



**City of Memphis
Internal Audit Service Center**

Public Works Division

**Grass Mitigation
Special Investigative Report**

April 7, 2014

INTERNAL AUDIT TEAM

CITY AUDITOR

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Credential Key:

ACRONYM	DESIGNATION
CFE	Certified Fraud Examiner
CIA	Certified Internal Auditor
CICA	Certified Internal Controls Auditor
CISA	Certified Information Systems Auditor
CRMA	Certified in Risk Management Assurance
CMFO	Certified Municipal Finance Officer

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A C WHARTON, JR. - Mayor
GEORGE M. LITTLE - Chief Administrative Officer
EXECUTIVE DIVISION
Internal Audit Service Center
LEON PATTMAN, CIA, CISA, CRMA, CMFO
City Auditor

TENNESSEE

April 7, 2014

Mr. Dwan Gilliom, Director
Public Works Division
City of Memphis
125 N. Main, Suite 608
Memphis, Tennessee 38103

Dear Director Gilliom:

We have completed our special investigation of the grass mitigation component of the “25 Square Project Initiative” managed by Neighborhood Improvement. The findings and recommendations contained in this report should assist management in providing adequate, effective internal controls to ensure compliance with City ordinance and applicable guidelines, and to accomplish program objectives.

Objectives and Methodology

The objectives of this special investigation were to evaluate compliance with City Ordinance Chapter 9-96, *Weeds and Refuse* and to evaluate the validity of contractor payments. Inherently, auditors must take into consideration the adequacy and effectiveness of internal controls with regards to our findings related to compliance and the validity of payments to grass mitigation contractors. Additionally, auditors designed procedures to identify potential red flags that may suggest fraud and/or conflict of interests.

To accomplish our objectives, we interviewed selected contractors (based on high dollar amounts which represent higher risk), management and staff, reviewed documentation, and transactions specifically related to notices to property owners and contractor payments. The basic scope of the investigation was limited to grass mitigation activity for the period January 1, 2013 to December 31, 2013. However, auditors used their professional judgment to evaluate information outside the noted period.

Background Information

The “25 Square Project Initiative” is a cooperative approach between various City divisions and other resources to address blight concerns in Memphis. The Grounds Maintenance Service Center managed the grass mitigation component of the initiative. The objective of the grass mitigation component was to cut overgrowth and to remove refuse from vacant and uninhabited lots in the City of Memphis with the exception of lots owned by Shelby County government. City of Memphis Ordinance, Section 16-459 (also referred to as Section 9-96-4) provided the conditions and authority for the City to conduct grass mitigation activity. The grass mitigation activity included both City employees and contractors. During the calendar year 2013, there were approximately 32 contractors hired to mitigate grass. The former Deputy Director for Public Works, Neighborhood Improvement had senior management oversight responsibility for the entire operation which included a 25 Square Project Manager. The former Deputy Director also initiated a targeted area approach, which gave contractors the authority to canvass the neighborhood within their assigned boundaries and mitigate vacant or uninhabited properties at their discretion without any limitations on the number of lots or the total dollar amount it would cost. The approximate budget for fiscal years 2012, 2013 and 2014 were \$1,326,007; \$3,194,793; and \$3,098,759; respectively.

Note: The approximate budget figures were taken from the Oracle Budget Statement Reports for the “Weed Control/Chemical Service” and “Miscellaneous Professional Services” accounts. The figures represent the original budget appropriations plus any additional funds added during a fiscal year. The vast majority of the transactions charged to those accounts were for grass mitigation activities but there were other charges to those accounts as well.

Conclusion

Auditors discovered/confirmed a conflict of interest, in fact or appearance, which involved the former Deputy Director for Public Works, Neighborhood Improvement. The grass mitigation practices deployed during the scope of this investigation did not comply with the notification to property owners provisions of the ordinance. Additionally, auditors, with the assistance of Grounds Maintenance staff, identified a large dollar amount of questionable and suspicious invoice entries submitted by three contractors. It was difficult to ascertain the propriety and validity of vendor invoices due to the sheer volume of property locations mitigated on the invoices and the inconsistency in invoice documentation. The next section provides auditors’ findings and recommendations.

