

Compliance Audit Report– Colliers International Contract

January 11, 2022



City of Gainesville Office of the City Auditor

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Executive Summary

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What We Did

The objective of this engagement was to evaluate compliance with the deliverables, terms and conditions of the City's contract with Colliers International Florida, LLC (Colliers). City departments and staff provide many services to its residents. Duties include managing a significant number of contracts. Effective contract administration is critical to the success of public contracting processes.

Through inquiries, observations, and substantive testing, we reviewed compliance with the contract terms related to the performance of real estate brokerage and lease administration services. Specifically:

- We reviewed the adequacy and completeness of policies and procedures governing the administration of the City's contract with Colliers.
- We assessed the adequacy of resident and tenant complaint management processes.
- We reviewed processes and activities around the acquisition and disposition of City property to determine whether they comply with requirements established in the contract.
- We reviewed lease administration activities, and analyzed collection of monies and payments to the City, to determine whether they are in compliance with requirements established in the contract.
- We analyzed third party compensation for completeness and accuracy in compliance with requirements established in the contract.

What We Found

Inadequate Oversight of Financial Activity

Management's reconciliations of Colliers financial activity and reports need improvement. The vendor made some errors in calculating lease payments to the City. The vendor overpaid the City for collected rent payments in the amount of \$22,923.28 and \$1,833.40. The vendor did not pay the City timely for rent collected in August 2021. Colliers corrected the errors in following months.

Insufficient Contract Administration Procedures

Insufficient procedures are in place to govern the administration of the Colliers contract. Of 30 leases, we sampled four and one was not fully executed. Management lacks centralized procedures for efficiently tracking and resolving tenant complaints regarding leased City properties. Potential conflicts of interest are not identified and reviewed. A third party report assessing the City's real estate portfolio and recommendations for the best use of properties was not received.

We would like to thank Capital Asset Planning and Economic Resilience (CAPER) personnel, Budget and Finance personnel, and the Interim City Manager leadership team, for their cooperation and professionalism throughout this engagement.



INTRODUCTION

This audit was added to the City Auditor's 2021 Audit Plan on November 17, 2021. The objective of this audit was to evaluate compliance with the Colliers contract terms and conditions, and deliverables. During this engagement, management decided not to renew its contract with Colliers International upon contract expiration on December 31, 2021. The contract also requires a 30-day post termination reconciliation period between Colliers and the City for all lease management transactions and financial activity.

City departments and staff provide many services to its residents that include managing a significant number of contracts. Effective contract administration is critical to the success of public contracting processes.

The City of Gainesville formed the Department of Capital Asset Planning and Economic Resilience (CAPER) in 2020 to centralize City of Gainesville real estate management activities under one department, as well as to work on capital planning, assigned redevelopment projects and economic development Citywide. The City contracted a third party, Colliers International Florida, LLC, (Colliers) in October 2020 to perform commercial real estate brokerage and lease administration services for the City. At the time of this audit, CAPER management was the lead for administering the Colliers contract with support from other departments such as Budget & Finance and Gainesville Community Reinvestment Area (GCRA).

The City owns multiple properties that are leased to tenants. Historically, departments having purview over certain properties, including GCRA, were responsible for lease administration. Since the City centralized real estate management services in 2020, CAPER now has purview over City leases and engaged Colliers to facilitate day-to-day lease administration processes.

SCOPE AND METHODOLOGY

The scope of this engagement included a review of processes and activities from January 1, 2021 to December 31, 2021, to determine whether contract-related activities assure compliance with contract terms and accountability for services provided. We performed the audit through inquiry, observation, and substantive testing for processes in scope. Specifically, the audit team:

City Contract Administration

- Reviewed adequacy and completeness of policies and procedures governing the City's contract administration processes,
- Assessed adequacy of process to manage resident and tenant complaints,

Sale and Acquisition of City Property and Compensation

- Reviewed *processes and activities* around the sale of City property and compensation to determine whether they are in compliance with requirements established in the contract,

Lease Administration, Collection of Monies, and Compensation

- Reviewed lease administration activities, and analyzed collection of monies and payments to the City, to determine whether they are in compliance with requirements established in the contract,



- Analyzed consultant compensation for completeness and accuracy in compliance with requirements established in the contract.

