



**County Controller**

Stephen J. Barron, Jr., CFE

**Audit Manager**

Frank S. Kedl, CIA

**Solicitor**

Timothy P. Brennan, Esq.

**County Executive**

John Stoffa

**County Council**

John Cusick, President  
Margaret Ferraro, Vice-President  
Thomas H. Dietrich  
Bruce A. Gilbert  
Kenneth M. Kraft  
Lamont G. McClure, Esq.  
Leonard S. Parsons  
Barbara Thierry  
Robert F. Werner

Audit Report

**ACS CONTRACT  
AUDIT -  
PROCUREMENT**

As of May 2012

**Office of the Controller  
County of Northampton  
Pennsylvania**



**STEPHEN J. BARRON, JR., CFE**

**CONTROLLER OF NORTHAMPTON COUNTY**

NORTHAMPTON COUNTY COURTHOUSE  
669 WASHINGTON STREET  
EASTON, PENNSYLVANIA 18042

**FRANK S. KEDL, CIA**  
Audit Manager

**TIMOTHY P. BRENNAN, ESQ.**  
Solicitor

**PHONE (610) 559-3186**  
**FAX (610) 559-3137**

July 23, 2012

Members of the Northampton County Council  
John Stoffa, County Executive  
County of Northampton, Pennsylvania

We have completed an audit of the ACS Contract with respect to hardware, software and hardware/software purchases as of May 2012.

The Executive Summary on page 1 summarizes the audit results and identifies opportunities for improvement, while the Audit Results section provides a detailed explanation.

We acknowledge the cooperation and assistance we received from the Procurement Division and ACS. Their help was essential to the performance of this audit.

Our report was discussed with management at our exit conference on June 29, 2012. Management's response is included in the Audit Results section of the report.

Very truly yours,

Stephen J. Barron, Jr., CFE  
County Controller

Anthony D. Sabino, CIA  
Lead Auditor

# *Table of Contents*

---

	<u>PAGE</u>
EXECUTIVE SUMMARY - OPPORTUNITIES FOR IMPROVEMENT .....	1
INTRODUCTION .....	2
PURPOSE AND SCOPE.....	3
METHODOLOGY .....	3
AUDIT RESULTS .....	4
 <i><u>Section A - Compliance</u></i>	
1. Compliance With Administrative Code.....	4
2. Discounts Earned and Fees Paid When Using ACS Procurement .....	7
3. ACS Procurement Fee .....	8
 <i><u>Section B – Internal Controls</u></i>	
1. Quotes for Purchases of Hardware/Software/Maintenance.....	9

---

## **EXECUTIVE SUMMARY - OPPORTUNITIES FOR IMPROVEMENT**

---

The following is a summary of the content of the enclosed report. See report references noted below for full detail.

### ***Section A - Compliance***

1. If the County resumes pursuing technology purchases through ACS as the need and the opportunity arises, it will be able to take advantage of deep discounts that would not be available otherwise. (Section A-1, pg. 4)
  2. If the County improves the clarity of the wording in some areas of the IS Outsourcing Contract when it is drafted again, it will provide greater guidance to both parties as to what services are to be rendered, what discounts are to be earned, and what fees are to be paid. (Section A-2, pg. 7)
  3. If the ACS Procurement Service fee was listed separately on invoices submitted by ACS, the County would be better able to monitor such purchases for contract compliance. (Section A-3, pg. 8)
- 

### ***Section B – Internal Controls***

1. If the ACS contract is amended to shift the duty of obtaining competing quotes to the County Purchasing Department, the County can improve the control that ensures that discounts are indeed earned when purchasing through ACS. (Section B-1, pg. 9)

---

## INTRODUCTION

---

In 2007, the County entered into a contract (C07-0178) with ACS Government Systems, Inc. (now a division of Xerox Corp.) for the provision of Information Technology Services, Materials and Equipment. The term of this contract was January 1, 2008 to December 31, 2011, with the option to extend the Agreement for two consecutive one-year periods. The County exercised these options, and the final expiration date of this contract will be December 31, 2013.

