



TO: Phil Stover, Deputy Superintendent of Business Operations
FROM: W. Stephen Carr, Director, Office of Internal Audit *WSC*
DATE: March 26, 2013
RE: Audit of Cherokee Point Air Conditioning Mechanical Systems

Bob Nelson conducted an audit of the Cherokee Point Air Conditioning Mechanical Systems for the period March 2010 to May 2011. The audit report contains information regarding the audit findings and recommendations.

Enclosed are copies of the audit report and the response from the Auditees' Departments.

The Office of Internal Audit takes a necessary action to respond to the Strategic Sourcing and Contracts Officer's response to audit finding number 4b.

Internal Audit agrees that a bidder should not have an unfair advantage. Internal Audit disagrees with management's determination that the bidder in question received an unfair advantage by sending in a *Bidder's DVBE Statement*, which increased the DVBE percentage of participation over a previously submitted document.

Because the closing date for the bid was on April 28, 2010, no submittals received after that date could change a bid. The low-bidder's Form 840 (*Documentation of DVBE Program Requirements*) indicated that a good faith effort would be made and identified three DVBE's that it had contacted. The form indicated that none of the three DVBEs submitted a bid to the low bidder to gain a percentage of work. The low bidder submitted an additional two documents subsequent to the district's request, one that identified zero DVBE participation on May 3, consistent with the Form 840, and another that identified ten percent participation on May 4. Because the ten percent participation document was considered by the district to not be demonstrative of a good faith effort, the document should have, at worst, been considered moot instead of disqualifying the bidder. The low-bidder did not state that it wanted to retract the original bid. Since the low bidder was disqualified prior to the deadline for submitting its evidence of a good faith effort, the low bidder was effectively denied further opportunity to demonstrate a good faith effort.

The second lowest bidder, who won the contract, submitted its *Bidder's DVBE Statement* on March 6, indicating three-plus percent DVBE participation. The document was inconsistent from the bidder's previously submitted Form 840, which indicated eleven percent participation. No follow-up by the district with the contractor or DVBE, whose company allegedly had a \$110,000 commitment drop to a \$30,000-plus participation over several days, was evident.

There are no written guidelines to indicate which actions warrant immediate disqualification of a bidder.

If you have any questions concerning information in this report, please call me at 725-5696.

c: Members, Board of Education
L. Schoenke

e-mail report:
Members, Audit Committee



Cherokee Point Air Conditioning Mechanical Systems Audit

March 26, 2013

Introduction

Proposition "S" was a \$2.1 billion bond measure approved by the voters on November 4, 2008. Proposition "S" provides for the repair and renovation of school facilities in the San Diego Unified School District in addition to maintenance and improvement projects at school facilities throughout the district.

The Office of Internal Audit performed an audit of the air conditioning mechanical systems upgrade at Cherokee Point Elementary. The project involved the installation of a new chiller to generate air conditioning for various buildings as well as the installation of pumps and piping.

The audit scope was:

- To determine whether payments were accurate, authorized, and supporting documentation was adequate.
- To determine whether prevailing wages were paid; and
- To determine whether contractual provisions were enforced.

Audit Observation

During the course of this audit, while not a finding as staff followed the existing process, we make the following comment for improving the process that protects students.

Verification of compliance with contract requirements related to protecting students who may come in contact with contractors does not occur.

Findings Summary

1. Documentation in support of payments for change orders occurring during the construction project is not always complete and the audit determined overpayment occurred.
2. Miscalculations sometimes occur when calculating amounts to pay for change orders due to incorrect completion of the support documentation.

Cherokee Point Air Conditioning Mechanical Systems

3. Required change order detail was lacking and prevented making a determination that prevailing wages were paid.
4. Bid documentation for the Cherokee Point project was incomplete.

Conclusion

The review of the Cherokee Point Air Conditioning Mechanical Systems project identified that full and complete documentation to support the payment of invoices from the contractor on change orders was not always present. Although a review process exists prior to final approval of payments, this review process was not robust enough to identify the weaknesses in documentary support. Additionally, bid documentation for the winning bidder was incomplete.

Due to the lack of an automated system for calculating payments to be made on change orders, some miscalculations occurred. Additionally, the ability to calculate whether prevailing wages were being paid was not possible due to the District not considering worker's compensation charges prior to making payment.

Procedures related to the enforcement of contractual compliance with provisions related to Education Code Section 45125.2, which identifies requirements for protecting children who may come into contact with contractors, were not evident. The Education Code requires the construction of physical barriers, fingerprinting, or supervisory responsibilities.



