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## HIGHLIGHTS

Highlights of City Auditor Report #1801, a report to the City Commission and City management

### WHY THIS AUDIT INQUIRY WAS CONDUCTED

This audit inquiry was conducted in response to information obtained by the City Auditor and the Independent Ethics Officer regarding a potential conflict of interest that pertained to acquisitions of engineering services within the Water Resources Engineering (WRE) divisions of the Underground Utilities and Public Infrastructure (UUPI) department. The potential conflict of interest involved the UUPI Assistant General Manager (AGM) and an engineering firm, DPB & Associates. The AGM's brother is the managing engineer and part owner of DPB & Associates. Because of the sibling relationship, concern had been expressed that the AGM's approval of the award of City work (engineering services) to that firm represented a conflict of interest. The purpose of this audit inquiry was to address that concern.

### WHAT WE FOUND

Our audit showed:

- The award of work to DPB & Associates for City engineering services did not result in violations of State statutes or City policies that pertain to acquisitions of engineering services and conflicts of interest.
- We did not identify or become aware of any issues or matters during our review to indicate (a) DPB & Associates (firm) was not qualified for the work awarded; (b) the amounts awarded to the firm for the work were not fair or reasonable; (c) the infrastructure built based on the firm's engineering work was not adequate; or (d) the engineering services provided by the firm were not adequate or sufficient.
- We did not identify any evidence that the approval of the award of work to DPB & Associates represented an effort by the AGM to use his position to secure a special benefit for his brother, who was a part owner and the managing engineer for DPB & Associates. However, the approval of the award of work to DPB & Associates by the AGM can be perceived as a conflict of interest by a reasonable person, due to the existing sibling relationship. In order to preserve and encourage the public's trust in the City, measures should be taken to avoid even the appearance of such conflicts in the future.

The full report may be obtained from the City Auditor's website: <http://www.talgov.com/transparency/auditing-auditreports.aspx>. For more information, contact us by e-mail at [auditors@talgov.com](mailto:auditors@talgov.com) or by telephone at 850/891-8397.

November 14, 2017

## AUDIT INQUIRY INTO POTENTIAL CONFLICT OF INTEREST REGARDING ACQUISITION OF ENGINEERING SERVICES

**Our audit procedures did not identify any evidence that the AGM inappropriately used his position to secure a personal benefit for his brother through the award of work to DPB & Associates; however, the approval of those awards to DPB & Associates by the AGM does represent the appearance of a conflict of interest.**

### MANAGEMENT'S RESPONSE & AUDIT RECOMMENDATIONS

When these matters were brought to their attention, City management responded by immediately revising the City's Purchasing Procedures to preclude any City employee from developing, recommending, or approving a procurement requisition, contract, purchase order, or pay request for any good or service from a business entity for which the employee may have a conflict of interest. Those revised procedures provide that a conflict of interest exists when an employee has, or appears to have, a financial or personal relationship with a vendor. A personal relationship includes, but is not limited to, marriage, family, or other close relationship that could reasonably be perceived as a conflict or create an actual conflict of interest. When such circumstances exist, the revised City procedures provide that the related request for the applicable work should be escalated to the affected employee's supervisor. City management is to be commended for this immediate corrective action.

To further the City's commitment to ethical procurement practices, we recommend clarifications and additional enhancements. For example:

- Management should consider revising City Commission Policy 242 (Procurement Policy) to include the additional language on "Ethics in Procurement" which was recently incorporated into the City Purchasing Procedures Manual.
- Within City Commission Policy 242 - Procurement Policy and/or the City Purchasing Procedures Manual, management should consider defining what constitutes "family" in regard to conflicts of interest in City purchasing activities. At a minimum, family should include spouses, children, parents, and siblings. Management should also consider defining or, at a minimum, giving examples as to what represents a "close relationship" in regard to conflicts of interest in City purchasing activities. As a last example, management should define and give examples as to what constitutes a "vendor" in regard to conflicts of interest in City purchasing activities. The City Attorney's Office and the Independent Ethics Officer should be consulted in this endeavor.
- Management should consider requiring each of the City's primary purchasing authorities and staff (e.g., department heads, City executive staff, procurement services staff) to complete annual assertions documenting known City vendors for which actual and/or perceived conflicts of interest may exist.

These revisions and enhancements, if made, will help ensure the City's acquisition of goods and services are accomplished in an ethical fashion and in a manner that encourages fair and open competition.

We would like to express our appreciation to the WRE and other divisions of the UUPI department, Procurement Services, and the City Manager's Office for their cooperation and assistance during this audit.

Office of the City Auditor

# Audit Inquiry Report



T. Bert Fletcher, CPA, CGMA  
City Auditor

## Inquiry into Potential Conflict of Interest Regarding Acquisition of Engineering Services

Report #1801

November 14, 2017

### Executive Summary

**Overview.** This audit inquiry was conducted in response to information obtained by the City Auditor and the Independent Ethics Officer regarding a potential conflict of interest that pertained to acquisitions of engineering services within the Water Resources Engineering (WRE) divisions of the Underground Utilities and Public Infrastructure (UUPI) department. The potential conflict of interest involved the UUPI Assistant General Manager (AGM) and an engineering firm, DPB & Associates. The AGM's brother is the managing engineer and part owner of DPB & Associates. Because of the sibling relationship, concern had been expressed that the AGM's approval of the award of City work (engineering services) to that firm represented a conflict of interest. The purpose of this audit inquiry was to address that concern. The specific objectives, pertinent background information, and results and related recommendations are reflected in the subsequent sections of this Executive Summary.

**Objectives.** The objectives of this audit inquiry were to determine:

1. Whether the awards of work to DPB & Associates by the Water Resources Engineering (WRE) divisions of the UUPI department, which were managed and supervised by the AGM, represent violations of State laws or City policies and procedures.
2. Whether there were any indications that: (1) DPB & Associates was not qualified to render the desired services; (2) the amounts of the awards to DPB & Associates were not reasonable for the work performed; (3) the work products (City stormwater and sewer infrastructure), which were constructed based on engineering work performed by DPB & Associates, were not adequate, or (4) the

related construction activities were inefficiently performed and such inefficiencies were attributable to inadequate or insufficient engineering design and planning by DPB & Associates.

3. Whether there were any conflicts of interest, actual or perceived, in regard to the award of work by the WRE divisions to DPB & Associates.
4. What measures have been taken, or should be enacted by the City, to help ensure future awards of work to contractors do not result in actual or perceived conflicts of interests.

**Background.** The City acquires engineering services following the process mandated in State statutes; specifically, Section 287.055, Florida Statutes, known as the "Consultants' Competitive Negotiation Act (CCNA)." That statutory act provides that in selecting a firm for needed engineering services, the City (and other local government entities) must initially identify and select a qualified firm based on factors other than cost (price). Factors to be used in determining a qualified firm include, for example, ability and experience, past performance, and volume of previous work awarded. After identification of a qualified firm, the City shall attempt to negotiate a fair and reasonable price. If those negotiation efforts are not successful, the City may identify a second qualified firm and negotiate a fair and reasonable price. If those efforts are also unsuccessful, the City may go to another qualified firm, and so on. This basic process must be followed in all circumstances, including: (1) when using a separate competitive process for a specific project, (2) when selecting firms for extended contracts (i.e., continuing service agreements), and (3) when non-competitive processes are allowed because the anticipated costs are below statutorily-established thresholds.

