that only a handful of contract administrators have that level of education.

This audit report does not suggest that the procurement and purchasing function be centralized or that each department hire a specialist in contract administration. However, in considering the County's goals and objectives for contract administration and monitoring, these are matters that may benefit from focused discussion.

### Current practices allow variances for contract peculiarities and departmental requirements

Under the current guidance each department is allowed to develop its processes based upon its view of the contract's complexity. The guidance states:

"This Guide has been created as a first step in establishing a county-wide, uniform monitoring system that can be duplicated from department to



department. Each department will have the responsibility for creating its own unique monitoring methods depending on the service.”

As such, a central office that oversees contract monitoring does not exist, therefore; departments are not accountable outside of themselves.

The following exhibit points out the best practices included in the County’s guidance measured against departmental practices to implement them. These best practices are recognized by national organizations with expertise in government purchasing.

Exhibit 1  
**Best Practices for Contract Monitoring<sup>4</sup>**

<b>Current Best Practices In County Processes.</b>	<b>depts. that follow</b>	<b>depts. that do not follow</b>
Written policies and procedures	7	1
Recent training in contract monitoring	0	8
Communicating clear expectations to vendors	8	0
Organized Contract Files at Contract Administrator level	1	7
Payments linked to satisfactory performance	5	3
Regular progress reports/ongoing monitoring	5	3
Required reports/data for every service contract	5	3
On-site monitoring when necessary <sup>5</sup>	4	0
Closeout procedures <sup>6</sup>	0	8
Performance resolution	0	8

Source: The best practices were reprinted from “A Guide to Effective Contract Monitoring.” Durham County Attorney’s Office, May 17, 2012.

As the exhibit shows, best practices were adhered to with various degrees of compliance. The lack of best practice implementation creates risk that unsatisfactory performance will be compensated, and that unworthy contractors will be awarded future contracts. The following sections points out where best practices were more consistently not followed and the risk associated with that practice.

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<sup>4</sup> These best practices are standard throughout the contracting industry. The attorney references the American Management Association and the National Institute of Government Purchasing. Internal audit also reviewed a best practices developed by the Office of Federal Procurement Policy, the state of Georgia, and several American universities.

<sup>5</sup> Only four departments had contracts that required on-site monitoring. All applicable departments conducted on-site monitoring as appropriate.

<sup>6</sup> Each Department disclosed through discussions that they had close-out procedures although they were not always documented. The Auditors concluded that there may have been some form of closeout but that it should be more formally organized according to the best practice for “organized files.”

## Training suspended for Contract Administrators

When the County instituted its contract monitoring program in 2012 all departments took advantage of the training opportunity. The 2012 guide states that training should occur as least annually, however; training did not continue on an annual basis. The person largely responsible for the training is no longer employed by the County and the focus on training did not continue. The

**Training, a necessary ingredient in the monitoring process has been discontinued. Training increases the likelihood that individuals will monitor contracts reliably.**

guidance stated that “that training increases the likelihood that individuals will monitor contracts reliably if given the appropriate background knowledge related to contracts.”

The guide states that training is essential to quality performance. As such, the quality of contract monitoring is related to the amount of training and awareness those involved in the monitoring process have at their disposal. Internal audit believes some of the weaknesses cited below are related to the lack of training. Therefore, internal audit believes the training program should be reinstated and provided annually per the

County’s Contract Monitoring guidance.

### **Files were not organized at the contract administrative level.**

Files were not organized and maintained in a common file or common location in seven of eight departments. Best practices states that “contract files should be organized so “someone can reconstruct and understand the history of the contract in the absence of the contract administrator.” The best practice recommends that all contract information including the contract monitoring plan, monitoring reports, invoices, and vouchers, records of complaints, and vendor disputes along with other information be maintained in the file.

Instead of comprehensive files maintained in one location, contract information was maintained in various locations within the departments and among various employees involved in the contract administration process. Although we did not find evidence that such practices resulted in the lack of control over contractor performance, it violated the intention that files be maintained in a manner that it can be readily accessed and reviewed. The risk is that decisions regarding contractor performance or other pertinent information could be overlooked by those authorized to make contracting decisions.

### **Payments Were Not Always Linked To Satisfactory Performance**

The practice in three of eight departments did not assure that payments were linked to satisfactory performance. For those departments regular progress reports/ongoing monitoring were not evident in the files. Best practices state that departments should not make a payment to a vendor unless the

**A basic premise is that before a payment is made, contract administrators should assure themselves that the product or service is satisfactory.**

department has some assurance that the vendor is making progress towards fulfilling the contract. The guide further states that for contracts involving monthly or quarterly payments, “departments should require a vendor to submit programmatic reports in advance of or concurrent with its invoices.” Records in three departments did not show evidence

of regular progress reports or ongoing monitoring, therefore; the auditor concluded that payments were not linked to satisfactory performance in a documented manner that provides assurance as intended by the County's guidance. The risk is that unsatisfactory performers could obtain payment for substandard service.

## **Resolution of Performance Quality Dispute Processes Needs Greater Attention**

The guidance regarding contract monitoring fall short of industry standards in one important way. In summary, industry standards suggests that contracts include a dispute resolution clause that (1) detail a procedure for the vendor to appeal any action (financial penalty, poor performance report, contract termination) with a higher purchasing official within the agency and that the contract should (2) explicitly state the title of official to hear the appeal, and (3) state a certain time period for the action. Best practices further state that appeals should be settled by negotiation or arbitration, with the dual goal of protecting the interests of the County and avoiding a claim made in the courts. The County's dispute resolution process is not designed in the fashion suggested in best practices. The County's process relies heavily upon contract termination and as such, runs the risk of court claims.

The County is aware of the need for a contract dispute resolution process and addresses the issue in its guidance. The guidance states that contractors will be held responsible for performing as defined in the statement or work. However, these statements are not specific in regards to disputes and the rights of each contracting partner. Current guidance states that when conflicts are not resolved quickly, the department should have procedures in place to notify the County Attorney's Office at which point actions such as penalties and contract termination is considered. The guidance further states that "department procedures and a contract clause should detail at what level of noncompliance the vendor will receive a letter threatening terminating of the contract."

**A formalized dispute resolution process is desirable in order to reduce the risk of claims made in the courts.**

Some disputes may rise to the level of termination, however; clear steps for both the contractor and the user are suggested as a means of moving through the dispute resolution process. Although a formalized contract dispute resolution process does not guarantee that all issues will be resolved, it provides a surer footing for the County in the event contract termination is the result. It may also avoid the costly process of undergoing

another contract procurement and award process and may facilitate continuation of services without disruption.

## RECOMMENDATIONS

Contract administration and monitoring programs are decentralized; a central unit is not assigned oversight responsibility of these areas. In the past, discussions of the requirements to effectively manage contracts resided with the County Manager and responsibility was parceled out as necessary. Therefore, the following recommendations are made to the County Manager for his administration of the recommendations.

In accordance with the best practices discussed above, we recommend that the County:

1. Re-institute a contract administration and monitoring training program.
2. Add contract language that more specifically address dispute resolution processes
3. Implement and document processes to assure that vendors are not paid without assurance that service or products are satisfactory.
4. Implement and document closeout procedures that ensure vendor worthiness to receive follow-on contracts.