

Memorandum



CITY OF DALLAS
Report Number E18-001

DATE: January 18, 2018

TO: T.C. Broadnax, City Manager
Sarah Standifer, Director – Department of Trinity Watershed Management
Michael Frosch, Director – Office of Procurement Services

SUBJECT: Independent Auditor's Report on Applying Agreed-Upon Procedures for Bid #CIZ1677: Department of Trinity Watershed Management – Storm Drainage Improvements Mill Creek / Peaks Branch / State-Thomas Drainage Relief Tunnel Procurement, \$206,700,000

Attached for your review is the *Independent Auditor's Report on Applying the Agreed-Upon Procedures for Single Bid #CIZ1677: Department of Trinity Watershed Management – Storm Drainage Improvements Mill Creek / Peaks Branch / State-Thomas Drainage Relief Tunnel Procurement.*

The Agreed-Upon Procedures are included in Attachment I. Exceptions were noted for Agreed-Upon Procedures 3, 9, 10, 11, 15, 16, and 18. After the Office of the City Auditor notified City of Dallas (City) management, the Department of Trinity Watershed Management (TWM) took subsequent actions to address the exceptions for Agreed-Upon Procedures 3, 9, 10, 11, 16, and 18. The TWM also took subsequent actions to address two exceptions related to Agreed-Upon Procedure 15.

The Office of the City Auditor identified relevant information for Agreed-Upon Procedures 15 and 17 related to the low bidder's: (1) subcontractor's safety record; and, (2) Minority and Women Business Enterprises goal achievement. This information is included in Attachment I as *Knowledge of a Matter Outside the Agreed-Upon Procedure.*

We have performed these procedures solely to assist the Dallas City Council and City management in evaluating the Office of Procurement Services', (OPS), formerly the Department of Business Development and Procurement Services, and the Department of Trinity Watershed Management's (TWM) compliance with the requirements of Texas Local Government Code (TLGC) Chapter 252, *Purchasing and Contracting Authority of Municipalities; Government Code, Chapter 2269, Contracting and Delivery Procedures for Construction Projects;* and, Administrative Directive (AD) 4-05: *Contracting Policy.*

The Dallas City Charter Chapter IX, Section 3, and the Office of the City Auditor's Fiscal Year 2017 Annual Audit Plan approved by the City Council authorized these agreed-upon procedures projects.

Independent Auditor's Report on Applying Agreed-Upon Procedures:
*Bid #CZ1677 Department of Trinity Watershed Management – Storm Drainage Improvements Mill
Creek / Peaks Branch / State-Thomas Drainage Relief Tunnel Procurement*
January 18, 2018
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If you have any questions, please contact me at 214-670-3222 or, Carol A. Smith, First Assistant City Auditor, at 214-670-4517.

Sincerely,



Craig D. Kinton
City Auditor

Attachments

C: Honorable Mayor and Members of the City Council
Larry E. Casto, City Attorney
Kimberly Bizar Tolbert, Chief of Staff to the City Manager
Jo M. (Jody) Puckett, P.E., Interim Assistant City Manager
M. Elizabeth Reich, Chief Financial Officer
Terry Lowery, Interim Director – Dallas Water Utilities
Zeronda Smith, Director – Office of Risk Management (ORM)
Barbara McAninch, Executive Assistant City Attorney
Susan Alvarez, P.E., Assistant Director – TWM Floodplain Management
Milton Brooks, P.E., Interim Assistant Director – TWM Stormwater Management
Jose L. Lopez, P.E., Project Manager – TWM
Zarin Gracey, Interim Executive General Manager – Office of Business Diversity
Stephanie Cooper, Assistant Director – OPS
Mario Alvarado, Procurement Manager – OPS
Paul Chaney, Senior Safety Analyst – ORM

City of Dallas Office of the City Auditor
Independent Auditor's Report on Applying Agreed-Upon Procedures

*Bid #CIZ1677: Department of Trinity Watershed Management –
Storm Drainage Improvements Mill Creek / Peaks Branch / State-Thomas
Drainage Relief Tunnel Procurement*

We have performed the procedures described in Attachment I, which were agreed to by the Office of Procurement Services (OPS), formerly the Department of Business Development and Procurement Services, and the Department of Trinity Watershed Management (TWM) solely to assist the City of Dallas (City) City Council and City management in evaluating the OPS' and TWM's compliance with the requirements of Texas Local Government Code (TLGC) Chapter 252, *Purchasing and Contracting Authority of Municipalities*; Government Code, Chapter 2269, *Contracting and Delivery Procedures for Construction Projects*; and, Administrative Directive (AD) 4-05: *Contracting Policy*. The OPS and TWM are responsible for the establishment of policies and procedures to comply with those requirements.