In addition to the CCNA, City procurement is governed by Chapter 112, Part III, Florida Statutes, known as the Code of Ethics for Public Officers and Employees. Those laws, as well as mirroring City policies, require ethical procurement of goods and services by governmental entities. Ethical principles within those laws and policies include provisions that encourage the avoidance of conflicts of interest when acquiring goods and services.

Pursuant to Section 2-3 of the City Ethics Code, all City employees also sign a loyalty oath. That oath provides, in part, that the employee commits to the highest standards of professionalism and ethics, including committing to the constant appearance of propriety and to always putting public trust first and never allowing personal benefit to affect his/her decisions and service as a public servant. That public service includes procurement activities.

During the approximately five-year period covered by this audit, the WRE divisions awarded work valued at \$19.8 million to 44 qualified engineering firms. Of that amount, \$595,221 (3%) in work was awarded to DPB & Associates. Twelve of the other 43 firms were awarded work during that period in amounts that exceeded the amount awarded to DPB & Associates. The remaining 31 firms were awarded work in amounts less than the amount awarded to DPB & Associates.

The awards to DPB & Associates related to five City projects. Each of the awards was authorized by the AGM after WRE professional engineers selected and recommended DPB & Associates for the needed engineering services. In addition to those awards, DPB & Associates sought other City work through the WRE divisions, but was unsuccessful in those efforts, as their proposals were not ranked favorably or the WRE staff were unable to negotiate an acceptable price for the services.

**Results.** Based on our audit, we determined:

- The award of work to DPB & Associates for City engineering services did not result in violations of State statutes or City policies and procedures that pertain to acquisitions of engineering services and conflicts of interest.
- We did not identify or become aware of any issues or matters during our review to indicate

(a) DPB & Associates (firm) was not qualified for the work awarded; (b) the amounts awarded to the firm for the work were not fair or reasonable; (c) the infrastructure built based on the firm's engineering work was not adequate; or (d) the engineering services provided by the firm were not adequate or sufficient.

- Our audit procedures did not identify any evidence that the approval of the award of work to DPB & Associates represented an effort by the AGM to inappropriately use his position to secure a special benefit for his brother, who was a part owner and the managing engineer for DPB & Associates. However, due to the sibling relationship, the approval of the award of work to DPB & Associates by the AGM can be perceived as a conflict of interest by a reasonable person. To preserve and encourage the public's trust in the City, measures should be taken to avoid even the appearance of a conflict of interest.

When these matters were brought to their attention, City management responded by immediately revising the City's Purchasing Procedures to preclude any City employee from developing, recommending, or approving a procurement requisition, contract, purchase order, or pay request for any good or service from a business entity for which the employee may have a conflict of interest. The revised Purchasing Procedures provide that a conflict of interest exists when an employee has, or appears to have, a financial or personal relationship with a vendor. A personal relationship includes, but is not limited to, marriage, family, or other close relationship that could reasonably be perceived as a conflict or create an actual conflict of interest. When such circumstances exist, the revised City standard provides that the related request for the applicable work should be escalated to the affected employee's supervisor. City management is to be commended for this immediate corrective action.

**Recommendations.** To further assist City management and staff in following the incorporated ethical practices, we recommend certain clarifications and enhancements. For example:

- Management should define what constitutes "family" in regard to conflicts of interest in

City purchasing activities. At a minimum, family should include spouses, children, parents, and siblings.

- Management should define and give examples as to what represents a “close relationship” in regard to conflicts of interest in City purchasing activities.
- Management should define and give examples as to what constitutes a “vendor” in regard to conflicts of interest in City purchasing activities.

To ensure appropriate and comprehensive clarifications and enhancements are made, we recommend the City Attorney’s Office and the Independent Ethics Officer be consulted as to appropriate and comprehensive language and procedures. Applicable City departments, including the WRE divisions within the UUPI department, should also be consulted during this process.

We also recommend additional enhancements. Specifically:

- After appropriate clarifications and enhancements are made thereto, management should consider revising City Commission Policy 242 - Procurement Policy (CP 242) to include the additional “Ethics in Procurement” language that was recently incorporated into the City Purchasing Procedures Manual. Adding that language to CP 242 will further emphasize the City’s commitment to ensuring purchasing activities are conducted in accordance with ethical standards and practices.
- Management should consider requiring each of the City’s primary purchasing authorities and staff (e.g., department heads, City executive staff, procurement services staff) to complete annual assertions documenting known City vendors for which actual and/or perceived conflicts of interest may exist. Such annual assertions should be filed with the Treasurer-Clerk’s Records division and retained in City records.

These revisions and enhancements, if made, will further management’s efforts to ensure the City’s acquisition of goods and services are accomplished in an ethical fashion and in a manner that

encourages fair and open competition.

**Acknowledgements.** We would like to express our appreciation to management and staff of the WRE and other divisions of the UUPI department, Procurement Services, and the City Manager’s Office for their cooperation and assistance during this audit.

## *Background*

### **Overview**

City capital projects often involve the construction of public facilities, including, but not limited to, utility infrastructure for electric and gas operations, stormwater and wastewater operations, and water and sewer operations. Capital projects also involve other public infrastructure, such as roads and sidewalks. Prior to construction, engineering analyses and studies are generally completed. Subsequent to those preliminary analyses and studies, engineering designs are completed and construction plans, based on those designs, are prepared for use by entities that construct the infrastructure.

Engineering work for City stormwater and wastewater operations; water and sewer operations; and roads, sidewalks, and similar non-utility public infrastructure is managed and/or performed by the Water Resources Engineering (WRE) divisions within the Underground Utilities and Public Infrastructure (UUPI) department. Those divisions include: (1) Stormwater Management, (2) Water Utilities Engineering (includes sewer), (3) Water Operations (production and quality), and (4) Public Infrastructure Engineering. The four WRE divisions are staffed by professional engineers. Those four divisions are managed by the Assistant General Manager (AGM) of the UUPI department. The AGM is a professional engineer.

Engineering services needed for capital projects may be performed entirely in-house by the City’s professional engineers or may be contracted out to qualified engineering firms. In the instances where the work is contracted out, City professional engineers oversee and manage the work performed by the contracted firms. The decision whether to perform the work in-house or to hire qualified firms is based on available resources, project complexity, project schedule and deadlines, and the expertise and professional disciplines needed for the projects. The

UUPI department indicated that most stormwater projects involve a contracted professional engineering firm and estimated that approximately 60 percent of water and sewer project work, and 75 percent of public infrastructure work, is contracted out to qualified firms. City records provided by the UUPI department show that for the approximately five-year period covered by this audit, the WRE division awarded work valued at \$19.8 million to 44 qualified external firms for engineering services associated with applicable capital projects.

### **Applicable State Statutes and City Policies and Procedures**

Several State statutes and City policies and procedures apply to the WRE divisions' acquisition of engineering services from external firms. The statutes and policies and procedures relating to the scope of this audit pertain to (1) ethical procurement, including the avoidance of conflicts of interest; and (2) the process used in evaluating and selecting firms to which engineering work is awarded. These statutes, policies, and procedures are discussed in the following paragraphs.

