

**SEMINOLE COUNTY
PUBLIC WORKS DEPARTMENT**

PROPERTY ACQUISITION AUDIT

March 13, 1997

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March 13, 1997

The Board of County Commissioners
Seminole County, Florida

Dear Commissioners:

I am very pleased to present you with the attached report of a property acquisition audit of the Engineering Division of Seminole County's Public Works Department.

The audit was conducted between November 25, 1996, and February 17, 1997; this draft report was completed and issued on March 13, 1997. The audit was conducted in accordance with generally accepted government auditing standards.

I would like to thank the personnel of the Engineering Division for their cooperation and assistance throughout the course of this audit. Their assistance is deeply appreciated.

With warmest regards, I am

Most cordially,

Maryanne Morse
Clerk of the Circuit Court
Seminole County

Prepared By:
Internal Audit Division
Clerk of the Circuit Court

SEMINOLE COUNTY PUBLIC WORKS DEPARTMENT

PROPERTY ACQUISITION AUDIT

REVIEW OF PROPERTY ACQUIRED FOR COUNTY ROAD 427 AND SELECTION AND ADMINISTRATION OF CLOSING AGENT SERVICES

The Internal Audit Division of the Office of the Clerk of the Circuit Court has completed a Review of the acquisition of real property by the Seminole County Engineering Division's Property Acquisition Section for the widening of County Road (CR) 427, and the Selection and Administration of Closing Agent Services.

PURPOSE

The purpose of the review was to determine if the procedures and internal controls exercised over the acquisition process were adequate to provide County Management with assurance that property acquired for the widening of CR 427 was done so at a price fair to both property owners and the taxpayers; that the acquisitions were carried out in accordance with applicable state statutes and county ordinances; and, a review of the process relative to the selection and administration of closing agent services.

BACKGROUND/CR 427

Section 127.01 of the Florida Statutes, and Rule 12B-4.14(15) of the Florida Administrative Code, grant the power to the State of Florida to acquire land from property owners through condemnation; as long as such land is needed for public purposes and the owner receives full compensation. The Engineering Division's Property Acquisition Section is responsible for acquiring the properties needed for road projects.

The Property Acquisition Coordinator (the Coordinator), reports to the County Engineer, through an Assistant County Engineer; and is responsible for carrying out the various functions necessary to acquire the land needed for road projects. This is accomplished through negotiations with the owners and, if necessary, through condemnation proceedings initiated and conducted by the County Attorney.

The Coordinator is instrumental in the pre-litigation negotiation process, and manages the performance of various consultants:

- ◆ Appraisal firms provide certified appraisals of the properties at their highest and best use;
- ◆ Acquisition consultants carry out much of the detailed acquisition work, such as obtaining legal descriptions and deeds, maintaining contact with owners, and advising the coordinator on various acquisition issues;
- ◆ Other consultants provide closing services and business damage estimates as needed.

The county offers to buy the subject piece of property at a price based on the certified appraisal of that property. Often owners do not accept the county's initial offer, and, sometimes with legal representation, make counteroffers supported by their own appraisals and other documents.

Prepared By:
Internal Audit Division
Clerk of the Circuit Court

Florida's Eminent Domain Statute (FS 73.092) requires that the county pay all reasonable legal and other professional expenses incurred by owners as part of settlements. Acceptance of a counteroffer in excess of the county's certified appraisal must be specifically approved by the County Engineer, and the Board of County Commissioners (BCC)

SCOPE

The widening of CR 427 is being carried out in six phases and involves the acquisition of approximately 300 parcels for a cost of \$18 to 20 million for the right-of-way acquisitions. Phase II was completed in 1990 and was not part of this review. Acquisitions of property for the other five phases began in October 1993 and is ongoing. We selected 50 parcels for examination; all 50 were purchased for amounts exceeding their appraised values. All of the parcels in this initial sample were approved for purchase by the BCC prior to October of 1996.

We also expanded our sample and examined the files pertaining to ten acquisitions for road widening projects, in which purchase agreements were submitted to the BCC for approval between October 8, 1996 through December 10, 1996.