The Agreed-Upon Procedures are included in Attachment I. Exceptions were noted for Agreed-Upon Procedures 3, 9, 10, 11, 15, 16, and 18. After the Office of the City Auditor notified City management, TWM took subsequent actions to address the exceptions for Agreed-Upon Procedures 3, 9, 10, 11, 16, and 18. The TWM also took subsequent actions to address two exceptions related to Agreed-Upon Procedure 15.

This agreed-upon procedures engagement was conducted in accordance with United States generally accepted government auditing standards which incorporate attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of OPS and TWM. Consequently, we make no representation regarding the sufficiency of the procedures described in Attachment I either for the purpose for which this report has been requested or for any other purpose.

The Office of the City Auditor identified relevant information for Agreed-Upon Procedures 15 and 17 related to the low bidder's: (1) subcontractor's safety record; and, (2) Minority and Women Business Enterprises goal achievement. This information is included in Attachment I as Knowledge of a Matter Outside the Agreed-Upon Procedure.

We were not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on compliance. Accordingly, we do not express such an opinion or conclusion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

The purpose of this report on applying agreed-upon procedures, as described in paragraph one above, is intended solely for the information and use of the Dallas City Council and City management and it is not intended to be and should not be used by anyone other than these specified parties. Accordingly, this report is not suitable for any other purpose.

Craig D. Kinton, CPA
City Auditor
City of Dallas, Texas

January 18, 2018

Attachment I

Agreed-Upon Procedures and Results of Procedures

*Bid #CIZ1677: Department of Trinity Watershed Management –
Storm Drainage Improvements Mill Creek / Peaks Branch / State-Thomas
Drainage Relief Tunnel Procurement
January 18, 2018*

Agreed-Upon Procedures	Results of Applying the Procedure ¹	Subsequent Actions by City Management After Receiving Notification of the Exception
<p>1. Confirm the documentation to support the procurement is provided by the Office of Procurement Services (OPS), formerly the Department of Business Development and Procurement Services, the Department of Trinity Watershed Management (TWM) and other applicable City departments.</p>	<p>No exceptions were found as a result of applying the procedure.</p>	
<p>2. Confirm the procurement followed Administrative Directive 4-05, <i>Contracting Policy</i> (AD 4-05), Texas Local Government Code (TLGC) Chapter 252 <i>Purchasing and Contracting Authority of Municipalities</i> and Government Code Chapter 2269, <i>Contracting and Delivery Procedures for Construction Projects</i> by comparing the procurement to selected Department of Dallas Water Utilities (DWU) policies and procedures as applicable. (Note: A recent audit of City of Dallas (City) construction-related procurements determined DWU policies and procedures for construction procurements align with these requirements and are best practices.)</p>	<p>No exceptions were found as a result of applying the procedure.</p>	

¹ On July 5, 2017, City management requested the *Agreed-Upon Procedures for Single Bid #CIZ1677: Department of Trinity Watershed Management – Storm Drainage Improvements Mill Creek / Peaks Branch / State-Thomas Drainage Relief Tunnel Procurement*. The Agreed-Upon Procedures were performed between July 5, 2017, and January 10, 2018. The bid was initially advertised on July 5, 2017 and closed on September 8, 2017. On November 28, 2017, the TWM provided the Office of the City Auditor a memorandum recommending the low bidder. Additional documentation supporting TWM's review of the low bidder was provided in December 2017.