#### **Ethical Procurement and Conflicts of Interest.**

Chapter 112, Part III, Florida Statutes, is known as the Code of Ethics for Public Officers and Employees. Among other things, it establishes guidelines and requirements to help government entities, including municipalities, acquire goods and services using ethical processes. It states, in part, that *"it is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of ... government employees in situations where conflicts may exist."* It also states that *"no officer or employee of a...City...shall have any interest, financial or otherwise, direct or indirect, engage in any business transaction or professional activity, or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest."* It defines a conflict of interest as *"a situation in which regard for a private interest tends to lead to disregard of a public duty or interest."*

In accordance with these principles, Section 112.313(3), Florida Statutes, establishes ethical

requirements for doing business with one's agency. That provision states *"No employee (e.g., City employee) acting in his or her official capacity...shall either directly or indirectly purchase ... goods or services for his or her own agency (e.g., the City) from any business entity of which the ... employee or the employee's spouse or child, or any combination of them, has a material interest."* A material interest is defined as a direct or indirect ownership of more than five percent of the total assets or capital stock of a business entity.

Furthermore, Section 112.313(6), Florida Statutes, addresses misuse of public position. That statutory provision states that *"No public officer, employee of an agency...shall ... use or attempt to use his or her official position...or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others."*

Section 112.326, Florida Statutes, provides that political subdivisions, including municipalities, may impose additional or more stringent standards of conduct, provided those standards do not otherwise conflict with the statutory provisions. The statute provides that such additional or more stringent standards may be implemented through an ordinance.

To ensure ethical procurement of goods and services by City employees, the City adopted policies that mirror and emphasize the provisions of Chapter 112, Part III, Florida Statutes, as described above. Specifically:

- Section 706.06(C) of the City's Personnel Policies and Procedures Manual addresses conflicts of interest. The Manual states that the City's policy shall be in accordance with the regulations specified in Chapter 112, Part III, Florida Statutes. Some of the prohibited behaviors and actions listed in that manual include:
  - A City employee shall not transact business on behalf of the City with any entity in which the employee or the employee's spouse or child has a material interest.
  - A City employee shall not use his or her position to secure a special privilege, benefit, or exemption for the employee or others.
  - A City employee shall not hold any employment or contractual relationship with any business entity or agency which is

subject to the regulation of, or is doing business with, the City.

The manual also requires that City employees who are officers, directors, partners, proprietors, associates, or general agents of, or who have material interests in any business entity regulated by or doing business with the City, must file a disclosure of such with the Clerk of the Court. Similar disclosures for certain City employees are also required by Section 112.3145, Florida Statutes.

- City Commission Policy 242 – Procurement Policy provides, in part, that special emphasis shall be placed on ensuring that City procurement actions comply with Chapter 112, Part III, Florida Statutes, relating to ethical behavior in the acquisition of supplies (goods) and services. The policy also states that all vendors which participate in City procurement activities shall be treated equitably.

Furthermore, Section 2-3 of the City Ethics Code requires all City employees to sign a loyalty oath. That oath provides, in part, that the employee commits to the highest standards of professionalism and ethics, including committing to the constant appearance of propriety and to always putting public trust first and never allowing personal benefit to affect his/her decisions and service as a public servant. That public service includes procurement activities. *(All WRE employees associated with the awards of work to DPB & Associates, including the AGM, had completed the required loyalty oath.)*

**Acquisition of Professional Engineering Services.**

Section 287.055, Florida Statutes, known as the “Consultants’ Competitive Negotiation Act (CCNA),” establishes guidelines and requirements for the acquisition of certain professional services, including engineering services, by governmental agencies, including municipalities. The CCNA requires the selection of firms for engineering services based on qualifications rather than on price, or a “lowest bid” basis. Requiring the selection of firms for engineering services based on qualifications rather than price helps ensure adequate work products. Specifically, eliminating the incentive to cut the pricing at the expense of quality helps ensure engineering designs and plans are sufficient to provide for the efficient and economical construction of adequate and appropriate public infrastructure.

In the acquisition of professional engineering services, the CCNA provides for the following process in regard to a specific project or service:

1. The need for professional services must be publicly announced and advertised. The advertisement should include a description of the project and/or services. This is accomplished by the City through the preparation, advertisement, and issuance of a Request for Qualifications, or RFQ.
2. Interested firms are to prepare and submit proposals in response to the RFQ, stating their qualifications and interest in the work/services.
3. The governmental agency is to evaluate and rank the proposals based on the firms’ qualifications. Qualification criteria include factors such as the ability of the firms’ professional personnel, past performance, willingness to meet time and budget requirements, whether the firms are certified minority business enterprises, volume of previously awarded work, etc. Price is not to be an evaluation criterion.
4. After evaluation and determination of the most qualified firm, the governmental agency is to attempt to negotiate a fair, competitive, and reasonable price for the services with that firm. If those negotiations are not successful, the governmental agency may negotiate with the second highest ranked firm. If those negotiations also are not successful, efforts may be made to negotiate with the next highest ranked firm, and so on.

The CCNA provides for two exceptions to the above-described process. First, the CCNA does not preclude a governmental agency from executing and using continuing service agreements, or CSAs, for the acquisition of engineering services. A CSA is a contract for continuing professional services for work of a specified nature as outlined in the contract (CSA). The City uses CSAs for engineering services for which the costs thereof for a specific service are not anticipated to exceed \$300,000. The following process is used by the City when executing CSAs for engineering services.

1. The need for professional services is publicly announced and advertised. The advertisement includes a description of the projects and/or services. This is accomplished by the City

through the preparation, advertisement, and issuance of a Request for Qualifications, or RFQ.

2. Interested firms are to prepare and submit proposals in response to the RFQ, stating their qualifications and interest in the work/services.
3. The City is to evaluate and rank the proposals based on each firm's qualifications. Qualification criteria include factors such as the ability of the firm's professional personnel, past performance, whether the firm is certified minority business enterprise, volume of previously awarded work, etc. Price is not an evaluation criterion.
4. Generally, CSAs are executed with each of the higher ranked firms. For recent CSAs for engineering services, the City elected to execute individual agreements (contracts) with the eight highest ranked firms in one instance, the ten highest ranked firms in another instance, and the fifteen highest ranked firms in a third instance.
5. When the City subsequently determines that it needs engineering services for a specific project (e.g., valued at no more than \$300,000), it can select any appropriately qualified firm with which a CSA was executed and negotiate a fair, competitive, and reasonable price for the services. Factors considered in selecting a firm include the firm's expertise and experience in relation to the specific project, the firm's performance on prior City projects, and the City's desire to ensure each contracted firm is provided an opportunity to conduct City work. As part of this process, the City is not allowed, pursuant to the CCNA, to require or solicit price quotes from multiple firms with which CSAs have been executed.

The primary advantage provided by CSAs is that firms are, in essence, pre-qualified for the engineering services that the City may need. As a result, a separate RFQ does not have to be prepared and issued, and the resulting firm proposals reviewed and evaluated, each time a determination is made that engineering services are needed. The governmental agency can simply select one of the qualified firms with which it has executed a CSA, and negotiate a fair, competitive, and reasonable price with that firm. If those price negotiations are not successful, the agency can select another qualified firm with which it has also executed a CSA and attempt to negotiate a fair, competitive, and reasonable price.

The second exception to the previously-described process is for services valued at less than the Category II threshold established in Section 287.017, Florida Statutes. That threshold is currently \$35,000. For services anticipated to be less than \$35,000, the CCNA provides that a governmental agency does not have to use a competitive process (e.g., RFQs) to identify the most qualified firm. Rather, the agency can identify an appropriate firm and negotiate a fair, competitive, and reasonable price for the needed services. That process is known as non-competitive negotiation.

