Final Audit Follow-Up

ALLAHASSEE OFFICE OF THE CITY AUDITOR

> T. Bert Fletcher, CPA, CGMA City Auditor

As of April 30, 2016

Inquiry into Potential Conflicts of Interests Regarding City Energy Auditors and Their Secondary Employment

(Report #1601 issued November 12, 2015)

Report #1611 May 20, 2016

Summary

City management and staff have successfully completed each of the 10 action plan steps established to address issues and circumstances identified in audit report #1601, "Inquiry into Potential Conflicts of Interests Regarding City Energy Auditors and Their Secondary Employment." Those completed actions further the City's ongoing efforts to preclude employee conflicts of interests.

In audit report #1601, we reported that our audit procedures did not disclose any instances where City energy auditors that worked secondary employment inappropriately used their City positions to obtain HVAC (heating, ventilation, and air conditioning) work for their secondary employment. We also reported that our audit procedures did not disclose instances where other City staff within the Utility Services Department (subsequently reorganized into the Customer Services Department) used their positions to inappropriately direct (recommend) HVAC work to those City energy auditors.

Furthermore, we reported that our audit procedures did not disclose where City energy auditors or other City staff recommended specific contractors, who were not City employees, to City utility customers in connection with work deemed needed or performed pursuant to the City energy audit or efficiency programs.

As reported, we did, however, identify circumstances relating to energy auditors in connection with their secondary employment that could be perceived as conflicts of interests. We also identified areas where procedures and practices relating to the energy audit and other energy efficiency programs should be enhanced and strengthened to help ensure conflicts of interests and other inappropriate actions relating to employees' secondary employment do not occur. Lastly, we determined appropriate procedures for one inspection activity should be determined and formalized, with staff trained accordingly.

Ten action plan steps were developed to address those areas. We found during this follow-up engagement that each of those actions had been completed. The completed actions included:

- Revising and enhancing written policies and procedures to reduce the risk of conflicts of interests by precluding certain actions by City energy auditors in connection with their City positions and secondary employment (five action plan steps).
- Revising and enhancing written policies and procedures to require reporting and tracking of work performed in connection with secondary employment so as to help preclude conflicts of interests (one action plan step).
- Requiring City energy auditors to make annual assertions and declarations regarding their secondary employment and conflicts of interests (three action plan steps).
- Enhancing written policies and procedures to clarify and specify what actions should and should not be done in regard to removing and attaching metal cabinet

panels on HVAC condensers and air handlers (one action plan step).

We commend City management and staff within the Customer Services Department (includes energy auditors) for the timely completion of those actions. We also appreciate their cooperation and assistance during this follow-up engagement.

Scope, Objectives, and Methodology

We conducted this audit follow-up in accordance with the International Standards for the Professional Practice of Internal Auditing and Generally Accepted Government Auditing Standards. Those standards require we plan and perform the audit follow-up to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit follow-up objectives.

Report #1601

Our initial audit inquiry (report #1601) addressed activity within the City's energy audit program and other energy efficiency programs that involved: (1) contact by City employees with City utility customers and (2) City utility customers paying contractors for repairs, maintenance, or installations at their premises as a result of those programs. While the audit focused primarily on current procedures and processes and activity from January 2014 through September 2015, we also considered certain activity occurring over the last 15 years.

The purpose of our initial audit inquiry was to determine whether City energy auditors were using their City positions to inappropriately obtain work in connection with their secondary employment or, contrary to City procedures, recommend specific contractors to City utility customers. Another purpose of our inquiry was to determine whether other employees working

in the City Utility Services Department (subsequently reorganized into the Customer Services Department) were inappropriately using their positions to direct work either to City energy auditors that worked secondary employment or to specific contractors. The secondary work addressed in our initial audit inquiry pertained to heating, ventilation, and air conditioning (HVAC) systems. Our initial audit inquiry also included a determination of the licensure status of City energy auditors performing HVAC work as part of their secondary employment. Lastly, we considered the appropriateness of certain inspection and evaluation activities performed by energy auditors during their City energy audits.

