



Sheryl G. Steckler
Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY



Inspector General
Accredited

“Enhancing Public Trust in Government”

Investigative Report

2014-0005

May 5, 2014

*“Provide leadership in the promotion of accountability and
integrity of Government in Palm Beach County”*



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REPORT OF INVESTIGATION CASE NUMBER: 2014-0005



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EXECUTIVE SUMMARY

On February 12, 2014, the Office of Inspector General (OIG) received a complaint from a citizen alleging that sometime in October 2013,¹ the City of Delray Beach (City) violated its own procurement policies, which required the City Commission's authorization prior to all purchases over \$15,000.00.² According to the Complainant, sometime in October 2013, the City purchased 1,200 trash carts from Otto Environmental Systems, Inc. (Otto) totaling \$57,010.00; however, this was done without first obtaining the City Commission's authorization. The Complainant further alleged that in order to conceal their failure to follow the City's procurement policies, City Manager Louie Chapman and City Community Improvement Department (CID) Director Lula Butler misled City Commissioners during their January 21, 2014 City Commission Meeting. According to the complainant, Mr. Chapman and Ms. Butler advised the City Commission that the trash cart inventory was low and indicated an urgency to purchase additional trash carts, when in fact, the City's trash cart storage facility contained approximately 700 trash carts.³



The Complainant stated that Mr. Chapman and Ms. Butler recommended the approval of a \$60,000.00 blanket Purchase Order (P.O.) in order to cover up the actual purchase four months earlier.

As the initial allegation (concerning Ms. Butler and Mr. Chapman's presentation to the City Commission) contained potential criminal activity, pursuant to Section 2-423(4) of the Inspector General Ordinance, on March 19, 2014, the information was coordinated with the Palm Beach County State Attorney's Office, Public Corruption Unit (PCU) for investigation. Upon their review of the initial information obtained by the OIG, PCU advised that the allegation could be handled administratively. The OIG subsequently opened an administrative investigation.

¹ The purchase actually occurred on September 27, 2013.

² It is noted that the \$15,000.00 threshold was increased to \$25,000.00 on November 19, 2013.

³ The Complainant provided this photograph, which was taken by an unidentified third party. According to the Complainant, this photograph was taken on or about January 25, 2014.

FINDINGS

Based on documents reviewed and statements provided, the Allegation (1) that the City of Delray Beach failed to competitively procure the purchase of trash carts from Otto Environmental Systems, Inc. in violation of its procurement policies, is **supported**. Although the City has purchased a total of \$1,601,561.04 worth of trash carts and/or parts from Otto since approximately 1996, because of the amount of time that has passed, the OIG Investigation focused on purchases from Otto between January 8, 2010 and February 24, 2014, which totaled **\$297,714.04**. The City was unable to provide any supporting documents during that same timeframe which would indicate that purchases from Otto had been competitively procured in accordance with its own policies and procedures. Furthermore, City staff acknowledged to the OIG that they had not followed their own policies and procedures and treated Otto as a sole source vendor, even though they were aware that comparable trash carts were available from other vendors. A review completed (January 27, 2014) by the Interim City Attorney concluded that

“...as the Inspector General has opined in similar situations previously, the City should follow its own policies and procedures.’...It is simply bad public policy not to do so.”

Based on documents reviewed and statements provided, the Allegation (2) that City of Delray Beach Manager Louie Chapman and Community Improvement Department Director Lula Butler misled the City Commission into approving a \$60,000.00 blanket Purchase Order for future purchases of trash carts even though the trash carts had already been purchased and delivered four months prior to obtaining the City Commission’s approval, is **supported**.

Although Ms. Butler was unable to provide a reason for doing so, Ms. Butler acknowledged to the OIG that she misled the City Commission into approving a blanket P.O. in January 2014, when she was fully aware that the trash carts had already been purchased on September 27, 2013 and delivered in October 2013. Ms. Butler reiterated throughout her interviews with the OIG (3) that Mr. Chapman was aware of the unauthorized purchase prior to the January 21, 2014 City Commission meeting and that she had advised him of such sometime between October 18, 2013 and October 28, 2013. Ms. Butler was unable to opine as to why Mr. Chapman did not correct her presentation to the City Commission.

Mr. Chapman maintained throughout his interviews (3) with the OIG that prior to approximately one week after the January 21, 2014 City Commission meeting, he had no knowledge, nor had he been advised by Ms. Butler, that the trash carts had already been purchased. However, after initially denying his knowledge and after being presented with his own e-mail, Mr. Chapman conceded during his second interview that he authorized Purchase Order #695582 and indicated that he probably should have advised the City Commission during their January 21, 2014 meeting that he had already done so. Aside from subsequently acknowledging his authorization of Purchase Order

#695582, Mr. Chapman maintained throughout his first two interviews with the OIG that he was not aware of the trash carts being purchased without authorization prior to the January 21, 2014 City Commission meeting. However, the OIG subsequently became aware of an e-mail dated October 28, 2013 from Ms. Butler to Mr. Chapman advising him of the unauthorized purchase. Approximately 26 minutes later on that same date, Mr. Chapman responded "Ok," and provided additional instruction. When presented with this information during his third interview, Mr. Chapman stated that he only focused on the first sentence of the e-mail (regarding an agenda item) and did not review the rest of its content, which discussed the unauthorized purchase).

