

AUDIT COMMITTEE MINUTES

December 15, 2021 – 10:00 a.m. PUBLIC MEETING

CITY OF PORTSMOUTH, NH – City Hall – 1 Junkins Avenue

The Audit Committee (AC) held the December 15, 2021 meeting in Conference Room A.

AC Members present: Chair Christopher M. White, Councilors Esther Kennedy and Petra Huda and Secretary Harry (Hawk) Furman.

Also present: Suzanne Woodland, Deputy City Attorney.

Call to Order

Chair White called the meeting to order at 10:03 a.m.

Chair White took roll call. Councilors Kennedy and Huda and Mr. Furman indicated that they are present.

Approval of December 9, 2021 Minutes

The minutes for the December 9, 2021 meeting were approved by unanimous vote.

Discussion of the Proposed AC Charter

There was a motion made and seconded to approve the Audit Committee Charter as presented for the December 15, 2021 meeting. By roll call vote, the motion carried by unanimous vote.

Discussion of RFP for Auditor and Nonattest Services Provider

The RFP for Auditing and Optional Nonattest Services was discussed. The RFP was designed to enhance the independence of the auditor. Nonattest services are those services that prepare accounting records to be audited. The preparation involves consolidating accounts from multiple related entities, such as Portsmouth's schools, Department of Public Works, and its water and sewer operations, into one set of financial records. It also takes the cash and modified-cash accounting and translates it into accrual-based accounting that better matches expenses and revenues over time.

Immediately after the discussion started, Attorney Suzanne Woodland presented an amended version that reflected the City management's recommendations. These included many edits on the Audit Committee draft that lessen or eliminate the independent quality of the auditing process: the appointment of Melanson as the provider of nonattest services, the exclusion of the Audit Committee from any further participation in the auditing process and the elimination of the proposed scoring of 70% weight for the technical qualifications and 30% weight for cost of services for the selection of the auditor. This scoring system is designed to promote objectivity and standardization in selecting an auditor.

The Audit Committee expressed frustration with City management's dilatory behavior in presenting its rendition of the RFP at the last minute. In fact, Councilor Kennedy had to wait ten to fifteen minutes while the City transmitted her edition to her. None of us on the Committee had seen this draft before Attorney Woodland presented it.

The Audit Committee also expressed strong disagreement with Attorney Woodland's eliminating the Committee's involvement in the auditing process after the Committee evaluates and recommends the auditor to the City Council.

In every discussion on this topic that the Committee has had with Attorney Woodland over the past several meetings, she has stated that the basis for City management's position was its interpretation of Ordinance 1.414 which established the permanent Audit Committee. But this interpretation ignores the predecessor City Charter and specifically Sections 4.1, 4.2 and 7.4 for forming the predicate for the Ordinance. It is Section 7.4 that requires the audit of the City's finances be independent.

Because City management deleted the Audit Committee's involvement in the audit once the Committee recommends the auditor to City Council, these minutes now include an addendum to provide a more fulsome explanation of the Committee's view on this matter. Some of this discussion was held in this meeting, some in Audit Committee meetings held earlier in December 2021. All involved conversations with Attorney Woodland. There was further elaboration of these points in an email from Chairman White to City Manager Karen Conard on December 7, 2021.

Additionally, the Audit Committee expressed concern that:

- 1) Attorney Woodland announced that City management had instructed Melanson NOT to respond to a 12/13/21 e-mail from the Chair to Alina Korsak, CPA, of Melanson introducing himself as the new Audit Committee Chair and seeking communication to partially fulfill the duties assigned to the Audit Committee by the City Council. City management's interference in direct communication between the City auditor and the Chair of the Audit Committee violates the City Council's effort to establish an audit independent of City management involvement. Such interference reasserts City management's control of the auditing function and presumes that the auditor reports only to City management rather than to the independent Audit Committee as established by City Council and set forth in Section 7.4 of the City Charter.
- 2) Attorney Woodland then declared that the Audit Committee may not communicate with the current auditor, Melanson, or any of the prospective auditors who may submit a proposal in response to the soon-to-be-issued RFP, or with the auditor who is recommended by the Audit Committee to the City Council.
- 3) Attorney Woodland announced that the City had reached a VERBAL agreement with Melanson to provide the nonattest services for the upcoming fiscal year (FY) 2022 and inserted a clause in the City's revised RFP to that effect. When the Chair asked if Attorney Woodland had received any estimate from Melanson for the cost of such nonattest services or any description of such services, Attorney Woodland stated, "No." Then, at

another point in the meeting, Attorney Woodland stated, “. . . when the City finds a vendor it likes to work with, it will do what it can to maintain that working relationship with that vendor rather than rebidding or issuing a new RFP,” contrary to the City’s Purchasing Manual’s procedures.