To meet our audit objectives we performed various audit procedures, including, but not limited to:

- Identified and reviewed City policies and legal provisions pertaining to employee conflicts of interests in connection with secondary employment.
- Identified and reviewed licensure requirements for HVAC work.
- Determined which energy auditors worked secondary employment that involved HVAC work and, to the extent determinable, whether those employees were properly licensed for the work performed.
- Selected a sample of recent energy audits and interviewed the applicable City utility customers to determine whether: (1) the energy auditor performing the energy audit recommended himself or any specific contractor to perform any needed HVAC repairs, maintenance, or installations and (2) any HVAC work was done and if so, what contractor or individual performed that work, and how the utility customer selected the contractor or individual.
- Identified and reviewed growth management permits issued to contractors that either hired or represented City energy auditors performing HVAC work as part of their secondary employment; then reviewed

related City records for that work to ascertain if it may have been awarded as a result of a City energy audit or a City energy program grant, loan, or rebate. As applicable, interviewed pertinent City utility customers to determine if there were any perceived or actual conflicts of interests.

• Interviewed City energy auditors and other related City staff for the purpose of identifying potential conflicts of interests.

Report #1611

This is our first and final follow-up on action plan steps identified in audit report #1601. The purpose of this follow-up is to report on the progress and status of efforts as of April 30, 2016, to complete action plan steps established to address issues identified in our initial audit inquiry. To determine the status of the action plan steps, we interviewed staff, made observations, and reviewed relevant documentation.

Background

Citizens' Concerns. In early August 2015, the Ethics Officer working for the City of Tallahassee Independent Ethics Board advised the City Auditor's Office that several HVAC doing contractors business within the expressed area had Tallahassee concerns regarding practices of City energy auditors. The City Auditor and Ethics Officer subsequently met with the HVAC contractors. meeting, the HVAC contractors indicated they were concerned that City energy auditors and energy program City staff inappropriately used their City positions to obtain secondary employment for themselves or others. After subsequent discussions with City management, the City Auditor decided to conduct an inquiry (audit) into the matter.

City Energy Audit Program. The City of Tallahassee has provided residential energy audits since 1981 and commercial energy audits since 1984. Annually, the City estimates it performs about 6,000 residential energy audits

and about 200 commercial energy audits. Those energy audits are provided at no charge to the customer and involve on-site "walk-throughs" by the energy auditor at the customers' premises.

Energy audits typically address one or more of the following three areas:

- Ceiling insulation the energy auditor determines the adequacy of the premises' ceiling insulation; customers may qualify for City grant assistance to add ceiling insulation when needed.
- 2. <u>High bill concerns</u> the energy auditor focuses on determining the causes of customers' high bills, with the reasons often attributed to air conditioning or water heaters.
- 3. General information audit the energy auditor conducts a general review and answers the customer's questions and gives them advice and guidance as to energy improvements. Areas checked during the review include, for example, HVAC systems, insulation, water heaters, appliances, windows, and doors.

As of the date of inquiry fieldwork in August and September 2015, there were 14 employees conducting energy audits. Twelve of those 14 employees worked in the City's regular energy audit program while the other two were assigned to perform energy audits in connection with the City's REACH Program. The REACH Program is a relatively new community program (started in 2010) designed to help City utility customers in selected neighborhoods to lower their utility consumption through a combination of energy audits (inspections and advice) and contracted installations of weatherization, caulking, and energy efficient light bulbs, aerators, and shower heads. Other than those installations, energy audits conducted under the City's REACH Program are similar to those conducted under the regular program.

Overall, the energy audits involve review and inspection of equipment and systems and the provision of advice to utility customers based on

those reviews and inspections. In regard to HVAC systems, energy auditors typically:

- Inspect air filters and evaporator coils for dust accumulation and clogging.
- Check the drain pan on the air handler to ensure it is working properly and not clogged.
- Inspect for leaks between the ducts and air handler.
- Inspect and check the duct work for leaks.
- Inspect thermostats to ensure they are working properly.
- Use thermometers to measure temperature changes at the inlet and outlet points of HVAC coils to determine system adequacy.
- Review usage history from City utility records to help identify anomalies in the performance of the HVAC system.

