

Chapter 4.66

CITY PERFORMANCE AUDIT COMMITTEE

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4.66.010 Policy.

The City of Lincoln recognizes the importance of periodically reviewing its operations in order to ensure an efficient and appropriate use of its resources to fulfill the City's obligations under the law and to meet the needs of the community. In furtherance thereof, the City is desirous of establishing a mechanism to secure audits of City offices, departments, agencies, and other governmental organizations subject to a City audit. The purpose of such audits is to review (1) the performance, efficiency, and effectiveness of any or all offices, departments, agencies, and other governmental organizations in which the City has a role; (2) the adequacy of management and financial accounting systems and controls; and (3) the accuracy of management and financial records, statements, and reports within the jurisdiction of the City Council and/or Mayor. (Ord. 19007 §1; October 8, 2007).

4.66.020 Definitions.

Auditee shall mean the City office, department, agency, or other governmental organization which is the object of a contract audit as specified in the City's contract with the contract auditor.

Committee shall mean the City Performance Audit Committee unless otherwise specified.

Committee audit report shall mean the written report created by the Committee which shall include the final audit report, any written response by the auditee, a separate listing, if any, of irregularities or failures to comply with legal or administrative policies, and the Committee's recommendations.

Contract administrator shall mean the City official charged with administering the contract with the contract auditor. The Director of Finance shall be the contract administrator, provided, however, if the Finance Department is specifically named in the contract as the auditee, the Mayor shall designate another City employee as Contract Administrator for that contract audit.

Contract audit shall mean an audit performed pursuant to this chapter and shall be any one or combination of a financial audit, a performance audit, an internal audit, or operational review.

Contract auditor shall mean the person with whom the City contracts at the direction of the Committee to perform a contract audit under this chapter.

Custodian of records shall mean the City Clerk.

Final audit report shall mean the report created by the contract auditor following his or her audit. No working papers shall be attached or otherwise disseminated by the contract auditor as part of a final audit report or otherwise.

Financial audit shall mean an audit designed to address questions of accounting and reposting of financial transactions, including commitments, authorizations, and receipt and disbursement of funds. The purpose is to verify that sufficient controls over cash and cash-like assets exist and that adequate processes controls over the acquisition and use of resources exist. Financial audits shall be conducted in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Generally Accepted Government Auditing Standards (GAGAS) maintained by the federal Government Accountability Office (GAO). For purposes of this chapter, financial audit does not include the external independent audit required in Article IV, Section 8 of the City Charter.

Internal audit shall mean an independent appraisal of operations to assess the effectiveness of internal administrative and accounting controls and help ensure conformance with managerial policies. Internal audits shall be conducted in accordance with the Standards for the Professional Practice of Internal Auditing (SPPIA) as promulgated by the Institute of Internal Auditors.

Operational review shall mean an objective and systematic examination of evidence to evaluate the City's conformity with plans and resource allocations, organizational structure, operating procedures, process controls, and to evaluate whether the auditee is operating efficiently, economically, and effectively to maximize the desired results.

Performance audit shall mean an objective and systematic examination of evidence for the purpose of providing an independent assessment of the performance of a government organization, program, activity, or function in order to provide information to improve public accountability and facilitate decision making by parties with responsibility to oversee or initiate corrective action. Performance audits shall be conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS) maintained by the federal Government Accountability Office (GAO).

Working papers shall mean those documents containing evidence to support the contract auditor's findings, opinions, conclusions, and judgments. (Ord. 20186 §2; April 13, 2015; prior Ord. 19007 §2; October 8, 2007).

4.66.030 City Performance Audit Committee Established; Membership.

The City Performance Audit Committee (Committee) is hereby established. The Committee shall consist of five members and shall be comprised as follows:

(a) Two members shall be appointed by the Mayor. At least one of the Mayor's two appointees shall hold an active license as a certified public accountant in Nebraska, or be a certified internal auditor, or have experience showing specialized knowledge in the area of conducting performance audits. The Mayor's appointees shall not share the same political party registration.

(b) The Committee shall include three City Council members. The City Council Committee members shall be elected by a majority vote of the City Council. No more than two City Council Committee members shall share the same political party registration when elected to the Committee. (Ord. 20186 §3; April 13, 2015; prior Ord. 19007 §3; October 8, 2007).

4.66.035 Term and Removal.

(a) City Council members of the Committee shall serve a term of two years with no limit on the number of terms.

