



CITY OF SAN ANTONIO
OFFICE OF THE CITY AUDITOR
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Audit of the Public Works Department's
Contract Administration Process

Project No. AU07-008

Issue Date: November 7, 2007

EXECUTIVE SUMMARY

Project No. AU07-008

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Audit of the Public Works Department's Contract Administration Process

Results in Brief	Recommendations
<p>We performed an audit of the Public Works (PW) Department. Key audit objectives and conclusions follow:</p> <ul style="list-style-type: none">• Are change orders approved by the proper authority, within the 25 percent threshold, and not split to circumvent City Council approval for change orders over \$25,000? <p>Generally, yes. However, there was one instance identified where a change order was intentionally split to avoid City Council approval.</p> <ul style="list-style-type: none">• Are contractors and subcontractors in compliance with wage and hour requirements? <p>Generally, no. Contractors and subcontractors were not consistently in compliance with wage and hour requirements of Texas Government Code, Chapter 2258.</p> <ul style="list-style-type: none">• Are project files maintained in compliance with the City's Contracting Policy and Process Manual? <p>Generally, no. Documents are not adequately safeguarded to ensure project files are maintained according to the City's Contracting Policy and Process Manual.</p> <ul style="list-style-type: none">• Are invoices submitted by the contractor properly approved for	<p>Key recommendations of this report are for the Deputy City Manager to:</p> <ul style="list-style-type: none">• Ensure Project Managers are properly trained to prevent split change orders from being processed.• Direct the Wage and Hour Auditor to collect the balance of \$8,700 in penalties from contractors for the wage and hour violations identified.• Direct the City's Wage and Hour Auditor to develop a systematic process for ensuring receipt and review of certified weekly payroll reports regarding Public Works contracts. Also, the Wage and Hour Auditor should follow-up on missing weekly reports. In instances of continuous noncompliance and as allowed in the City's contract, payment should be withheld from the contractor until such time that missing reports are received.• Ensure Contract Administration staff continue to move towards full utilization of the current electronic filing system. <p>Management's comments will be included when received.</p>

Results in Brief	Recommendations
<p data-bbox="284 178 743 247">payment, adequately supported, and accurately invoiced?</p> <p data-bbox="284 283 730 430">Yes. All invoices tested were properly approved for payment, adequately supported, and accurately invoiced.</p> <ul data-bbox="240 472 766 577" style="list-style-type: none"><li data-bbox="240 472 766 577">• Are there indicators that bids from contractors are not fair and reasonable? <p data-bbox="284 619 755 724">No. There are no indicators that bids submitted by the contractors are unfair and unreasonable.</p> <p data-bbox="186 766 750 913">We commend Management's efforts for assessing and collecting penalties from the contractors for wage and hour violations identified during this audit.</p>	

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INTRODUCTION

BACKGROUND

The Public Works (PW) Department oversees and directs the development and maintenance of the City of San Antonio (City) infrastructure. The City's infrastructure consists of horizontal and vertical projects funded with General Obligation Bonds, Certificates of Obligation Bonds, and other funding sources. The horizontal projects include the construction and maintenance of streets, sidewalks and drainage. Whereas, vertical projects represent the development of City owned buildings. As of April 1, 2007, vertical projects were transferred to Asset Management and the horizontal projects remained under the purview of the PW Department.

The Department has three designated functions that play key roles in the City's contract administration processes. These roles are performed by the Contract Administration (CA), Capital Programs Division (Capital Programs), and Fiscal Operations Section (Fiscal Operations).

- The CA is responsible for the procurement of design and construction contracts, along with professional architectural and engineering design services. CA is also responsible for delivering and executing contracts. They ensure that all required documents are secured.
- Capital Programs provides professional development and management of all horizontal projects (i.e., streets, drainage, sidewalks, detention facilities, etc.). They also manage General Obligation, Storm Water Revenue Bond, HUD 108 and Advanced Transportation District projects. In addition to project management, they provide other services such as engineering plan review, project utility coordination, and plans maintenance and distribution.
- Fiscal Operations' primary responsibility is to review and approve invoices received from contractors. Fiscal Operations ensures that invoices are paid from the appropriate funding sources.

Contract Administration was responsible for the contract administration of 174 projects during October 2005 and May 2007, valued at \$454 million.

OBJECTIVES AND CONCLUSIONS

- Are change orders approved by the proper authority, within the 25 percent threshold, and not split to circumvent City Council approval for change orders over \$25,000?

Generally, yes. However, one change order was intentionally split to avoid City Council review and approval.

- Are contractors and subcontractors in compliance with wage and hour requirements?

Generally, no. Contractors and subcontractors paid 80 workers below wage and hour requirements of the Texas Government Code, Chapter 2258.

