



Office of the Washington State Auditor
Pat McCarthy

Accountability Audit Report
Spokane County Fire Protection
District No. 3

For the period January 1, 2013 through December 31, 2015

Published April 20, 2017

Report No. 1018454





**Office of the Washington State Auditor
Pat McCarthy**

April 20, 2017

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

Report on Accountability

Thank you for the opportunity to work with you to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role of providing state and local governments with assurance and accountability as the independent auditor of public accounts. In this way, we strive to help government work better, cost less, deliver higher value and earn greater public trust.

Independent audits provide essential accountability and transparency for District operations. This information is valuable to management, the governing body and public stakeholders when assessing the government's stewardship of public resources.

The attached comprises our report on the District's compliance and safeguarding of public resources. Our independent audit report describes the overall results and conclusions for areas we examined. We appreciate the opportunity to work with your staff and we value your cooperation during the audit.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

TABLE OF CONTENTS

Audit Summary.....	4
Schedule Of Audit Findings And Responses.....	5
Summary Schedule Of Prior Audit Findings.....	12
Information About The District.....	15
About The State Auditor’s Office.....	16

AUDIT SUMMARY

Results in brief

In most areas we audited, District operations complied with applicable requirements and provided adequate safeguarding of public resources. The District also complied with state laws and regulations and its own policies and procedures in the areas we examined.

However, we identified areas in which the District could make improvements.

We recommended the District:

- Re-bid contracts in the event of a vendor filing bankruptcy.
- Properly determine the scope of each public works project 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.

These recommendations were included in our report as a finding.

About the audit

This report contains the results of our independent accountability audit of Spokane County Fire Protection District No. 3 from January 1, 2013 through December 31, 2015.

Management is responsible for ensuring compliance and adequate safeguarding of public resources from fraud, loss or abuse. This includes the design, implementation and maintenance of internal controls relevant to these objectives.

Our audit involved performing procedures to obtain evidence about the District's uses of public resources, compliance with state laws and regulations and its own policies and procedures, and internal controls over such matters.

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 fraud, loss, abuse, or noncompliance. The following areas were examined during this audit period:

- Understanding of operational structure and statutory requirements
- Procurement (bidding/prevaling wage)
- Payments/expenditures

SCHEDULE OF AUDIT FINDINGS AND RESPONSES

2015-001 The District did not comply with state bid law when constructing its training center and purchasing two pumper tenders.

Background

Governments must estimate the total costs for purchases of equipment and public works projects including materials, supplies, equipment, labor, and applicable sales and use taxes to determine how to appropriately procure these items at the lowest cost. For fire districts, state law (RCW 52.14.110) requires that they competitively bid equipment purchases of more than \$10,000 and public works projects of more than \$20,000.

State law also allows alternative procurement requirements for equipment purchases and public works projects if formally adopted by fire districts. For purchases, fire districts may pass a resolution to use the purchase contract process, which allows equipment purchases up to \$50,000 without requiring formal bidding procedures (RCW 39.04.190). Additionally, fire districts may adopt the use of a small works roster, which allows public works projects to be procured up to \$300,000 without requiring formal bidding procedures (RCW 39.04.155).

Our audit found the District adopted the purchase contract process under resolution 01-7 and the use of a small works roster for public works projects.

Description of Condition

We reviewed the District's procurement of two pumper tenders totaling \$528,256 and the construction of a new training center totaling \$355,536, and found:

Pumper Tenders

While the initial contract to purchase the pumper tenders was correctly procured, the vendor filed for bankruptcy and the District awarded the contract without additional competition to another vendor. Upon the original vendor's bankruptcy, the contract should have been re-bid to ensure that the contract was awarded to the lowest responsible bidder.

Training Center

During the audit period, the District completed one public works project that would be subject to competitive bidding. A training center was constructed next to the training tower, which was built during the previous audit period. The District would have been required to use the formal bidding process if the District

had not broken the project into phases. The project started in the beginning of 2013, and was completed about October 2015.

For the construction of the District's training center, 26 contracts were entered into through use of the small works roster. From these contracts, the District expended \$355,536 for services and supplies. A district may select a vendor from its small works roster to perform construction work, provided the cost of the project does not exceed the threshold, which was \$300,000 during the audit period. Because the District exceeded the threshold, the project should have been formally bid.

Additionally, the District used 6,106 hours of employee day labor. With the help of the District Office Manager, we approximated an hourly rate of \$13.00. This would equal \$79,378 in labor. This labor was used for ground work, insulating, flooring and framing. State law does not authorize fire districts to use their own employees.

The amount expended between employee labor, supplies and services totaled \$434,914.

Cause of Condition

The District disagrees with the State Auditor's interpretation of state law for the transfer of the pumper tender contract.

The District also 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 its 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 the pumper tender contract and all portions of the training center project. By limiting competition and not following proper bid law procedures, the District cannot ensure it received the best possible price.

Performing public works projects in this manner can leave the District with limited recourse in the event of a defective building, and increased liability if damages occurred.

Recommendation

We recommend the District:

- Re-bid contracts in the event of a vendor filing bankruptcy.
- Properly determine the scope of each public works project 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.