Our review included:

- ◆ Verification and compliance with applicable laws, ordinances, and regulations;
- ◆ Discussions with key personnel involved in the land acquisition process;
- ◆ Examination of files relative to land acquisitions; and
- ◆ Other such auditing procedures as considered necessary under the circumstances.

The audit field work began on November 25, 1996, and was completed on February 17, 1997. The review was performed by Ed Brennan, Bill Carroll and Paul Wise.

OVERALL EVALUATION

Our review disclosed that a substantial number of parcels were purchased for prices far exceeding their appraised values. Of the 50 parcels examined in our initial sample, 23 (46 percent) were purchased for prices well beyond 100 percent of appraisal; and nine more (18 percent) than \$100,000 above appraisal. Of the ten parcels examined in our expanded sample, four (40 percent) were purchased for prices more than 100 percent above appraisal; and two more (20 percent) than \$100,000 above appraisal.

Because of a lack of documentation in the files and other weaknesses in internal controls, it could not be determined if the payments in excess of appraised amounts were unnecessary, or simply the best deal the county could obtain. However, based on our review, it is our opinion that the internal controls over the acquisition process are inadequate to provide county management with assurance that county funds are not being wasted or otherwise misspent. Although an amount cannot be quantified, we believe that the county likely paid substantially more than necessary for property acquired for the widening of CR 427.

The Engineering Division has taken some measures to improve controls by:

- ◆ Changes in personnel assignments;
- ◆ Providing some additional information to the BCC;
- ◆ Providing more documentation of negotiations; and,
- ◆ Changes in the method of selecting appraisal firms.

Despite these improvements, more needs to be done to reduce the vulnerability of county funds to waste and misuse. We also have determined, based on the overall results of our audit work, that the procedures and controls exercised over Closing Agent related services are adequate to provide a satisfactory level of financial and administrative control and accountability and ensure compliance with applicable state statutes and local ordinances.

However, two internal control weaknesses were identified during the course of the audit. The following details our audit findings and recommendations for corrective action.

FINDING No. 1

Finding

There is insufficient segregation of duties and responsibilities to ensure a fair price in property acquisitions.

It is the policy of the county to make every reasonable effort to acquire property through negotiations. Although the assistants and acquisition consultants often assist in the negotiation process, the Coordinator is the principal negotiator and, in many cases, the sole negotiator of the purchase price. After reaching an agreement with a property owner the Coordinator sends a brief memorandum to the County Engineer justifying the price and recommending approval and submission to the BCC. The Assistant County Engineer, who is the Coordinator's immediate supervisor, was not involved in negotiations, and neither was the County Attorney (except in certain and special circumstances).

The County Engineer stated that he sometimes had a very limited amount of time available to review the details of purchase agreements. He would rely heavily on the Coordinator, and his own judgment, based on his knowledge of real property values and right-of-way issues. These procedures do not provide for adequate administrative and fiduciary control because there is insufficient segregation of responsibilities. From a practical standpoint, only two individuals (the Coordinator and the County Engineer), one of whom reports to the other, would determine the amounts of purchase prices.

As stated earlier, numerous parcels were purchased for prices far in excess of their appraised values, and many for high dollar amounts. For example, in acquiring Parcel No. 115 of Phase III, a purchase price was negotiated solely by the Coordinator who accepted a property owner's counteroffer of \$510,000, despite the advice of the acquisition consultant, and despite the fact that the appraised value was only \$386,000. This counteroffer was later accepted by the County Engineer, and subsequently approved by the BCC. Other similar examples were noted in which the Coordinator accepted counteroffers far in excess of appraised values, and in which the advice of the acquisition consultants were ignored.