(b) The term of service for outside members of the Committee shall be three years. Initially, one of outside members shall serve for two years, and one of the outside members shall serve for three years. The Mayor shall designate, while making the appointments, the initial term lengths of the respective appointees. Upon expiration of the initial terms, appointments thereafter shall be for a period of three years. No outside member shall serve more than six consecutive years on the Committee.

(c) The Committee shall elect a chair from the City Council members of the Committee. The chair shall serve for a one-year term. Successive terms by the chair are permitted.

(d) Committee members may be removed from office by a majority vote of the City Council for malfeasance or nonfeasance of office or for any cause that renders the member ineligible for office or incapable or unfit to discharge the duties thereof. Violation of Section 4.66.090(b) of the Lincoln Municipal Code, or any other provision of this chapter, shall be grounds for immediate removal from the Committee. (Ord. 20186 §4; April 13, 2015).

4.66.040 Duties and Powers.

As authorized in this chapter, the Committee shall advise the City Council on matters relating to financial audits, internal audits, performance audits, and operational reviews as provided for in this chapter. However, the Committee shall not review or recommend an audit of the performance of any particular employee and shall not infringe upon the authority of the Personnel Board, Human Resources Director, a Department head, Mayor, or City Council with respect to personnel matters. Nothing in this chapter shall confer upon the Committee or the City any authority to audit governmental organizations not otherwise subject to City audit.

The City Council shall, by majority vote, select at least one subject for an audit by the Committee each year. The Council's decision on at least one such audit subject shall be completed by August 31st.

The Committee shall have the following responsibilities:

(a) The Committee shall develop an annual audit program. The Committee's program shall be submitted to the City Council for review and approval.

(b) The Committee shall approve annual audit protocols.

(c) The Committee shall make recommendations to the Mayor and City Council of changes in the City's financial and management practices.

(d) When directed to do so by resolution of the City Council, determine whether an audit, as suggested in Council's resolution, is appropriate and desirous. In order to make this determination, the Committee may consult with departments heads to familiarize themselves with information necessary to make an informed decision on whether and what type of contract audit should be conducted. If the Committee determines that such an audit is not appropriate and desirous, the Committee shall forward such decision in writing to the City Council.

If the Committee concludes that such an audit is appropriate and desirous, the Committee shall determine what the scope of such audit should be. In recommending the scope of the audit, the Committee shall pay particular attention to the anticipated cost to the City for such audit including, but not limited to, the cost of gathering or providing access to records that may be requested by the contract auditor. The Committee's recitation of the scope of the audit shall include:

- (1) Identification of the auditee including, if applicable, what particular function or activity of the auditee should be audited;
- (2) Whether the contract audit should be a financial audit, an internal audit, a performance audit, an operational review, or any combination thereof;
- (3) The time span to be covered by the audit; and
- (4) Whether the contract auditor should be the State Auditor of Public Accounts, or whether the City should pursue a private contractor to serve as contract auditor.

The Committee shall transmit the scope of the audit, in writing, to the City Purchasing Agent.

(e) Evaluate the adequacy of management and financial accounting systems and controls based on the final audit report and any written response thereto furnished by the auditee;

(f) Appraise and verify the accuracy of management and financial records, statements and reports based on the final audit report and any written response thereto furnished by the auditee;

(g) Report to the Mayor and the City Council, in the form of a Committee audit report, within sixty days of receiving the final audit report. The Committee audit report shall be simultaneously transmitted to the Mayor and the City Council. Three copies of the Committee audit report shall be placed on file with the City Clerk for public examination. The Committee audit report shall include:

(1) The Committee's findings, based on the final audit report and the response of the auditee as to whether:

(i) Activities and programs are being conducted and funds expended in compliance with applicable laws;

(ii) Revenues are being properly collected, deposited and accounted for;

(iii) Resources are adequately safeguarded, controlled and used in an effective and efficient manner; and/or

(iv) There are adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls which have been established by management;

(2) A copy of the final audit report and auditee's response thereto;

(3) A separate listing, if any, of irregularities or failures to comply with legal or administrative policies; and

(4) The Committee's recommendations. (Ord. 20186 §5; April 13, 2015: prior Ord. 19969 §52; December 16, 2013: Ord. 19007 §4; October 8, 2007).

4.66.050 Meetings and Rules.

The Chair shall conduct meetings of the Committee. Such meetings shall be subject to the open meetings laws of the City Charter and statutes of the State of Nebraska. The Committee shall hold regular meetings on a minimum of a quarterly basis. The Committee shall keep minutes of its meetings which shall document all resolutions, motions, and determinations of the Committee and shall be kept on file in the office of the City Clerk.