City Commission Policy 242 - Procurement Policy provides for the use of competitive negotiation procedures when selecting City services, such as engineering services acquired under the CCNA. That policy also provides for the use of continuing service agreements for applicable professional services. Additionally, the policy provides for non-competitive negotiation in appropriate circumstances, such as acquisition of engineering services the costs of which will be less than \$35,000. Further, the policy establishes purchasing authorities (employee positions authorized to approve procurements), which are based on the type and amount of the purchase. The City Purchasing Procedures Manual provides additional guidelines and requirements for acquisition of professional services, including engineering services.

### **City Professional Engineering Services Awarded to DPB & Associates**

This audit addressed City work awarded to a specific engineering firm, DPB & Associates. One of the owners of that firm, who serves as the firm's managing engineer, is a close relative (brother) of the Assistant General Manager (AGM) of the City's Underground Utilities and Public Infrastructure (UUPI) department. The following paragraphs provide background information on DPB & Associates, including a description of the City work sought by and awarded to DPB & Associates for the approximately five-year period covered by this audit.

**DPB & Associates.** Based on records maintained by the City and the Minority Business Enterprise (MBE) Office within the Office of Economic Vitality, Department of Place (joint City-County function), DPB & Associates was incorporated in November 2011, and has been certified as a minority and women-owned business enterprise since 2012. In the application for MBE status and in a proposal

submitted soliciting City business, DPB & Associates was identified as a business that provides consulting and related engineering services to government and non-profit agencies for development of public projects. In addition to civil engineering, site design, and construction administration services, DPB & Associates is certified by the MBE Office to provide grant writing and administration services.

Records show that one of DPB & Associates’ owners is a professional engineer with approximately 40 years of experience in civil engineering. That engineer is listed as the firm’s principal point of contact and project manager for engineering services. The records show the engineer owns a 19% share of the ownership units. That engineer is also the brother of the AGM of the City’s UUPI department. The engineer and the current majority owner of DPB & Associates are former City employees.

As of July 2017, DPB & Associates had sought City work in several instances. That work pertained to engineering services. Description of the work sought and awarded is addressed in the following report sections.

**Continuing Service Agreements.** Under the process described previously in this report, the City executes continuing service agreements (CSAs) with qualified engineering firms. As previously noted, the determination of the most qualified firms is

accomplished through a RFQ process where each interested firm submits a proposal that is evaluated by knowledgeable City staff. The City executes CSAs with the higher ranked firms. For a specific service need, the number of firms for which a CSA is executed depends on the City’s projected needs for that service. For the RFQs reviewed as part of this audit, the number of top ranked firms with which the City executed CSAs ranged from 8 to 15.

As also previously described in the background section, when City staff determines that it needs a specific service (e.g., engineering service); it can select any appropriate qualified firm with which a CSA was executed and negotiate a fair, competitive, and reasonable price for the services. As noted, CSAs are only used for projects and services valued at a maximum of \$300,000.

Since its creation in 2011, DPB & Associates has submitted proposals in response to four separate RFQs issued by the City for continuing service agreements. Each RFQ was for a specific type of engineering services. Based on its proposals and rankings thereof by City staff, DPB & Associates was successful in three of those four instances. In each of those three instances the City executed a CSA with DPB & Associates. This is reflected in **Table 1** that follows.

<b>Table 1</b>							
<b>Continuing Service Agreements – DPB &amp; Associates</b>							
	<u>CSA Service Description</u>	<u>RFQ Issuance Date</u>	<u>No. Firms that Submitted a Proposal</u>	<u>Rank of DPB &amp; Associates</u>	<u>No. Firms awarded a CSA</u>	<u>DPB &amp; Associates CSA</u>	
						<u>Contract #</u>	<u>Term</u>
1	Consulting Services for Stormwater Management	Nov. 7, 2011	26	25	13 top ranked firms	NA*	NA*
2	Civil Engineering – Site Work Consulting	July 18, 2012	14	2	8 top ranked firms	2858	Three years (2013 through 2016) **
3	Consulting Engineering Services for Water & Wastewater	May 17, 2013	17	3	10 top ranked firms	3087	Five years (2014 through 2019) **
4	Stormwater Engineering Services	July 18, 2016	21	5	15 top ranked firms	3881	Three years (2017 through 2020) **
* DPB & Associates was not successful – no CSA executed							
** Two one-year extensions allowed							



As shown in the following section, DPB & Associates has been awarded City work under only one of these CSAs as of July 2017.

**City Work Sought and/or Awarded.** As of July 2017, the City has awarded DPB & Associates engineering work valued at \$595,221 for the period covered by this audit. The majority of that amount, \$534,377, was awarded through six purchase (task) orders issued pursuant to CSA contract #2858 for

civil engineering – site work services. (See item 2 in Table 1 above.) Those six purchase orders pertained to three City projects. The remaining amount, \$60,844, was awarded to DPB & Associates through two additional purchase orders for two other projects, each valued at less than \$35,000, and therefore exempt from competitive negotiation procedures as provided by the CCNA. Each of these awards and the applicable purchase orders and projects are shown in **Table 2** below.

**Table 2  
Work Awarded to DPB & Associates**

	<u>Award Process</u>	<u>Purchase Order/Date</u>	<u>Project</u>	<u>Services Provided</u>	<u>Award Amount</u>	<u>Amount Paid</u>
1	CSA *	1044901 (June 7, 2013)	Ivan Drive Drainage	Preliminary engineering design	\$14,835	\$14,067
2	CSA *	1047428 (February 21, 2014)	Ivan Drive Drainage	Community Survey	\$4,956	\$4,956
3	CSA *	1048606 (July 8, 2014)	Ivan Drive Drainage	Engineering analyses and design, permitting, and preparation of construction documents	\$94,182	\$92,652
4	CSA *	1052103 (August 3, 2015)	Madison/Gaines St. Supplemental Stormwater Outfall	Final design, permitting, and preparation of construction documents	\$98,293	\$75,800
5	CSA *	1053453 (December 10, 2015)	Maclay Blvd. Stormwater Facility Improvements	Preliminary engineering investigation and concept development	\$122,907	\$122,578
6	CSA *	1057054 (January 10, 2017)	Maclay Blvd. Stormwater Facility Improvements	Phase I engineering design, permitting, and preparation of construction documents	\$199,204	\$172,521
7	Non-Competitive Negotiation **	1040874 (Revised April 12, 2013)	Hutchinson Ave. Stormwater Improvements	Engineering investigation and design and preparation of construction documents	\$34,893	\$34,892
8	Non-Competitive Negotiation **	1047453 (February 25, 2014)	4 <sup>th</sup> and 7 <sup>th</sup> Avenue Sanitary Sewer Replacement	Engineering design and preparation of construction documents and permit applications	\$25,951	\$23,848
<b>TOTALS</b>					<b>\$595,221</b>	<b>\$541,314</b>
*	These six purchase orders were executed after successful competitive negotiations through CSA #2858 for Civil Engineering – Site Work (See Table 1).					
**	These two purchase orders were executed after successful non-competitive negotiations allowed by the CCNA, as the value of work was less than \$35,000.					

In addition to the unsuccessful efforts to execute a CSA for consulting services for stormwater management services in fiscal year 2012 (see item 1 in Table 1 above), DPB & Associates was

unsuccessful in three more efforts to obtain City work for engineering services. Information on those three unsuccessful efforts is shown in **Table 3** below.