W. Stephen Carr
Director, Office of Internal Audit



Bob Nelson
Audit Manager, Office of Internal Audit

Audit Observation

Verification of compliance with contract requirements related to protecting students who may come in contact with contractors does not occur.

Education Code Section 45125.2 requires contractors who may come in contact with children to either install a physical barrier between workers and children or workers must be continually supervised by a foreman whom the Department of Justice has determined to not have been convicted of a violent or serious felony. Alternatively the contractors may commit to a Department of Justice background check and fingerprinting for either all employees or their supervisors and monitors.

A procedure is not in place to verify that fingerprinting has occurred and that background checks have been conducted. For the Cherokee Point project, the contractor stated in the bid proposal that workers would be fingerprinted or a barrier would be in place. While there was a barrier erected to separate students and workers in the area where the chiller was being installed, the audit determined that there was no physical barrier to separate students from workers in the walkways where piping installation occurred.

Recommendation

The Office of Internal Audit recommends management establish a practice requiring contractors to provide to the district proof of fingerprinting and background check results. When a contractor has committed in the bid documents to other means of protecting students under the Education Code, the District should enforce the contractor's compliance with the Code.

Findings

1. Documentation in support of payments for change orders occurring during the construction project is not always complete and the audit determined overpayment occurred.

Change order documentation is not always clear as to the basis of payment and supporting documentation is not always present in the file. Payments to contractors do not always indicate whether they were based on an estimate or on the basis of reimbursement (i.e. "time and materials"). Time and materials reimbursements require supporting documentation, including invoices and cancelled checks. Payments made on an estimate are made after work is completed and not to exceed the estimated cost.

Cherokee Point Air Conditioning Mechanical Systems

The audit determined that some estimates for change orders were not approved prior to performance of the work. The contractor submitted a change order related to electrical location changes, in the amount of \$1,613 and was paid this amount. However, there were no invoices in the file to support the payment. The payment was based on an estimate provided by a subcontractor to the general contractor. However, the general contractor submitted the estimate to the District after the work had already been completed.

The contractor submitted a change order related to potholing in the amount of \$7,693.96, which was subsequently paid. The amount was reimbursed to the contractor on a time and materials basis. However, the audit determined that no invoices were present for the rental of a backhoe and excavator. The cost claimed by the contractor was \$1,120 plus sales tax at a rate of 8.75%. Additionally, a crew truck owned by the contractor was billed at a base rate of \$980. However, the contractor inappropriately added sales tax of 8.75% (\$85.75) to the contractor-owned vehicle and was reimbursed for that amount. Additionally, the audit determined that the contractor marked up the equipment and crew truck by 16%, an amount allowable by contract. However, prior to this permissible markup, the contractor had marked up the equipment and crew truck by 15%. The inappropriate markup and sales tax add-ons resulted in an overpayment of \$464.87 for the equipment and truck. This amount represents an 18% overpayment.

The audit determined that a change order related to work performed due to an unforeseen existing fire line was calculated similarly by the contractor and reimbursed for \$1,968.37. The audit determined that the proper amount was \$1,762.76 when removing the inappropriate additional markup of 15%. No invoices were present in the file to support payment for a backhoe that had been rented, but was unused for three days due to a work stoppage. The file contained a note written by the District's construction manager that the contractor notified the District in advance of the work stoppage. However, no explanation was evident to explain why the rental equipment wasn't returned to the rental company to abate the rental charges. The backhoe accounted for \$1,378.08 of the change order with an on-site crew truck being reimbursed at \$200.97.

Recommendation

The Office of Internal Audit recommends that management establish a process to require change orders and supporting documentation to be clearly identified as either "Time and Materials" or "Estimate." Additionally,

a careful review of documentation provided by the contractor in support of reimbursements should be made prior to approving the payment. Identified overpayments should be recovered from the contractor.

2. Miscalculations sometimes occur when calculating amounts to pay for change orders due to incorrect completion of the support documentation.

Exhibit B is a document prepared by the contractor and serves as a summary of charges related to a change order. The document includes separate sections for contractor and subcontractor costs related to labor and materials as well as the standard mark-up charged by the contractors. The sum of Exhibit B is the amount to be paid to the contractor for the work performed under the change order.

The audit determined that several change orders were completed incorrectly on their face, but the bottom line totaled correctly. However, one change order had an Exhibit B which resulted in an overpayment to the contractor.