Agreed-Upon Procedures	Results of Applying the Procedure ¹	Subsequent Actions by City Management After Receiving Notification of the Exception
<p>3. Confirm the process TWM used to develop the bid specifications was designed to comply with AD 4-05, TLGC Chapter 252, and Government Code Chapter 2269 requirements, (encourage competition, prevent favoritism, and obtain the best price in the interest of the City), and that the bid specifications met that criteria.</p>	<p>Exception noted:</p> <p>The bid specifications included significant changes when compared to the bid specifications used when the same project was previously advertised (<i>Bid # CIZ1566: Department of Trinity Watershed Management – Storm Drainage Improvements Mill Creek / Peaks Branch / State-Thomas Drainage Relief Tunnel Procurement</i>).</p> <p>These bid specification changes appeared to have reduced certain requirements in Special Provision A-18 <i>Bidder Qualifications</i>, without adequate documentation explaining the purpose for the changes.</p> <p>Exception noted:</p> <p>The bid specifications featured four deductive bid alternatives², including a deductive bid alternative for a large section of the tunnel, significant enough to potentially change the low bidder. The bid specifications provided the City discretion to select or not select deductive bid alternatives.</p> <p>The City did not provide documentation of the use of similar deductive bid alternatives for other City construction projects. The Engineers Joint Contract</p>	<p>Half Associates Inc. and Black and Veatch, the City’s two consulting firms for this project, identified the specific changes made to the bid specifications and stated the changes were made to ensure: (1) qualified contractors were not excluded; and, (2) the required contractor experience was more relevant to the project requirements.</p> <p>On August 29, 2017, in Addendum 3 to the bid specifications, the City communicated to bidders TWM intended to construct the entire project and would use deductive bid alternatives if the bids received exceeded the available funding for the project.</p> <p>Note: <i>On September 8, 2017, TWM determined the deductive bid alternatives would not be considered after the bids came in below the available funding for the project.</i></p>

² Deductive bid alternatives give entities flexibility on the project price. The deductive bid alternatives require bidders to declare how much the total project cost would be reduced if certain items are removed from the project. For example, if bids come in high, entities can reduce the project cost by removing specific bid alternatives.

Agreed-Upon Procedures	Results of Applying the Procedure ¹	Subsequent Actions by City Management After Receiving Notification of the Exception
	Documents Committee (EJCDC) ³ identified concerns about the use of deductive bid alternatives when the bid specifications do not clearly indicate how the deductive bid alternatives will be used in the bid award.	
4. Confirm the bid specifications identify the criteria for which TWM could determine that a bid is responsive and responsible.	No exceptions were found as a result of applying the procedure.	
5. Confirm OPS properly advertised the notification of the bid specifications in the newspaper.	No exceptions were found as a result of applying the procedure.	
6. Confirm OPS applied the correct commodity codes and classes to identify potential bidders.	No exceptions were found as a result of applying the procedure.	
7. Confirm solicitation notices and addenda (if applicable) were made available timely to the identified potential bidders in step 6.	No exceptions were found as a result of applying the procedure.	
8. Confirm a pre-bid conference was held.	No exceptions were found as a result of applying the procedure.	
9. Determine whether the contracts TWM has with two consulting firms (participating in the bid evaluation) included conflict-of-interest policies and disclosure requirements. If so, determine if those policies or requirements were properly followed.	Exception noted: The contract with Halff Associates Inc., one of the City's two consulting firms, did not include a conflict-of-interest policy and disclosure requirements related to conflicts with other companies.	On September 13, 2017, a signed supplemental agreement to the contract with Halff Associates Inc. included an updated conflict-of-interest policy and disclosure requirement.

³ The EJCDC is a joint effort of the American Council of Engineering Companies, the National Society of Professional Engineers, and the American Society of Civil Engineers – Construction Institute. The EJCDC develops and endorses quality contract documents.