<b>Table 3                      Additional Unsuccessful Efforts by DPB &amp; Associates to Obtain City Work</b>						
	<u>Services Sought</u>	<u>Solicitation Process (Date of Solicitation)</u>	<u>Applicable Agreement if Efforts Made Through an Existing CSA</u>	<u>No. Firms that Submitted a Proposal (If Separate RFQ)</u>	<u>Rank of DPB &amp; Associates (If Separate RFQ)</u>	<u>Reason DPB &amp; Associates was Unsuccessful</u>
1	Implementation of a Pavement Management System	Competitive Negotiation through a RFQ (May 2016)	Not Applicable	5	5	Highest ranked firm received award; DPB & Associates was ranked lowest of 5 firms
2	Provision of a Redundant Force Main for Sewer Pump Stations	Through an Existing CSA (September 2015)	3087	Not Applicable	Not Applicable	City not successful in negotiating a fair and reasonable price; City opted to perform services using in-house staff as a result
3	FAMU Area Underground Utility Replacement	Through an Existing CSA (November 2016)	3087	Not Applicable	Not Applicable	City not successful in negotiating a fair and reasonable price; City opted to perform services using in-house staff upon determination that staff would be available.

In summary, DPB & Associates was both successful and unsuccessful in attempts to obtain City work through competitive and non-competitive negotiation processes. The amount of work awarded to DPB & Associates, totaling \$595,221, represents 3% of all engineering work (\$19.8 million) awarded by the four WRE divisions, that are supervised by the AGM, during the approximately five-year period covered by this audit. During that period, 43 other engineering firms were awarded work. Twelve of those other 43 firms were awarded work in amounts that exceeded the amount awarded to DPB & Associates. The remaining 31 firms were awarded work in amounts less than the amounts awarded to DPB & Associates. The average amount awarded to a firm during this period was approximately \$450,000.

## Objectives, Scope, and Methodology

**Objectives.** This special audit inquiry was conducted to provide transparency regarding the circumstances under which City work was awarded to a specific engineering firm, DPB & Associates. One of the owners of that firm, who also serves as the firm’s

managing engineer, is a close relative (brother) of the Assistant General Manager (AGM) of the City’s Underground Utilities and Public Infrastructure (UUPI) department. The objectives of our audit inquiry were to determine:

1. Whether the awards of that work by the Water Resources Engineering (WRE) divisions of the UUPI department, which were managed and supervised by the AGM, represent violations of State laws or City policies and procedures.
2. Whether there were any indications that: (1) DPB & Associates was not qualified to render the desired services; (2) the amounts of the awards to DPB & Associates were not reasonable for the work performed; (3) the work products (City stormwater and sewer infrastructure), which were constructed based on engineering work performed by DPB & Associates, were not adequate, or (4) the related construction activities were inefficiently performed and such inefficiencies were attributable to inadequate or insufficient engineering design and planning by DPB & Associates.

3. Whether there were any conflicts of interest, actual or perceived, in regard to the award of work by the WRE divisions to DPB & Associates.
4. What measures have been taken, or should be enacted by the City, to help ensure future awards of work to contractors do not result in actual or perceived conflicts of interests.

**Scope.** This audit addressed activity that occurred during the approximately five-year period covering fiscal years 2013, 2014, 2015, 2016, and 2017 to date (i.e., as of July 31, 2017). Activity reviewed during that period included instances where DPB & Associates was considered for, (1) City continuing service agreements (CSAs) and (2) work under those CSAs or under separate processes.

**Methodology.** To achieve the stated audit objectives, the following audit procedures were performed:

- State statutes and City policies and procedures relating to the award of contracts (including CSAs) and work for professional engineering services were identified and reviewed. Determinations were made as to whether the award of contracts (CSAs) and work to DPB & Associates complied with those statutes or policies and procedures.
- The value of professional engineering services awarded to all firms by WRE divisions was determined. The portion of that overall value pertaining to work awarded to DPB & Associates was also determined.
- Instances were identified where DPB & Associates was awarded continuing service agreements (CSAs) for professional engineering services. The process and circumstances under which each of those agreements (contracts) was awarded were evaluated.
- Instances were identified where DPB & Associates was awarded City work for professional engineering services, either through existing CSAs or through separate processes. The process and circumstances under which each of those awards was made were evaluated.
- Instances were identified where DPB & Associates submitted proposals in unsuccessful efforts to enter into continuing service agreements with the City for professional engineering services (City did not execute a CSA

with DPB & Associates). For each of those instances the process and circumstances were evaluated.

- Instances were identified where DPB & Associates submitted proposals in unsuccessful efforts to obtain awards of City work (DPB & Associates was not awarded work). For each of those instances the process and circumstances were evaluated.
- City management and staff involved in the evaluation and selection of DPB & Associates for contracts (CSAs) and awards of City work for professional engineering services were interviewed. Those interviews included questions to identify any actual or perceived conflicts of interests, including whether the AGM or other management had attempted to influence the processes leading to the award of work to DPB & Associates.
- The AGM was interviewed to determine his role in the award of City work to DPB & Associates, and whether that role inappropriately influenced the award decisions.
- With the assistance of City engineers and for the work awarded to DPB & Associates, a review was conducted of the quality of the engineering services and resulting constructed infrastructure.
- Contractors that constructed applicable City infrastructure, based on engineering designs and plans prepared by DPB & Associates on behalf of the City, were interviewed to determine whether those designs and plans were adequate and sufficient. City construction inspectors that inspected the applicable construction work were similarly interviewed.

We conducted this audit inquiry in accordance with the International Standards for the Professional Practice of Internal Auditing and Generally Accepted Government Auditing Standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Objective No. 1

**OBJECTIVE No. 1:** Determine whether the awards of work to DPB & Associates by the Water Resources Engineering (WRE) divisions of the UUPI department, which were managed and supervised by the AGM, represent violations of State laws or City policies and procedures.

This audit answered Question No. 1 in two parts, those being:

1. Whether the work was awarded in accordance with the Consultants' Competitive Negotiation Act (CCNA), as established in Section 287.055, Florida Statutes, and in accordance with related provisions of Commission Policy 242 and the City's Procurement Procedures Manual.
2. Whether the award of work resulted in violations of Chapter 112, Part III, Florida Statutes, or related provisions of City policies governing ethical procurement practices.

### Part 1 – CCNA

Our review showed the awards of work to DPB & Associates were made in accordance with the CCNA and related provisions of Commission Policy 242 and the City's Procurement Procedures Manual. Our conclusion was based on the following:

- We found the RFQ process used to identify, evaluate, and select qualified engineering firms with which CSAs were executed met the requirements of the CCNA and applicable City policies and procedures. Specifically:
  - The applicable RFQs were properly and adequately advertised.
  - A sufficient number of proposals was received in response to each RFQ.
  - Proposals were evaluated and ranked based on qualifications and not price. Criteria used by the City in those evaluations included experience and ability, past performance, MBE participation, understanding of project, and approach and method.
  - Knowledgeable City staff performed the evaluations and ranked the firms (proposals).
  - Only the higher ranked firms were awarded CSAs.