A quorum of the Committee shall be three members. Three affirmative votes are required for any final action of the Committee.

The Committee may adopt such rules, bylaws, and procedures as it deems appropriate to carry out the purposes and goals of this chapter, in accordance with the City Charter, Lincoln Municipal Code, and relevant state or federal law. (Ord. 20186 §6; April 13, 2015: prior Ord. 19007 §5; October 8, 2007).

4.66.060 Committee Staff.

The legal advisor to the Committee shall be the City Attorney.

Department heads and their designees shall cooperate with the Committee in order that the Committee may carry out its duties. In the event the Committee requests information which would not be mandatorily disclosed pursuant to a public records request, the department head or designee shall refrain from providing such information at that time and shall consult with the City Attorney and the Mayor. The Mayor shall determine what records or information shall be provided in response to the Committee's request. (Ord. 20186 §7; April 13, 2015: prior Ord. 19007 §6; October 8, 2007).

4.66.070 Contract Auditors.

Contract auditors may not have a financial interest in the affairs of the auditee or the City, or its officers or members of the Committee.

The contract with the contract auditor shall include language requiring the contract auditor to retain all working papers or other documents gathered or created in the course of conducting the audit for a period of ten years. During and after that ten-year period, the contract auditor may not disseminate such information except as required by law. The contract shall further require that upon receipt of a request for such information, in the form of a public record request, subpoena, or otherwise, the contract auditor shall, within one working day of receiving such request, forward such request to the City Attorney and shall not fulfill the request. At the end of the ten years, the contract auditor shall destroy all such documents, working papers, and information, in whatever form, by shredding, incinerating, wiping, or otherwise rendering such data unrecoverable, and shall confirm such destruction in writing to the City Clerk; provided, however, that the City may require an extension of the ten-year period as may be reasonable prior to destruction of the material. Nothing in this section is intended to prohibit the contract auditor and the City from agreeing to reasonable terms for access to such data by the City.

The contract shall also include language requiring that the contract audit be performed in accordance with the industry standard for the type of audit that is the subject of the contract audit. A contract for a performance audit or financial audit shall include language that such audit be performed in accordance with the Generally Accepted Government Auditing Standards. A contract for an internal audit shall contain language that such audit be performed in accordance with the Standards for the Professional Practice of Internal Auditing as promulgated by the Institute of Internal Auditors.

The contract with the contract auditor shall require the contract auditor to prepare a final audit report and to simultaneously furnish such report to the Committee, the auditee, the Mayor, and City Council.

The contract with the contract auditor shall include language which identifies the scope of the audit and which specifies the auditee. The contract shall also specify the type of audit to be performed under this chapter. (Ord. 20186 §8; April 13, 2015: prior Ord. 19007 §7; October 8, 2007).

4.66.080 Audit Coordination.

Prior to contracting with a contract auditor for a particular audit, consideration shall be given to audits, whether contract audits or otherwise, which have been previously performed, are ongoing, or are scheduled for future performance in order to minimize duplication of efforts with respect to auditing particular City activities, functions, offices, departments, agencies, and other governmental organizations subject to City audit. (Ord. 19007 §8; October 8, 2007).

4.66.090 Records.

(a) The custodian of records for all records received or created by the Committee shall be the City Clerk.

(b) Neither the Committee nor any member thereof shall, by their own initiation or pursuant to a request, release, disclose, disseminate, or otherwise provide any document, record, or material in whatever form, except as required in this chapter. Any and all requests made of the Committee or a Committee member for such material shall, within one day of receipt of a request, be forwarded to the City Attorney. (Ord. 20186 §9; April 13, 2015; prior Ord. 19007 §9; October 8, 2007).

4.66.100 Access to Information.

(a) All officers and employees of the City of Lincoln shall, upon request by a contract auditor, furnish access to all documents, records, or materials of or belonging to the City of Lincoln, or copies thereof, regardless of the form in which they were created or stored, within the custody of or under the control of the officer or employee. In the event the officer or employee of the City believes that furnishing particular access to the contract auditor would violate an applicable policy or law of the City, including policies relating to the dissemination of information, or would conflict with federal or state law, such officer or employee shall refrain from providing access to the contract auditor and shall immediately notify his or her department head and the City Attorney of the request.

In the event the City Attorney believes that provision of the requested information would violate a City policy or applicable city, state, or federal rule, regulation or law, or if the City Attorney believes the requested information is subject to withholding under the Public Records Act or that the City is prohibited from making the requested disclosure, the City Attorney shall indicate as much in writing to the contract auditor and such information shall be disclosed to the contract auditor in a de-identified or redacted form. If the information provided by the City Attorney is not acceptable to the contract auditor, the contract auditor may notify the Mayor that there is a question as to what information should be made accessible and the Mayor, in consultation with the City Attorney, shall determine what records or information shall be provided the to contract auditor.