Summary of Findings

- 1) Auditors identified a conflict of interest, in fact or appearance, and possibly other violations of City and/or State statutory guidelines for ethical conduct by the former Deputy Director of Neighborhood Improvement.** The conflict arose because the former Deputy Director had direct oversight responsibility and was to superintend the grass mitigation operation and the fiscal management thereof. He also directly participated in

Grounds Maintenance day-to-day management of grass mitigation activities and decisions made related to contractors. Auditors found no evidence that he disclosed the fact that his son was a subcontractor to McGhee Lawn Service. The required annual disclosure form on file in the City Attorney's office did not disclose information regarding his son. Although McGhee was not the only prime grass mitigation contractor to subcontract part of the work, the contract document had language that required the City to approve subcontractors. The dollar amount of the work subcontracted to the former Deputy Director's son was \$249,393.50 (49% of prime contract) and \$198,620.25 (40% of prime contract) for calendar years 2012 and 2013, respectively. Auditors also found evidence that McGhee was one of three contractors that the former Deputy Director directed Grounds Maintenance staff to find work for after the growing season because they hired ex-offenders. Additionally, an employee stated that the owner of McGhee Lawn Services visited the work area to solicit additional assignments; in some instances his visit would result with the former Deputy Director calling the project manager and directing him to assign work to McGhee. Therefore, Internal Audit referred the matter to Police Inspectional Services Bureau to make the determination whether or not the former Deputy Director's actions taken as a whole constitute any administrative and/or criminal violation of City or State statutes.

Recommendations

Management should immediately suspend the contracting services of McGhee Lawn Services pending the outcome of the investigation. Additionally, management should administer and provide oversight of contracts to ensure compliance with terms and conditions of the contract which require the approval of subcontractors. Management should periodically make inquiries and observations of the contractors to ascertain compliance with all contract terms. Additionally, employees should be trained and encouraged to report concerns and suspicions of impropriety by any City employee and/or contractor (vendor) to Internal Audit, Police Inspectional Services Bureau, or the whistleblower hotline.

- 2) **The grass mitigation process lacked adequate internal controls to provide adequate oversight of contractors' performance and to operate within the appropriated budget.** The lack of controls, monitoring and management oversight led to significant abuse and waste of financial resources by some contractors as well as possibly fraudulent activity. Auditors found it extremely difficult to detect both errors and irregularities because there was no defined, reliable method to validate vendor invoices and performance with the initiation of the targeted area approach. The approach gave contractors the authority to canvass the neighborhood within their assigned boundaries and mitigate vacant or uninhabited properties at their discretion without any limitations on the number of lots or the total dollar amount it would cost. Additionally, auditors found it troublesome that the initial design phase of the grass mitigation component had suitably designed internal controls to ensure compliance with the ordinance, provide oversight of vendor performance and verify payments to vendors but was discarded with the targeted area assignments to contractors at

the direction of the former Deputy Director. The following control deficiencies created the conditions for abuse, waste and possibly fraud to exist and go undetected:

- Management of Neighborhood Improvement (more specifically the former Deputy Director) failed to provide “the tone at the top” for an ethical culture within his area. Rather, an environment existed where contractors often visited the employees’ work areas and made direct attempts to influence work assignments and invoice processing by touting political affiliations with Council members, Administration, or the former Deputy Director. Further, employee interviews revealed that the former Deputy Director’s threatening style of communication and tone created a work environment where employees did not feel empowered to perform their duties in a competent manner. Some employees indicated they feared reprisal after contractors (primarily McGhee Lawn Service, Turning Point, Lifeline to Success and occasionally others) contacted the former Deputy Director for assistance, particularly regarding additional work assignments. They also communicated to auditors that increased productivity was paramount to the former Deputy Director. Therefore, employees sought ways to increase productivity without regards to process, controls, budget or fairness.
- The grass mitigation work assignment process lacked policies and procedures to ensure the fair and equitable distribution of the work to contractors. Initially when the grass mitigation function transitioned from City employees to contractors in 2012, the City hired approximately 18 contractors. In the subsequent year, management hired an additional 14 contractors; however, one contractor was never used. The table on page 14 shows the dollar value of work. The fact that the dollar amount of the work was skewed significantly towards a few contractors further contributed to employees and some contractors questioning the ethical culture of the environment. Auditors found no plausible reason for the number of contractors hired when considering the actual work distribution based on payment history to contractors.
- Management failed to adequately plan to operate the grass mitigation process within the appropriated budget. We found no evidence that Neighborhood Improvement management forecasted the number of lots or hours that the appropriated budget would support. Therefore, there was no correlation between the mitigation assignments and the budget. Consequently, management exceeded the budget in FY2013 which required \$2.1 million addition at mid-year review and will likely exhaust all its FY2014 funding prior to the end of June 30, 2014, without a significant reduction in lots mitigated. As of March 24, 2014, the balance left to fund FY2014 grass mitigations will be less than \$500K after payments in process are completed. Notably, the former Deputy Director had been warned by his superiors on several occasions to operate within his established budget. Immediately following a financial forecast meeting with the Public Works Director (PWD) and Finance Director on September 29, 2013, the PWD instructed him to produce a schedule. It was supposed to explain the plan to work within the remaining budget and show the number of lots and associated costs that could be mitigated the