ALLEGATIONS AND FINDINGS

Allegation (1):

The City of Delray Beach failed to competitively procure the purchase of trash carts from Otto Environmental Systems, Inc. in violation of their procurement policies. If supported, the allegation would constitute a violation of Section 36.02(D) and (E), Chapter 36, of the City of Delray Beach Code of Ordinances.

Finding:

The information obtained **supports** the allegation.

Until November 19, 2013, the City of Delray Beach Code of Ordinances provided the following:

Chapter 36. Finance; City Property Transactions

City Purchasing:

Sec 36.02. Acquisitions of Personal Property, Supplies or Contractual Services.

- (D) *[Acquisitions of \$15,000.00 and up.]* For acquisitions of fifteen thousand dollars (\$15,000.00) and up, purchases shall be made by the Purchasing Supervisor after the Commission has reviewed and awarded the bid/quote. Bids/quotes shall be secured in the manner prescribed in subsection (E) of this Section.
- (E) *Conditions for Securing Formal Bids/Quotes.* The Purchasing Supervisor shall either:
- (1) Solicit competitive bids/quotes in a formal written manner from at least three (3) different sources of supply when available; or

According to the OIG's review of all available City records,⁴ since at least June 19, 1996 through February 24, 2014, the City has purchased its trash carts from Otto Environmental Systems, Inc. (Otto) through 32 Purchase Orders (P.O.) totaling

⁴ According to City employees, Assistant Finance Director Milena Walinski, Purchasing Department Assistant Ja'Anal Dowdell, and Administrative Assistant Donna Quinlan, no documents were able to be located that would assist in determining whether or not the City followed its own procurement policies.

\$1,601,561.04. Due to the amount of time that has passed, the OIG Investigation focused on P.O.s related to Invoices submitted by Otto between January 8, 2010 and February 24, 2014. That review disclosed the following pertinent information:

- Between January 8, 2010 and February 24, 2014, the City generated seven P.O.s totaling \$297,714.00 that were related to Invoices submitted by Otto for payment. This total includes the September 27, 2013 purchase of trash carts mentioned by the Complainant. All seven of these P.O.s have been paid.
- It appears that all purchases from Otto have been through a sole source method; however, the City was unable to produce any documentation to support Otto as a sole source (i.e., quotes, bids) vendor. In fact, statements obtained by the OIG from City employees, as well as Otto, acknowledge that comparable trash carts were available from other vendors.

Statement of Al Berg, Community Improvement Department Assistant Director, City of Delray Beach

Mr. Berg stated that he vaguely recalled the purchase of trash carts from Otto sometime in September 2013, but initially advised that he solicited quotes from Otto, as well as other vendors prior to the purchase. When asked to provide documentation of such, Mr. Berg retracted his statement and stated that he never solicited or received quotes from other vendors. Mr. Berg acknowledged that Otto was not a sole source vendor and that he was aware of other vendors who could provide the same product. Mr. Berg further stated that during his eight years of employment with the City, the City has only generated P.O.s as needed when ordering trash carts, and that it had always been through Otto. Mr. Berg indicated that he was not aware of any of the City's Purchasing Policies and Procedures, nor was he aware of the City's Purchasing Ordinances. According to Mr. Berg, it was the Purchasing Department's (Ms. Nadal) responsibility to adhere to the procurement procedures.

Statement of Lula Butler, Community Improvement Department Director, City of Delray Beach

Ms. Butler stated that she has been employed as the CID Director for approximately 26 years and that she was unaware of whether or not a contract existed between the City and Otto. According to Ms. Butler, neither she nor her staff has ever solicited bids/quotes for purchases, to include Otto, as that is the responsibility of the Purchasing Department. Ms. Butler stated that she did not have any knowledge as to whether or not the Purchasing Department, under Ms. Nadal, followed the appropriate purchasing policies and procedures, but that she (Ms. Butler) and her staff relied on the Purchasing Department to follow the rules when a purchase is made.

Statement of Louie Chapman, City Manager, City of Delray Beach

Mr. Chapman stated that the responsibility for the purchasing of products through the proper procurement process was ultimately his; however, the Purchasing Department usually handles the responsibility. Mr. Chapman added that the specific Department requesting to purchase a product also shares some of that responsibility as well.

Mr. Chapman stated that following his inquiry⁵ into the September 2013 purchase of trash carts from Otto, he found that the City had not followed the correct procurement policies or procedures when it came to purchasing trash carts/parts from Otto, both during his term as City Manager, as well as prior to his employment (June 2013). According to Mr. Chapman, based on his inquiry, the City never had a contract to purchase from Otto and that all purchases were based on need and convenience. Mr. Chapman stated that it appeared that the City failed to follow its own policies and procedures when purchasing trash carts/parts from Otto since approximately 1996.