RESULTS AND CONCLUSION

As a result of our review, we believe management has been proactive in their communications with the third party and fulfilled their roles as designed; however, we identified the following two opportunities to improve City oversight of real estate brokerage and lease administration contracts and services, and to assure accountability and compliance with contract terms.

1. Inadequate Oversight of Financial Activity (Moderate)
2. Insufficient Contract Administration Procedures (Moderate)

The Audit Issue details and management action plans are included within the *Audit Issues and Management Action Plans* section beginning on page 8.

- **High Risk:** Key controls do not exist or are not effective, resulting in an impaired control environment. High Risk control weaknesses require immediate corrective action detailed in the management action plan.
- **Moderate Risk:** Adequate control environment exists for most processes. Moderate risk control weaknesses require corrective action detailed in the management action plan.
- **Low Risk:** Satisfactory overall control environment with a small number of low risk control improvement opportunities that do not require corrective action or a management action plan.

We would like to thank Capital Asset Planning and Economic Resilience (CAPER) personnel, Budget and Finance personnel, and the Interim City Manager leadership team, for their cooperation and professionalism throughout this engagement.

GOVERNMENT AUDITING STANDARDS COMPLIANCE

We conducted this audit engagement in accordance with *Generally Accepted Government Auditing Standards* and the *International Standards for the Professional Practice of Internal Auditing*. Those standards require that we plan and perform the engagement 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 observations and conclusions based on our audit objectives.

INTERNAL AUDIT TEAM

Ginger Bigbie, CPA, CFE, City Auditor
 Brecka Anderson, CIA, CFE, Assistant City Auditor (Lead Auditor for this engagement)
 Gregory Robeson, CPA, CIA, CFE, Internal Audit Manager
 Diana Ferguson-Satterthwaite, FCCA, CIA, Senior Internal Auditor



BACKGROUND

The City of Gainesville's Real Property Policies establish the regulations that govern the acquisition and disposition of real property by the City. Due to limited real estate management experience in house and a desire to improve lease management, the City issued a Request for Proposal in May 2020 seeking a qualified real estate brokerage firm to provide professional services related to real property assets (such as lease administration) owned by the City and to identify properties for acquisition. After a solicitation process, the City selected Colliers International (Colliers) and entered into a contract for real estate brokerage and lease administration services effective October 2020 and expiring December 31, 2021 with an option to extend the contract for one additional year, for a maximum of three extensions. Colliers was engaged to provide the City the following services:

- Lease Administration, Collection of Monies, and Payments to the City,
- Acquisition and Disposition of City Property and Valuation Services,
- Reporting.

Lease Administration, Collection of Monies, and Payments to the City

Colliers serves as the fiscal and accounting agent for the City and collects all rents and other lease-related monies. Colliers advertises properties available for lease and works with City staff to complete lease agreements. The firm invoices tenants leasing City properties and collects rent payments from the tenants.

For its professional leasing services, Colliers receives a management fee of 3% of the rent the firm collects (excluding monies for pass-through expenses such as taxes and insurance). The Colliers 3% management fee from January to November 2021 totaled \$12,913 which is averages \$1,174 each month. Colliers established an exclusive escrow account to account for rent collected on behalf of the City. Monthly, Colliers remits the collected rent to the City, less the firm's management fee.

Acquisition and Disposition of City Property and Valuation Services

Colliers assisted City departments with identifying and selling City property, identifying properties for acquisition, and property valuations. Colliers worked with CAPER management and staff to secure contracts for the sale of two properties to third parties. The approach for sales of other properties were in discussion. No sale or acquisition was closed at the time of the issuance of this report; therefore, Colliers did not collect any administration fees for this service.

Reporting

Colliers agreed to provide reports to the City for proper oversight and management of the contract for compliance. The firm provided monthly reports to management for collected tenant deposits, rent, rent receivables, management fee calculations, interest earned and other accounting information as requested. The City convened a group of staff comprised of crossfunctional representatives (CAPER, Budget & Finance, GCRA, Parks, Recreation and Cultural Affairs, Technology & Innovation and Santa Fe College) to review these reports and discuss other issues as they arose. Management and Colliers held periodic meetings to discuss these reports. The City Auditor's Office observed two meetings during this engagement. With the expiration of the Colliers contract, final reconciliation is in progress.



Per contract terms, Colliers was required to provide a report of their assessment of the City's real estate portfolio and identification of opportunities to meet City needs and increase revenue. The report was not provided. Management and Colliers held periodic meetings to discuss the status of properties up for sale and acquisition, including the requirement for the delivered report.



