



Memorandum No: 21/22-04

Date: February 8, 2022

To: Honorable Mayor and Commissioners

From: John Herbst, CPA, CGFO, CGMA
City Auditor

Re: Procurement of Sexual Assault Treatment Kits from the FY 2018 National Sexual Assault Kit Initiative Grant Audit

Conclusion

The City Auditor's Office (CAO) found that the purchase of the sexual assault treatment kits was not properly approved by the City Commission, as required by the Procurement Ordinance. In addition, we identified internal control weaknesses, as described in Finding 1. We consider this Finding to be internal control "significant deficiency" as defined below. As a result of a weak internal control environment, there is the potential for other City agreements being entered into without proper approvals.

City Management's response does not agree with this finding and can be found in Exhibit 1 of this report. Our rebuttal to the Management response is included as Exhibit 2.

Objective

The objective of this audit was to determine if the procurement of the Sexual Assault Treatment Kits complied with procurement requirements.

Scope and Methodology

The audit included review of the FY 2018 procurement for the Sexual Assault Treatment Kits from the FY 2018 National Sexual Assault Kit Initiative Grant Audit.

The audit methodology included, but was not limited to:

- Reviewing any applicable regulatory guidance, policies and procedures, and related requirements;
- Reviewing the relevant contractual agreements;
- Performing assessment of internal controls;
- Interviewing appropriate personnel;
- Performing examination of the procurement documentation; and
- Performing detailed testing on selected activities.

We have identified one Finding during the review. A Finding results from a failure to comply with

policies and procedures, rules, regulations, contracts, and fundamental internal control best practices. This finding is considered a significant deficiency.

A finding is categorized as a “deficiency,” a “significant deficiency” or a “material weakness” as defined below:

- *A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance on a timely basis.*
- *A significant deficiency in internal control over compliance is a deficiency, or a combination of deficiencies, in internal control over compliance that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.*
- *A material weakness in internal control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance will not be prevented, or detected and corrected, on a timely basis.*

This audit was conducted in accordance with generally accepted government auditing standards. These standards require that we plan and perform the review to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our objectives.

Background

On November 6, 2018, the City Commission approved the City Commission Agenda Memo (CAM) that made the recommendation to accept the FY 2018 National Sexual Assault Kit Initiative Grant for \$238,031. The City Commission approved the related budget amendment which included \$111,825 for services / materials, which was the sexual assault treatment kits. The budget amendment for the grant award was properly approved by the City Commission.

The agreement for \$111,825 for the sexual assault treatment kits was not brought back to the City Commission for approval. The Police Department told Procurement and the City Attorney’s Office that the amount of the services / materials was \$99,999, just less than the mandatory City Commission approval requirement, even though the grant showed higher total expenditures.

On March 2, 2021, this item was brought back to the City Commission to approve additional funds in the amount of \$16,950. This brought the total amount of expenditures to \$116,949, which was more than the initial budget in the grant agreement documents. This future reiterates that the anticipated expenditure was more than \$100,000 from the start of the procurement.

Findings

1. The purchase of the sexual assault treatment kits was not properly approved by the City Commission, as required by Procurement Ordinance.

Condition

According to the sexual assault treatment kit budget, approved by DOJ, the anticipated expenditure for the sexual assault treatment kits was \$111,825. The total expenditure was

anticipated to exceed \$100,000 required City Commission approval per the Procurement Ordinance. The City Commission was never brought the agreement for approval.

This violated the Procurement Ordinance, which in turn violated the DOJ Grant Award requirements.

Criteria

The DOJ Award Letter dated 9/20/2018 provided Special Conditions Item 3 that requires compliance with the DOJ Grants Financial Guide. The DOJ Grants Financial Guide requires for Post-Award Requirements Section 3.8 Procurement Under Awards of Federal Assistance – Procurement Standards General Guidance requires that “for procurement transactions using Federal award funds, the non-Federal entity must use its own documented procurement procedures consistent with applicable State, local, and tribal laws and regulations.” This requirement means that the grant requires the City procurement processes be followed when making purchases with federal funds.

City Ordinance Section 2-173. - Definition of Terms Mandatory commission approval amount requires that “the minimum procurement award or rejection amount at which city commission approval is required shall be equal to or greater than one hundred thousand dollars (\$100,000.00) total expenditure or, in the case of a term contract, equal to or greater than one hundred thousand dollars (\$100,000.00) per term, excluding price adjustments.”

Cause

The grant award documentation that was initially placed on the City Commission agenda included the relevant documents, such as, award letter and general details for the item. However, the additional requirements from the grant award letter were not attached as part of the agenda item.

Procurement reviews the documentation submitted by the department prior to approving the agreements when less than the City Commission required mandatory threshold. It appears in this instance that the original grant budget detail worksheet and the grant award CAM expenditures showing \$111,825 for the purchase of the sexual assault treatment kits were not reviewed at the same time as the agreement or department’s request for the agreement. Additionally, the Police Department told Procurement that the amount of the expenditure would be less than \$100,000.

