

# MUNICIPAL AUDITING REPORT CITY OF ROANOKE



## **Fleet Management – Vendor Provided Lunch August 26, 2019**

Report Number: 20-003  
Audit Plan Number: 19-315

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## SUMMARY OF COMPLAINTS

Vendors under contract to build and deliver solid waste trucks for the City provided lunch for approximately 100 city employees when delivering the trucks, at the request of city management.

## INVESTIGATION OBJECTIVES & SCOPE

### Investigation Objectives:

1. To determine if the vendor-provided lunch for city employees was inconsistent with the intent of the City's procurement policies and the Virginia Public Procurement Act (VPPA).

**Substantiated** – We concluded that the Director of General Services erred in asking vendors to provide lunch to approximately 100 city employees. This action appeared to be inconsistent with city policy and Section 2.2-4371 of the VPPA. The effect of this error was amplified when the Director dismissed the advice of the City's Purchasing Manager without seeking guidance from the City Attorney's Office to resolve the matter.

### Investigation Scope:

We reviewed the State and Local Government Conflict of Interest Act, the Virginia Public Procurement Act, and the City's Procurement Manual guidelines, including Section 3.13 "Discretionary Expenditures." We interviewed a variety of individuals who were directly or indirectly involved, or who could provide authoritative guidance on procurement laws, regulations and policy.

We reviewed the contracts associated with the vehicle purchases, as well as the record of all purchases of solid waste vehicles since July 1, 2014.

## End of Investigation Objectives & Scope

## **BACKGROUND**

In the spring of 2018, the City's Fleet Management Division ordered 17 solid waste trucks. A Richmond dealership coordinated the manufacture of these specialty vehicles by multiple vendors, in accordance with terms negotiated by an industry cooperative. The City is authorized to purchase these types of specialty vehicles through the cooperative. Several of the trucks were delivered to the City on April 30, 2019. At the request of the Director of General Services, two (2) of the vendors provided a celebratory lunch for city employees on the date the trucks were delivered.

**End of Background**

## Objective 1: VPPA Violation

### Allegation:

The vendor-provided lunch for city employees was a violation of the Virginia Public Procurement Act (VPPA) and the City's Procurement Manual guidelines.

### **Substantiated.**

### Overview:

The Fleet Manager, at the direction of the Director of General Services, asked vendors to provide lunch for ~ 100 city employees as a celebration of the delivery of several long-awaited vehicles. The estimated cost of the lunch was \$6 to \$8 per person, which both the Director and the Manager felt was nominal in value. Neither the Director of General Services, nor the Fleet Manager felt that the lunch provided by the vendor was a violation of city policies or VPPA regulations based on the following:

- The value of the meal provided to each employee was de minimis.
- There was no personal benefit to the Director or Fleet Manager, beyond the value of the individual meal.
- The lunch was part of a training event during which vendor representatives oriented city employees to the new vehicles.
- The vehicles were purchased through a cooperative contract that was not negotiated by the City.
- The lunch request was made at the end of the project, just prior to delivery of the trucks.

The Director and Manager invited select personnel from Purchasing, Risk Management, Finance and the City Attorney's office who had played a role in helping to obtain the trucks. The Assistant City Manager for Operations was also aware that the vendor would be providing the lunch.

The Purchasing Manager explicitly declined the invitation, stating to the Director that she felt it was in violation of VPPA and a conflict of interest. Other persons from these ancillary departments with whom we talked also had reservations about accepting meals from a vendor and did not attend.

The Director of General Services attended training several weeks prior to the vendor-provided lunch entitled "There's No Such Thing as a Free Lunch." The training included scenarios that

touched on issues similar in nature to the vendor-provided lunch on April 30. Application of the VPPA to these types of situations was discussed.

The VPPA prohibits the solicitation or acceptance of gifts by bidders, offerors, contractors or subcontractors, or anything of more than nominal or minimal value. Neither city policy nor the Code of Virginia specifies a maximum value that is considered to be nominal. The Local Government Attorneys of Virginia (LGAV) Handbook specifies \$5 or less as being a reasonable standard for nominal value.

Based on our discussions with the City Attorney's Office, they would have advised the Director not to solicit or accept the vendor-provided lunch. The total cost to the vendor exceeded any reasonable standard of nominal value. Allowing such an event creates an opportunity for competing vendors to raise concerns about conflicts of interest and potential disadvantages in future solicitations.