Within the Statement of Work section of the contract, duties are assigned to ACS with regard to the procurement of hardware, software and related maintenance. Among the duties specifically assigned to ACS are the following (quoted directly from the contract):

- Set technical direction and establish specifications and recommendations for hardware and software.
- Serve as focal point for purchase requests
- Research and obtain quotes when necessary
- Utilize ACS Global reseller/partner status for the most effective procurement of hardware when it is in the best interest of the County to do so... When utilizing ACS procurement, County will derive savings of 4% or more. (Similar clauses in the contract address the procurement of software and maintenance of both hardware and software.)
- ...pricing will be compared at the time of the purchase, to ensure vendor pricing ACS or otherwise is in the best interest of the County.

According to the ACS Director of Information Services, the reason for the inclusion of these clauses in the contract was so that the County could take advantage of the volume discounts that ACS's vendors provide to them that would not be otherwise available to the County, even through the competitive procurement process which the County normally uses.

Purchases made under the terms of the contract were effectuated using purchase orders to ACS, not to the vendor ultimately providing the goods or services. Many of these purchases exceeded \$25,000.

In contrast, however, Article XIII of the Administrative Code establishes procurement standards for the County which include bidding requirements and contracting guidelines. These functions are normally the responsibility of the County Purchasing Manager. Recently, questions have arisen with regard to the ACS contract and whether the procurement duties assigned to them comply with the related Administrative Code provisions.

In response to the controversy surrounding these purchases, ACS voluntarily discontinued their involvement in the procurement of hardware and software (other than the development of specifications), and is currently involved only in the acquisition of maintenance agreements.

---

## **PURPOSE AND SCOPE**

---

The purpose of this audit was to determine whether purchases of hardware, software and maintenance are made in compliance with the Administrative Code and are in the best interests of the County.

Objectives of individual tests included:

- Determining if purchases are fairly offered to other potential bidders
- Determining if purchases made through ACS were performed in compliance with the contract
- Determining if savings to the County are earned and clearly documented.

For testing, our scope included any transaction completed during the life of the contract.

---

## **METHODOLOGY**

---

In performing this audit, we analyzed the following documents:

- Master Agreement for Information Technology Services, Materials and Equipment
- Article XIII of the County Administrative Code
- 2007 Request for Proposals – IS Outsourcing Services

We also conducted interviews with the ACS Director of Information Services, the County Purchasing Manager and Assistant Purchasing Manager. We also consulted with the Controller's Solicitor regarding the legal issues involved.

For testing, we examined Executive Orders instructing County officials to submit purchase orders to ACS, as well as documentation related to the purchases including quotes.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

---

## AUDIT RESULTS

---

### Section A - Compliance

---

---

#### 1. Compliance With Administrative Code

##### OBSERVATION

There are a number of provisions in the County's Administrative Code which would appear to be applicable to the procurement of hardware, software, and hardware/software maintenance that, until recently, were often being purchased through ACS. Following are cited sections and related observations:

- *Section 13.03 The County Executive may delegate the administrative authority and responsibility for procurement to someone other than the Procurement Officer subject to approval by County Council in accordance with the provisions of this Code.*

This is consistent with contract language making ACS the focal point of all IS purchasing activity.

- *Section 13.16a Contracts and Agreements – Written contracts are required for all purchases of goods and services exceeding \$25,000. All contracts and agreements shall be prepared and executed as directed by the County Executive by way of the Executive Order.*

Many of these purchases exceeded \$25,000, and they were purchased using purchase orders to ACS. No contract was signed with the vendor providing the equipment/service or with ACS. In an effort to comply with Administrative Code, the Purchasing Manager obtains an Executive Order even though no contract exists.

- *Section 13.07b Procurement of County property over \$25,000 shall be by Competitive Sealed Bid, Competitive Negotiation or Cooperative Purchasing unless, prior to the solicitation of any contract, the County Executive shall, with the approval of County Council, determine that these methods are not practical.*

As noted above, many of the purchases exceeded \$25,000, but the method used to obtain the goods and services was limited to the solicitation of three written quotes. According to the County Purchasing Manual, quotes are obtained for purchases totaling less than \$25,000.

- *Section 13.16c In addition, prior to making the award, approval of County Council is required... (for) any contract exceeding \$100,000 which was awarded using the Competitive Negotiation, Negotiation After Competitive Sealed Bidding, and Non-Competitive Negotiation source selection methods.*

According to the Purchasing Manager, a resolution from County Council is obtained for purchases over \$100,000. However, as noted above, no formal bid process is used and no contract is prepared.