- 4) Members of the Audit Committee expressed a strong concern regarding the apparent violation of internal processes and controls by City management with the Melanson appointment. By overriding the City’s established competitive bidding process for purchases of either \$500 to \$10,000 or \$10,000 and above, the City has selected a professional services vendor without a specified scope of work, agreed upon cost of work or an adherence to the process and procedures outlined in the City’s Purchasing Manual.
- 5) As the City’s Audit Committee, we now question what internal controls were being violated by the City management’s verbal commitments? Which sections of the City’s Purchasing Manual were being ignored? For example, was a purchasing order written? Who signed off in approving the commitment? Clearly, there is no evidence of the standard three bids being sought or, if the work costs more than \$10,000, a formal RFP issued, per the Purchasing Manual supplied by Attorney Woodland to the Mayor’s Blue Ribbon Audit Committee in May 2021.
- 6) As evidenced by the City’s own Purchasing Manual and noted in the Manual’s flow charts on Page ii for purchases between \$500 and \$10,000 and Page iii for purchases over \$10,000, it is required that for professional services, such as the nonattest work in question, specifications for the work must be developed and, for work over \$10,000, an RFP must be issued.
- 7) The Audit Committee raises the question of Federal guidelines regarding issuance of bids or RFPs for seeking professional services. It wishes to explore this matter further.
- 8) By City management striking significant portions of the Audit Committee’s RFP, it deleted the Committee’s involvement in working with the selected auditor for FY 2022, in meeting with the auditor prior to, during and at the conclusion of the auditor’s work, and in contributing to the auditor’s work and perspective. These deletions severely compromise the auditor’s independence and violate the stipulations in the City Charter, especially that of Section 7.4. These deletions also remove the Audit Committee’s independent contributions of experience, expertise and knowledge of the City to the auditor.

ADDENDUM TO AUDIT COMMITTEE RFP DISCUSSION

The provisions in the Audit Committee’s RFP that allowed for the Audit Committee’s continued involvement with the auditor after the auditing firm is selected are essential for the Audit Committee to carry out its responsibilities as described in the City Charter and Ordinance 1.414. All of these were struck by Attorney Woodland with no legal justification provided.

Ordinance

In Ordinance 1.414, the first sentence states that the Audit Committee is “. . . established and maintained for the purpose of advising the City Council on the adherence of the audit to the

City Charter, Section 7.4, INDEPENDENT AUDIT.” The Audit Committee must be directly involved in the audit to advise on the adherence of the audit to the City Charter.

The last sentence of the same Ordinance states that, “In the event the auditor identifies any serious exceptions, the Audit Committee shall advise and work with the City Council as to next steps.” This last sentence requires the Audit Committee’s necessary ongoing role in the audit so that it can act knowledgeably if problems arise in the audit. It also emphasizes the Audit Committee’s responsibilities to the City Council rather than to City management.

The Committee states that to carry out the responsibilities the Ordinance dictates, the Committee must be involved in the auditing process and the nonattest process. Otherwise, the independence of both activities is compromised, and the audit would no longer be independent, in violation of the City Charter.

City Charter

It is the opinion of the Audit Committee that the City Council, not City management, is the governing body of the City, as identified in the City Charter Sections below:

- ARTICLE I – GENERAL PROVISIONS
 - Section 1.3 - General Structure. The City Council is responsible for the policy-making for the City.
- ARTICLE IV – CITY COUNCIL
 - Section 4.1 – Administration of the City
 - Section 4.1 specifies that the City Council is responsible for the entire administration of all fiscal, prudential, and municipal affairs of the City as well as each of the City’s departments.
 - Section 4.2 – General Powers of the City Council.
 - Section 4.2 states that the City Council shall be the governing body of the City of Portsmouth. It may exercise all of the powers and duties by law vested in boards of aldermen and city councils under state law and the City Charter.
- ARTICLE VII – FINANCE AND REVIEW
 - Section 7.4, Independent Audit
 - Section 7.4 requires that there be an independent audit conducted at least annually by the City Council.

These sections comprise the basis for the Audit Committee’s position that the auditor must report to the Audit Committee as appointed by the City Council rather than to City management.

City management is only responsible for the proper administration of the City departments as stated in Section 5.3 of the City Charter. Nowhere in the Charter is the City Manager or City management empowered to manage, oversee or conduct audits of its own financial records. This power resides with City Council and, by extension, its Audit Committee. The City Manager is responsible for the proper administration of all departments. The independent auditor’s job

is to confirm that the City Manager has done this effectively. The independent auditor cannot do this if the auditor is reporting to the City Manager during the auditor's work.

For all these reasons, the Audit Committee objects in the strongest terms to the City removing all the passages in the RFP that describe the Audit Committee's proper involvement in the audit process. Such involvement is described and affirmed in material from the Government Financial Officers' Association (GFOA) and the New Hampshire Municipal Association.

END OF ADDENDUM TO AUDIT COMMITTEE RFP DISCUSSION

There was a motion made and seconded to re-insert the description of the weights in the Selection Process as originally presented for the December 15, 2021 Audit Committee meeting. By roll call vote, the motion carried by unanimous vote.

There was a motion made and seconded to approve the original RFP as presented for the December 15, 2021 Audit Committee meeting. By roll call vote, the motion carried by unanimous vote.

Under Other Business, Councilor Huda asked if the draft ACFR had been issued. Attorney Woodland reported that it had not been. Councilor Huda indicated that she would request this as part of the upcoming City Council meeting on December 20, 2021.

Chair White proposed that our next Audit Committee meeting be held on December 30, 2021 at 1:00 pm in Conference Room A of City Hall. It will be held by Zoom.

Chair White also distributed the list of five new RFP recipients in addition to Melanson Heath which are to receive the RFP. Attorney Woodland requested that Chair White forward to her a copy of this one-page Word document to her.

Councilor Huda moved to adjourn. Councilor Kennedy seconded. The motion passed on a 4 – 0 vote. The meeting was adjourned at 11:18 a.m.

It should be noted for the record that City management issued its own RFP for an auditor the day after this meeting. As issued, the City management RFP deleted the Audit Committee's involvement in the audit process once the Committee recommended an independent auditor to City Council. It also appointed Melanson Heath to provide the nonattest services without any separate RFP or bidding process being followed.

Date approved: 12-30-2021

Minutes Respectfully Submitted by

Christopher White, Chair