The Exhibit B related to a change order for an installation of coils was calculated at \$19,719.40. The amount was penciled out without explanation and reduced to \$19,640.67 and paid in that amount. However, the audit determined that an \$840 subtotal related to subcontractor work was added in twice, resulting in an overpayment to the contractor. The correct total based on the components of the exhibit B is \$18,879.40.

Recommendation

The Office of Internal Audit recommends the development of an automated method such as Excel to calculate Exhibit B. Payments in excess of the Exhibit B calculation should be recovered from the contractor.

3. Required change order detail was lacking and prevented making a determination that prevailing wages were paid.

Labor cost for work performed under change orders is reimbursed to the contractor by the District based on a total cost of labor. Total cost of labor includes the hourly wage paid to the worker plus benefits and the portion of worker's compensation insurance paid by the contractor and attributable to the worker. For change orders performed on the basis of an estimate, the labor charges may exceed prevailing wage. However, for change orders which are paid for on a reimbursement basis (i.e. time and materials), the

hourly charge for labor should not exceed prevailing wage as published by California's Department of Industrial Relations.

The audit determined that the District approved reimbursement for wages based on a total cost of labor in which the worker's compensation element was unknown and not submitted by the contractor. Because the amount of labor cost attributed to worker's compensation is unknown, it is not possible to accurately determine the total cost of labor and whether prevailing wage was being met cannot be determined.

Recommendation

The Office of Internal Audit recommends that management institute a practice which requires contractors to break out all components of a worker's total hourly wage, including worker's compensation, prior to reimbursement or payment by the District.

4. Bid documentation for the Cherokee Point project was incomplete.

After the District approves a project for construction, a request for bids from contractors is posted to the public. In addition to notifying potential bidders of where to obtain bid documents and specifying a time to visit the project site, the proposal specifies the deadline for submitting bids. The audit determined that not all bid documents were fully completed. The audit also identified an inconsistency in the application of the rules to different bidders.

- a. The Non-Collusion Affidavit received by a bidder did not have a notary seal attached. Although the bidder was considered non-responsive for other reasons, the absence of the notary seal was not identified as an exception causing the bidder to be non-responsive.
- b. The District informed a non-winning bidder by email that the company would have until May 6, 2010 to submit several documents, including documentation related to the Disabled Veteran Business Enterprise (DVBE). However, on May 5, 2010, the District informed the same bidder by email that because the bidder did not submit the DVBE documentation before the deadline of April 29, 2010 as declared in the request for bids, the DVBE documentation would not be accepted as it would be an "unfair advantage." The winning bidder was permitted until May 7, 2010 to submit its DVBE information and submitted the information on May 6, 2010. There is no explanation in the file for why the winning bidder was permitted to submit its documentation on May

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6, 2010, after the initial deadline for submitting bids, but the non-winning bidder was not.

Recommendation

Management should reinforce procedures related to obtaining and retaining complete and accurate bid documentation and enforce bid requirements consistently for all bidders.



San Diego Unified
SCHOOL DISTRICT



Lee Dulgeroff
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MEMORANDUM

TO: S. Carr

FROM: L. Dulgeroff *LD*

DATE: March 22, 2013

SUBJECT: CHEROKEE POINT CHILLER PROJECT AUDIT

Enclosed please find my responses to the audit, which defines the actions taken to correct the issues and the new procedures that are now in place to prevent this from occurring again.

LD/dg

CHEROKEE POINT AIR CONDITIONING MECHANICAL SYSTEMS
AUDIT RESPONSES

Audit Observation Response

Response: The special conditions and the general conditions of the District's construction contracts require contractors to comply with fingerprinting for a background check under Education Code section 45125.2. However, criminal records, such as fingerprinting, are confidential in that no person or agency shall require another person to furnish a copy of a criminal history record or notification that such a record exists or does not exist under Penal Code 11125. Violation of this statute is a misdemeanor. Because of this legal restriction, the District requires the contractor to complete a document entitled "Contractor Certification Requiring Background Checks" as part of its bid package.

In that document, the contractor certifies under penalty of perjury that (a) it has conducted criminal background checks of its employees through the California Department of Justice (DOJ) and they have received clearance; or (b) it will install a physical barrier and have continual supervision of all employees by a supervisor who has undergone and received clearance from DOJ; or (c) it will comply with fingerprinting requirements through the DOJ. If the contractor checks the last box, FPC understands that the audit recommendation to require that the contractor provide an attestation under penalty of perjury that it has complied with the fingerprinting obligation after contract award is another enforcement mechanism. This is simply written confirmation under penalty of perjury that the contractor completed the requirement it promised to do, and FPC will work with Legal Services to supplement the existing procedure on fingerprinting compliance.