- Executed CSAs were only for projects below the \$300,000 threshold established by the City.
- Execution of the CSAs was authorized by the appropriate approval authority; i.e., the City Commission.
- We also found the awards of City work to DPB & Associates through the CSA for civil engineering site work were made in accordance with the CCNA and applicable City policies and procedures. Specifically:
  - Each award was less than the \$300,000 threshold established by the City.
  - The services were within the scope of the CSA.
  - The firm was selected for the work after successful negotiation of price.
  - Competitive price quotes were properly not simultaneously solicited from multiple firms (i.e., selection was based on firms' qualifications through the CSA selection process, and then negotiations of price were held with the contracted firm judged capable of providing the services).
  - Each award was authorized by a designated approval authority; i.e., the AGM for the UUPI department, as delegated by the City Manager for applicable capital projects.
- We found the non-competitive awards of City work to DPB & Associates were made in accordance with the CCNA. Specifically:
  - The value of the services for each project/service was less than the \$35,000 statutory threshold.
  - The firm was selected for the work after successful negotiation of price.
  - Competitive price quotes were properly not simultaneously solicited from multiple firms (i.e., negotiations of price were held with an appropriate firm capable of providing the services).
  - Each award was authorized by a designated approval authority; i.e., the AGM for the UUPI department, as delegated by the City Manager for applicable capital projects.

## Part 2 – Ethical Procurement Practices (Chapter 112, Part III, Florida Statutes)

Our review showed work awarded to DPB & Associates did not result in violations of ethical procurement practices as established in (1) Chapter 112, Part III, Florida Statutes, (2) City Commission Policy 242, and (3) Section 706.06(C) of the City's Personnel Policies and Procedures Manual. Our conclusion was based on the following:

- As shown in the background section of this report, Section 112.313(3), Florida Statutes, established ethical requirements for doing business with one's agency. That provision states *"No employee (e.g., City) acting in his or her official capacity...shall either directly or indirectly purchase...goods or services for his or her own agency (e.g., the City) from any business entity of which the...employee or the employee's spouse or child, or any combination of them, has a material interest.* A material interest is defined as a direct or indirect ownership of more than five percent of the total assets or capital stock of a business entity. Accordingly, the AGM's approval and authorization of the acquisition of engineering services from a firm, owned and managed, in part, by his brother (not a prohibited relationship), did not represent a violation of this statutory provision.
- Similarly, Section 706.06(C) of the City's Personnel Policies and Procedures prohibits a City employee from transacting business on behalf of the City with any entity in which the employee or the employee's spouse or child has a material interest. Accordingly, the AGM's approval and authorization of the acquisition of engineering services from a firm, owned and managed, in part, by his brother, did not represent a violation of this City policy.
- Also, in regard to Section 112.313(6), Florida Statutes, which addresses the misuse of public position, our audit work identified no evidence to demonstrate the AGM had used his position to inappropriately award work to DPB & Associates. Our review showed that the initial selection and the initial and intermediary approvals of awards of work to DPB & Associates were made by WRE professional engineers and managers other than the AGM. Further, both selection and approval records, as well as the results of our interviews of WRE management and staff indicate that the AGM did not participate in, or attempt to influence, the selection process. Those records and interviews indicate the AGM was involved in the process only as the "final approver" of the award (i.e., after WRE professional staff selected and recommended DPB & Associates, and mid-level managers preliminarily approved the award.) *(Notwithstanding that no actual conflict of interest was identified through our audit procedures, as noted in our audit determinations for Objective 3, the AGM should no longer be involved in the matters involving the award of any work to DPB & Associates, so that even the appearance of a conflict of interest may be avoided.)*
- Furthermore, City Commission Policy 242 – Procurement Policy provides, in part, that special emphasis shall be placed on ensuring that City procurement actions comply with Chapter 112, Part III, Florida Statutes, relating to ethical behavior in the acquisition of supplies (goods) and services. As described above, the acquisition of engineering services from DPB & Associates did not represent a violation of the noted statutory provisions, and therefore also did not represent a violation of City Commission Policy 242.
- Additionally, City Commission Policy 242 states that the City is to provide for the fair and equitable treatment of all vendors who participate in City procurement activities. Exclusion of a vendor from participation in City procurement activities solely because the vendor's owner or manager is a relative of a City employee would not constitute fair and equitable treatment. In those instances, however, steps must be taken to ensure the applicable City employee does not inappropriately participate in the selection and award of City work to that vendor.

**In conclusion, the awards of work to DPB & Associates by the Water Resources Engineering (WRE) divisions of the UUPI department were made in compliance with State statutes and City policies and procedures.**

## Objective No. 2

**OBJECTIVE No. 2:** Determine if there were any indications that (1) DPB & Associates was not qualified to render the desired services; (2) the amount of the awards to DPB & Associates was not reasonable for the work performed; (3) the work products (City stormwater and sewer infrastructure) constructed based on engineering work performed by DPB & Associates were not adequate, or (4) the related construction activities were inefficiently performed and such inefficiencies were attributable to inadequate or insufficient engineering design and planning by DPB & Associates.

Our audit procedures and results for each area are addressed below.

DPB & Associates Qualifications: We reviewed documentation that substantiated the managing engineer for DPB & Associates (brother of the AGM) was a licensed professional engineer in the State of Florida. Additionally, we interviewed WRE staff involved in the selection of DPB & Associates for the applicable City projects and reviewed related WRE records. Those interviews and record reviews showed that the firm was selected and recommended for those City projects for the following reasons:

- For applicable contracts, the firm's proposals submitted in response to RFQ's for continuing service agreements (CSAs) demonstrated the firm's ability to perform engineering services for WRE projects.
- Because the firm was awarded a CSA through a competitive CCNA process, it was appropriate to consider the firm for City work.
- DPB & Associates was a certified MBE firm; award of appropriate amounts of work to MBE firms is a goal of all City departments.
- WRE engineers were aware of significant skills attributable to certain staff that worked for the firm.
- WRE engineers were aware of areas in which the firm had meaningful engineering experience.
- When awarded City work, the firm performed well and provided good and timely products and services; for some projects the work was completed at costs lower than the amounts

awarded (see Table 2 above); and prior work was considered when identifying and recommending firms to consider for subsequent City projects.

- DPB & Associates had good knowledge and understanding of, and interests in, the areas and issues pertaining to certain City projects.

Based on the results of our procedures as described above, nothing came to our attention to indicate DPB & Associates was not qualified to perform the awarded services.

Reasonableness of Award Amounts: Documentation available for review demonstrated WRE staff negotiated the amounts (price) to be paid for desired services that were awarded to DPB & Associates. As noted in Table 3, in two instances the City did not award work to the firm because WRE staff were unable to negotiate a fair and reasonable price for the services. In five instances where DPB & Associates was successful in obtaining a City award, documentation substantiates that WRE staff negotiated award amounts that were lower than the prices initially proposed by DPB & Associates. Accordingly, nothing came to our attention to indicate the amounts awarded to DPB & Associates were not fair and reasonable.

Quality of Constructed Infrastructure: To the extent possible and practicable and with the assistance of City engineers, we observed the stormwater and sewer infrastructure built based on the engineering work performed by DPB & Associates. Those engineers advised us that the quality of the infrastructure was good. Based on those observations and discussions with WRE staff, nothing came to our attention to indicate the constructed infrastructure was not adequate.

