

**Washington State Auditor's Office**  
**Accountability Audit Report**

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**San Juan County Fire Protection District  
No. 2  
(Orcas Island Fire Department)**

Report Date  
**May 29, 2013**

**Report No. 1010105**

Issue Date  
**July 15, 2013**



WASHINGTON  
**TROY KELLEY**  
STATE AUDITOR



**Washington State Auditor  
Troy Kelley**

July 15, 2013

Board of Commissioners  
Orcas Island Fire Department  
Eastsound, 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 Orcas Island Fire Department'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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San Juan County  
May 29, 2013

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# **Audit Summary**

## **Orcas Island Fire Department San Juan County May 29, 2013**

### ***ABOUT THE AUDIT***

This report contains the results of our independent accountability audit of Orcas Island Fire Department from January 1, 2010 through December 31, 2011.

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
- Contracts/agreements
- Insurance/risk management
- Open Public Meetings Act
- Conflict of interest
- Payments/expenditures
- Procurement (bidding/prevaling wage)

### ***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 competitive bid laws for the construction of its fire station, which limited competition and did not ensure the best price. Additionally, the District created a conflict of interest when it used a Commissioner's company for a component of the project.

## **Related Reports**

**Orcas Island Fire Department  
San Juan County  
May 29, 2013**

### ***FINANCIAL***

Our opinion on the District's financial statements is provided in a separate report, which includes the District's financial statements.

## **Description of the District**

### **Orcas Island Fire Department San Juan County May 29, 2013**

#### ***ABOUT THE DISTRICT***

San Juan County Fire Protection District No. 2, doing business as Orcas Island Fire Department, provides firefighting and ambulance services to residents of Orcas Island in San Juan County. The District maintains seven fire stations throughout Orcas Island and its main source of revenue is property taxes. The District does not have a separate emergency medical services levy and does not charge for ambulance transport services.

An elected, three-member Board of Commissioners governs the District. The Board appoints a Fire Chief to oversee the District's daily operations as well as its four full-time firefighter paramedics, two firefighter emergency medical technicians (EMT), an EMT administrative assistant and over 60 volunteer firefighters, EMTs and First Responders. The District operated on annual budgets of approximately \$2.6 million in 2010 and \$2.1 million in 2011.

#### ***ELECTED OFFICIALS***

These officials served during the audit period:

Board of Commissioners:

Jim Coffin  
Clyde Duke  
Barbara Bedell

#### ***APPOINTED OFFICIALS***

Fire Chief

Mike Harris

#### ***DISTRICT CONTACT INFORMATION***

Address: Orcas Island Fire Department  
P.O. Box 217  
Eastsound, WA 98245-0217

Phone: (360) 376-2331, ext. 21

Website: [www.orcasfire.org](http://www.orcasfire.org)

## ***AUDIT HISTORY***

Previously, the District was audited once every three years. The District is now on a two-year audit cycle. The past five audits have been free of audit findings.

# **Schedule of Audit Findings and Responses**

## **Orcas Island Fire Department San Juan County May 29, 2013**

- 1. The District did not comply with competitive bid laws for the construction of its fire station, which limited competition and did not ensure the best price. Additionally, the District created a conflict of interest when it used the Commissioner's company for a component of the project.**

### **Background**

State law requires the District to seek formal bids on public work projects of more than \$20,000. State law also does not allow for an elected official to have a beneficial interest in a contract entered into by the District.

### **Condition**

The District constructed a new fire station on Orcas Island. The District originally sought bids for the complete fire station on September 1, 2009; however, the bids came in at amounts greater than the District wished to spend, with a low bid of \$923,150. The District rejected all bids and created a bare-bones set of specifications to significantly reduce the cost of the project. The stripped down version of the fire station was re-bid on May 11, 2010, and awarded to a low bidder for \$426,562.

On May 20, 2010, the District contacted the contractor who was awarded the project and requested estimates on items previously removed from the initial bid in 2009. Approximately \$56,000 in change orders were added to the project. Since these additions were not included in the awarded bid specifications they represent separate projects and appropriate bidding procedures should have been followed.

Additionally, after the award of the bid, roofing labor for the project was removed from the scope deducting \$13,764 from the contract. The labor for roofing was provided by a Commissioner's company at no cost to the District. Materials were also provided by the Commissioner's company at a cost to the District of \$22,484.41. The cost of building materials alone exceeded the competitive bid threshold for fire districts and should have been bid, and a conflict of interest was created by the use of the Commissioner's company. Per state law, officers, such as Board Commissioners, are not allowed to directly or indirectly hold a beneficial interest in any contract under the supervision of the officer.

### **Cause**

District management did not have a full understanding of the bidding and conflict of interest laws when starting this construction project.



## Effect

The District's lack of compliance and knowledge of bid law did not allow all contractors wanting to work on the public project an opportunity and increased the risk that it did not receive the best price possible for the project. In addition, the District violated conflicts of interest laws when contracting with a Commissioner's company.

## Recommendation

We recommend the District establish policies and a procedure to ensure it follows state bid and conflict of interest laws. Additionally, we recommend the District seek outside training or guidance to ensure proper handling of future projects.