- Are project files maintained in compliance with the City's Contracting Policy and Process Manual?

Generally, no. Bid tabulations, contracts, good faith effort plans, insurance certificates, payment and performance bonds were missing from the project files. However, most of these documents were subsequently located after extensive research.

- Are invoices submitted by the contractor properly approved for payment, adequately supported, and accurately invoiced?

Yes. All invoices tested were properly approved for payment, adequately supported, and accurately invoiced.

- Are there indicators that bids from contractors are not fair and reasonable?

No. There are no indicators that bids submitted by the contractors are unfair and unreasonable.

OBSERVATIONS AND RECOMMENDATIONS

A – Split Change Order

OBSERVATION

A change order was approved by a Project Manager that was intentionally split to circumvent City Council approval. This action was not consistent with Texas Local Government Code, Chapter 252. Consequently, the City Council did not have the opportunity to approve or disapprove the change order.

BACKGROUND

The dollar threshold for City Council approval of change orders is \$25,000. According to Chapter 252.062 of the Code, "A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor." Section 252.021 specifically references subchapter C which includes regulations for the appropriate authorization of change orders. In effect, a municipal officer or employee who knowingly splits a change order has committed an offense under the Texas Local Government Code, Chapter 252, which is punishable as a Class B misdemeanor.

DISCUSSION

On July 16, 2005, a previous Public Works Project Manager purposely split a \$27,407 change order to avoid City Council review and approval. An e-mail was sent by the contractor, Valemas, Inc. to the Project Manager stating:

"instead of adding this to the previous proposal for Signal Updates at Louis Pasteur, I have issued a separate proposal to avoid sending this to Council for review/approval. Please let me know how to proceed."

In response to this e-mail, the Project Manager issued two separate change orders in the amounts of \$13,454 and \$13,953. This matter has been referred to the City's Municipal Integrity Office for investigation.

RECOMMENDATION

We recommend that the Deputy City Manager ensure Project Managers are properly trained to prevent split change orders from being processed.

B – Wage and Hour Non-Compliance

OBSERVATION

Contractors and subcontractors of the City's Public Works contracts did not consistently comply with wage and hour requirements of Texas Government Code, Chapter 2258. Numerous workers were paid less than the applicable prevailing wage rate for their work classification as determined by the Department of Labor in accordance with the Davis-Bacon Act. This was due to inadequate oversight by the City's Wage and Hour Auditor. When contractors fail to pay their workers in accordance with the prevailing wage rates, the City projects a negative image.

BACKGROUND

Public Works contracts require compliance with Chapter 2258 of the Texas Government Code. This code incorporates prevailing wage rates in accordance with the Davis-Bacon Act. It states that "A worker employed on a public work by or on behalf of the state or a political subdivision of the state shall be paid: (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work." To help ensure compliance by contractors, the City's contract stipulates that a \$60 penalty be assessed per worker per day when workers are paid less than the prevailing wage rates. According to City Ordinance 71312, dated January 17, 1985, the Wage and Hour Office is charged with enforcing and monitoring the City's wage and labor standard provisions regarding Public Works contracts. As the only full-time employee in the Office, the City's Wage and Hour Auditor is responsible for assessing and collecting penalties for wage and hour violations in Public Works contracts.

DISCUSSION

Eighteen Public Works projects were examined for wage and hour compliance. We determined that 80 workers were paid below prevailing wage rates. Based on our audit, contractors owe the City \$13,200 in penalties and \$1,113 in restitution to the workers for the difference between the actual hourly rates paid and the prevailing wage rates. To date, contractors have paid the City \$4,500 in penalties and \$398 in restitution to their employees for wage and hour violations identified during this audit.

RECOMMENDATION

We recommend that the Deputy City Manager direct the Wage and Hour Auditor to collect the balance of \$8,700 in penalties from contractors for the wage and hour violations identified.

C – Missing and/or Incomplete Weekly Certified Payroll Reports

OBSERVATION

Weekly certified payroll reports were missing and/or incomplete in project files. This was due to lack of appropriate oversight by the City's Wage and Hour Auditor. When weekly certified payroll reports are unaccounted for, there is no assurance that workers on Public Works contracts are paid in accordance with wage and hour requirements.