AUDIT ISSUES AND MANAGEMENT ACTION PLANS

ISSUE #1 Inadequate Oversight of Financial Activity

Risk rating: [Moderate]

Observation:

Management's reconciliations of financial activity and reports from Colliers International (Colliers) related to the real estate contract need improvement. Over the course of the contract, the vendor made multiple errors when calculating lease payments to the City. Management was successful in reconciling some errors, but was unable to resolve all errors in a timely manner. While Colliers collected tenants' lease payments, their subsequent payments to the City were not made in strict compliance with contract terms. Specifically:

- Colliers overpaid the City by \$22,923.28 for July 2021 tenant lease receipts that had already been paid directly to the City by the tenant. The July 2021 overpayment resulted in a \$16,002 shortage in the escrow account (exclusive to City of Gainesville lease receipts and payments) in the month of August 2021.
- As a result of the shortage in the escrow account, Colliers did not pay the City an August 2021 lease payment. The vendor corrected the non-payment for August in the payment for September leases. Management communicated with the vendor on periodic meetings and as needed in an attempt to reconcile errors.
- Colliers made a \$1,833.40 overpayment to the City for October 2021 leases. Management detected the error through reconciliation and informed the vendor that a correction was needed. Management requested the correction be applied to the December lease payment.

Criteria:

The Government Finance Officers Association's Best Practices entitled "Receivables and Handling Receipts in the Treasury Office" guide that governments have many types of receivables, including service fees. The timing of the receipt of the receivables is critical to the cash flow and treasury function of a government. Therefore, care must be taken to establish enforceable invoicing and collection policies and the consequences of non-payment of amounts due. Governments should ensure their revenue control and management policy and procedures are in full compliance with any applicable laws or requirements. Governments should establish invoicing and accounts receivable controls, processes, and procedures for services provided in advance of payment, considering the following: billing timeframe, dollar thresholds, use of outside collection services, write-off of bad debt, receivables aging analysis, and decision-making authority.

The Committee of Sponsoring Organizations (COSO) Internal Control – Integrated Framework establishes that Monitoring Activities are one of the five essential components of the internal control framework. Included in Monitoring Activities is Principle 16 which states, "The organization selects, develops and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning."



Cause:

Inadequate procedures and training contributed to insufficient oversight processes for financial activity relevant to the Colliers International contract with the City.

Risk:

Inadequate controls over monitoring financial activity related to the contract increase the risk that error or fraud will not be detected timely and can lead to financial loss and/or inaccurate financial statements.

Recommendation:

The City Auditor recommends and agrees with the following management action plan.

Management Action Plan

Management will enhance documented procedures to ensure the billing and collection of lease payments, payments to the real estate consultant, and transfers to the City are accurate, complete, timely, properly recorded, and reconciled. Procedures will include the roles for Finance oversight, monitoring and reconciliation of real estate financial activities and reports. We will work on a centralized plan to better track City properties and their related billing, security deposits, tenant payments, and contractor fees. Additional training will be provided to relevant finance and accounting staff.

Due date: May 31, 2022

Responsible Party: Tracy Whiteley

Accountable Party: Andrea Agha, Cintya Ramos,
Phyllis Plummer, Erik Bredfeldt, Kara Brecken

Consulted Party: Sarah Vidal-Finn, Fred Murry

Informed Party: Cynthia Curry, David Schwartz



ISSUE #2 Insufficient Contract Administration Procedures

Risk rating: [Moderate]

Observation:

Centralized Procedures

Although the City does have an approved Real Estate Policy that governs the disposition of land and lease terms, sufficient centralized procedures around contract administration are not in place to adequately govern the management of the sale, acquisition or lease administration of City property. During this review we noted the following opportunities to strengthen procedures:

- Procedures around administration of the Colliers International contract did not define tenant billing expectations, the process for collection of tenant lease payments, management's monitoring of past due accounts including write off thresholds, or the delineation of City staff and contractor roles and responsibilities. Of 30 leases, we sampled four and one was not fully executed.
- Management lacks sufficient centralized procedures for efficiently tracking and resolving **tenant complaints** regarding leased City properties.
- **Potential conflicts of interest** related to the Colliers contract were not adequately managed. During this review we identified one potential conflict of interest with a Colliers staff and one of their affiliated businesses but management did not have procedures in place to manage the potential conflict. Potential conflicts of interest with City staff or third parties should be identified and reviewed periodically to minimize the risk of fraud, waste and abuse.