(b) All contracts entered into by the City for the purchase of services or goods shall contain language requiring that such contractor make available to a contract auditor copies of all financial and performance related records and materials germane to the city contract, as allowed by law.

(c) In addition to other restrictions on the dissemination of working papers and documents provided elsewhere in this chapter, neither the contract auditor nor the Committee or any individual member thereof may disclose any information received during an audit that is considered proprietary in nature or confidential by any local, state, or federal law or regulation. (Ord. 20186 §10; April 13, 2015; prior Ord. 19007 §10; October 8, 2007).

4.66.110 Auditee's Response.

The auditee shall have thirty days after receipt of the final audit report to provide the Committee with a written response to such final audit report. The auditee's response shall include:

- (a) Whether the auditee agrees or disagrees with the final audit report;
- (b) Reasons for any disagreement with the final audit report;
- (c) Recommendations or plans for implementing solutions to issues identified in the final audit report as requiring attention;
- (d) A reasonable time table for the completion of such activities;
- (e) A reasonable estimate of the costs associated with completion of such activities. (Ord. 20186 §11; April 13, 2015; prior Ord. 19007 §11; October 8, 2007).

4.66.120 Selecting a Contract Auditor; Process.

(a) Upon receipt of an audit scope from the Committee, if the Committee recommended pursuing a contract with the State Auditor of Public Accounts (State Auditor), the Purchasing Agent shall contact the State Auditor and negotiate a contract to perform the audit as scoped by the Committee. Upon reaching agreement on contract terms with the State Auditor, the Purchasing Agent shall forward such proposed contract to the City Council for action along with a recommendation of approval or rejection. If the Purchasing Agent is unable to reach agreement with the State Auditor as to the terms of a contract, or if the State Auditor is unwilling or unable to serve as contract auditor, the Purchasing Agent shall report as much to the Committee. The Committee shall then review the audit scope and determine whether:

- (1) Such proposed audit shall be abandoned; or
- (2) Such proposed audit shall be pursued in accordance with (b) below, in which case the Committee shall forward the audit scope to the Purchasing Agent with directions that the Purchasing Agent proceed in accordance with (b), below; or
- (3) Such proposed audit shall be further pursued with the State Auditor, in which case the Committee shall direct the Purchasing Agent to reopen negotiations with the State Auditor.

(b) Upon receipt of the audit scope from the Committee, or pursuant to (a)(2), above, the Purchasing Agent shall proceed in accordance with either b(1) or b(2) below, depending upon the anticipated cost of the contract audit at issue. The anticipated cost means the total amount to be paid the contract auditor, and does not include the cost to the City of submitting to the contract audit.

(1) If the anticipated cost of the contract audit is less than \$30,000.00, the Purchasing Agent shall secure and record at least three informal quotes, if practical, from persons qualified to perform the contract audit. The Purchasing Agent shall rank the responders based on their overall ability to perform the contract audit; performance record for timeliness; performance record for compliance with this code; reputation for professionalism; current workload with the City; any other specialized qualification which a responder might possess which would be of benefit to the project, such as familiarity with the particular activity being audited; and cost of services.

The Purchasing Agent shall negotiate a contract with the first ranked responder, consistent with the scope provided by the Committee. The negotiated contract, which shall be signed by the would-be contract auditor, shall be forwarded to the City Council for consideration.

(2) If the anticipated cost of the contract audit is greater than \$30,000.00, the Purchasing Agent shall prepare and advertise a request for proposals for publication. Upon receipt of valid responses to the request for proposals, the Purchasing Agent shall forward such responses to the Committee. The Chair of the City Council shall provide copies of the responses to members

of the Committee. No member of the Committee shall further disseminate such responses, or otherwise disclose the contents of such responses until such time as a contract for the anticipated audit has been either accepted or rejected by the City Council as a whole.

(c) Upon receipt of the proposals pursuant to (b)(2) above, the Committee shall evaluate the proposals, negotiate with the responders as necessary, and select the proposal which best serves the City's interests. The Committee shall forward the selected proposal and contract terms to the City Council for action. If the Committee does not believe any of the proposals meet the needs of the City, it may forward all proposals to the City Council with a written recommendation that all proposals be rejected. (Ord. 20186 §12; April 13, 2015: prior Ord. 19007 §12; October 8, 2007).