remainder of FY2014. On October 30, 2013, the PWD instructed the former Deputy Director again to stay within his budget. He also told the former Deputy Director that he could not use personnel surplus/attrition funds to augment his budget. In a follow-up meeting with the Chief Administrative Officer (CAO), PWD, and the former Deputy Director; the CAO reiterated to the former Deputy Director that he had to stay within budget and that he would not get additional funds.

- Management failed to maintain operational control over contractor work assignments with the use of the targeted area approach. Consequently, contractors mitigated as many as possible which ultimately lead to chaos, abuse, waste and possibly fraud. Auditors noted that a material number of entries on the contractors' invoices lacked a physical address or legal property description. For example: a description stated "VL South of 1405 Grand Opera Cv" or "VL 0 Keating" which placed a burden on the staff to verify. Additionally, the pictures that were intended to evidence the violation and mitigation were of little to no value in the validation process. This also resulted in thousands of dollars of questionable charges on invoices submitted primarily by Unique Professional Cleaning and Staffing, Lifeline to Success, and Turning Point. Refer to finding three for detailed information regarding questionable invoices. The targeted area approach which resulted in 7,173; 36,906; and 35,559 total properties mitigated for FY2012, FY2013, and FY2014 (to December 31, 2013) simply overwhelmed the Grounds Maintenance staff (manager, 2 supervisors, 2.5 inspectors, crew person/weed inspector, and 2 clerks) and financial resources capacity. Auditors concluded the situation can be attributed to the former Deputy Director's goal to increase mitigation productivity without regards to controls or costs.

Note: Staffing figures are based on full time equivalent (FTE) positions. For example: a part time employee represents .5 FTE.

- Due to staffing shortage and the lack of management's emphasis placed on billing property owners, only a small number of property owners were billed. Additionally, due to the lack of specific property addresses/descriptions provided by contractors with the targeted area approach, a substantial number of property owners could not have been billed regardless of staffing.
- With the former Deputy Director's efforts to increase productivity, several vendors informed auditors during interviews that they routinely mitigated the same lots over a two or three week period to keep the grass on the lots maintained at 12 inches or less as stated in the Ordinance. Auditors considered this practice abusive and wasteful because lots where all the refuse had been removed and the grass was slightly over 12 inches did not constitute "blight".
- Management deviated from the standard procurement process where professional services contracts should be encumbered to restrict funds in the budget to pay

contractors in a timely manner. Auditors found no plan to estimate and allocate funds to be encumbered for specific contractors prior to all work assignments. Rather, the deviation resulted in a process where administrative staff frequently completed the request to encumber funds to pay invoices that had already been presented to the City for payment.

Recommendations

Management should adhere to the established internal controls initially designed for grass mitigation. Additionally, management should:

- Restrict the contractors' accessibility at the employees work areas to eliminate the possibility of undue influence previously practiced by the contractors.
 - Establish a process for distributing grass mitigation work assignments to vendors to ensure fair and equitable distribution of work. Any deviations from the established process should be adequately justified.
 - Operate within the appropriated budget approved by City Council. Monthly, management should review the appropriation statement to identify questionable transactions and ensure that budget to actual expenditures are within the budget.
 - Cease the practice of allowing the grass mitigation contractors to provide services without proper authorization from management or confirmation of violations. Subsequent to our exit conference, management provided evidence that they purchased software (Xora) that would allow them to accurately track the property locations. We recommend that management monitor and evaluate the software to ensure it achieves the desired results.
 - Require contractors to provide adequate information on the invoices (i.e., complete address, description of services, etc.) for payment processing.
 - Prior to the established grass mitigation season, management should estimate and allocate funds to be encumbered for specific contractors prior to all work assignments. Additionally, management should adhere to the standard procurement process for encumbering funds for professional services contracts.
- 3) **Three of the contractors that received the larger dollar amounts in payments from March 2012 to March 2014 for grass mitigation submitted questionable invoices to the City for payment.** With the decision to allow contractors the authority to canvass targeted areas and make the determination on the properties to be mitigated, auditors concluded that it became an opportunity for some contractors to take advantage of an obviously uncontrolled environment. Based on our preliminary interviews with staff, the majority of