BACKGROUND

Public Works contracts require contractors to submit weekly payroll reports and a signed statement by the employer indicating conformity with wage and hour requirements. This helps ensure that workers are paid prevailing wage rates based on their work classification

DISCUSSION

Weekly certified payroll reports were missing and/or incomplete in project files. According to the City's Wage and Hour Auditor, weekly reports are reviewed as time permitted. Based on our audit, the following issues were noted regarding weekly certified payroll reports:

- Seven projects were missing weekly reports
- Three projects had payroll reports with no and/or incorrect worker classification
- Two projects had weekly certified payroll reports without a certification from the contractor and a subcontractor

RECOMMENDATION

We recommend that the Deputy City Manager direct the City's Wage and Hour Auditor to develop a systematic process for ensuring receipt and review of certified weekly payroll reports regarding Public Works contracts. Also, the Wage and Hour Auditor should follow-up on missing weekly reports. In instances of continuous noncompliance and as allowed in the City's contract, payment should be withheld from the contractor until such time that missing reports are provided.

D – Required Documents were Missing in Project Files

OBSERVATION

Documents are not adequately safeguarded to ensure project files are maintained according to the City's Contracting Policy and Process Manual. Specifically, files were stored in an unlocked room without proper monitoring. Consequently, the City is at risk of non-compliance with Texas Local Government Code 201.003. In addition, project files are vulnerable to alteration if not properly protected.

BACKGROUND

According to the City’s Contracting Policy and Process Manual, “Certified contracting officers must ensure specific records are retained in order to maintain a complete file, as well as comply with state law.” A signed contract by parties, insurance certificates, performance and payment bonds must be kept on file.

DISCUSSION

We reviewed 15 project files for the period October 2005 to May 2007. Eight of them did not contain crucial documents required by the City’s Contracting Policy and Process Manual. After further inquiry, Contract Administration (CA) staff was able to provide the auditors with most of the documents. However, two of the recovered documents were contracts that did not contain the City Manager’s signature, as required by the City’s Contracting Policy and Process Manual. In addition, CA staff was unable to find the contractor’s payment and performance bonds for one of the completed projects. See the chart below for details.

Project	Bid Tabulations	Contract	Good Faith Effort Plan	Insurance Certificate	Payment Bond	Performance Bond
Medical Center Intersection Phase II		**			*	*
Duke Area Streets, Phase I			***			
Potomac/Mittman to Walters				***	***	***
S. Alamo Durango-Cedar & St. Mary’s/Alamo-Pereida				***		
Belgium Lane Picardi to SBC Parkway		**			***	***
W. French/ N. Zarzamora – N. Trinidad				***	***	***
Cardiff Area Drainage/ Honey Commerce Aransas	***	***	***	***	***	***
Larkspur / West Ave. to Baltic		***				

* – Documents were not located by the Contract Administration staff.

** – Documents recovered did not contain the City Manager's signature.

*** – Documents were subsequently provided by staff.

In December 2006, CA staff implemented an electronic filing database called "SharePoint" for record retention purposes of project files. We performed a cursory review of information stored in the database to determine its adequacy. Based on this review, it appears that the database contains the crucial documents required by the City's Contracting Policy and Process Manual for projects. However, the database is not consistently used by Project Managers. According to the Fiscal Planning Manager, Project Managers prefer to use hardcopy documents.

RECOMMENDATION

We recommend that the Deputy City Manager ensure Contract Administration staff continue to move towards full utilization of the current electronic filing system. The electronic filing system provides better document control and security for project files.

GENERAL AUDIT INFORMATION

STATEMENT OF COMPLIANCE WITH GAGAS

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. Our audit included tests of management controls that we considered necessary under the circumstances.

SCOPE AND METHODOLOGY

The audit period included transactions from October 2005 to May 2007. We researched other city reports, observed processes, performed tests and analyzed results of the tests performed. We interviewed management and staff of the Public Works Department, and representatives of the City Attorneys Office. We reviewed horizontal and vertical project files for testing purposes.

STAFF ACKNOWLEDGEMENT

Barry Lipton, CPA, DABFA, Deputy City Auditor
Denis Cano, CPA, CIA, CISA, Audit Manager
Danny Zuniga, CIA, Auditor In-Charge
Tanya Rodriguez, Auditor

APPENDIX A – Management Response



CITY OF SAN ANTONIO

P. O. BOX 839966
SAN ANTONIO, TEXAS 78283-3966

City Auditor
San Antonio, Texas

RE: Management's Corrective Action Plan for the Audit of the *Public Works' Contract Administration Process*

City Management and the Office of Public Works have reviewed the audit report and have developed the Corrective Action Plans below corresponding to report recommendations.