Contract Administration

The City's contract administration procedures to govern oversight and management of the Colliers contract are informal. Contract administration determines how well the government and the contractor performed to meet the requirements of the contract. It encompasses all dealings between the government and the contractor from the time the contract is awarded until the work has been completed and accepted or the contract terminated, payment has been made, and disputes have been resolved. As such, contract administration constitutes that primary part of the procurement process that assures the government gets what it paid for.

Third Party Report

A third party report assessing the City's real estate portfolio and recommendations for the best use of properties was not submitted to management as required in the contract. The City's contract with Colliers commenced in October 2020 with leasing activities commencing January 1, 2021. The third party assessment was to:

- Summarize the costs and potential revenue associated with the sale of each property,
- State goals as they relate to the City,



- Identify properties which present an opportunity as they are determined to be either underutilized or surplus to City needs,
- Present a specific plan of action to meet the City's goals of revenue generation,
- Identify all real property appropriate for use as affordable housing.

Criteria:

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) issued a framework to help organizations design and implement internal controls to address risk. Principles recommend that organizations select and develop internal controls to mitigate risks to the achievement of objectives, and implement policies that establish what is expected and procedures that put policies into action.

Signed lease agreements should be maintained for all tenants occupying City properties.

The City's contract document, Request for Proposal, stated "Upon award of the contract, the Contractor shall provide a review an assessment of all City owned vacant and/or underutilized property, its current use, and submit recommendations for the best use of the property. The Contractor is expected to produce a draft report, including a recommendation section for City review, no later than one hundred and twenty (120) days after the commencement of the contract. The report should summarize the costs and potential revenue associated with the sale of each property; state goals as they relate to the City; identify properties which present an opportunity as they are determined to be either generation. In accordance with Florida Statute 166.0451, the report shall identify all real property that is appropriate for use as affordable housing. The final report will reflect City comments and be produced within one hundred and eighty (180) days of commencement of the contract."

Cause:

Historically, departments having purview over certain properties, including GCRA, were responsible for lease administration. CAPER is a new City department with three staff formed within the last two years to centralize real estate management activities under one department, as well as to work on capital planning, assigned redevelopment projects and economic development Citywide. While centralizing real estate services is underway, key tasks such as the establishment of procedures are not yet completed.

The City adopted a fraud risk management policy in October 2021, and more robust conflict of interest controls in some procurement policies; however, management lacks procedures requiring the disclosure and periodic monitoring of potential conflicts of interest around contracts administered by the department.

While the City has made progress toward obtaining signed lease agreements since centralizing real estate services, some leases are not monitored effectively.

Risk:

The lack of sufficient contract administration and real estate management procedures increases the risk that:

- Real estate sales, acquisitions and leases are handled inappropriately, resulting in inefficient processes and/or financial loss,



- Tenant leases and complaints are not adequately managed, resulting in reputation damage and/or financial loss,
- Conflicts of interest are not identified or managed which can lead to fraud, waste or abuse.

Without signed leases, tenants may dispute amounts owed and payments may not be tracked properly resulting in a loss of City revenue.

Recommendation:

The City Auditor recommends and agrees with the following management action plan.

Management Action Plan

City leadership is working through the transition and developing next steps for City real estate services such as determining whether the function will be managed in-house by City departments and/or assisted by a third party. Management will work with cross-functional stakeholders to establish and document centralized procedures that govern City real estate acquisition, disposition and lease activities. The procedures will include:

- *City and third party roles and responsibilities, including tenant billing, payment and monitoring activities, and consistent and equitable management of past due accounts,*
- *Management and tracking of tenant complaints,*
- *Clear and effective City contract administration and related third party risk management processes, including identifying and monitoring potential conflicts of interest,*
- *Properly executed lease agreements for all City properties,*
- *The development of a report of the City's real estate portfolio and recommendations to meet City needs.*

Due date: June 30, 2022

Responsible Party: Erik Bredfeldt

Accountable Party: Andrea Agha, Cintya Ramos

Consulted Party: Sarah Vidal-Finn, Fred Murry

Informed Party: Cynthia Curry, David Schwartz, Sean McDermott, Heather Murray