Repairs, maintenance, and replacements of equipment and systems (e.g., HVAC systems and water heaters) are not provided by City staff in connection with an energy audit. In the event the energy auditor determines that repairs, maintenance, or replacement of such equipment or related components is warranted, the energy auditor may recommend to the customer (in an advisory role) that such services be obtained. However, City procedures provide that the energy auditor may <u>not</u> recommend a contractor to perform that work.

Other City Energy Efficiency Programs. The City has other energy efficiency programs that provide grants, loans, and rebates to City utility customers. Under the grant program, customers that meet income-based eligibility guidelines may be provided City grants to assist them in repairing HVAC systems or hot water leaks. Under the loan program, the City offers loans to that purchase various customers energyefficiency appliances, including HVAC systems. Customers obtaining such loans are billed for and pay the resulting loan payments through their monthly utility bills. Under the rebate program, customers that purchase and install HVAC systems meeting established energy efficiency standards may submit a rebate application to the City and receive a rebate ranging from \$100 to \$750. The amount depends on the type and energy rating of the purchased HVAC system.

For the loan and rebate programs, a City utility customer may use any qualified contractor to install the new HVAC system. A list of licensed contractors is made available to customers participating in those programs to assist them in selecting a contractor. The list during our initial audit inquiry included 61 HVAC contractors. As stated, the customers are not required to use a contractor on that list.

For the grant program, customers may only use those HVAC contractors that have been authorized to participate in that program. During the time of our initial audit inquiry, there were 25 HVAC contractors participating in the grant program.

HVAC Contractor Licensure. To protect the general public, state law (Section 489.015, Florida Statutes) requires individuals/entities that install, repair, fabricate, alter, extend, or design HVAC systems to be properly licensed through State Department of Business the Professional Regulation (DBPR). Specific individuals/entities authorized to perform such HVAC services include those licensed as general building contractors. contractors. air conditioning contractors, and mechanical Such contractors must also be contractors. authorized (either "certified" by DBPR or "registered" in the applicable jurisdiction) to perform work in a specific location (i.e., city or county). An individual not so licensed may perform the described HVAC services if that individual is working under the supervision of an individual or entity that is properly licensed.

Additionally, individuals/entities that are located within the City of Tallahassee's corporate limits and that perform HVAC services (repair, maintenance, installation, etc.) are required to pay a City occupational business tax and obtain a City Business Tax Certificate.

Conflict of Interests Provisions and Secondary Employment. Because of the expressed concerns that resulted in this inquiry, we reviewed and identified State laws and City policies addressing employee secondary employment and related conflicts of interests.

In regard to state law, we found that Sections 112.311 and 112.313, Florida Statutes, provide, in part, that no city employee shall have any direct or indirect interest, financial or otherwise; any business engage in transaction professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of the employee's duties in the public interest. Furthermore, no city employee shall corruptly use or attempt to use his or her official position or perform his or her official duties to secure a special benefit for himself, herself, or others. In addition, a city employee may not disclose or use information not available to the general public and gained by reason of his/her official position for his or her personal gain or benefit, or for the personal gain or benefit of any other person or business entity.

City Administrative Policy and Procedure (APM) "Working Conditions" provides in Section 706.06 C (conflicts of interest in relation to City employment) that the City will follow the regulations and requirements of Sections 112.311 and 112.313, Florida Statutes, described in the previous paragraph of this report. That policy contains provisions stating that a City employee is prohibited from (1) using his/her position to secure a special privilege or benefit for the employee or others and (2) disclosing or using information not available to the general public for the employee's personal gain or for the gain of any other person or business entity. Section 706.06 H (outside employment) of that policy provides, in part, that no employee shall accept outside employment or engage in any private business if such outside employment or private business interferes or is in conflict with the performance of the employee's regular City position.

Lastly, Section 706.11 (departmental work rules) of that City policy provides that department

directors are authorized to establish work rules and regulations governing their operations as long as those internal rules/regulations do not conflict with those in APM 706. Section 706.11 also provides that such internal rules and regulations shall be in writing and shall be reviewed periodically with employees and shall be available for employee reference. We determined that such internal work rules and regulations had been established for the energy audit program. We found those internal rules and regulations addressed various operational areas within the energy audit function; however, they did not address secondary employment or conflicts of interests.