Recommendations:

To provide additional internal controls through appropriate division of responsibilities, and balanced information for use by county negotiators, we recommend that:

- (1) An additional position be authorized, independent of the Engineering Division, to be filled by an individual knowledgeable in real property appraisal techniques and financial analysis. This individual would be responsible for performing detailed analyses of the differences or discrepancies between county appraisals and information provided by property owners;
- (2) The individual filling this position prepare reports of the differences and discrepancies between county appraisals and information submitted by property owners, and submit these reports to the county negotiators, with summaries to the BCC for its consideration. In high dollar disputes, this individual should seek another appraisal to determine the validity of a property owner's appraisal, and include that appraisal in the report to the BCC;

- (3) The Assistant County Engineer be assigned the responsibility of reviewing and approving all purchase agreements negotiated by the coordinator and assisting in the negotiation process;
- (4) The County Attorney should be involved and assist in negotiating a purchase price when the property owner's counteroffer exceeds the appraised value by more than \$50,000. (Ultimately the \$50,000 threshold should be replaced by a scale of thresholds for various types of property, agreeable to both the County Engineer and the County Attorney); and,
- (5) The county ensure that all employees involved with negotiations receive formal training in negotiating.

FINDING No. 2

Finding

Data submitted by owners in support of their counteroffers is not sufficiently reviewed and verified to evaluate the accuracy and the validity of the data. Certified appraisals are sometimes disregarded and information submitted by property owners is, simply, accepted as fact.

In many of the acquisitions we reviewed, property owners would submit supporting data with counteroffers. Data submitted consisted of independent appraisals, engineering studies, comments and observations of various types of professionals, and other information. Our review disclosed that there was insufficient review and verification of these data. Rather, it appears that the Coordinator often accepted the information as presented and made little attempt to negotiate a lower price. Only rarely was a detailed analysis of the differences between the county's and the owner's appraisals performed.

Also, in some cases, additional information presented by the property owner was not reviewed in detail or verified as to its accuracy or validity. Even a cursory review of some of this information should have raised questions and challenges. For example, for one parcel (Phase I No. 182), the owner claimed that expenses in excess of \$90,000 had been incurred in anticipation of placing a service station on the property. The document presented supporting this was simply a list of items that included \$50,000 for steel (purchased from a firm with the same name as the owner), and \$10,000 for storage tanks and other miscellaneous items. All of the expenditures listed were incurred more than four years earlier. The county covered the cost of these items. The claim was not questioned and the costs never verified. If these costs were valid and accurate, then the county should have verified the existence and the condition of the steel and storage tanks and, since they were paid for by the county, considered taking possession of these items and reselling them.

Recommendations:

- (1) The county should perform detailed analysis, and require specific verification of data submitted by owners in purchase negotiations with the county; and,
- (2) A procedure be implemented to ensure that the work performed by the County's appraisal firms is adequately monitored and controlled to ensure that quality appraisals are obtained and defective appraisals are not accepted and used as a basis for offers to owners.

Prepared By:
Internal Audit Division
Clerk of the Circuit Court

FINDING No. 3

Finding

There is inadequate documentation in the county's official files detailing the negotiations that took place when establishing prices; and no enforcement mechanism exists to ensure that individuals involved in negotiations prepare detailed records of those negotiations.

The control deficiencies described in this report were compounded by a lack of documentation in the official files. Most files reviewed lacked adequate documentation of the negotiation process. Without detailed documentation of the negotiations that took place in arriving at the purchase price, there is no method of determining if negotiations were properly carried out in the best interest of the county and were fair to the property owner.

In some cases, records of contacts prepared by the acquisition consultants specify that the Coordinator was the sole negotiator and accepted the owners' first counteroffers, against the advice of the consultants, with little or no effort to limit the cost to the county.

Section 3.3 of the Property Acquisition Manual, prescribes that the negotiator shall maintain thorough and accurate written records of all negotiations on a parcel by parcel basis. However, there is no mechanism in place to ensure that this is done. We did note that for one recently acquired parcel, there is a detailed record of negotiations, prepared by the Acting Coordinator. These actions indicate that the county is taking some steps to correct this deficiency, however, a formal procedure for enforcing this important control is needed.

Recommendation:

We recommend that a procedure be implemented to ensure that all individuals involved in the negotiating process prepare detailed memoranda of negotiations. This procedure should specify that the County Engineer perform periodic verifications to determine that these memoranda have been prepared and maintained in the official files.

FINDING No. 4

Finding

In some cases purchase agreements were sent to the BCC for approval with incorrect, or insufficient information.