Statement of Terill Pyburn, Interim City Attorney, City of Delray Beach

Ms. Pyburn explained that following her own inquiry (requested by the Mayor and completed January 27, 2014) to the purchase of trash carts in September 2013, she discovered that the City “probably” had not followed its own procedures since 1996 when it came to the purchase of trash carts. Ms. Pyburn’s January 27, 2014 Memorandum to the City Commission referenced the fact that the trash carts were purchased prior to the City’s new purchasing code (November 19, 2013) and was therefore utilizing the City’s purchasing code in effect at the time of purchase. The Memorandum contained the following quoted information, in pertinent parts:

It appears from my research that Otto’s garbage carts had a patent that expired in 1996, around the same time that the City first contracted with Otto to purchase their carts. Therefore, arguably, the carts probably have not been “sole source” for a long time...

In conclusion, while nothing illegal [the purchase itself] occurred in this instance as the Inspector General has opined in similar situations previously, “the City should follow its own policies and procedures.”...It is simply bad public policy not to do so.

Statement of Patsy Nadal, Purchasing Manager, City of Delray Beach

Ms. Nadal explained that when it came to obtaining bids/quotes from vendors, it was the responsibility of the requesting Department; however, she would provide assistance if necessary. Ms. Nadal confirmed that there was no ongoing contract with Otto and stated that she had solicited quotes from Otto and other similar companies in the past; however, she was unable to recall when (maybe 2009), nor was she able to provide any documentation to support her claim. Ms. Nadal explained that she did not consider the most recent purchase from Otto (September 2013) as a sole source purchase, but that it met the City Standard exception (based on the carts durability).

According to the OIG’s review of the City Standard referred to by Ms. Nadal, the City Standard was not applicable until November 19, 2013. The trash carts referenced in this report were purchased on September 27, 2013 and delivered on October 18, 2013 and October 28, 2013. The new City Standard states the following:

⁵ Mr. Chapman initiated his inquiry approximately one week after the January 21, 2014 City Commission meeting and his Memorandum to the City Commission concerning his findings was dated February 14, 2014.

Section 36.02(C)(6)(b) of the City of Delray Beach Code of Ordinances (November 19, 2013)

City Standard. Where the City has determined that a particular style, brand, make, or model is the only type that meets the City's requirements for performance, consistency, compatibility or other salient characteristics, and such determination has resulted in there being only one source available to the City, the City may acquire or contract for such goods without utilizing a Sealed Competitive Method or the Written Quotations Method.

It is noted that even if the new City Standard were applied in this situation, it still required a determination that a particular style, brand, make, or model is the only type that meets the City's requirements...,” in other words, that the product is available from only one source, something that even City staff admits is not true.

Allegation (2):

City of Delray Beach (City) Manager Louie Chapman and Community Improvement Director Lula Butler misled the City Commission into approving a \$60,000.00 blanket Purchase Order for future purchases of trash carts even though the trash carts had already been purchased and delivered three months prior to obtaining the City Commission's approval. If supported, the allegation would constitute a violation of Section 36.02(D) and (E), Chapter 36, of the City of Delray Beach Code of Ordinances.

Finding:

The information obtained **supports** the allegation.

Until November 19, 2013, the City of Delray Beach Code of Ordinances provided the following:

Sec 36.02. Acquisitions of Personal Property, Supplies or Contractual Services.

(D) [Acquisitions of \$15,000.00 and up.] For acquisitions of fifteen thousand dollars (\$15,000.00) and up, purchases shall be made by the Purchasing Supervisor after the Commission has reviewed and awarded the bid/quote.

Based on the OIG's review of pertinent documents and information obtained from the City, as well as Otto Environmental Systems, Inc. (Otto), the following timeline is established:

- **July 31, 2013:** CID Code Enforcement Coordinator Danise Cleckley, per her request, receives a quote from Otto for 1,200 trash carts.⁶ Otto supplies a quote of \$57,010.00.

⁶ The City purchased 1,200 trash carts of varying capacity (450 – 95 gallon / 400 – 65 gallon / 350 – 35 gallon).