The District's contracts already require indemnification from the contractor's acts or omissions, which includes fingerprinting requirements. Non-compliance with contract requirements is cause for termination. The District also reviews fingerprinting requirements at the pre-construction conference. Contractors know that fingerprinting is a material obligation.

Audit Finding Responses:

Finding #1

Response:

This finding identifies an exception to the norm; typically change orders are well documented. Construction managers will be directed to insure they more thoroughly document the basis for payment.

Finding #2

Response:

Construction managers typically use Excel or some other automated mechanical/software method to reduce the risk of mathematical errors. In this case the construction manager chose not to use an automated calculation method. Construction Managers will be directed to use an Excel version of the Exhibit B form to prevent math errors.

Finding #3

Response:

Staff will revise our procedures to require general contractors and subcontractors to provide the District with a breakout of their worker compensation costs.



San Diego Unified
SCHOOL DISTRICT

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MEMORANDUM

TO: Robert Nelson
FROM: Arthur S. Hanby, Jr.
DATE: March 22, 2013
SUBJECT: **CHEROKEE POINT AIR CONDITIONING MECHANICAL SYSTEMS
AUDIT**

Enclosed please find my response to the audit which describes the facts, circumstances and resultant actions with respect to the evaluation of a bid received for the installation of a new air conditioning mechanical system at Cherokee Point.

A handwritten signature in blue ink, appearing to read "Arthur S. Hanby, Jr.", written over a horizontal line.

ASH

CHEROKEE POINT AIR CONDITIONING MECHANICAL SYSTEMS
AUDIT RESPONSES

Finding 4. Bid documentation for the Cherokee Point project was incomplete.

Response to Finding 4A: Agreed.

- 4.a. There were multiple reasons why the bid from a bidder who did not have a notary seal attached to its Non-Collusion Affidavit was considered non-responsive and not considered for award. In the evaluation of future bids, when a bid is recommended for rejection, the following text will be included in the statement of rejection:
 "There may be an additional reason, or there may be additional reasons, that would cause this bid to be rejected. The consideration of this bid for an award ceased upon discovery of the above reason(s) for rejection."

Response to Finding 4B: Not Agreed.

- 4.b. Strategic Sourcing and Contracts has increased its vigilance and due diligence in the evaluation of bids received to ensure consistency in the enforcement of all bid requirements. At the time of this bid opening on April 29, 2010, there was only a "good faith effort" required with respect to DVBE participation. The School Board did not approve until May 10, 2011 a Resolution in support of service disabled veterans owned businesses (SDVOB) and disabled veteran business enterprises (DVBE) which established a 3 percent required participation of DVBE's for all district construction contracting opportunities. This Finding addresses the documentation to support a bidder's representation in its bid that it had made a "good faith effort" to include DVBE participation in its bid.

At the time of this bid opening, if a bidder submitted in its bid a "good faith effort" of at least 3% DVBE participation, then it was not necessary for the bidder to submit any supporting documentation. However, if a bidder did not submit in its bid a "good faith effort" of at least 3% DVBE participation, then it was necessary for the bidder to provide supporting documentation detailing its efforts to attempt to include at least a 3% DVBE participation in its bid, in accordance with the directions in the bid documents.

A non-winning bidder who did not submit in its bid a "good faith effort" of at least 3% DVBE participation was properly noticed, in accordance with the directions in the bid documents, that it would have until May 6, 2010 to submit several documents, including supporting documentation detailing its efforts to attempt to include at least a 3% DVBE participation in its bid.

However, this non-winning bidder who did not submit in its bid a "good faith effort" of at least 3% DVBE participation and therefore was required to submit supporting documentation detailing its efforts to attempt to include at least a 3% DVBE participation in its bid in accordance with the directions in the bid documents, submitted documents in response to the email in which the bidder changed its original representation in its bid of a 0% DVBE "good faith effort" to be a 10% DVBE participation. A bidder may not alter or change its bid after it is submitted to the district. This submittal did, in fact, alter or change the original bid submitted to the district since it meant that the bidder was now no longer required to provide supporting documentation detailing its efforts to attempt to include at least a 3% DVBE

participation in its bid. This alteration or change to the bid originally submitted was reviewed by the Contract Specialist' supervisor who determined that this subsequent submittal provided this non-winning bidder with an "unfair advantage" in the consideration of its bid by the district, and this bid was then rejected and not further considered for award based upon this determination.