Quality of Engineering Work: To ascertain the quality of engineering services provided by DPB & Associates we performed several procedures. Those procedures and our audit results are as follows:

- With the assistance of WRE engineers, we observed the deliverables, including engineering reports and designs and related construction drawings. Our observations indicated the required deliverables were provided. WRE engineers indicated the deliverables were professional and adequate.
- We identified and reviewed construction change orders to determine if they were attributable to inadequate engineering services. We determined

the two identified change orders pertained to changes in the scope of planned work and were not the result of inadequate engineering services.

- We interviewed construction contractors hired by the City to build the applicable stormwater and sewer infrastructure based on the construction plans developed and provided by DPB & Associates. Each of the interviewed construction contractors indicated the engineering designs and construction plans prepared by DPB & Associates were accurate and/or adequate for the project.
- We interviewed applicable WRE staff, including construction inspectors not supervised by the AGM. All interviewed staff indicated the services provided by DPB & Associates were professional and of a good quality.
- We reviewed available project performance reports prepared by WRE engineers that addressed the quality of services provided. For applicable projects, those reports indicate the quality of services provided by DPB & Associates was good.

Based on these procedures, nothing came to our attention to indicate the quality of the engineering services provided by DPB & Associates was not adequate.

**In conclusion, we identified nothing to indicate DPB & Associates (firm) was not qualified; the amounts awarded to the firm were not fair and reasonable; the constructed infrastructure based on the firm's work was not adequate; or the engineering services provided by the firm were not adequate.**

### **Objective No. 3**

**OBJECTIVE No. 3: Determine if there were any conflicts of interest, actual or perceived, in regard to the award of work by the WRE divisions to DPB & Associates.**

As described previously for Audit Objective No. 1, the award of City work to DPB & Associates by the WRE Divisions did not represent a violation of statutory or policy provisions regarding ethical behavior, including conflicts of interest. Therefore, from a legal (statutory) and policy (procedural) perspective, there were no conflicts of interest in

relation to the award of that work. Notwithstanding that determination, we conducted procedures to ascertain whether there were any perceived conflicts of interest in regard to that activity. Those procedures included:

- Interviewing the AGM to determine his role in the award of City work to DPB & Associates, and whether that role inappropriately influenced the award decisions.
- Identifying City employees reporting to the AGM, or to other managers reporting to the AGM, that:
  - Reviewed and ranked the proposals received from DPB & Associates and other firms in response to RFQs issued for CSAs (continuing service agreements).
  - Solicited, evaluated, and/or recommended approval/authorization of task proposals (i.e., for award of City work) from DPB & Associates for City projects, either through an existing CSA or through a non-competitive process for projects less than \$35,000.
- Interviewing the identified employees to determine:
  - Whether they, or their close family members, had any personal conflicts of interest, including those involving a personal or financial relationship with DPB & Associates.
  - Whether the relationship of the AGM to DPB & Associates impacted their decisions relating to solicitation or evaluation of DPB & Associates for City work.
- Reviewing financial disclosure forms filed by any of the identified employees to determine the existence of any financial or personal relationships with firms doing business with the City.
- Reviewing available records pertaining to DPB & Associates to identify owners and staff who may have relationships that could be perceived as potential conflicts of interest for City staff involved in procuring engineering services.

We also considered the perception of a conflict of interest resulting from the AGM authorizing the award of work to DPB & Associates. The AGM's

brother was an owner and the managing engineer of DPB & Associates, and the primary point of contact for the City in regard to the awarded work.

We identified 13 employees that reported to the AGM, or to a manager that reported to the AGM, and that: (1) reviewed and ranked proposals submitted by DPB & Associates and/or (2) solicited, evaluated, and/or recommended approval of task proposals from DPB & Associates. Twelve of those 13 employees (one is deceased) and the AGM were interviewed. Eleven of the 12 interviewed employees asserted that the relationship between the AGM and DPB & Associates did not impact their solicitations, evaluations, and recommendations. The remaining interviewed employee acknowledged that the relationship “impacted his thinking” in the evaluation and ranking of proposals for a continuing services agreement, and that he gave DPB & Associates “the benefit of the doubt” in his evaluation and ranking because he had been made aware of the sibling relationship. Notwithstanding that circumstance, that employee was emphatic that he was not pressured in any way by the AGM in regard to the evaluation, ranking, and recommendation of DPB & Associates.

In addition to the interviews, we reviewed financial disclosure forms for applicable employees and available records pertaining to DPB & Associates. Our reviews did not identify evidence that the AGM’s approval of the award of work to DPB & Associates represented an effort by the AGM to inappropriately use his position to secure a special benefit for his brother, who was a part owner and the managing engineer for DPB & Associates.

However, due to the existing sibling relationship, the approval of the award of work to DPB & Associates by the AGM can be perceived as a conflict of interest by a reasonable person. Such perceived conflicts of interest increase the risk that the public’s trust in the City will be eroded. Accordingly, to preserve and encourage the public’s trust in the City, measures should be taken to avoid even the appearance of such conflicts in the future.

**ISSUE: The authorization and approval by the AGM to award work to DPB & Associates, as recommended by his staff, represents a perceived conflict of interest.** We acknowledge: (1) our audit procedures did not identify evidence to suggest the AGM inappropriately used his position to secure a benefit for his brother; (2) there was no statutory or procedural conflict of interest; (3) the majority of the

interviewed employees indicated the relationship between the AGM and DPB & Associates did not impact their evaluations, solicitations, or recommendations pertaining to award of work; and (4) there were no indications that work performed by, or as a result of designs and plans prepared by, DPB & Associates was inefficient or inadequate. Notwithstanding those circumstances, the perception of a conflict of interest exists. Factors that resulted in this audit conclusion include the following:

- DPB & Associates managing engineer, part owner, and primary point of contact for work awarded by the City is the brother (close relative) of the AGM.
- One of the 12 employees interviewed indicated the relationship between the AGM and DPB & Associates did impact his thoughts when evaluating proposals from DPB & Associates. That circumstance is demonstrative that the relationship can result in an unintentional bias in the selection process.

Similar to actual conflicts of interest, perceived conflicts of interest can erode the public’s trust in a government’s procurement practices and activities. For that reason, in those future instances where a potential conflict of interest exists in regard to an acquisition of goods or services, the evaluation, selection, negotiation, and authorization and approvals processes should be conducted by appropriate employees other than the employee that has the potential conflict of interest. Also, to the extent practicable, the employee(s) performing the evaluation, selection, negotiation, and authorization and approval functions should not report (organizationally) to the employee with the potential conflict of interest. Lastly, in those circumstances where it is not practicable to exclude such subordinate employees from the evaluation, selection, and recommendation functions, City management should reinforce to those employees the importance of not considering the relationship(s) regarding their supervisor/manager on which the potential conflict of interest is based.

*(NOTE: See Audit Objective No. 4 that follows, which addresses corrective action taken by City management prior to this audit.)*

**In conclusion, our audit disclosed no evidence that the AGM inappropriately used his position to secure a personal benefit for his brother through the award of work to DPB & Associates.**



However, because the AGM is the brother of the managing engineer and part owner of DPB & Associates, the AGM's approval of the award of work to DPB & Associates represents a perceived conflict of interest.

## Objective No. 4

**Objective No. 4: Determine what measures have been taken, or should be enacted, to help ensure future awards of work by the City to contractors do not result in actual or perceived conflicts of interests.**

As noted in the background section, Section 112.326, Florida Statutes, provides that municipalities may impose standards of conduct in regard to ethical behavior and actions that are in addition to, or more stringent than, the standards established in Chapter 112, Part III, Florida Statutes, as long as the additional/more stringent standards do not otherwise conflict with the statutory provisions. The statute provides that such additional or more stringent standards may be implemented through an ordinance.