- **September 27, 2013:** CID Assistant Director Al Berg authorizes Ms. Cleckley to order the 1,200 trash carts, which Ms. Cleckley subsequently orders on this same date.
- **October 15, 2013:** Otto submits Invoice #15672 to the City for payment for 450 of the 1,200 trash carts totaling \$23,850.00. Prior to payment, CID Administrative Assistant Donna Quinlan requests Ms. Cleckley to obtain an updated quote from Otto due to the amount of time that has passed since their original quote.
- **October 16, 2013:** Otto provides an updated quote wherein the price remains unchanged.
- **October 18, 2013:** The 450 trash carts (Invoice #15672) are received by the City.
- **October 28, 2013:** The remaining 750 carts are received by the City.
- **October 29, 2013:** Otto submits Invoice #5320839 to the City for payment of the remaining 750 trash carts totaling \$33,160.00.
- **December 31, 2013:** Invoice #15672, totaling \$23,850.00, was paid through City P.O. #695582.
- **January 21, 2014:** Ms. Butler makes a presentation to the City Commission recommending the approval of a \$60,000.00 blanket P.O. Mr. Chapman appears to back Ms. Butler's statements by advising the City Commission "I think we are just trying to make sure we have enough to get us to a point where we can go out for bid."
- **March 4, 2014:** Invoice #5320839, totaling \$33,160.00, was paid through City P.O. #696641.

Despite having taken delivery of 1,200 trash carts in October 2013, and having no present need for additional trash carts, during the January 21, 2014 City Commission Meeting, the following quoted statements, in pertinent parts, were made by Ms. Butler and/or Mr. Chapman:

- **5:55 hours:** Ms. Butler indicates in her presentation that she is "requesting approval for a \$60,000.00 blanket P.O. to order carts, parts, and wheels as needed."
- **5:56 hours:** Ms. Butler indicates in her presentation to the City Commission stating that "at this time we have to order carts."
- **5:57 hours:** Commissioner Petrolia asks "how many carts do we have in reserve right now?" Ms. Butler responds "I don't know that off the top of my head, my

staff knows what the inventory is and knows what the demand is and knows what projects are coming on line that needs the carts.” Commissioner Petrolia asks “do we have enough?” Ms. Butler responds that “we don’t have enough to fulfill all of our needs for this fiscal year.”

- **6:06 hours:** Commissioner Jacquet asks about the time frame that it would take to bid and receive the trash carts, to which Ms. Butler responds, “I just need this one approved. I cannot afford to run out of carts.”
- **6:07 hours:** Mayor Glickstein and Commissioner Petrolia ask questions concerning pricing and whether or not Ms. Butler can go back to Otto and negotiate a better price. Mayor Glickstein asks, “you are still behind?” Ms. Butler responds, “yes.”
- **6:08 hours:** Mayor Glickstein expresses some concern regarding the \$60,000.00 cost, at which time Mr. Chapman responds, “I think we are just trying to make sure we have enough to get us to a point where we can go out for bid.”

Mr. Chapman noted the following in his February 14, 2014 Memorandum to the City Commission:

- “On January 21, 2014, the City Commission approved the acquisition of 1,200 [trash] carts. Only **after inquiry** [*emphasis added*] was it discovered that the City had actually taken delivery of the 1,250^[7] [trash] carts prior to approval by the City Commission.”

When interviewed by the OIG concerning their January 21, 2014 approval of the \$60,000.00 blanket P.O., City Commissioners stated the following:

- Mayor Glickstein, Commissioner Petrolia, Commissioner Frankel, and former Commissioner Gray all stated that they did not authorize the City’s September 2013 purchase of 1,200 trash carts prior to their January 21, 2014 City Commission meeting. Commissioner Jacquet was unable to recall details concerning his vote.
- Mayor Cary Glickstein, Commissioner Shellie Petrolia, Commissioner Adam Frankel, and former Commissioner Angeleta Gray all stated that based on Ms. Butler’s presentation, they believed that the City needed trash carts and that they were approving a blanket P.O. for *future* purchases of trash carts. Commissioner Al Jacquet was unable to recall details concerning his vote.

Statement of Donna Quinlan, CID-Ms. Butler’s Administrative Assistant

Ms. Quinlan explained that sometime in mid-October 2013, Ms. Cleckley provided her with Invoice #15672 and after her (Ms. Quinlan’s) own review, she realized that the

⁷ It is noted that although the City ordered 1,200 trash carts, 50 additional trash carts were mistakenly delivered. The City was credited the cost of 50 trash carts.

trash carts had been purchased incorrectly (September 27, 2013) because the City Commission's prior approval had not yet been obtained. Ms. Quinlan stated that a purchase of this amount (\$57,010.00) required the City Commission's prior approval. Ms. Quinlan stated that she immediately notified Ms. Butler of the issue. Ms. Quinlan stated that Ms. Butler advised her that she (Ms. Butler) needed to notify Mr. Chapman; however, Ms. Quinlan was not aware as to whether or not Ms. Butler actually notified him. Ms. Quinlan further added that according to Ms. Butler, P.O. #695582, processed on December 31, 2013, to pay Otto Invoice #15672 (\$23,850.00) was authorized by Mr. Chapman, not the City Commission.