District's Response

Training Center:

*The District followed all applicable bid laws, provided all responsible bidders the opportunity to bid on the Training Center projects under the Small Works Roster process authorized by RCW 39.040.155. The District's compliance with the bid laws guaranteed that the District received the best possible price on those 26 contracts. The Auditor states, without any supporting evidence, that the District's use of a small works roster for 26 separate contracts rather than using a sealed competitive bid process for the entire project violated RCW 39.04.155(4). However, RCW 39.04.155(4) only 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 statute does not prohibit the breaking of any project into units to avoid a sealed bid process.*

Regardless, the District did not break the project into units or phases "for the purpose of avoiding" any bid laws and the Auditor has not provided any evidence to support this allegation. The District, separated the training tower construction project into smaller projects because the District retained its volunteer association as its general contractor pursuant to the authority granted in RCW 52.14.120 and it was neither practical nor cost effective to let a bid for the entire project as the District was not seeking a single contract for the project.

Use of Employees on Public Works Project.

The Auditor concludes that the District should not use District employees to complete public works projects but cites to no legal authority that prohibits the use of District employees to perform public works projects.

The District respectfully disagrees with this premise and conclusion. The District is unaware of any legal authority that prohibits the District from using its own employees to build a fire station. 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.

Pumper Tenders.

The Auditor concludes that the District should have rebid a contract to purchase pumper tenders following the original low bidder’s bankruptcy. We respectfully disagree with this conclusion.

As the auditor recognizes, “the initial contract to purchase the pumper tenders was correctly procured.” As a result, contrary to the Auditor’s conclusion, the District did ensure all interested responsible bidders were given the opportunity to bid on the pumper tender contract. In response to the low bidders bankruptcy following the award of the bid, the District was able to negotiate an assignment of the contract to a different vendor that honored the terms of the originally bid contract. The end result was the District purchased the pumps at the same price as was originally bid. It is unclear to the District how this decision to complete the purchase under the same terms as originally bid constitutes a violation of the bid law. This decision to assign the contract instead of going back out for bid was reviewed and approved by District legal counsel and this approach benefitted the District’s taxpayers by avoiding the delay and potential increase in costs that would have been triggered by a rebidding of the contract.

Auditor's Remarks

The State Auditor's Office conferred with the Attorney General's Office in reaching our conclusions. Our Office has been reporting concerns regarding the District's bid compliance since 2008 and have issued findings in three out of the last four audits. We reaffirm our finding and will review the status of this issue during our next audit.

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 39.04.155 - Small works roster contract procedures—Limited public works process—Definition, states in part:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less.

(4) 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.

RCW 39.04.190 - Purchase contract process – Other than formal sealed bidding.

(1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the awarding of contracts for purchases, for the municipality.

(2) At least twice per year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible bidder as defined in chapter 39.26 RCW. Immediately after the award is made, the bid quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised.

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.

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.

SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS

**Spokane County Fire Protection District No. 3
January 1, 2013 through December 31, 2015**

This schedule presents the status of findings reported in prior audit periods. The status listed below is the representation of Spokane County Fire Protection District No. 3. The State Auditor’s Office has reviewed the status as presented by the District.

Audit Period: January 1, 2010 through December 31, 2012	Report Ref. No.: 1011139	Finding Ref. No.: 1
Finding Caption: The District did not comply with state bid laws when constructing its training tower.		
Background: 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.		
Status of Corrective Action: <input type="checkbox"/> Fully Corrected <input type="checkbox"/> Partially Corrected <input checked="" type="checkbox"/> Not Corrected <input type="checkbox"/> Finding is considered no longer valid		
Corrective Action Taken: <p><i>Due to differences in interpretation of the laws applicable to the finding issued, the District has determined to maintain the process under which vendors are procured for the construction of the training center. Outlined below is documentation showing our basis for disagreement in interpretation of the law, which was determined from discussion with our lawyer Brian Snure.</i></p> <p><i>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.</i></p>		

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.

INFORMATION ABOUT THE DISTRICT

Spokane County Fire Protection District No. 3 was established in 1945 and provides fire suppression and protection services and emergency medical aid to approximately 15,000 residents in the southeast portion of Spokane County.

The District is administered by an elected, three-member Board of Commissioners and has seven full-time employees. The District's annual budgets for fiscal years 2013, 2014 and 2015 were \$3.4 million, \$3.6 million and \$4.2 million, respectively. The District operates 10 fire stations with the administrative offices near Cheney.

Contact information related to this report	
Address:	Spokane County Fire Protection District No. 3 10 S. Presley Drive Cheney, WA 99004
Contact:	Debbie Arnold, District Office Manager
Telephone:	(509) 235-6645
Website:	www.firehouse.com/region/departments/spokane-county-fire-protection-district-3

Information current as of report publish date.

Audit history

You can find current and past audit reports for Spokane County Fire Protection District No. 3 at <http://portal.sao.wa.gov/ReportSearch>.

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 to achieve our vision of government that works for citizens, by helping governments work better, cost less, deliver higher value, and earn greater public trust.

In fulfilling our mission to hold state and local governments accountable for the use of public resources, we also hold ourselves accountable by continually improving our audit quality and operational efficiency and developing highly engaged and committed employees.

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.

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 as well as [fraud](#), state [whistleblower](#) and [citizen hotline](#) investigations.

The results of our work are widely distributed through a variety of reports, which are available on our [website](#) and through our free, electronic [subscription](#) service.

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

Contact information for the State Auditor's Office	
Public Records requests	PublicRecords@sao.wa.gov
Main telephone	(360) 902-0370
Toll-free Citizen Hotline	(866) 902-3900
Website	www.sao.wa.gov