In reviewing the Executive Orders issued for these purchases, we noted that there is no mention of the vendors that ultimately provided the goods or services to the County. The Orders decree that a purchase order be issued to ACS under the terms of contract C07-0178. In effect, the County is not treating these as if they are separate and distinct purchases; rather they are treated as acquisitions permitted under the terms of an *existing* contract. If this is a valid approach, then aspects of Administrative Code related to separate and distinct purchases would not apply here.

To determine whether this approach is indeed valid, we decided to review the original Request For Proposal (RFP) for IS Outsourcing Services issued in 2007 to determine what specific requirements were solicited from ALL respondents. We found a number of key clauses applicable to this analysis:

- Appendix A-1 Scope of Work & Responsibility Matrix (The RFP states that this section outlines the basic scope of work that the Proposer must adhere to in its response):
  - Upon request for purchase, develop specifications & provide to end user
  - When savings are possible, utilize Provider discount/negotiated pricing & purchase as pass thru
  - Proactively make recommendations regarding what make, model, & configuration of equipment to buy and what software to buy
  - Provider will serve as focal point for all County hardware and software purchase activity.
- Section 7: Service Level Agreements
  - (Respondent must)... obtain competitive quotes when necessary e.g., when no obvious discount exists.
- Section 5.1 – General Requirements: Proposers must adhere to all formats and address all portions of this RFP set forth herein providing all information requested.
- Section 6.1 – Evaluation Criteria: Only those proposals meeting the mandatory requirements of this RFP will be considered and further reviewed.

These clauses clearly indicate that access to a discounted network of technology providers would have been required of any vendor submitting a proposal to this RFP. In fact, if the Technical Proposal did not contain provisions for discounted/negotiated pricing of technology purchase, the County would have had grounds to reject the proposal as nonresponsive.

In addition, since these features were included in the RFP and therefore required as part of the Technical Proposal, presumably the Cost Proposal would include fees for these services. Although the overall Cost Proposals for all respondents

were not broken down by the various services rendered, we noted that the ACS contract includes a fee of 4% when using ACS Procurement Services. Two companies other than ACS submitted proposals in response to this RFP.

In light of this, competition for these subsequent technology purchases already occurred at the time the IS Outsourcing Contract was negotiated in 2007. Purchasing through the IS vendor offers the County a likely discounted price; a similar discount would have been available through either of the other competing IS Outsourcing vendors had they been selected through the RFP process. There is no doubt that the County desired this arrangement at the time and considered such purchases permissible under the Administrative Code.

In addition, since these purchase discounts are currently a contractual obligation in the ACS contract, discontinuing this practice would seem to require a contract amendment. We do not believe that this is wise, however. The County certainly benefits from being able to take advantage of discounts that would not be available to them otherwise.

#### RECOMMENDATION

We recommend that the County resume pursuing discounted purchases through ACS as the need and the opportunity arises. Alternately, if the both parties wish to formally discontinue this practice, the contract should be amended.

#### MANAGEMENT RESPONSE – Doran Hamann, Acting Director of Fiscal Affairs/AI Jordan, ACS Director of Information Services

As it was discussed that neither party wishes to discontinue the existing technology procurement process, we are in agreement with the recommendation that the County resume pursuing discounted purchases through ACS as the need and opportunity arises.

## 2. Discounts Earned and Fees Paid When Using ACS Procurement

### OBSERVATION

Exhibit A, Section VII-4 of the ACS contract states, "When utilizing ACS procurement, County will derive net savings of 4% or more." In our audit, we selected four purchases made through ACS procurement, and reviewed the documentation related to the price offered by ACS and the prices quoted by other vendors. In one instance, the savings percentage achieved through ACS was only 2% when compared to the next lowest quote obtained. Our initial interpretation of the contract language was that the 4% discount represented a guarantee; the Purchasing Manager stated that she also believed this was a guaranteed discount. However, according to the ACS Director of Information Services, the 4% was not a guarantee, but rather a minimum net savings that must be achieved when compared to the next lowest quote before ACS can impose a 4% Procurement Services fee which is also allowed under the terms of the contract. (In effect, the overall savings would have to be 8% or more for ACS to receive its entire fee.)

We consulted with the Controller's Solicitor, who confirmed that the contract could be interpreted as stated by the Director of Information Services. The statement in the contract regarding the net savings appears in a table in a column headed "Assumptions," which supports the position that no guarantees exist.