Statement of Al Berg, Community Improvement Department Assistant Director, City of Delray Beach

Mr. Berg stated that he "vaguely" remembers the purchase of trash carts from Otto sometime around October 2013. Mr. Berg explained that he had given Ms. Cleckley authority to order trash carts without his approval on an as-needed basis and that it was Ms. Cleckley who ordered the trash carts from Otto. Mr. Berg confirmed that they did not receive the City Commission's approval for the \$57,010.00 purchase, but was unable to explain why the trash carts were purchased, other than to state that Ms. Cleckley initiated the purchase. Mr. Berg believed that Ms. Butler became aware of the September 2013 purchase around the same time the trash carts were initially delivered (October 18, 2013). Mr. Berg stated that he was not aware of when Mr. Chapman discovered that the trash carts had been purchased without the City Commission's authorization. When asked, Mr. Berg was unable to explain any of the City's purchasing policies or procedures, only that he knew this purchase had been made without the City Commission's authorization.

Statement of Danise Cleckley, Code Enforcement Coordinator, City of Delray Beach

Ms. Cleckley stated that it was Mr. Berg's (her immediate supervisor) signature on Otto's September 27, 2013 quote/specification sheet, which indicated his approval for her to initiate the purchase of trash carts from Otto. Ms. Cleckley confirmed that on September 27, 2013, she purchased 1,200 trash carts totaling \$57,010.00 from Otto and that the first shipment of trash carts (450 at \$23,850.00) was delivered on October 18, 2013. The second shipment of trash carts (750 at \$33,160.00) was delivered on October 28, 2013. Ms. Cleckley further confirmed that the City Commission had not been made aware, nor had they authorized the purchase. Ms. Cleckley acknowledged that purchases in this amount required the pre-approval of the City Commission; however, Ms. Cleckley justified the purchase by stating that they were out of trash carts. Ms. Cleckley stated that Ms. Butler learned of the unauthorized purchase sometime in October 2013 and she (Ms. Cleckley) assumed that Mr. Chapman had been notified by Ms. Butler around the same time.

Statement of Patsy Nadal, Purchasing Manager, City of Delray Beach

Ms. Nadal explained that she had not been made aware of the September 2013 purchase of trash carts from Otto until she received an e-mail from Otto (December 6, 2013) requesting payment of Invoice #15672. Ms. Nadal stated that she was not aware

of when Ms. Butler or Mr. Chapman knew about the unauthorized purchase, but stated that on December 31, 2013, Mr. Chapman provided his authorization, via e-mail, to process P.O. #695582 to pay Otto Invoice #15672.

First Statement (March 24, 2014) of Lula Butler, Community Improvement Department Director, City of Delray Beach

Ms. Butler explained that she was not aware that the trash carts had been initially purchased (September 27, 2013), nor initially delivered (October 18, 2013), until she was notified by Ms. Quinlan that Ms. Cleckley had submitted Otto's first invoice (Invoice #15672) to her (Ms. Quinlan) for payment (sometime between October 18, 2013 and October 28, 2013). Ms. Butler stated that immediately following Ms. Quinlan's notification, she conducted an inquiry with Mr. Berg and Ms. Cleckley and discovered that a second shipment of trash carts (750 carts at \$33,160.00) was due to arrive at the end of October 2013. Ms. Butler advised that the entire \$57,010.00 purchase was improper as her staff did not obtain the City Commission's prior approval. Ms. Butler stated that immediately following her inquiry, she notified her direct supervisor, Mr. Chapman (sometime near the end of October 2013), to which he advised her that "he would take care of the problem." When asked, Ms. Butler interpreted Mr. Chapman's statement to mean that he would handle the situation accordingly.

Ms. Butler acknowledged that she was "not forthcoming" in her January 21, 2014 presentation to the City Commission to obtain their authorization for a \$60,000.00 blanket P.O. for trash carts. Ms. Butler further acknowledged that she did not provide the City Commission with accurate information concerning the fact that the trash carts had already been purchased in September 2013, without the City Commission's pre-approval and that part of the purchase had already been paid (P. O. #695582, \$23,850.00). Ms. Butler was unable to explain why she did not provide the City Commission with the truth, nor was she able to explain why Mr. Chapman, who she claimed had been immediately made aware of the purchase shortly after it occurred, did not correct her presentation with the truth. Ms. Butler was then asked as to the extent of Mr. Chapman's knowledge of the entire events, to which Ms. Butler provided the following:

- Sometime between October 18, 2013 and October 28, 2013, after she was notified by her staff, Mr. Chapman was immediately advised of the unauthorized purchase.
- On December 31, 2013, Mr. Chapman authorized P.O. #695582 to pay Otto \$23,850.00 for the initial delivery of 450 trash carts in October 2013.
- Prior to November 19, 2013, Mr. Chapman's purchasing threshold (without the City Commission's approval) was authorized for purchases up to \$15,000.00. After November 19, 2013, this limit was changed to purchases up to \$25,000.00. According to Ms. Butler, Mr. Chapman authorized the December 31, 2013 P.O. #695582 totaling \$23,850.00 using his newly raised purchasing threshold, which would *now* not require the City Commission's authorization.

Regardless of the fact that Mr. Chapman's threshold was increased to \$25,000.00 on November 19, 2013, the actual trash cart purchase on September 27, 2013 totaled \$57,010.00, and was therefore still required to obtain the City Commission's prior approval. Apart from the threshold level, the City was still required to competitively procure this purchase, an issue that is addressed in Allegation 1.