Previous Conditions and Current Status

Our inquiry procedures did not identify or disclose any instances where City energy auditors that worked secondary employment inappropriately used their City positions to obtain HVAC work for their secondary employment. Our inquiry procedures also did not identify or disclose any instances where other City staff within the former Utility Services Department (now Customer Services) used their positions to inappropriately direct (recommend) HVAC work to those City energy auditors. Furthermore, our inquiry procedures did not identify or disclose any instances where City energy auditors or other City staff recommended specific contractors (who were not City employees) to City utility customers.

We did, however, identify areas where procedures and practices relating to the energy audit or other energy efficiency programs could be enhanced and strengthened to help ensure conflicts of interests and other inappropriate actions relating to employees' secondary employment do not occur. We also identified the need for City management to determine and train energy auditors on the most appropriate procedures for removing and replacing panels of HVAC units as part of the inspection and evaluation process.

Ten action plan steps were developed to address the identified issues. Seven of those 10 steps were due for completion as of March 31, 2016. However, during the performance of our followup fieldwork, we found that each of the 10 action plan steps had been addressed and completed by City staff and management. Detail on the status of each of the 10 action plan steps is included in **Table 1** that follows.

Table 1 Action Plan Steps from Audit Report #1601 Current Status as of April 30, 2016

Action Plan Steps Current Status as of April 30, 2016 Reduce the risk of employee conflicts of interests in connection with their City positions and secondary employment. Written procedures and related practices will be **Completed.** Management provided a copy of the internal procedures established for energy revised to provide that a City energy auditor will audits, that were revised to provide that an not be allowed to conduct work in their secondary employment for a City utility energy auditor is not allowed to conduct customer and premises where the energy auditor secondary employment work (HVAC and other previously performed an energy audit. applicable areas) for any City utility customer or premises where the energy auditor previously conducted a City energy audit. Based on our interviews of the two energy auditors who have applicable secondary employment and our limited review of activity (e.g., growth management permits issued since the initial audit), there has been only one instance where one of those two energy auditors conducted (or plans to conduct) HVAC work for a City utility customer. Our review confirmed that no City energy audits have been conducted for that utility (commercial) customer to date. Furthermore, our interview of a limited sample (6) of City utility customers that received recent energy audits did not indicate any energy auditors had performed secondary employment for those customers or their premises, either before or after the energy audits. Accordingly, there were no identified conflicts of interests for activity occurring since the initial audit. Based on the revised procedures and the results of our follow-up audit tests, this action plan step is considered completed.

- Written procedures and related practices will be revised to provide that a City energy auditor will not be allowed to perform a City energy audit for a City utility customer and premises where
- Completed. Management provided a copy of the internal procedures established for energy audits that were revised to provide that an energy auditor is not allowed to perform an

the energy auditor previously conducted related work in connection with their secondary employment. energy audit for a City utility customer or premises where the energy auditor previously conducted related work (HVAC or other applicable areas) in connection with their secondary employment.

As described in the status reported for the previous action plan step, our interviews of the two energy auditors who have applicable secondary employment and our limited review of activity (e.g., growth management permits issued since the initial audit), showed there has been only one instance where one of those two energy auditors conducted (or plans to conduct) HVAC work for a City utility customer. As noted, no City energy audits have been conducted for that utility (commercial) customer to date. As also noted, interviewed City utility customers that received recent energy audits did not indicate any energy auditors had performed secondary employment for them or their premises, either before or after the energy audits. Accordingly, there were no identified conflicts of interests for activity occurring since the initial audit.

Based on the revised procedures and the results of our follow-up audit tests, this action plan step is considered completed.

- Written procedures and related practices will be revised to provide that City energy auditors will be required to report the City utility customers and premises for which they conduct secondary employment; that information will be tracked within the City's PeopleSoft CIS (or other appropriate records) and used by management to help ensure energy auditors are not assigned to do future energy audits for those customers and premises.
- Completed. Management provided a copy of the internal procedures established for energy audits that were revised to provide that an energy auditor is now required to report the City utility customers for which they conduct secondary employment. Those revised procedures further provide the information will be recorded and tracked within the PeopleSoft Customer Information System (CIS) and elsewhere, so as to help ensure the applicable auditors are not assigned to conduct subsequent energy audits for those customers or premises.

