

Washington State Auditor's Office
Accountability Audit Report

**Spokane County Fire Protection District
No. 3**

Report Date
November 20, 2013

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WASHINGTON
TROY KELLEY
STATE AUDITOR



**Washington State Auditor
Troy Kelley**

January 27, 2014

Board of Commissioners
Spokane County Fire Protection District No. 3
Cheney, Washington

Report on Accountability

We appreciate the opportunity to work in cooperation with your District to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role to advocate for government accountability and transparency and to promote positive change.

Please find attached our report on Spokane County Fire Protection District No. 3's accountability and compliance with state laws and regulations and its own policies and procedures. Thank you for working with us to ensure the efficient and effective use of public resources.

Sincerely,

**TROY KELLEY
STATE AUDITOR**

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November 20, 2013**

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Audit Summary

Spokane County Fire Protection District No. 3 November 20, 2013

ABOUT THE AUDIT

This report contains the results of our independent accountability audit of Spokane County Fire Protection District No. 3 from January 1, 2010 through December 31, 2012.

We evaluated internal controls and performed audit procedures on the activities of the District. We also determined whether the District complied with state laws and regulations and its own policies and procedures.

In keeping with general auditing practices, we do not examine every transaction, activity or area. Instead, the areas examined were those representing the highest risk of noncompliance, misappropriation or misuse. The following areas were examined during this audit period:

- Cash receipting
- Payroll
- Small and attractive assets
- Contracts and agreements
- Procurement – purchases and public works

RESULTS

In most areas, the District complied with state laws and regulations and its own policies and procedures.

However, we identified a condition significant enough to report as a finding:

- The District did not comply with state bid laws when constructing its training tower.

Description of the District

Spokane County Fire Protection District No. 3 November 20, 2013

ABOUT THE DISTRICT

Spokane County Fire Protection District No. 3 was established in 1945 and serves approximately 15,000 residents in the southeast portion of Spokane County. The District is governed by an elected, three-member Board of Commissioners.

The District's seven full-time employees and more than 100 volunteer fire fighters operate 10 fire stations and provide fire suppression and protection and emergency medical services. The District also has administrative offices near Cheney. The District operated on annual budgets for fiscal years 2010, 2011 and 2012 were \$3.6 million, \$3.0 million and \$3.6 million, respectively.

ELECTED OFFICIALS

These officials served during the audit period:

Board of Commissioners:

Ron McKinley
Sharon Colby
Howard Marsh

APPOINTED OFFICIALS

Fire Chief
District Secretary

Bruce Holloway
Debbie Arnold

DISTRICT CONTACT INFORMATION

Address: Spokane County Fire Protection District No. 3
10 S. Presley Drive
Cheney, WA 99004

Phone: (509) 235-6645

Website: www.firehouse.com/region/departments/spokane-county-fire-protection-district-3

AUDIT HISTORY

We audit the District once every three years. In the prior three audits, the District has received one finding relating to compliance with state bid laws for conditions similar to those of the current audit finding.

Schedule of Audit Findings and Responses

Spokane County Fire Protection District No. 3 November 20, 2013

1. The District did not comply with state bid laws when constructing its training tower.

Description of Condition

Governments must estimate project costs for all public works projects including materials, supplies, equipment, labor and applicable sales and use taxes. State law requires fire departments to use a formal bid process for public works projects over \$20,000 unless an exception (not applicable here) applies. At the completion of the competitive process, a contract must be awarded to the lowest responsible bidder, unless the District finds good cause to reject any or all bids.

The District completed two public works projects during the audit period which would be subject to competitive bidding. Maintenance bays were added to Station No. 31 and a training tower was constructed. As a result of our previous audit, the District properly bid the maintenance bay addition using a competitive process. However, the District did not use competitive bidding for all portions of the training tower project. The project began in February of 2012 and continues into 2013.

The District has expended \$637,662 on the training tower as of our audit report date. Of this amount, \$451,132 was procured using the formal sealed bid process. However, we noted the District:

- Did not include \$186,530 in project costs as part of the public works project. The District split the remaining tower construction project into smaller projects, which reduced the estimated cost for portions of the project below the \$20,000 threshold. Therefore labor and materials for fencing, sprinklers, building trusses, topsoil, trees, sod and other construction materials were not included in the project specifications and included in the formal sealed bidding process. The District obtained vendor quotes instead of using a formal sealed bidding process as required by state law.
- Used its own employees to provide project labor such as preparing the ground for rock and asphalt, electrical work, running piping and utility lines to the fire hydrant and building a small storage shed next to the training tower. State law does not allow fire districts to use their own employees instead of including the labor in the bid.

Cause of Condition

The District disagrees with the State Auditor's Office interpretation of state law for the use of District employees for public works projects. The District believed splitting the project into smaller components and using their own employees would be more efficient and cost-effective.

Effect of Condition

The District did not ensure all interested responsible bidders were given the opportunity to bid on all portions of the training tower project. By limiting competition and not following proper bid law procedures, the District cannot ensure it received the best possible price.

Recommendation

We recommend the District:

- Properly determine the scope of each public works projects and develop accurate project cost estimates to determine when formal competitive bidding requirements apply.
- Discontinue the practice of splitting public works projects into smaller projects to avoid formal competitive bidding requirements.
- Refrain from using District employees to complete public works projects instead of including the labor in the bid.