#	Description	Recommendation		Responsible Person's Name/Title	Completion Date
		Audit Report Page	Accept, Partially Accept, Decline		
Detail Report					
1	<p>Split Change Order We recommend that the Deputy City Manager ensure Project Managers are properly trained to prevent split change orders from being processed.</p> <p>Action plan: The CIMS Department hosted a meeting of all staff on 10/30/07 where the Contract Administrator provided refresher training on Change Order legal requirements including the unlawfulness and possible ramifications of intentionally splitting change orders. The CIMS Department continues to emphasize the need to follow all state and local statutes related to contracting.</p> <p>In addition, the Web Portal System, which was implemented in September 2006, provides for a routing and tracking system that creates accountability and assists Project Management staff in ensuring that Change Orders are processed appropriately. The Web Portal System includes a workflow process in which Project Managers, Inspectors and administrative staff each review the Change Order and have the ability to see prior Change Orders in the system which would allow them to determine if a change order had been split prior to approval.</p>	3	Accept	Debbie Sittre Contract Administrator	11/15/07
2	Wage and Hour Non-Compliance	4			

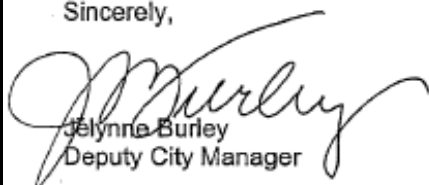
Recommendation					
#	Description	Audit Report Page	Accept, Partially Accept, Decline	Responsible Person's Name/Title	Completion Date
	We recommend that the Deputy City Manager direct the Wage and Hour Auditor to collect the balance of \$8,700 in penalties from contractors for the wage and hour violations identified.		Accept	Debbie Sittre Contract Administrator	12/31/07
<p>Action plan: Wage & Hour Office is actively pursuing collection of the balance of \$8,700 in penalties from contractors for the wage and hour violations identified. Additionally, as a result of this audit, the Wage & Hour Office has reviewed additional projects and identified outstanding penalties in the amount of approximately \$20,000. Wage & Hour Office is actively pursuing collection of approximately \$20,000 in penalties from contractors for the additional wage and hour violations identified.</p>					

Recommendation					
#	Description	Audit Report Page	Accept, Partially Accept, Decline	Responsible Person's Name/Title	Completion Date
Detail Report					
3	Missing and/or Incomplete Weekly Certified Payroll Reports	5	Accept	Debbie Sittre Contract Administrator	01/31/08
<p>We recommend that the Deputy City Manager direct the City's Wage and Hour Auditor to develop a systematic process for ensuring receipt and review of certified weekly payroll reports regarding Public Works contracts. Also, the Wage and Hour Auditor should follow-up on missing weekly reports. In instances of continuous noncompliance and as allowed in the City's contract, payment should be withheld from the contractor until such time that missing reports are received.</p>					
<p>Action plan: The Fiscal Year 2008 adopted budget provides an improvement to the Wage & Hour Office which adds 2 permanent full time positions, for a total of 3 permanent full time positions dedicated to compliance with Davis Bacon and Chapter 2258 of the Texas Government Code. The CIMS Department is planning to have the 2 new positions filled by December 31, 2007. Additionally, by January 31, 2008, the Wage & Hour Office will implement new software that contractors and subcontractors will use to submit certified payrolls. This software will automate certified payrolls through a web-based system and will allow the Wage & Hour Office to audit by exception and run monthly reports. The system will also provide e-mail notices on a weekly basis to the contractor/subcontractor if a certified payroll is missing.</p>					

Recommendation					
#	Description	Audit Report Page	Accept, Partially Accept, Decline	Responsible Person's Name/Title	Completion Date
4	Required Documents were Missing in Project Files We recommend that the Deputy City Manager ensure Contract Administration staff continue to move towards full utilization of the current electronic filing system. The electronic filing system provides better document control and security for project files.	7	Accept	Debbie Sittre Contract Administrator	01/31/08
<p>Action plan: The task of maintaining project records is currently decentralized, with each division keeping their own hard-copy records in their own filing areas. Because the majority of the project files are now the responsibility of the CIMS Department, CIMS is moving forward with consolidation of records using the SharePoint System that Contracts Services Division began implementing in December 2006. A representative from each Division at CIMS will designate one administrative staff person as the records coordinator responsible for ensuring that their division's records are stored in SharePoint. The Contracts Services Division will take the lead in training all staff the proper way to use the system. The Web Portal Division has provided a standard naming convention for documents for ease in searching. Records coordinators will be mobilized in November and work to complete the tasks in three phases. The first phase consists of identifying closed project files and archiving them at the Municipal Records Facility. The second phase will include a systematic approach to placing all existing open project files in SharePoint. The third phase focuses on maintaining the system in which each division records coordinator places documents electronically into the appropriate folder in SharePoint as the documents are created.</p>					

We are committed to addressing the recommendations in the audit report and the plan of actions presented above.

Sincerely,



Jelynn Burley
Deputy City Manager

Mission Statement

The Office of the City Auditor will champion an atmosphere of continuous improvement, integrity, honesty, accountability, and mutual trust through independent appraisal of City programs, activities, and functions.



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