When asked to review Mr. Chapman's February 14, 2014 Memorandum to the City Commission, Ms. Butler acknowledged that she was allowed to review and edit Mr. Chapman's summary of the events leading up to their January 21, 2014 presentation. Ms. Butler stated that there were several misrepresentations; however, she failed to correct them explaining only that "Mr. Chapman is my boss."

Ms. Butler reiterated that based on her notification to him sometime in October 2013, as well as his authorization of P.O. #695582 on December 31, 2013, Mr. Chapman, prior to their January 21, 2014 City Commission meeting, was aware that the trash carts had already been purchased.

Ms. Butler advised that to date, there has not been any further follow-up by her or Mr. Chapman, nor has Mr. Chapman disciplined her in any manner. Ms. Butler denied any type of collusion between her and Mr. Chapman and could only explain her failure to be "forthcoming" as a situation in which she did not want to throw Mr. Chapman "under the bus." Ms. Butler stated that she was unable to opine as to why Mr. Chapman did not correct her misrepresentations.

First Statement (March 25, 2014) of Louie Chapman, City Manager, City of Delray Beach

Mr. Chapman was advised by the OIG that Ms. Butler claimed to have informed him of the unauthorized purchase sometime at the end of October 2013 during an impromptu meeting. Mr. Chapman confirmed that he met with Ms. Butler around the same timeframe and stated that Ms. Butler came to his office and said that they had to "talk;" however, Ms. Butler only advised him that the trash cart inventory was at a low level and that she needed to order more so the City would not run out of trash carts. Mr. Chapman denied having been informed by Ms. Butler during this meeting or any other meeting that the trash carts had already been purchased by her staff. Mr. Chapman reiterated that he was not aware of the unauthorized purchase until approximately one week after the January 21, 2014 City Commission meeting.

When presented with P.O. #695582, dated December 31, 2013, which he had approved, Mr. Chapman denied giving his approval and opined that a CID employee must have authorized it. Mr. Chapman was then advised that Ms. Butler, Ms. Quinlan, and Ms. Nadal all stated that he gave his approval for P.O. #695582, which he again denied. When advised that his own e-mail, dated December 31, 2013, to Ms. Nadal, authorized P.O. #695582, Mr. Chapman then recalled having authorized the purchase, but stated that he could not recall any details concerning Invoice #15672 or P.O. #695582, except the fact that it was for 450 trash carts.

Mr. Chapman's December 31, 2013 e-mail to Ms. Nadal contained the following message:

"I am authorizing the purchase of approximately \$23,000.00 [P.O. #695582] worth of trash receptacles from Otto in accordance with the purchasing rules."

It is noted that at the time of the unauthorized purchase (September 27, 2013), Mr. Chapman's authorization threshold was limited to purchases up to \$15,000.00. On November 19, 2013, Mr. Chapman's authorization threshold was increased to purchases up to \$25,000.00. Even so, regardless of the fact that the first invoice received by the City was for a partial delivery totaling \$23,850.00, the actual trash cart purchase on September 27, 2013 totaled \$57,010.00, and was therefore still required to obtain the City Commission's prior approval.

Mr. Chapman acknowledged that until November 19, 2013, his authorization threshold was for purchases up to \$15,000.00. Mr. Chapman denied circumventing the new purchasing rules in order to avoid detection by the City Commission, and stated that he only used the new purchasing rules to authorize the initial P.O. because he believed that (at the time) the trash carts had been purchased by Ms. Butler after November 19, 2013. Mr. Chapman stated that he never reviewed P.O. #695582 until his inquiry in January 2014.

Mr. Chapman stated that he did not know why Ms. Butler did not provide the City Commission with accurate information during the January 21, 2014 City Commission meeting, but denied knowing at the time that Ms. Butler's presentation was inaccurate. However, Mr. Chapman acknowledged that he probably should have mentioned that he had already authorized P.O. #695582 to pay for the initial delivery of 450 trash carts in December 2013 (\$23,850.00).

Mr. Chapman believed that Ms. Butler and her staff misled him; however, when asked to provide information as to his disciplinary actions against Ms. Butler, he advised that there had been no discipline. Mr. Chapman was unable to explain why, approximately three months after he allegedly became aware that his subordinate "lied" to him, he had not taken any disciplinary action. Mr. Chapman denied any collusion between him and Ms. Butler to conceal the unauthorized purchase from the City Commission.

