
CITY OF SAN ANTONIO

OFFICE OF THE CITY AUDITOR



Audit of the City Attorney's Office

Outside Legal Counsel

Project No. AU17-003

November 9, 2017

Kevin W. Barthold, CPA, CIA, CISA
City Auditor

Executive Summary

As part of our annual Audit Plan approved by City Council, we conducted an audit of the City Attorney's management of outside legal fees. The audit objective and conclusion follow:

Determine if outside legal expenditures are properly authorized and properly supported.

Expenditures for outside legal counsel are not properly authorized or properly supported. We identified overpayment of hourly rates and payment for unauthorized personnel assigned to cases. In addition, we were unable to determine the accuracy of invoice payments due to lack of engagement letters on file. Finally, there is a lack of periodic monitoring of case activities from the inception to conclusion of cases.

We recommend the City Attorney:

- Ensure that outside legal firms are providing completed engagement letters detailing the personnel assigned to the case along with their hourly rate. In addition, establish controls to ensure invoices are reviewed for personnel assigned and accurate hourly rates.
- Require firms to provide monthly case status reports timely. Additionally, implement a periodic monitoring program to adequately track case activities throughout the life of the case and require firms to obtain approval prior to exceeding established thresholds.

The City Attorney's Office agreed with the audit findings and has developed positive action plans to address them. Management's verbatim response is in Appendix B on page 6.

Table of Contents

Executive Summary	i
Background.....	1
Audit Scope and Methodology	2
Audit Results and Recommendations	3
A. Invoice Validation	3
B. Case Monitoring	4
Appendix A – Staff Acknowledgement	5
Appendix B – Management Responses	6

Background

The City Attorney's Office performs a wide variety of legal services including prosecuting misdemeanor offenses, defending the City in civil lawsuits, and preparing the many required agreements, legal documents, and ordinances for the City. The City Attorney's Office is headed by the City Attorney and is comprised of six divisions which include Prosecution, Real Estate & Land Use, Commerce & Visitors, Community Service, Administration & Financial Services, and Litigation.

The litigation division represents and defends the City in civil lawsuits such as motor vehicle accidents & civil rights violations. Additionally, lawyers in this division file civil lawsuits to protect the City's interests and enforce the City's contracts and regulations. This litigation division is staffed with 1 Deputy City Attorney, 8 Assistant City Attorneys, 5 Paralegals, 3 Legal Secretaries, and 1 Administrative Associate.

There are occasions, however, where it is necessary to engage outside counsel on certain matters. In doing so, the City seeks to minimize legal expenses by eliminating all unnecessary activity and excessive charges. These occasions fall into two categories which are transactional and litigation.

Outside legal counsel for transactional matters are utilized if the matter requires some expertise in a specific field. For example, if the matter is related to Federal Communication Commissions (FCC) charges or Environmental Protection Agency (EPA) requirements, firms with expertise in these areas are hired to represent the City. Outside legal counsel for litigation matters are engaged to avoid a potential conflict of interest by having the City Attorney's Office represent one of the City's employees.

The City Attorney's Office utilizes the ProLaw system to maintain all documents, invoices, recordings, and case notes.

Below is a table summarizing the expenditures for outside legal counsel from the ProLaw system.

Outside Legal Counsel Expenditures

	FY2015	FY2016	FY2017 through April
Transactional Matters	\$1,645,064	\$685,903	\$344,417
Litigation Matters	\$1,155,025	\$1,676,375	\$760,190
Total	<u>\$2,800,089</u>	<u>\$2,362,278</u>	<u>\$1,104,607</u>

Audit Scope and Methodology

The audit scope was from October 1, 2014 through April 2017.

To establish our test criteria, we reviewed City Administrative Directives and the Outside Legal Guidelines for both litigation and transactional legal matters. We also interviewed City Attorney Management and staff to gain an understanding of the procurement process for outside legal counsel. Additionally, we interviewed staff from the Office of Risk Management who is responsible for processing litigation invoices in SAP for payment.