the invoicing discrepancies occurred with Unique Professional Cleaning and Staffing, Lifeline to Success, and Turning Point. Auditors did not find sufficient evidence that allowed us to make the determination as to whether the entries on the invoices were due to human errors or irregularities.

Note: Auditors relied upon the Grounds Maintenance team to review the questionable invoices and to conclude on the validity of the transactions itemized on the contractors' invoices they reviewed. We recognized that the Grounds Maintenance team had the expertise and experience to perform the review. Auditors reviewed the results and determined that they were reliable for the purpose of this investigation.

- During October and November 2013, Unique Professional Cleaning and Staffing submitted \$223,944 in invoices to the City for payments that the Grounds Maintenance staff flagged as questionable and warranted a thorough review. The review concluded that only \$56,675 (final two payments) had adequate documentation with the remainder being duplicates, unidentifiable lots, lacked documentation, or an overcharge in hours.
- During October and November 2013, Turning Point submitted invoices totaling approximately \$384,302 for payment whereby the staff questioned the charges. Based on a thorough review ordered by the Director of Public Works, the City made an initial payment of \$97,187.50 and has a final payment in-process for \$237,940.50. The review disallowed \$49,174.50 due to insufficient documentation for violations, duplicates, unidentifiable lots, or an overcharge in hours.
- In December 2013, Lifeline to Success submitted \$3,725 in invoices to the City for payment that Grounds Maintenance staff flagged as questionable and warranted a thorough review. In its case, Lifeline to Success stated that its process for mitigation of yards was significantly different from the other contractors. Their process involved a “wave” approach that meant the property was cut by one crew, edged/trimmed by another and raked/cleaned by yet another. Therefore, their pictures did not allow a measurement of time duration for hours charged. In some instances, the property appeared multiple times with different dates on invoices which made it nearly impossible for Grounds Maintenance staff to identify duplicates and determine the appropriate number of billing hours. In another instance, Lifeline disagreed with the number of hours specifically approved for the property before they mitigated it and later attempted to overbill the City without resolving the disagreement—the overbilled amount was disallowed.

Recommendation

Management should consider a temporary and appropriate suspension for the contractors that failed to exercise due professional care with billing the City for services and operating in good faith with regards to their job performance.

- 4) **Auditors found that Lifeline to Success, McGhee Lawn Service and Turning Point received preferential treatment because they hired the most ex-offenders.** We found that management had no process to provide an equitable distribution of work to other contractors that hired ex-offenders. Auditors reviewed the conditions regarding the work assignments made to Lifeline to Success, McGhee Lawn Service and Turning Point which received the majority of work after the grass growing season and found no justification for excluding other vendors that hired ex-offenders. The Administration confirmed that the contractors would and should receive additional consideration and a preference because of their commitment to provide employment for ex-offenders which was consistent with the guidance for all contracting opportunities. However, the Administration expected management to properly superintend their work and to operate within the appropriated budget.

Recommendations

Management should only contract with vendors that it realistically expects to assign a reasonable amount of work while seeking to apply equity and fairness for contractors that are similarly situated such as with ex-offender preference. Additionally, City Administration should work with the Contract Compliance Office to establish written guidance relative to any situations in which preference is given for a specific business reason. At a minimum, the guidance should include written verification regarding the contractor's eligibility for the preference, criteria for measuring the contractor's compliance, and monitoring.

- 5) **The grass mitigation process, in most instances, did not comply with the Ordinance with respect to providing the property owners a notice of violation and five days to cure the violation before mitigation of the overgrowth and/or removal of refuse.** Typically, a citizen's complaint created a service request that generated a notice to the property owner prior to any confirmation of the violation. Prior to the April 2013 time period, the property would then be inspected to confirm violation after the notice had been forwarded and prior to mitigation activity. With the targeted area approach where contractors canvassed their target areas to identify violations, in most instances, the property owner did not get a notice until the property had been mitigated and the details of the contractors' invoices were entered into the system to generate a service request. Therefore, property owners were not afforded "due process" under the Ordinance. The City Attorney's office provided a legal opinion which confirmed auditor's conclusion.