As noted in the status reported for the previous two action plan steps, there has been only one instance identified since the initial audit where an energy auditor conducted (or plans to conduct) HVAC work for a City utility customer. That planned work has been recorded in the PeopleSoft CIS; i.e., the applicable

customer and premises has been flagged within the system to reflect that the City energy auditor will perform HVAC work as part of his secondary employment. That recording (flagging) should allow management to ensure that energy auditor is not assigned to conduct subsequent energy audits for the customer or premises.

Based on the revised procedures and the results of our follow-up audit procedure, this action plan step is considered completed.

- Written procedures and related practices will be revised to provide that City energy auditors and other energy program staff will no longer provide names of five or six contractors to City utility customers requesting recommendations for work; instead, the customers will be informed no recommendations/names can be made/provided but will be provided the comprehensive list of applicable contractors included available in related City literature (e.g., loan and grant handbooks and guidelines).
- Completed. Management provided a copy of the internal procedures established for energy audits that were revised to provide that energy auditors cannot recommend contractors, and can no longer even reference or name several (e.g., five or six) contractors. Under the revised procedures energy auditors may reference comprehensive lists contained in City printed materials and online (City website), of contractors that participate in the various City energy programs (e.g., loans, rebates, and grants).

Additionally, three energy auditors and two other energy program staff interviewed during this follow-up engagement indicated they did not reference or name specific contractors; instead, they only provide customers with the comprehensive City lists. Furthermore, our interview of a limited sample (6) of City utility customers that received recent energy audits confirmed that energy auditors were following these revised procedures by not recommending or naming specific contractors.

Based on the revised procedures and the results of our follow-up audit procedure, this action plan step is considered completed.

- Written procedures and related practices will be revised to provide that City energy auditors and other energy program staff cannot refer or recommend work, resulting from a City energy audit or a grant, loan, or rebate through the City's energy program, to another energy auditor that has secondary employment in the applicable field.
- Completed. Management provided a copy of the internal procedures established for energy audits, which were revised to provide that energy auditors and other energy program staff cannot recommend or refer HVAC or other applicable work to energy auditors who engage in secondary work in those areas.

Additionally, three energy auditors and two

other energy program staff interviewed during this follow-up engagement indicated they had not recommended any work to another energy auditor as provided by these revised procedures. Furthermore, our interview of a limited sample (6) of City utility customers that received recent energy audits indicated energy auditors were not recommending work to another energy auditor.

Based on the revised procedures and the results of our follow-up audit procedures, this action plan step is considered completed. (NOTE: No instances were identified in the initial audit where energy auditors or other energy program staff recommended work to another energy auditor; procedures were strengthened to help ensure such inappropriate recommendations do not occur.)

- Written procedures and related practices will be revised to provide that City energy auditors cannot use available City records (e.g., PeopleSoft CIS or other records) to get business in connection with their secondary employment.
- ✓ <u>Completed.</u> Management provided a copy of the internal procedures established for energy audits, which were revised to provide that City energy auditors cannot use PeopleSoft CIS or other available City records to get business in connection with their secondary employment.

Furthermore, the two energy auditors determined to be performing secondary work asserted in response to our inquiry during this follow-up engagement that they do not use (and never have used) the PeopleSoft CIS or other City records to obtain business in connection with the secondary employment.

Based on the revised procedures and the responses to our follow-up inquiries, this action plan step is considered completed. (NOTE: No instances were identified in the initial audit where energy auditors with secondary employment used the PeopleSoft CIS or other City records to obtain business for their secondary employment; however, procedures were strengthened to help ensure such inappropriate efforts are not made.)

- Written procedures and related practices will be revised to provide that City energy auditors will be required to declare on an annual basis any personal or financial interests in any contractor or vendor that may do work as the result of a
- ✓ <u>Completed.</u> Management provided a copy of the internal procedures established for energy audits that were revised to provide that energy auditors will be required to declare on an annual basis any personal or financial interests in any

City energy audit or grant, loan, or rebate provided through the City's energy program.

contractor or vendor that may do work as the result of a City energy audit or grant, loan, or rebate provided through the City's energy programs.