The former Purchasing Manager resigned effective July 1, 2019. Her successor began work at the City on July 16<sup>th</sup> providing our office an opportunity to obtain a second opinion about the appropriateness of asking a vendor to provide lunch. The new Purchasing Manager has decades of experience in public procurement, both in local government and with Virginia's University system. Based on the facts our office provided, and given her past experience with and knowledge of VPPA, she would have advised against requesting or accepting the lunch.

Based on the events as we understand them, as well as the consensus interpretation of Section 2.2-4371 of the VPPA, we believe the Director of General Services erred in asking the vendor to provide a celebratory lunch for ~ 100 city employees. We believe he compounded this mistake when he did not seek advice from the City Attorney's Office once the Purchasing Manager stated her concerns.

**End of Objective 1**

**SUMMARY OF MANAGEMENT ACTION PLANS**

<b>Management Action Plan – VPPA Violation</b>	
The maximum dollar value considered “nominal” and list of items for the purposes of complying with the VPPA will be defined.	
<b>Assigned To</b>	<b>Target Date</b>
Jeffrey H. Powell, Director General Services	3/01/2020

<b>Management Action Plan – VPPA Violation</b>	
Interpretation challenges between the Director of General Services and Purchasing Manager will be referred to the designated Assistant City Manager for resolution.	
<b>Assigned To</b>	<b>Target Date</b>
Jeffrey H. Powell, Director General Services	12/02/2019

<b>Management Action Plan – VPPA Violation</b>	
Revisions will be made to the Purchasing Manual to have it align with State Purchasing Guidelines	
<b>Assigned To</b>	<b>Target Date</b>
Pamela Simpkins, Purchasing Manager	7/02/2020

<b>Management Action Plan – VPPA Violation</b>	
Guiding principles will be developed for determining when employees without procurement responsibilities may accept promotional items such as hats, shirts and similar goods, or other nominally valued food and refreshments.	
<b>Assigned To</b>	<b>Target Date</b>
Jeffrey H. Powell, Director General Services	7/02/2020

**End of Summary of Management Action Plans**

## MANAGEMENT COMMENTS

City Management (Administration) accepts the findings of the Municipal Auditing Report. The Assistant City Manager for Operations takes full responsibility for the violation. The Summary of Management Action Plans outline specific steps that will be taken in response to the findings and recommendations.

While Administration does not take exception to the findings in response to the complaint submitted to the Fraud, Waste, and Abuse Hotline, it does take exception to specific representations and characterizations included in the report as referenced below:

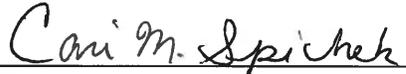
- “The effect of this error was amplified when the Director dismissed the advice of the City’s Purchasing Manager without seeking guidance from the City Attorney’s Office to resolve the matter.”
- “Other persons from these ancillary departments with whom we talked also had reservations about accepting meals from a vendor and did not attend.”
- “The Director of General Services attended training several weeks prior to the vendor-provided lunch entitled “There’s No Such Thing as a Free Lunch.” The training included scenarios that touched on issues similar in nature to the vendor-provided lunch on April 30. Application of the VPPA to these types of situations was discussed.”
- “The former Purchasing Manager resigned effective July 1, 2019. Her successor began work at the City on July 16th providing our office the opportunity to obtain a second opinion about the appropriateness of asking a vendor to provide lunch. The new Purchasing Manager has decades of experience in public procurement, both in local government and with Virginia’s University system. Based on the facts our office provided, and given her past experience with and knowledge of VPPA, she would have advised against requesting or accepting the lunch.”

The inclusion of the representations and characterizations above go beyond the spirit of reporting whether a policy is violated. Such representations and characterizations border on impugning the integrity and competency of the Director of General Services.

### End of Management Comments

**ACKNOWLEDGEMENTS**

We would like to thank the Director of General Services and the Fleet Manager for their cooperation and assistance throughout the Investigation. We would also like to thank the Purchasing Department and the City Attorney's Office for their input as well.

  
Cari M. Spichek, CIA  
Senior Auditor

  
Drew Harmon, CPA, CIA  
Municipal Auditor