Agreed-Upon Procedures	Results of Applying the Procedure ¹	Subsequent Actions by City Management After Receiving Notification of the Exception
<p>10. Determine whether TWM had conflict-of-interest policies and disclosure requirements in place for the bidding companies. If so, determine if those policies or requirements were properly followed.</p>	<p>Exception noted:</p> <p>The bid specifications did not include a conflict-of-interest policy and disclosure requirements related to conflicts with other companies.</p>	<p>On August 9, 2017, Addendum 1 to the bid specifications added a conflict-of-interest policy related to conflicts with other companies by informing bidders of the disclosure requirements.</p>
<p>11. Confirm TWM performed due diligence, when developing the bid specifications, by consulting with other City Departments, such as the City Attorney's Office, and documenting the consultation.</p>	<p>Exception noted:</p> <p>The TWM limited consultation with the City Attorney's Office to one section of the bid specifications, Special Provision A-18 <i>Bidder Qualifications</i> (the section related to the minimum qualifications – see Procedure 15 for more information). The TWM did not consult with the City Attorney's Office regarding the use of deductive bid alternatives.</p>	<p>Prior to issuing Addendum 3 to the bid specifications on August 29, 2017, TWM consulted with the City Attorney's Office regarding deductive bid alternatives.</p> <p>According to TWM management:</p> <p>Consultation with the City Attorney's Office was limited to Special Provision A-18 <i>Bidder Qualifications</i> because much of the bid specifications include standard language and that section was unique to the project.</p>
<p>12. Confirm the bid specifications were posted for the appropriate period of time on the City's website.</p>	<p>No exceptions were found as a result of applying the procedure.</p>	

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<p>13. Confirm bids were received on time and that only sealed bids were accepted, opened, and subsequently read.</p>	<p>No exceptions were found as a result of applying the procedure.</p>	
<p>14. Confirm TWM reviewed, verified, and documented the lowest bidder(s) response packages included all information required by the bid specifications.</p>	<p>No exceptions were found as a result of applying the procedure.</p>	
<p>15. Confirm TWM reviewed, evaluated, and documented TWM's review of the lowest bid(s) received for the areas described in Special Provision A-18 <i>Bidder Qualifications</i> of the bid specifications, including that the bidder(s) met the minimum requirements for:</p>		
<p>1. Financial capability</p>	<p>1. No exceptions were found as a result of applying the procedure.</p>	
<p>2. Experience</p>	<p>2. Exception Noted:</p> <p>To meet the minimum required experience per the bid specifications, the low bidder submitted two examples of tunnels excavated within the last ten years. The TWM provided the Office of the City Auditor documentation to demonstrate these two tunnels met the minimum experience requirement; however, the documentation was not sufficient for one of the two tunnels. The TWM documentation included a statement from the sewer district (project owner) that the tunnel was completed and operational in 2005, before the last ten years.</p>	<p>According to TWM management:</p> <p>On Project #2, tunnel construction was completed in 2005; other work including shaft was ongoing in 2007 which was within the experience timeframe.</p>

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<p>3. Safety record</p>	<p>3. Exception noted</p> <p>The safety record review performed by the Office of Risk Management (ORM) was incomplete. The review did not include each member of the joint venture, Southland Contracting Inc. and Mole Constructors Inc., (Southland Mole Joint Venture), as required in the bid specifications in Special Provision A-18 <i>Bidder Qualifications</i>.</p>	<p>On November 13, 2017, ORM performed a search of Southland Contracting Inc. and Mole Constructors Inc. Complete documentation of those searches was provided on December 1, 2017 and December 20, 2017.</p>

Agreed-Upon Procedures	Results of Applying the Procedure	Subsequent Actions by City Management After Receiving Notification of the Exception
<p data-bbox="205 228 846 285">Knowledge of a Matter Outside of Agreed-Upon Procedure – Subcontractor’s Safety Record</p> <p data-bbox="163 1271 846 1328">4. Performance in complying with the City’s “Good Faith Effort Plan”⁴</p>	<p data-bbox="951 228 1360 651">The Special Provision A-18, <i>Bidder Qualifications</i>, of the bid specifications, did not require the safety review to include subcontractors because the prime contractor: (1) may replace subcontractors at any time; and, (2) assumes responsibility and liability related to the subcontractors’ performance. A subcontractor’s, prior safety record, however, may warrant the City’s consideration of additional risk mitigation.</p> <p data-bbox="951 683 1360 1260">Oscar Renda Contracting Inc., an affiliate of both members of Southland Mole Joint Venture, was listed as a subcontractor to perform \$22 million, or 10.6 percent, of the project. Oscar Renda Contracting Inc. has 13 serious safety violations in the three years prior to the September 8, 2017, bid closing date, exceeding the maximum of six serious safety violations identified in City Council Resolution 89-1132 which was the criteria used in the bid specifications. Eleven of the serious safety violations are related to one incident which is currently under contest and may change.</p> <p data-bbox="884 1271 1360 1328">4. No exceptions were found as a result of applying the procedure.</p>	

⁴ This step is related to the M/WBE commitment for the project.