District's Response

The District is committed to cooperating with the Auditor to insure that the District is managed and operated in full compliance with the law. The District is also committed to complying with all public bidding laws to insure that public funds are spent in the most responsible and efficient manner possible. The procedures used to bid and construct the training tower referenced in the proposed finding, were based on advice from legal counsel, complied with applicable bid laws and provided substantial cost savings for District taxpayers.

General Comments:

The proposed audit finding fails to identify any facts that support the conclusion that the District "did not comply with state bid laws when constructing its training tower." Initially we note that the Auditor is not objecting to the expenditure of \$451,132 on the project because a formal sealed bid process was used. This response focuses only on the claim that the District somehow failed to comply with the public bid laws for \$186,530 of the project cost.

Specific Response:

Proposed Finding: "The District split the remaining tower construction project into small projects, which reduced the estimated cost of portions of the project below the \$20,000 threshold....The District obtained vendor quotes instead of using a formal sealed bidding process as required by state law."

Response: The District followed all applicable bid laws. The District is not required to use competitive sealed bidding for projects under \$300,000 and is not required to use any formal statutory process for projects under \$20,000. Accordingly if the District split the tower construction into small projects that each cost less than \$20,000 the District would not have been obligated to use a competitive sealed bid process for those

portions of the project. The proposed finding does not specifically claim that the District's splitting of the tower construction project into small projects violated RCW 39.04.155(4). To the extent the audit finding assumes this statute has been violated we respond as follows:

RCW 39.04.155(4) prohibits "The breaking of any project into units or accomplishing any projects by phases is prohibited **if it is done for the purpose** of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process. (emphasis added).

The District did not elect to break the station construction into units or phases "for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process." The District, as we have repeatedly stated, broke the training tower construction projects into smaller projects to save the taxpayers of the District money by using its own and volunteer personnel for portions of the construction. As a result of the District's innovative approach, a single bid process for the entire project was not only unnecessary, but was impractical.

Proposed Finding "State law does not allow fire districts to use their own employees instead of including the labor in the bid."

Response: The District disagrees with this premise and conclusion. The District is unaware of any binding authority that prohibits the District from using its own employees to build its fire stations. RCW 52.12.0201 gives fire protection district broad authority to "enter into and to perform any and all necessary contracts, to appoint and employ the necessary... employees ... and to do any and all lawful acts required and expedient to carry out the purpose of this title."

The purpose of a fire protection district is to provide fire protection and emergency medical services. In order to fulfill this purpose the District necessarily requires stations to house its equipment and employees and it is necessary and expedient that such facilities be constructed using the lowest cost methods available. The decision to use District employees for portions of the construction is within the discretion of the Board of Commissioners. Fire Districts across the state use employees for various public works projects including janitorial services, building maintenance and repair services, landscaping services, etc. We are not aware of any precedent or prior audit findings that supports the premise that fire protection districts cannot use employees to perform these types of public works projects.

We request that the proposed finding be withdrawn.

Auditor's Remarks

We thank the District for its cooperation and assistance during the audit. We will review the status of this issue during our next audit. We commend the District for the decision to confer with its legal counsel on this issue. We conferred with the State Auditor's Office Assistant Attorney General in reaching our conclusions. We reaffirm our finding.

Applicable Laws and Regulations

RCW 39.04.010 – Definitions – states in part:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW

RCW 52.12.021, General powers, states:

Fire protection districts have full authority to carry out their purposes and to that end may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, or any interest therein, to enter into and to perform any and all necessary contracts, to appoint and employ the necessary officers, agents, and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of assessments and special taxes in the manner and subject to the limitations provided in this title against the lands within the district for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this title.

RCW 52.14.110, Purchases and public works — Competitive bids required — Exceptions , states:

Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ten thousand dollars. However, whenever the estimated cost does not exceed fifty thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

(2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of twenty thousand dollars, which includes the costs of labor, material, and equipment;

(3) Contracts using the small works roster process under RCW 39.04.155; and

(4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

RCW 52.14.120, Purchases and public works — Competitive bidding procedures, states:

- (1) Notice of the call for bids shall be given by publishing the notice in a newspaper of general circulation within the district at least thirteen days before the last date upon which bids will be received. If no bid is received on the first call, the commissioners may re-advertise and make a second call, or may enter into a contract without a further call.
- (2) A public work involving three or more specialty contractors requires that the district retain the services of a general contractor as defined in RCW 18.27.010.



ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established in the state's Constitution and is part of the executive branch of state government. The State Auditor is elected by the citizens of Washington and serves four-year terms.

We work with our audit clients and citizens as an advocate for government accountability. As an elected agency, the State Auditor's Office has the independence necessary to objectively perform audits and investigations. Our audits are designed to comply with professional standards as well as to satisfy the requirements of federal, state, and local laws.

The State Auditor's Office employees are located around the state to deliver services effectively and efficiently.

Our audits look at financial information and compliance with state, federal and local laws on the part of all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits of state agencies and local governments and fraud, whistleblower and citizen hotline investigations.

The results of our work are widely distributed through a variety of reports, which are available on our Web site and through our free, electronic subscription service.

We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program.

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