Recommendation

Management should revise the grass mitigation process to confirm the violation before the notice is forwarded to the property owners and allow the property owners the required time frame (5 days) before any mitigation activity begins.

Note: Management provided auditors with a process flow chart that should resolve this issue going forward.

- 6) **Auditors identified two \$4,875 transactions (each) where the “25 Square Project” purchased their public relations signs from the nonprofit organization “Freedom From Unnecessary Negatives” (FFUN) in December 2012 and September 2013.** The former Deputy Director of Neighborhood Improvement approved the payments for transactions. At issue here is the appearance of impropriety because FFUN and Turning Point are operated by the same person. Also, FFUN had no business license as a printing, graphics, imaging, or signs service provider. However, auditors did obtain the documentation that another imaging company had provided a quote for a higher cost than the payments made to FFUN. While auditors found no apparent violation of City procurement policy, in auditors’ opinion, the decision fueled additional speculation of favoritism and poor judgment within the management of the project.

Recommendation

Management should seek to obtain goods and services from vendors with the appropriate business license and avoid decisions where they give the appearance of impropriety.

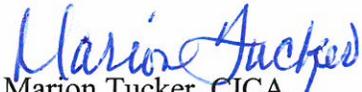
Our special investigation may not necessarily disclose all weaknesses related to internal controls. Additionally, the procedures performed during this investigation do not constitute an audit under Government Auditing Standards.

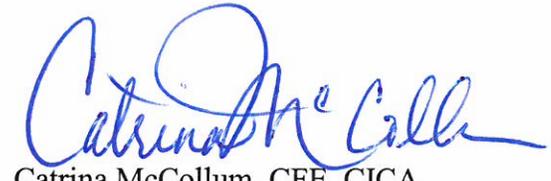
We presented management with the draft report dated March 24, 2014. To provide readers with management’s views and perspective on our findings and recommendations, we included management’s written response to the draft report in full text in the appendix of this report. We will evaluate the response and the adequacy of corrective action during follow-up activity.

City of Memphis – Internal Audit
Public Works Division
Grass Mitigation Special Investigative Report
April 7, 2014

We appreciate the cooperation of contractors, management, and Neighborhood Improvement staff during our investigation. Please let us know if we can assist you further.

Sincerely,


Marion Tucker, CICA
Auditor-in-Charge


Catrina McCollum, CFE, CICA
Project Manager

APPROVED:


Leon Pattman, CIA, CISA, CRMA, CMFO
City Auditor

Atch: Management's Response

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State of Tennessee, Comptroller of the Treasury

L. Rene Brison, Assistant Director, Special Investigations Unit

APPENDIX

Table – Grass Mitigation Contractors by Dollar Amount

	CONTRACTOR'S NAME	PAYMENTS	PERCENTAGE OF TOTAL PAYMENTS
1	Stevie Moore dba Turning Point	1,051,569.50*	16.44%
2	Lifeline To Success, Inc.	961,040.00	15.03%
3	McGhee Lawn Service	878,342.50	13.73%
4	Rotolo Consultants, Inc.	713,645.00	11.16%
5	Unique Professional Cleaning And Staffing	547,530.00	8.56%
6	Dortch Construction, LLC	453,127.50	7.08%
7	Bonds Lawn Service	357,075.00	5.58%
8	Boyd's Lawn Service	288,385.00	4.51%
9	Coleman's Lawn Service	200,877.50	3.14%
10	Mind Body Spirit Workshop	171,105.00	2.68%
11	MCCI	156,410.00	2.45%
12	James Smith Landscaping & Trucking	122,300.00	1.91%
13	JC Payne Enterprises	95,887.50	1.50%
14	Synergy Treatment Centers, Inc.	87,372.50	1.37%
15	ZMSB Lawns LLC	46,722.50	0.73%
16	Marshall Lawn Service	33,875.00	0.53%
17	Deberry Maintenance Company	29,650.00	0.46%
18	Gregory K. Threatt dba Whitehaven Lawncare	26,887.50	0.42%
19	L & M Lawn Service	26,495.00	0.41%
20	Jack's Lawn Maintenance	25,940.00	0.41%
21	CAAP Inc. Lawn Service	22,850.00	0.36%
22	Best Practice Lawn Services	17,544.00	0.27%
23	Middleton & Company LLC	14,625.00	0.23%
24	NHPA	13,050.00	0.20%
25	EC Masonry Services	11,212.50	0.18%
26	C & J's Lawn Care Services	10,750.00	0.17%
27	Amnesty Professional Services	9,400.00	0.15%
28	H & S Services LLC	8,575.00	0.13%
29	Look Up Tree & Landscape	3,135.00	0.05%
30	Jasiri Lawn Service	3,125.00	0.05%
31	Dapper Lawn Care And Maintenance	2,883.00	0.05%
	TOTALS	6,396,261.50	100.00%