“Dallas, the City that Works: Diverse, Vibrant, and Progressive.”

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5. Prior contract performance	5. No exceptions were found as a result of applying the procedure.	
6. Environmental record	<p>6. Exception noted:</p> <p>The environmental record review performed by TWM was incomplete and did not include each member of the Southland Mole Joint Venture, as required in the bid specifications in Special Provision A-18 <i>Bidder Qualifications</i>.</p>	<p>The TWM provided documentation of searches performed for both members of the Southland Mole Joint Venture on December 20, 2017.</p>

Agreed-Upon Procedures	Results of Applying the Procedure	Subsequent Actions by City Management After Receiving Notification of the Exception
<p>16. Confirm TWM performed due diligence, when evaluating the bidder(s), by consulting with other City Departments, such as the City Attorney's Office, and documenting the consultation.</p> <p>Note: <i>The City's Administrative Directive 4-05, Contracting Policy (AD 4-05), directs departments to submit bid documentation to the City Attorney's Office when legal issues related to a bid irregularity or protest must be addressed. As a result, the documentation related to the bid protest was considered as part of this agreed-upon procedure.</i></p>	<p>Exception noted:</p> <p>The TWM did not provide specific documented support for key statements in its response to a bid protest letter asserting the bid was "unbalanced" and "non-responsive." The TWM provided multiple spreadsheets to support the statements without summary details and conclusions. The City's AD 4-05, Contracting Policy, does not provide City management with detailed guidance on how to analyze and respond to a bid protest beyond consulting with the City Attorney's Office.</p>	<p>On December 12, 2017 and December 13, 2017, TWM provided detailed analysis performed by TWM consultants to support the key statements that bid was not unbalanced. The TWM, however, did not provide specific documented support for all key statements in its response to the bid protest letter.</p> <p>According to TWM management:</p> <p>"The assertions made by the project engineer in the response to the protestant were based on his professional judgment/review of all the data provided to the City Auditor as well as the consultants' analyses."</p> <p>Note: <i>The protest letter asserted the bid was non-responsive because it was unbalanced. No exceptions were found as a result of applying Procedure 14, which related to whether the bid was responsive.</i></p>
<p>17. Obtain a representation from OBD that the procurement followed M/WBE program requirements for ensuring sub-contractors were certified as MWBEs.</p>	<p>No exceptions were found as a result of applying the procedure.</p>	

Agreed-Upon Procedures	Results of Applying the Procedure	Subsequent Actions by City Management After Receiving Notification of the Exception
<p>Knowledge of a Matter Outside of Agreed-Upon Procedures – M/WBE certifications.</p>	<p>Southland Mole JV proposes to meet the 25 percent goal in the bid specifications by using certified M/WBEs to perform 32 percent of the project.</p> <p>Five M/WBE subcontractors, however, are not certified for the type of work they plan to perform for \$9,135,000, or 4.4 percent of the \$206,700,000 project. For example, one subcontractor certified to provide multiple types of administrative services is providing \$6 million of pipes, valves, and fittings.</p>	<p>According to OBD management:</p> <p>The City is not required to check and does not check if the subcontractor is certified to perform the type of work it plans to perform for the project.</p> <p>According to the North Central Texas Regional Certifying Agency:</p> <p>Upon request, the certifying agency can add the appropriate type of work to the certificate following the signed letter of intent to work on the project.</p>
<p>18. Confirm TWM used the Federal System for Award Management (SAM) website to confirm that the lowest responsible bidder is not currently excluded.</p>	<p>Exception noted:</p> <p>The TWM did not include documentation of searches for Mole Constructors Inc., one member of the joint venture, and searches performed of company officers.</p>	<p>The TWM provided complete documentation of the search performed of Mole Constructors Inc., on November 10, 2017, and provided complete documentation of searches performed of company officers on December 14, 2017.</p>