

# 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.