As part of our testing procedures we examined the following areas:

- The process of selecting outside firms
- City Clerk records of lawsuits filed against the City
- Invoicing and payment processes
- City Attorney files which included engagement letters, invoices received from outside firms, and monthly status reports
- ProLaw user access and roles
- ProLaw data of invoices paid to outside firms
- Payment data from SAP
- SAP user access regarding invoice payments and vendor management history

We selected a random sample of cases to determine if reporting requirements, invoice review and approval, and charges were compliant with the Outside Legal Guidelines. Finally, we performed data analysis on all payment data to identify anomalies such as duplicate payments.

We relied on computer-processed data in SAP to validate the payments made to legal firms for outside legal counsel. Our reliance was based on performing direct tests on the data rather than evaluating the system's general and application controls. We do not believe that the absence of testing general and application controls had an effect on the results of our audit. We also performed a review of the general access controls of the ProLaw system which used to keep copies of all documents, invoices, recordings, and case notes.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that 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 that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results and Recommendations

A. Invoice Validation

We tested a random sample of 25 cases totaling 314 invoices from October 2014 through April 2017 for accuracy and allowable expenses. Outside legal counsel sends monthly invoices to the City Attorney's Office for the duration of the case. We identified overpayment of hourly rates, and payment for unauthorized personnel assigned to cases. In addition, we were unable to determine the accuracy of invoice payments due to a lack of engagement letters on file. Of the 314 invoices,

- 61 invoices were billed the incorrect hourly rate, and in most cases, greater than the approved rate on the engagement letter on file
- 73 invoices could not be verified for accuracy since the engagement letter did not state an approved hourly rate
- 8 invoices included hours billed for personnel who worked on cases but were not authorized to do so
- 60 invoices could not be verified for accuracy since there was no engagement letter on file

The Guidelines for Outside Counsel are the foundation of a successful relationship between the City, the City Attorney's Office, and outside counsel. Within the guidelines, firms are required to provide several reports during the life of a case which include initial engagement letters.

The engagement letter sets out the terms of the engagement in the matter. Each engagement letter identifies the name of the matter, describes the requirements of the representation, the outside counsel firm and lists the names and approved billing rates for outside counsel personnel who will be authorized to work on the case. To accept the engagement, outside counsel must sign and return the engagement letter and other required documents to the City Attorney's Office.

The City Attorney's Office is not maintaining documentation to support the contractual terms for cases requiring outside legal counsel. Of the 25 cases tested, 4 cases did not have an engagement letter on file and 7 engagement letters did not have an approved hourly rate. As a result, City Attorney's invoice reviews for allowable costs are not effective.

Ineffective validation of invoices for outside counsel expenses may lead to overpayment and payment for unauthorized personnel.

Recommendation:

The City Attorney should ensure that outside legal firms are providing completed engagement letters detailing the personnel assigned to the case along with their hourly rate. In addition, establish controls to ensure invoices are reviewed for personnel assigned and accurate hourly rates.

B. Case Monitoring

Monthly status reports are not provided to the City Attorney's Office by outside legal counsel timely. Additionally, there is a lack of periodic monitoring of case activities and milestones from the inception to conclusion of cases. Auditors identified instances where the same invoice was paid twice and invoices were billed and paid by the City six months after services were performed.

Within the Outside Legal Guidelines, firms are to provide monthly status reports to the Chief of Litigation on the first business day of every month. These status reports are provided to keep the City Attorney's Office up to date on the status of pending litigation. During the course of the engagement, the guidelines also require outside firms to obtain approval for:

- exceeding 10 hours of research per case
- exceeding 5 written or oral depositions per case
- hiring experts or consultants
- using other attorneys in the law firm not previously approved
- using more than one attorney at any meeting, deposition, or trial
- attendance of any paralegal(s) at any meeting, deposition, or hearing

Through discussion with the City Attorney's Office, if outside firms require additional research hours or depositions to have the best chance at a successful outcome, those additional charges will not be denied. However, the approval is not documented.

Without the monitoring of monthly status reports, the City can be billed for unnecessary activities or activities already billed for. Additionally, without periodic monitoring, the City Attorney's Office would be unaware if the outside firm obtained proper approval to exceed limitations set by the guidelines.

Recommendation:

The City Attorney should require firms to provide monthly case status reports timely. Additionally, implement a periodic monitoring program to adequately track case activities throughout the life of the case and require firms to obtain approval prior to exceeding established thresholds.