Each energy auditor provided the initial annual declaration in late March and early April 2016. No personal or financial relationships were declared. Accordingly, this action plan step is considered completed.

- Written procedures and related practices will be revised to provide that City energy auditors will be required to (1) sign annual statements that they understand the City and department's internal policies and procedures regarding employee conflicts of interests and secondary employment and (2) assert in writing whether they are aware of any conflicts of interests, involving themselves or other employees, that occurred during the applicable annual period.
- **Completed.** Management provided a copy of the internal procedures established for energy audits that were revised to provide that energy auditors will be required to (1) sign annual statements indicating they understand the City department's internal policies and and procedures regarding employee conflicts of interests and secondary employment, and (2) assert in writing whether they are aware of any conflicts of interests involving themselves or other employees that occurred during the applicable annual period.

In late March or early April 2016, each energy auditor signed the applicable annual statement created to allow the employees to acknowledge their understanding of the specific policies and procedures. Additionally, each energy auditor asserted in writing at that time whether they were aware of any conflicts of interests involving themselves or other employees. No awareness of any such conflicts of interest was declared. Accordingly, this action plan step is considered completed.

Ensure applicable City energy auditors are properly licensed in connection with their secondary employment.

- City energy auditors conducting secondary employment involving City utility customers and City energy programs (e.g., loans and rebates) will be required to declare that work to management on annual basis; management will take appropriate steps to ensure those employees are properly licensed with the State and City for that work.
- Completed. Management provided a copy of the internal procedures established for energy audits that were revised to provide that energy auditors conducting secondary employment involving City utility customers are now required to declare that work to management on an annual basis; and, that management will take appropriate steps to ensure those energy auditors are properly licensed.

Each energy auditor provided the initial annual certification in late March and early April 2016.

In addition, we determined one of the two energy auditors identified in the initial audit as infrequently conducting work for City utility customers continues to be properly licensed for that work. The other energy auditor that previously infrequently conducted work for City utility customers has subsequently obtained a City occupational license (as recommended in the initial audit). To preclude any further questions regarding his work, that energy auditor asserted that he will only consider performing subsequent secondary employment work for City utility customers in the event that he obtains a State HVAC contractor license. Accordingly, this action plan step is considered completed.

Ensure procedures performed during City energy audits are appropriate.

- Management will determine the most appropriate procedures for City energy auditors to perform in regard to removing and replacing panels from air handlers/condensers as part of the inspection process, including when such panels should and should not be removed so as to ensure equipment (e.g., panels) is not damaged; staff will be trained on those procedures.
- Completed. Management provided a copy of the internal procedures established for energy audits, which were revised to specifically explain that energy auditors should never remove or attach the metal cabinet panels of an HVAC condenser or air handler. The revised procedures provide, however, that the narrow metal strip that sometimes secures an air filter may be removed by the energy auditor in order to access the air filter, and in those circumstances the energy auditor may reattach that metal strip. Energy auditors were trained on these revised procedures. Accordingly, this action plan step is considered completed.

Table Legend:

- Issue to be addressed from the original audit.
- ✓ Issue addressed and action step completed.

Conclusion

Ten action plan steps were developed by City management to address the recommendations made in our initial audit inquiry. As shown above in Table 1, each of those 10 steps have been completed as of April 30, 2016.

We commend City management and staff within the Customer Services Department (includes energy auditors) for the timely completion of those actions. We also appreciate their cooperation and assistance during this follow-up engagement.

Appointed Official's Response

City Manager:

The Auditor has conducted a thorough review of this issue. I am pleased that all of the action items have been addressed and finalized. The action items will serve to improve the energy audit program, and ensure the program remains a valuable option for our customers and a model program in Florida. Additionally, I would like to thank the Auditor's Office and the Customer Operations staff for their timely work and outstanding efforts.

Copies of this final audit follow-up #1611 or audit report #1601 may be obtained from the City Auditor's website (http://www.talgov.com/auditing/auditing-auditreports.aspx) or via request by telephone (850 / 891-8397), by FAX (850 / 891-0912), by mail or in person (Office of the City Auditor, 300 S. Adams Street, Mail Box A-22, Tallahassee, FL 32301-1731), or by e-mail (auditors@talgov.com).

Audit follow-up conducted by:

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