## District's Response

*Orcas Island Fire and Rescue (OIFR) understands the comments of the Washington State Auditor but disagrees with the findings. OIFR attempted to fully comply with all legal requirements and believes that it did so, consulting repeatedly with OIFR's municipal attorneys throughout the process. OIFR acted responsibly and in the community's best interest, saving significant taxpayer dollars in the process of improving fire and EMS service to our community.*

*Despite our disagreement with the findings, in an effort to ensure full compliance with the Auditor's recommendations, OIFR has changed its internal policies regarding public works. OIFR has conducted –and will continue to exercise—internal training to assure full compliance.*

*The Auditor's comments focus on two issues: (i) changes orders issued to the successful contractor and (ii) donations by a District commissioner of manual labor at no charge and of roofing materials at cost, i.e. without any markup for overhead/profit.*

*This project was bid as an apparatus bay capable of housing four response vehicles and a "shell" of a building that would have the ability to be finished in the future. As Phase One proceeded, Orcas Island Fire and Rescue recognized that significant cost savings could be obtained by installing certain future improvements to Station 24 during the construction of the shell. To realize these savings, the District issued change orders, a commonly accepted practice for construction projects. The total changes orders issued in the manner was exceedingly modest, representing only about 13% of the total contract price. The auditor's criticism is that the district could not ensure it obtained the best price because the extra work was not competitively bid; however, using that logic, no public agency could ever enter into any change order with the contractor selected through a competitive bidding process, and this is clearly not the case. Further, the District's research confirms that it obtained extremely favorable pricing, compared to what it would have cost to rebid the extra work: (i) the scope of the added work was modest, (ii) it would have required another contractor to coordinate with the general contractor for the shell (a difficult proposition at best) and (iii) the added work would have required a new contractor to charge for its own mobilization costs. In light of the foregoing, the price for the additional work would have been significantly higher if the district had separately bid this work.*

*The second issue involves the donation by Commissioner Clyde Duke of labor to complete the roof and donation of materials at cost. In contrast to the auditor's comments, no contract was signed; further, no contract was needed since this was a donation which fire districts are legally entitled to accept under state statutes. RCW 52.16.150. The donation of labor, alone, saved the District over \$13,000. The donation of materials at wholesale cost saved the district approximately 40% in roofing material expenses. (The District would like to clarify that our records show Duke Construction provided \$17,405 in materials<sup>1</sup>, excluding sales tax. This figure differs from the \$22,484.41 reported by the auditor.) While we now understand that this may have been a technical violation of the purchasing statutes, we reaffirm that the District indisputably saved the taxpayers money on acquiring the materials in this manner.*

*Finally, in contrast to the auditor's suggestion, the commissioner who donated the labor at no charge and materials at cost did not have a beneficial interest in any contract with the District. First, no contract was formed. And second, neither the commissioner nor his company benefited or profited in the least, either directly or indirectly, from these donations. To the contrary, the donation was a burden to Commissioner Duke who paid for wages and benefits of those employees who performed the labor.*

*Throughout the bidding and construction processes, both issues raised by the auditor were discussed openly and memorialized in the public meetings held by the Board of Fire Commissioners.*

*Despite our disagreements with the auditor's findings, the District aspires to comply with the law. We have taken the auditor's comments into consideration and have made appropriate changes. Through accountable management practices and fiscal responsibility, we aspire to maintain and equip Station 24 in a manner that provides the people of Deer Harbor with highly reliable and proficient EMS, life safety, fire, and rescue services.*

## **Auditor's Remarks**

Change orders are only allowable if the additional work is within the bid upon scope of the project. We identified approximately \$56,000 in change orders outside the scope of the project. If the District wished to include these items in "Phase One", each of these items could have been provided to the bidders in the form of "options" on the project when the project was bid. This method allows for the District to get the best price for the project and allows all bidders an equal opportunity to bid.

We consider all the work performed and billed to the District by the Commissioner's company to be one project. All four invoices were for roofing related materials and billed during December 2010 and January 2011. The total amount billed to the District exceeded the bid limit. Also, each invoice provided to the District by the Commissioner's company exceeded the payment limit to a commissioner of \$1,500 in any calendar month, as outlined by RCW 42.23.030. Finally, RCW 42.23.030(3) defines "contracts" to include "... any ... sale, lease or purchase." The purchases of roofing related materials were subject to the Code of Ethics for Municipal Officers.

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<sup>1</sup> The auditor incorrectly added sales tax as well as a separate donation related to the Old Station 24 (a separate project). However, the auditor used the wrong number and thereby erred in its assertion that the cost of the donated materials was \$22,484.41. The actual cost was \$17,405.

We reaffirm our finding and will review the steps taken by the District during our next scheduled audit.

## **Applicable Laws and Regulations**

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 42.23.030 - Interest in contracts prohibited – Exceptions, states in part:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein . . . A municipal officer may not vote in the authorization, approval, or ratification of a contract in which he or she is beneficially interested even though one of the exemptions allowing the awarding of such a contract applies. The interest of the municipal officer must be disclosed to the governing body of the municipality and noted in the official minutes or similar records of the municipality before the formation of the contract.



## **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.

Our mission is to 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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