*Figure does not include a final payment in process of \$238,890.50.

Source: Oracle Supplier Payment History Report for March 1, 2012 to March 23, 2014

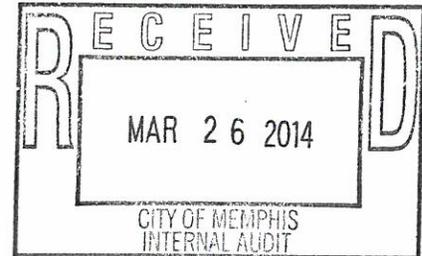


TENNESSEE

A C WHARTON, JR. - Mayor
GEORGE M. LITTLE - Chief Administrative Officer
DIVISION OF PUBLIC WORKS
DWAN L. GILLIOM - Director

March 26, 2014

Mr. Leon Pattman, City Auditor
Internal Auditing Department
City of Memphis
125 North Main Street



Dear Mr. Pattman:

Please allow this document to serve as my official response to the audit report concerning the Division Public Works, Neighborhood Improvement Department's grass mitigation program/25 Square Strategy. I will start by stating that I agree entirely with the findings. Further, in addition to the three contractors noted in the report for submitting questionable invoices, I believe the City may have paid invoices submitted by other contractors with many of the same discrepancies. The costs and volume of contractor invoice activity were prohibitive of our staff conducting the same thorough and very time-consuming review that I ordered for the three contractors on all 30 plus contractors. It also worth noting that while it was determined that the former Deputy Director had an undisclosed relationship with McGhee and may have concocted a scheme to ensure continuous work was provide to McGhee, it is fair to assume that a review of McGhee's invoices would also reveal a number of serious discrepancies that went undetected due to the lack of controls as well as how the program was managed. I am pleased that Police Inspectional Service Bureau (ISB) will review all of McGhee's activity with respect to the project.

Regarding the recommendations offered in the report, I have already implemented new processes and procedures (controls and accountability) that will accomplish our mission of mitigating grass and operate in compliance with City Ordinance and other applicable policies and procedures. We have begun the hiring of additional staff and the implementation of technology that will assist us monitoring and mitigating, if not eliminating further waste and abuse in the program. Further, I have directed the Neighborhood Improvement Administrator to develop an action plan to implement the remaining recommendations in the report on a priority basis. As suggested in the report, I will engage the Office of Contract Compliance to assist with granting a business preference to vendors that employ ex-offenders on a fair and competitive basis. Like all of my director colleagues, I aspire to do my best to combat

poverty and to get ex-offenders a chance to become productive members in society, but want to ensure we have a legal basis for whatever we do in offering preferences.

Finally, I agree with the recommendation for a temporary, if not a permanent, suspension of McGhee Lawn Service, of course pending the outcome of the ongoing ISB investigation into the undisclosed business relationship with the former Deputy Director's son. However, I do not support any suspension of Lifeline to Success or Turning Point for submitting questionable invoices. Time permitting; I am convinced that my team would have found the same issues with perhaps a number of other contractors that also took advantage of our weak system of accountability and controls. I will stop short of saying that the former Deputy Director encouraged questionable business practices. However, I will say that based the former Deputy Director's widely known philosophy that every contractor was allowed have as much work and to cut as many unassigned lots as possible with little to no oversight, certainly promoted bad business practices on the part of many of the contractors.

In closing, let me express my sincere appreciation to you and your team in Internal Auditing for the hard work and commitment put into this investigative audit, considering the significant workload your office experiences from one week to the next.

Sincerely,



Dwan L. Gilliom, Director
Division of Public Works

c: George Little, Chief Administrative Officer
Herman Morris, City Attorney
Patrick Dandridge, Assistant Senior Attorney