Second Statement (March 26, 2014) of Lula Butler, Community Improvement Department Director, City of Delray Beach

Ms. Butler was re-interviewed and advised by the OIG that according to Mr. Chapman, he was never informed (prior to his own inquiry) that the trash carts had been purchased in September 2013. Ms. Butler reiterated that she met with Mr. Chapman sometime between October 18, 2013 and October 28, 2013 in his office, at which time she advised him that there was a problem and that her staff had purchased the trash carts without prior approval from the City Commission. Ms. Butler stated that Mr. Chapman should have known that the purchase had been made in October 2013

because he authorized P.O. #695582 on December 31, 2013. Furthermore, P.O. #695582 referenced Otto Invoice #15672, dated October 15, 2013, and included the amount of \$23,850.00. Ms. Butler stated that she did not know why Mr. Chapman would say she never told him.

Second Statement (March 26, 2014) of Louie Chapman, City Manager, City of Delray Beach

Mr. Chapman reiterated his previous statement to the OIG and stated that Ms. Butler never advised him during their October 2013 meeting that the trash carts had already been purchased without authorization from the City Commission. Mr. Chapman maintained that Ms. Butler only advised him that the City's trash cart inventory was at a low point and that they needed to order more immediately. Mr. Chapman further maintained that it was not until approximately one week after the January 21, 2014 City Commission meeting, during his own inquiry, that he learned that the trash carts had already been purchased.

Statement of Terrill Pyburn, Interim City Attorney, City of Delray Beach

Ms. Pyburn advised that upon the request of the Mayor, she conducted her own inquiry (separate from Mr. Chapman's) immediately following the January 21, 2014 City Commission meeting. According to Ms. Pyburn, approximately a day or so after the January 21, 2014 City Commission meeting, she spoke with both Mr. Chapman and Ms. Butler individually, at which time they both maintained that they had not been made aware of the unauthorized trash cart purchase in October 2013 until this inquiry.

Following the re-interviews of Mr. Chapman and Ms. Butler, the OIG reviewed City e-mails between October 1, 2013 and March 1, 2014, which disclosed the following:

From: <Butler>, Lula <Butler@mydelraybeach.com>
Date: Monday, October 28, 2013 at 11:11 AM
To: Louie Chapman <chapman@mydelraybeach.com>
Cc: "Wynn, Kimberly" <wynn@mydelraybeach.com>
Subject: Garbage Carts

Got a problems with this one being removed from the agenda. Staff has already placed the order (\$57,015) as of the first week in October. A portion of the order has been delivered and we expect the balance to be here by the end of this week. So, in order to pay, we had to set up the PO. Hopefully, I can revise the transmittal

From: Chapman, Louie [chapman@mydelraybeach.com]
Sent: Monday, October 28, 2013 11:37 AM
To: Butler, Lula
Cc: Wynn, Kimberly
Subject: Re: Garbage Carts

Ok. But you need to answer the attorney's question about why we purchase from this vendor. What is the magic thing that makes their product different?

Louie Chapman, Jr.
City Manager

Based on the discovery of this additional e-mail, Ms. Butler and Mr. Chapman were re-interviewed.

Third Statement (April 21, 2014) of Lula Butler, Community Improvement Department Director, City of Delray Beach

Upon review of the aforementioned e-mail, Ms. Butler confirmed that it was an e-mail from her own account; however, Ms. Butler had no recollection of its details.

Third Statement (April 21, 2014) of Louie Chapman, City Manager, City of Delray Beach

Upon review of the aforementioned e-mail, Mr. Chapman acknowledged that the e-mail indicated that Ms. Butler sent it to him; however, Mr. Chapman was unable to recall its details. After reviewing the e-mail a couple of times, Mr. Chapman conceded that the e-mail verified that Ms. Butler notified him of the unauthorized purchase on October 28, 2013 (approximately three months prior to the January 21, 2014 City Commission meeting). However, Mr. Chapman stated that he only focused on the first sentence of the e-mail concerning the agenda item and did not review the remaining content, which addressed the unauthorized purchase.

RECOMMENDED CORRECTIVE ACTIONS

Based on Allegation 1 and Allegation 2 being **supported**, the OIG recommends the following corrective actions:

1. Take corrective personnel action deemed appropriate.
2. Ensure that any new purchase of trash carts is completed in accordance with the City's own policies and procedures.
3. Implement measures to ensure that all City staff are knowledgeable of the current policies and procedures, specifically the City's procurement policies and procedures.
4. Consider implementing additional control methods to ensure that City staff adhere to all policy and procedures.

IDENTIFIED, QUESTIONED, AND AVOIDABLE COSTS

Identified Costs: \$297,714.04

Questioned Costs: At this time, these costs cannot be determined as a competitive procurement process has not taken place. The City has indicated that a Request for Proposal will be issued to address future purchases of trash carts.

ARTICLE XII, SECTION 2-427

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, on April 22, 2014, Ms. Butler and Mr. Chapman were provided the opportunity to submit a written

explanation or rebuttal to the findings as stated in this investigative report within ten (10) calendar days.

On May 2, 2014, Ms. Butler provided a written response (*attached in its entirety*). As Ms. Butler's response did not contain any additional information pertinent to the findings of this report, no additional action is warranted.

On May 2, 2014, Mr. Chapman provided a written response (*attached in its entirety*). As Mr. Chapman's response did not contain any additional information pertinent to the findings of this report, no additional action is warranted.

This Investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

Memo

To: Flora T. Butler, Director of Investigations (Acting)
From: Lula Butler, Director, Community Improvement
Date: May 5, 2014
Re: **Response to Inspector General's Report**

This is in response to your report dated April 22, 2014. Al Berg has functioned as the Assistant Director of the Department and the Contract Administrator to the City's Waste Hauler for the past eight (8) years. He has had the responsibility of maintaining the inventory and ensuring an appropriate supply of garbage carts are made available for customers. He certainly understands the relationship between the purchase order approval process, in relationship to ordering garbage carts, given the history of his actions prior to July 2014. Requesting a quote from the supply vendor and placing the order are two (2) separate functions. Al Berg clearly directed his staff to get the quote, follow up with the vendor and ultimately approved the order, which violated department policies governing the same. The volume of carts ordered in September 2013 was also inconsistent with departmental practices.

Adequate steps and standard operating procedures have been put in-place to prevent this from occurring in the future.

I took responsibility for my staff's actions, notifying and discussing the same with the City Manager. At no time was there any collusion between the City Manager and me to misrepresent this matter to the Commission. I am very consistent at respecting the direction and position of the City Manager.

I sincerely apologize for what appeared to be a misrepresentation on my part to the City Commission.

CITY OF DELRAY BEACH



100 N.W. 1st AVENUE * DELRAY BEACH, FLORIDA 33444 * 561/243-7600

Flora Butler, Director of Investigations (Acting)
Office of Inspector General
Palm Beach County
P.O. Box 16568
West Palm Beach, Florida 33416-6568

May 2, 2014

Dear Ms. Butler,

I appreciate the opportunity to respond to the findings of the Office of Inspector General (OIG) concerning the purchasing of trash carts from the vendor Otto Environmental Systems (Otto) to the City of Delray Beach.

- **ALLEGATION 1**

As to your finding regarding Allegation 1 where by the city failed to competitively procure the purchase of trash carts from Otto Environmental Systems:

I concur with your finding and I take full responsibility for this occurrence and understand that as City Manager it is my responsibility to see that staff follows all city ordinances. However, I would like to provide some context to the situation.

I have determined that the initial purchase of Otto carts, approved by the City Commission on June 18, 1996, was "piggy-backed" off of a competitively bid purchase done by another city. Otto was selected after extensive research into available carts, and since then the City of Delray Beach had been procuring these carts as a "sole source" for more than 18 years. That was the process that the staff had followed and had been supported by prior management and commissions, and frankly did not raise any red flags with me. When Community Improvement Director Ms. Lula Butler informed me of the situation, I did not consider it to be the serious problem that it has become. I did not commit the conversation to memory and therefore did not recall it at the time of the OIG interviews.

I should have more closely monitored this procurement but instead chose to focus on other priorities I had on my plate at the time, like the completion and implementation of the budget and filling numerous Department Head vacancies, as well as the Assistant City Manager position.

I had been a City Manager here for approximately six months and while I was trying to bring myself up to speed on every detail of the city, this one fell through the cracks. Frankly, I considered the purchase of trash carts to be minutia and left it to a staff that had been purchasing them for many years. However, in hindsight, the purchase of these trash carts should have commanded more of my attention and I should have spent more time immersing myself in the city's procurement procedures.

Ms. Flora Butler
Office of Inspector General
May 2, 2014
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At the time, it did not occur to me to make that a priority and for that I was wrong.

In addition, I feel the need to mention that a culture of fear had permeated the staff. They are petrified of making a mistake and being publicly ridiculed by the commission at a meeting. It was in this environment that the staff ordered the trash carts for fear of running out to expected demand and exposing the staff to criticism from the customers that would be left without the carts. Apparently, this had happened in the past and was considered a "catastrophic" event by the Community Improvement staff.

- **ALLEGATION 2**

As to Allegation 2, I agree that the Commission was misled but I did not deliberately mislead the City Commission or the general public about the purchase of Otto Carts.

My focus was on getting the needed trash carts and not on how they were obtained. That was a mistake on my part and clearly a lesson learned about a staff that I had six-months of working experience with.

I offer the Commission, the public, and my staff an apology for the mistake and the part I played in making the mistake. If it happens on your watch, you are responsible. I take full responsibility for the purchasing error and not correcting the public record when the matter came before the City Commission. Again, my focus was on getting them what they needed to fulfill expected customer demand. It was not to circumvent the legitimate authority of the City Commission in the purchasing approval process. No staff member or me benefitted in any way from the purchase of these carts from Otto. The only beneficiary was our citizen/customers. However, I know that the ends do not justify the means. This process was flawed.

For all my years in public management, there still remain things to be learned. This has been one of those teachable moments that I will take valuable lessons from.

Once again, thank you for the opportunity to comment on the OIG findings.

Sincerely,



Louie Chapman, Jr.
Delray Beach City Manager

LCJR/dr