The contract is also unclear regarding the Procurement Services fee. Nowhere does the contract state that the fee is dependent on the County's net savings on the transaction. The contract can easily be interpreted to mean that the 4% fee is charged on all transactions.

We believe that the contract is poorly worded regarding the discount and the Procurement Services Fee and is open to misinterpretation.

### RECOMMENDATION

We recommend that the County review these sections of the contract and consider strengthening the clarity of the wording when a new contract is drafted after the current one expires in 2013. The conditional nature of the net savings should be clearly explained, and the contract should explain that the Procurement Services fee is only paid when the minimum net savings to the County is achieved.

### MANAGEMENT RESPONSE – Doran Hamann, Acting Director of Fiscal Affairs/AI Jordan, ACS Director of Information Services

In light of the approaching end of term in the ACS contract, the County Information Services Governance Committee will review, strengthen and clarify the terms associated with discounts and fees. In order to maintain compliance under the terms of the existing contract the changes identified later in the document will take place immediately.

### 3. ACS Procurement Fee

#### OBSERVATION

As noted above, the section of the ACS contract titled Exhibit D – Fees states that in addition to the monthly Basic Services fee, ACS is entitled to 4% of a transaction amount as a Procurement Services fee (when purchasing through ACS).

In reviewing the sample of purchases mentioned in A-2 above, we found that the amounts on invoices submitted for payment to the County by ACS matched the original quote. The transaction fee due to ACS was not listed at all, even in instances where the County's net savings far exceeded 4%. According to the ACS Director of Information Services, the transaction fee is incorporated in the price of each item.

Fees for procurement services should be listed as a separate line item on invoices. This will give the County the ability to monitor compliance with the contract with regard to the fee it pays and to the net savings it receives from using ACS procurement.

#### RECOMMENDATION

We recommend that the ACS list their Procurement Services fee separately on invoices if the County chooses to resume making discounted purchase through ACS. Ideally, ACS should provide a copy of the invoice from the discounted vendor from which the original merchandise was purchased as further evidence that the net savings and fees are properly calculated.

#### MANAGEMENT RESPONSE – Doran Hamann, Acting Director of Fiscal Affairs/AI Jordan, ACS Director of Information Services

Although the audit recommends ACS identify its fees and provide the source invoices for verification, that is not possible. The example put forth is that no matter what you buy or where you buy it, at no time do you see the resellers cost. As an individual consumer or as a government entity your purchasing choice is of the reseller/bidder with the best price or in the case of an RFP best reputation, track record, proposed service etc. Additionally, the cost to ACS is based on the discounts received from manufacturers and larger resellers; revealing those discounts publicly could have negative results for ACS and our suppliers and is therefore not disclosed. However, in order to ensure compliance, ACS will, at any time, comply with a Controllers Office Official Audit request to produce any suppliers invoices (within a reasonable number). Such conditions would enable the protection of ACS's pricing information and allow to choose and sample any invoice to ensure ACS compliance with the terms of the contract.

Additionally, the Procurement Office at random intervals of their choosing without notice will perform pricing validations to ensure best pricing for the specified products.

---

## **Section B – Internal Controls**

---

### **1. Quotes for Purchases of Hardware/Software/Maintenance**

#### **OBSERVATION**

In the original RFP for IS Outsourcing Services, the County required that the successful respondent, when procuring technology related purchases, “obtain competitive quotes when necessary, e.g., when no obvious discount means exist.” The contract with ACS clarifies this requirement, stating that “...pricing will be compared at the time of purchase, to ensure the vendor pricing ACS or otherwise is in the best interest of the County.”

The main purpose of obtaining quotes, then, would be to determine whether the discounted price offered by ACS is the best price available to the County, and if it is, to quantify the discount percentage.

Although the duty of obtaining quotes is assigned to ACS in the contract, it is a poor internal control for an entity vying to earn the award to perform the price comparisons. Any work in this regard performed by ACS should be verified by the County.

#### **RECOMMENDATION**

We recommend that County personnel perform research to verify discounted prices offered by ACS prior to any related purchase.

#### **MANAGEMENT RESPONSE – Doran Hamann, Acting Director of Fiscal Affairs/Al Jordan, ACS Director of Information Services**

See response for section A-3 for detail on County’s plan to verify prices at random intervals.