BCC approval is required to purchase property for prices in excess of the county's certified appraisal. However, in seeking BCC approval for the purchase of several of the parcels included in our initial sample, the information submitted was inaccurate; and in seeking BCC approval for the purchase of nearly all of the other parcels in the sample, the information submitted was too brief. For one parcel (Phase III No. 126), the purchase price submitted to the BCC was \$294,582 and the attached detail sheet stated that this price included the amount of the appraisal, plus attorney fees. However, this amount actually reflected the owner's appraisal of \$260,000 plus attorney fees of \$34,582; the county's appraisal was actually only \$165,000.

In our opinion, more information should be included on the detail sheets provided to the BCC. The detail sheets recently submitted to the BCC included more information than those in our initial sample, indicating that the county is taking steps to correct this deficiency. This procedure needs to be formalized.

Recommendations:

- (1) The detail sheets sent to the BCC for approval of purchase agreements should include accurate and complete information concerning the prices recommended. Included in this information should be a brief summary of the differences between the county's and the owner's appraisals, a list of fees, and any costs; and,
- (2) A standard form be developed and used to present this information to the BCC in a consistent and formalized manner.

FINDING No. 5

Finding

Procedures and controls over the award and administration of contracts for appraisal services were inadequate.

We reviewed the county's procurement practices related to the award and administration of contract PS133, issued in 1993 for appraisal services, and found substantial control deficiencies:

- (1) **Insufficient segregation of duties** – The Seminole County Purchasing Code prescribes the Purchasing Department the responsibility to “purchase, supervise, and monitor the purchase of all supplies, services and construction needed by this county”. Despite this requirement, Purchasing had very limited involvement in the selection of appraisal firms, and the issuance of individual work orders. Although Purchasing pre-qualified the 24 firms who responded to advertisements in the local newspapers, the selection committee, comprised principally of members of the Engineering Division, made a determination that only 11 firms would be awarded Master Contracts. The rationale used by the committee for selecting only 11 firms was not documented.

In December of 1995, Engineering further restricted the number of firms being used by opting to issue work orders to only three of the 11 firms approved by the BCC. The justification given to Purchasing by Engineering, (dated December 7, 1995), “the project's are now in a downward move and we need only to justify three firms.” There is no other documentation in Purchasing or Engineering files to support the decision for using only three firms.

In addition, Purchasing had very little involvement in the award of work orders to the appraisal firms. Quotes from appraisal firms for work orders were requested, received, and evaluated by Engineering without Purchasing's involvement. Quotes received were scored as to price, experience, past performance and knowledge of the project. A quote tabulation sheet was then submitted to Purchasing with a directive from Engineering's Property Acquisition coordinator as to which firm should be issued a work order.

- (2) **Work orders not awarded to low bidders** – Our review disclosed that some work orders were awarded to firms that were not the lowest bidder, even though the low bidding firm was one that had previously been approved by the Selection Committee as to its experience, past performance, and knowledge of the project. In one example, the justification given by the Property Acquisition Coordinator for awarding a work order to a firm that had actually bid \$17,625 higher than the lowest bidder, was simply “I don’t think that we will have a problem with any of the appraisers on this process, since the appraisal firm that was low quote is already working on two of our projects.” We also found some cases in which the quote tabulation sheets were sent to Purchasing without quoted prices. These were accompanied with a memorandum directing Purchasing to issue the work orders to a specific firm. In all of these examples, there is no documentation in the files that provided any indication as to why work orders were issued to specific firms.
- (3) **Inadequate monitoring of appraisal firms’ performance** – There was no formal procedure for documenting negative or positive performance of appraisers. Some county employees indicated that some appraisals obtained were not accurate and using these appraisals resulted in higher costs, by requiring another costly appraisal be performed as well as higher legal fees to attorneys representing property owners.