Prior to this audit, the City Auditor and the Independent Ethics Officer obtained and accumulated preliminary information relating to the circumstances addressed by this audit. The City Auditor and the Independent Ethics Officer met with the Deputy City Manager to discuss that preliminary information. The Deputy City Manager shared information from that meeting with the City Manager, who took immediate action to revise the City's Procurement Services Manual.

Those revisions included incorporation of certain additional ethical procurement practices. That revised section is entitled "Ethics in Procurement." One of those incorporated practices provides that *"No employee shall initiate, evaluate, recommend, develop or approve a procurement requisition, contract, purchase order, or pay request, directly or indirectly, for any supply or service from a business entity of which the employee has or may have a conflict of interest. Should a conflict exist, the employee should request that such work be escalated to his or her supervisor."* The revised manual defines conflict of interest, in part, *"as a situation, in which an employee has, or appears to have a financial relationship with a vendor, or has a personal relationship with any vendor. A personal relationship includes but is not limited to marriage, family, or other close relationship that could*

*reasonably be perceived as a conflict or create an actual conflict of interest."*

We commend the Deputy City Manager and City Manager for their prompt attention to this matter and for these changes to the City's Procurement Services Manual. To further assist City management and staff in following the incorporated ethical practices, we recommend certain clarifications and enhancements. For example:

- Management should define what constitutes "family" in regard to conflicts of interest in City purchasing activities. At a minimum, family should include spouses, children, parents, and siblings.
- Management should define and give examples as to what represents a "close relationship" in regard to conflicts of interest in City purchasing activities.
- Management should define and give examples as to what constitutes a "vendor" in regard to conflicts of interest in City purchasing activities.

To ensure appropriate and comprehensive clarifications and enhancements are made, we recommend the City Attorney's Office and the Independent Ethics Officer be consulted as to appropriate and comprehensive language and procedures. Applicable City departments, including the WRE divisions within the UUPI department, should also be consulted during this process.

We also recommend additional enhancements. Specifically:

- After appropriate clarifications and enhancements are made thereto, management should consider revising City Commission Policy 242 - Procurement Policy (CP 242) to include the additional "Ethics in Procurement" language that was recently incorporated into the City Purchasing Procedures Manual. Adding that language to CP 242 will further emphasize the City's commitment to ensuring purchasing activities are conducted in accordance with ethical standards and practices.
- Management should consider requiring each of the City's primary purchasing authorities and staff (e.g., department heads, City executive staff, procurement services staff) to complete annual assertions documenting known City vendors for which actual and/or perceived

conflicts of interest exist. Such annual assertions should be filed with the Treasurer-Clerk's Records division and retained in City records.

These revisions and enhancements, if made, will help management ensure the City's acquisition of goods and services are accomplished in an ethical and fair manner.

**In conclusion, City management should be commended for taking immediate corrective action. Our review disclosed some additional measures that should be considered to further strengthen those actions and the City's commitment to ethical acquisitions of goods and services.**

### *Conclusion*

Our audit procedures did not identify any evidence that the AGM inappropriately used his position to secure a personal benefit for his brother through the award of work to DPB & Associates. However, the AGM's approval of acquisitions of engineering services from DPB & Associates, for which the AGM's brother is the managing engineer and a part owner, does represent the appearance of a conflict of interest. City management took immediate action to help preclude future instances when this matter was brought to their attention. We made additional recommendations for management's consideration.

Notwithstanding the determination that there was an

appearance of a conflict of interest, the award of the City work to DPB & Associates did not violate provisions of State laws pertaining to ethical procurement and purchase of engineering services, and did not violate City policies and procedures in effect at the times those acquisitions were made. Additionally, nothing came to our attention to indicate (1) DPB & Associates was not qualified to provide the services, (2) the amounts paid for the services were not fair and reasonable, or (3) the work products did not meet the City's requirements.

We would like to express our appreciation to management and staff of the WRE and other divisions of the UUPI department, Procurement Services, and the City Manager's Office for their cooperation and assistance during this audit.

### *Appointed Official's Response*

**Acting City Manager:** We appreciate the Auditor's thorough examination of this matter. I am pleased that the Auditor determined that the award of work to DPB & Associates did not result in violations of State law or City policies. Further, I believe the action items included in this audit will strengthen the City's procurement policies and procedures and serve to protect the public's trust in the City. I would like to thank the City Auditor, his staff, and the Underground Utilities and Public Infrastructure Department for their cooperation and professional work on this issue.

<b>Appendix A – Management’s Action Plan</b>		
<b>Action Steps</b>	<b>Responsible Employee</b>	<b>Target Date</b>
<b>A. Objective: Ensure there are no actual or perceived conflicts of interest</b>		
1) For future instances where a potential conflict of interest exists in regard to an acquisition of goods or services, the evaluation, selection, negotiation, and authorization and approvals processes will be conducted by appropriate employees other than the employee that has the potential conflict of interest. Also, to the extent practicable, the employee(s) performing the evaluation, selection, negotiation, and authorization and approval functions will not report (organizationally) to the employee with the potential conflict of interest. Lastly, in those circumstances where it is not practicable to exclude subordinate employees from the evaluation, selection, and recommendation functions, City management will reinforce to those employees the importance of not considering the relationship(s) regarding their supervisor/manager on which the potential conflict of interest is based.	Assistant City Managers and Deputy City Manager	November 1, 2017
<b>B. Objective: Further City’s commitment to ethical procurement practices</b>		
1) The “Ethics in Procurement” language that was recently incorporated into the City Purchasing Procedures Manual will be reviewed, with the intent of modifying and revising that language to provide clarifications and enhancements as appropriate. Among other things, (1) the term “family” will be defined to identify specific relationships; (2) the term “close relationship” will be defined, with examples provided as to what represents a conflict of interest in City purchasing activities; and the term “vendor” will be defined as to applicability and pertinence to conflicts of interest. In addition to designated City management and staff (including Procurement Services and management from WRE divisions), the Office of the City Attorney and the Independent Ethics Officer will be consulted in the completion of this action plan step.	Assistant City Manager for Administrative and Professional Services	April 30, 2018
2) After appropriate clarifications and enhancements are made pursuant to the preceding action plan step, proposals will be made to revise City Commission Policy (CP) 242 to include the “Ethics in Procurement” language that was incorporated into the City Purchasing Procedures Manual.	Assistant City Manager for Administrative and Professional Services	June 30, 2018
3) The City’s primary purchasing authorities will be identified. Each identified primary purchasing authority will complete annual assertions as to known City vendors for which an actual or perceived conflict of interest exists. Such annual assertions will be filed with the Treasurer-Clerk’s Records division and retained in OnBase.	Appointed Officials	September 30, 2018

Copies of this (Report #1801) may be obtained at the City Auditor's web site (<http://www.talgov.com/transparency/auditing-auditreports.aspx>) or via request by telephone (850 / 891-8397), by FAX (850 / 891-0912), by mail or in person (City Auditor, 300 South Adams Street, Mail Box A-22, Tallahassee, FL 32301-1731), or by e-mail ([auditors@talgov.com](mailto:auditors@talgov.com)).

Audit conducted by:  
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