Appendix A – Staff Acknowledgement

Buddy Vargas, CIA, CFE, Audit Manager
Gabe Trevino, CISA, Auditor in Charge
Doug Francis, Auditor

Appendix B – Management Responses



CITY OF SAN ANTONIO

October 26, 2017

Kevin W. Barthold, CPA, CIA, CISA
City Auditor
San Antonio, Texas

RE: Management's Corrective Action Plan for Audit of Outside Legal Counsel

The City Attorney's Office has reviewed the audit report and developed the Corrective Action Plans below corresponding to the report's recommendations.

Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
1	Invoice Validation Recommendation The City Attorney should ensure that outside legal firms are providing completed engagement letters detailing the personnel assigned to the case along with their hourly rate. In addition, establish controls to ensure invoices are reviewed for personnel assigned and accurate hourly rates.	4	A	Elizabeth Provencio, First Assistant City Attorney Deborah Klein, Deputy City Attorney, Litigation	Phase 1 – November 30, 2017 Phase 2 – October 1, 2018

OFFICE OF THE CITY ATTORNEY


PO BOX 839966 • SAN ANTONIO, TX 78283-3966 • TEL: 210-207-8940 • FAX: 210-207-4004

Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
	<p>Action plan:</p> <p>Phase 1 – Retention letters will be reviewed on a planned periodic basis to ensure updated information and consistency. A trained member of the CAO will be assigned to prepare and follow up on confirming engagement letters for outside counsel. This individual will also confirm that the litigation or project plan, including staff who will work on the matter and hourly rates, is complete and returned to the CAO within 20 days of assignment consistent with the engagement letter.</p> <p>All engagement letters will be maintained in a single location and within an accessible database for ease of access. CAO will send a written communication to all outside counsel outlining processes for retention and changes to litigation guidelines.</p> <p>Phase 2 - With respect to review of invoices, the CAO is researching whether or not current software will allow for electronic submission and review of invoices. Electronic invoicing would significantly enhance the identification of billing information that is inconsistent with the engagement letter, e.g., hourly rate. If such software is not currently available, the CAO will seek to have the cost of such software included in its FY2019 budget.</p> <p>Regardless, through the process above, a database shall be created and maintained of each matter assigned to outside counsel, approved counsel on the file and approved rates, for easier review of invoices.</p>				
2	<p>Case Monitoring</p> <p>Recommendation The City Attorney should require firms to provide monthly case status reports timely. Additionally, implement a periodic monitoring program to adequately track case activities throughout the life of the case and require firms to obtain approval prior to exceeding established thresholds.</p>	4	A	<p>Elizabeth Provencio, First Assistant City Attorney</p> <p>Deborah Klein, Deputy City Attorney, Litigation</p>	November 30, 2017

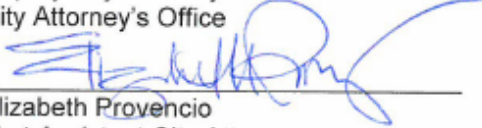
Recommendation					
#	Description	Audit Report Page	Accept, Decline	Responsible Person's Name/Title	Completion Date
	<p>Action plan:</p> <p>The CAO implemented a new monthly status report format which will be provided to all outside counsel representing the City. This format will be included with the correspondence issued from the CAO referenced in Section 1, Phase 1 above. Additionally, the Risk Management Office, in conjunction with the CAO, has created Litigation Best Practices protocols addressing reporting and monitoring of files, especially those assigned to outside counsel. A copy of those protocols is attached as Exhibit B. The Protocols, as well as the revised Representation and Litigation Guidelines that will be issued with all new assignments, will outline tracking responsibilities and when additional approvals will be required.</p>				

A review of the Audit results reflects that of the \$992,430 total of invoices randomly sampled, only \$21,770.00 in overages were identified, or a 2.2% margin of error. However, the City Attorney's Office is committed to continuous improvement in all phases and to addressing the recommendations in the audit report. We look forward to a follow-up audit to ensure our process improvements have been appropriately implemented.

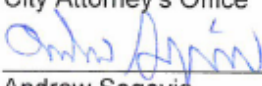
Sincerely,


Deborah Klein
Deputy City Attorney
City Attorney's Office

10/26/17
Date


Elizabeth Provencio
First Assistant City Attorney
City Attorney's Office

10/26/17
Date


Andrew Segovia
City Attorney

10/26/17
Date