Effect

By not following the City’s Procurement Ordinance, this agreement and award for the sexual assault treatment kits is not in compliance with the DOJ grant award letter. When out of compliance with the grantor’s requirements, the grantor has the ability to require the City to repay the grant funds.

Recommendations:

The CAO recommends that the City Manager:

- Bring the agreement to the City Commission for ratification to ensure that grant requirements are properly met.
- Attach all grant requirements, including the linked documents from award letters, to the agenda item being reviewed to ensure proper review of all of the grant award requirements.
- Ensure that Procurement validates expenditure estimates prior to approving

agreements to ensure that the proper procurement requirements are followed.

Management Response:

City Management disagrees with this finding. See Exhibit 1 for additional details.

Attachment:

Exhibit 1 – Management Response

Exhibit 2 – City Auditor’s Office Rebuttal

cc: Chris Lagerbloom, City Manager
Greg Chavarria, Assistant City Manager
Tarlesha Smith, Assistant City Manager
Larry Sciroto, Chief of Police
Susan Grant, Finance Director
Alain E. Boileau, City Attorney
David Solomon, City Clerk

Exhibit 1 – Management Response

From: Glenn Marcos <GMarcos@fortlauderdale.gov>
Sent: Friday, February 04, 2022 4:30 PM
To: Susan Grant <SuGrant@fortlauderdale.gov>
Subject: Draft Audit Report - Procurement of Sexual Assault Treatment Kits from the FY 2018 National Sexual Assault Kit Initiative Grant Audit

Management Response

Management disagrees with the finding. The procurement of the sexual assault treatment kits (Kits) from the FY2018 National Sexual Assault Kit Initiative Grant Audit was achieved by piggybacking on Santa Clara County Agreement No. 5500002978. A piggyback is allowed by the City's Procurement Ordinance and is defined as utilizing another public agency's competitively solicited contract, prices, terms, and conditions to procure similar goods/services. Upon utilizing this proper procurement method permitted by the Ordinance, the Police Department required the Kits to be ordered and delivered in an expeditious manner. Procurement proceeded with procuring the Kits totaling \$99,999, despite the fact the City Commission approved the related budget amendment, which included \$111,825 for services/materials, because at the time, it appears the Police Department required the lesser amount. When the Police Department required the additional testing Kits, it increased the total contract value from \$99,999 to \$116,949. Since this was over the *Mandatory Commission Approval Amount* of \$100,000, the Procurement Services Division took the item to the City Commission on March 2, 2021 (CAM #21-0215) for approval. Moreover, usually when a procurement exceeds the mandatory commission approval amount of \$100,000, it is a generally accepted procurement practice to make an award below the commission award threshold of \$100,000 for a portion of an award, and then take it to Commission, when the recurring purchase exceeds the Mandatory Commission Approval award threshold to achieve operational efficiency in the organization. This practice does not violate any requirements of the Procurement Ordinance. As a result, this agreement and award for the sexual treatment kits is in compliance with the DOJ grant award letter, the City's Procurement Ordinance, and the DOJ should not require the City to repay the grant funds.

Respectfully,

Glenn Marcos, CPPO, CPPB, FCPM, FCPA
Chief Procurement Officer/Assistant Finance Director- Procurement and Contracts
City of Fort Lauderdale | Procurement Services Division
100 N. Andrews Ave. | Fort Lauderdale FL 33301
P 954-828-5677 | F 954-828-5576 | GMarcos@fortlauderdale.gov
Website: www.fortlauderdale.gov/departments/finance/procurement-services

Exhibit 2 – City Auditor’s Office Rebuttal

Bid splitting is the act of breaking up a public project or purchase of equipment or supplies into segments to avoid approval thresholds. The City’s Management response states this is exactly what occurred to expedite the process, which we believe is a violation of the Procurement Ordinance.

The City Commission approved the initial award and grant for the purchase of sexual assault kits with the anticipated expenditure of \$111,825. The City Commission anticipated the expenditure to match the grant amount of \$111,825, since a budget amendment was approved in that amount. Under the Procurement Ordinance this type of agreement is required to be brought to the City Commission for approval.

The City Attorney’s Office advised Procurement that the item would need City Commission approval for the agreement; however, this was during the City Commission’s summer break. To expedite the transaction, the Police Department / Procurement broke the purchase into two components:

1. The Police Department / Procurement entered into an agreement to purchase a portion of the sexual assault kits for \$99,999.
2. In order to complete the purchase of the remainder of the sexual assault kits, the Police Department / Procurement then brought a change order to the City Commission for \$16,950. This only included approval of the change order and not the original agreement.

Management’s Response is that it is their practice “to make an award below the commission award threshold of \$100,000 for a portion of the award, and then take it to the Commission, when the recurring purchase exceeds the Mandatory Commission Approval award threshold...” This is the very definition of bid splitting, hence we disagree with the Management Response.