We noted 12 instances in which the certified appraisal accepted by the county, and initially used as the basis of the first offer made to property owners, were disregarded during the negotiation process. The County Engineer, and two of the county attorneys involved, stated that some of the appraisals received by the county were not accurate. In their opinion, the appraisals submitted by property owners sometimes were more accurate, particularly where planning, environmental, or engineering support was needed in order to arrive at an accurate value. They attributed this, in part, to the selection process for appraisal services: the Request for Bids (RFB) did not indicate if, when, and where, special support and expertise was needed, and the county’s appraisal consultants did not always have staff with qualifications in these areas. They stated that the appraisal firms hired by the property owners, on the other hand, often hired experts fully qualified in all areas to assist in the appraisal.

We reviewed appraisals to determine if the county appraisals were flawed as indicated by the County Engineer and the county attorneys. We found four instances in which the county’s appraiser did make some calculation errors. Generally, the differences in values between the county’s appraisal and the owners’ appraisal were due to more liberal assumptions (i.e. business damage estimates, market value comparisons, best use of the property) used by the owner’s appraisers.

It is the responsibility of the Property Acquisition Section to monitor the performance of the appraisers. Defective appraisals should never be accepted and used as the basis for offers to property owners. We did note several instances in which defective appraisals were rejected by the county and new ones ordered accordingly. However, appraisals in our initial sample were accepted, and later disregarded, after the owners submitted their appraisals without a comprehensive analysis of the differences. This was done despite the fact the county’s appraisals were submitted by certified appraisers and reviewed and verified by other certified appraisers.

If appraisals are in fact inaccurate, or too low, but are still accepted, the county runs the risk of incurring unnecessary costs in several ways. First, funds are spent for a service that

is not useful; second, the county has no basis for negotiating favorable prices and finally, property owners' legal fees, paid for by the county, will be higher. (Florida law requires that the county pay owners' legal fees; those fees are based on the difference between the county's first offer and the settlement amount.) By not documenting performance there is no assurance that firms providing defective appraisals would be excluded from obtaining work orders in the future or that firms providing excellent services would receive additional work orders.

- (4) **Lack of documentation of reference checks** – There was no documentation in the official files indicating that references of appraisal firms were checked as required by the Request For Proposal Guidelines in the Seminole County Purchase Code. Reference checks are necessary to ensure that the county is contracting with qualified firms.

Summary of Finding No. 5

The county is in the process of changing its procedures for awarding appraisal contracts. Master contracts no longer will be awarded. Instead, appraisal firms will bid for individual projects and only one firm will be awarded a contract for each project. Also, the Purchasing Division will be closely involved in the process and the Purchasing Manager or her designee will be a non-voting member of the Selection committee. All bid tabulation sheets will contain prices and, if all other factors are equal, the low bidder will receive the award. We endorse these procedures which should eliminate the control deficiency of inadequate division of responsibilities in the award process. However, more needs to be done to promote the award and administration of appraisal contracts.

Recommendations:

The procedures implemented by the county should prescribe that:

- (1) When competing firms are equally qualified, the award is made to the lowest bidder that meets the county time requirements; when the award is not given to the lowest bidder, full justification as to why should be placed in the file;
- (2) The quality of work performed by appraisal firms is fully documented; and
- (3) References provided by appraisal firms are thoroughly checked prior to award.

FINDING No. 6

Finding

Settlement costs for acquired property are not sufficiently itemized and documented to ensure that title insurance is purchased in the proper amount by the Closing Agent.

Our review and testing of title insurance purchased by Seminole County for land acquisitions determined that title insurance is not always obtained in the correct amount, resulting in erroneous title insurance premiums. These errors occurred because the closing documents provided to the County's closing agent, Shutts & Bowen, by Engineering's Property Acquisitions group did not always itemize the purchase agreement settlement costs by category, such as land, improvements, and cost to cure. Consequently, title insurance was purchased by Shutts & Bowen for the County based on the total settlement amount rather than just the cost of the land and, in the case of a whole take, improvements.

Recommendation:

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Internal Audit Division
Clerk of the Circuit Court

That the Property Acquisition Section develop and utilize a form to itemize and document the purchase agreement settlement costs by category. This form should be two parts – one to be placed in the file and one forwarded to the closing agent.

Dated

Maryanne Morse
Clerk of the Circuit Court
County Auditor

Prepared By:
Internal Audit Division
Clerk of the Circuit Court